

**Cantor Fitzgerald & Co. v 8AN Capital Partners  
Master Fund L.P.**

2014 NY Slip Op 33967(U)

December 19, 2014

Supreme Court, New York County

Docket Number: 156559/14

Judge: Melvin L. Schweitzer

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: MELVIN L. SCHWEITZER
Justice

PART 45

CANTOR FITZGERALD + CO.

INDEX NO. 156559/14

MOTION DATE

MOTION SEQ. NO. 061

-v-

8 AN CAPITAL PARTNERS MASTER FUND L.P.
8 AN CAPITAL PARTNERS, LTD. AND PHILLIP EYTAN

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).

Answering Affidavits — Exhibits No(s).

Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion by the individual defendant to dismiss the action is DENIED per the attached Decision and Order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: December 19, 2014

Melvin L. Schweitzer
MELVIN L. SCHWEITZER

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER DO NOT POST FIDUCIARY APPOINTMENT REFERENCE



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 45

-----X	
CANTOR FITZGERALD & CO.,	:
	:
Plaintiff,	:
	:
-against-	:
	:
8AN CAPITAL PARTNERS MASTER FUND L.P.,	:
8AN CAPITAL PARTNERS, LTD. and PHILIP EYTAN,	:
	:
Defendants.	:
-----X	

Index No. 156559/14

DECISION AND ORDER

Motion Sequence No. 001

**MELVIN L. SCHWEITZER, J.:**

This action involves an alleged fraudulent transfer of assets by a financial institution during the course of a litigation against the financial institution. An individual defendant, who is alleged to have controlled both the transferor and transferee, has moved to dismiss the action.

**Facts**

In August 2012, plaintiff commenced an action against a master fund for failure to settle an agreed-upon securities trade, seeking in excess of \$2,500,000. During the litigation, which ended in an award of monetary relief to plaintiff, the master fund transferred approximately \$500,000 and several million shares of stock to an account of an investor in Switzerland.

The investor had entered into an investment management agreement with the master fund, with a limited liability company acting as investment manager to both entities. The individual defendant here served as managing member of the master fund, director of the investor, and an officer of the investment manager. It is alleged that under the investment management agreement assets could be transferred between the master fund and investor at the sole direction of the

investment manager. Thus, the individual defendant who controlled the master fund and the investor also had the power to transfer assets between them.

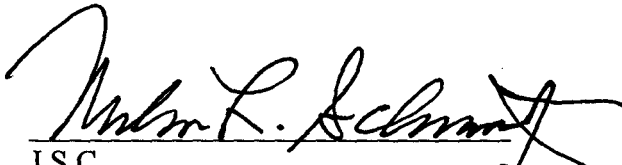
#### Discussion

The individual defendant, who is alleged to have been responsible for the transfer referred to above, asserts that the Debtor and Creditor law does not provide for a remedy against non-transferees. However, where the party is alleged to have dominion and control over the transferred assets and also is alleged to have benefitted in any way from the transfer, the Debtor and Creditor law is applicable. *See FDIC v Porco*, 75 NY2d 840 (1990). That is exactly what is alleged against individual defendant. Thus, his motion to dismiss is denied. Accordingly, it is

ORDERED that defendants' motion to dismiss is denied.

Dated: December 19, 2014

ENTER:

  
J.S.C.  
MELVIN L. SCHWEITZER