

**2001 Real Estate Space Catalyst, Inc. v Stone Land
Capital, Inc.**

2021 NY Slip Op 32647(U)

December 10, 2021

Supreme Court, New York County

Docket Number: Index No. 653398/2015

Judge: Erika M. Edwards

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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: HON. ERIKA EDWARDS

PART 11

Justice

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2001 REAL ESTATE SPACE CATALYST, INC.,

INDEX NO. 653398/2015

Plaintiff,

**Decision &
Order After
Inquest**

- v -

STONE LAND CAPITAL, INC., BENJAMIN LANDY and
URBAN PROPERTY GROUP, INC.,

Defendants.

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After an inquest for the assessment of damages held before this court on December 9, 2021, the court rendered its decision on the record for judgment in favor of Plaintiff 2001 Real Estate Space Catalyst, Inc. ("Plaintiff") as against Defendants Stone Land Capital, Inc. ("Stone Land") and Urban Property Group, Inc. ("Urban Property") in the amount of \$41,000.00, plus prejudgment interest.¹ However, the court reserved decision on the issue of whether Plaintiff is entitled to attorneys' fees and costs as alleged in the Seventh Count in Plaintiff's amended complaint regarding fraudulent conveyance against Urban Property. Based upon the evidence, the court declines to award Plaintiff attorneys' fees and costs.

As set forth orally on the record, the court found that Plaintiff demonstrated its entitlement to half of the commissions received by Stone Land for the tenants that Plaintiff's principal, Lloyd Putter, procured for commercial leases located at 85 and 95 Delancey Street, New York, New York.

The court determined that Plaintiff demonstrated its entitlement to its share of the commission for 85 Delancey Street in the amount of \$15,000.00, plus interest as of July 23, 2012, however, the court now realizes that it erred in its calculation of a median date for the beginning of the accrual of interest. The court exercised its discretion pursuant to CPLR 5001 and determined a reasonable intermediate date based upon the three commission checks that Stone Land received in the amount of \$10,000.00 each based upon the dates when such checks appeared to have been processed by the bank according to Plaintiff's Exhibit 4 (October 9, 2012, May 6, 2013, August 9, 2013). The court initially calculated the date by incorrectly determining that all three checks were processed in 2012, but the court now realizes that two of the checks were processed in 2013. Therefore, the median date is March 9, 2013 and Plaintiff is entitled to prejudgment interest on \$15,000.00 as of March 9, 2013.

¹ The court previously dismissed the amended complaint against Defendant Benjamin Landy, who is the principal of both corporations.

The court also determined that Plaintiff demonstrated its entitlement to a judgment against Defendants Stone Land and Urban Property for Plaintiff's share of the commission for the lease for 95 Delancey Street in the amount of \$26,000.00, which is half of the \$51,000.00 that Stone Land received in three installments for checks in the amount of \$17,000.00 each, plus prejudgment interest as of a median date of May 21, 2013. This date is based upon the dates that the bank processed the checks according to Plaintiff's Exhibit 3 (January 22, 2013, August 8, 2013 and September 17, 2013).

As to Plaintiff's claim for attorneys' fees and costs based upon its claim for fraudulent conveyance against Urban Property under Count Seven of the amended complaint, the court determines that Plaintiff failed to prove its entitlement to damages on this claim and declines to award Plaintiff attorneys' fees and costs.

Plaintiff alleges in substance that, upon information and belief, Stone Land received Plaintiff's share of its commission and transferred it to Mr. Landy and/or Urban Property without fair consideration with the intent to "siphon funds out of defendant Stone Land" and "to hinder, delay or defraud plaintiff's rights as a creditor" of Stone Land as set forth in §§ 273-A, 276 and 271 of the New York Debtor & Creditor Law (Plaintiff's amended complaint at ¶¶ 84-89). Plaintiff further alleges that Plaintiff is entitled to annul, recapture and set aside such fraudulent conveyances since they were done while Stone Land was insolvent pursuant to § 279 of the New York Debtor & Creditor Law (*id.* at ¶ 90). Finally, Plaintiff alleges that it is entitled to attorney's fees in this action to set aside the fraudulent conveyance pursuant to § 276-a of the New York Debtor & Creditor Law (*id.* at ¶ 91).

Pursuant to CPLR 3215(b), after default "[t]he court, with or without a jury, may make an assessment or take an account or proof, or may direct a reference" (CPLR 3215[b]). Although Defendants admitted to liability and all traversable allegations set forth in Plaintiff's amended complaint because of the default, "the legal conclusions to be drawn from such proof are reserved for the court's determination" and, if a valid cause of action is not stated, then Plaintiff is not entitled to its relief requested, even on default (*see Green v Dolphy Constr. Co., Inc.*, 187 AD2d 635, 636 [2d Dept 1992]). In determining whether a plaintiff has a viable cause of action as required by CPLR 3215(f), "the court may consider the complaint, affidavits, and affirmations submitted by the plaintiff" (*Litvinskiy v May Entertainment Group, Inc.*, 44 AD3d 627 [2d Dept 2007] [court dismissed a complaint for Plaintiff's failure to plead and establish the existence of a viable cause of action based upon the complaint and evidence introduced at the inquest]). Although based upon different facts, like in *Green*, "[a]llegations of scienter will not transform what is essentially a breach of contract cause of action into one to recover damages for fraud" (*Green*, 187 AD2d at 636).

Here, the court finds that although Defendants admitted to the traversable allegations in the amended complaint, Plaintiff's allegations in its fraudulent conveyance claim are insufficient to establish Plaintiff's entitlement to attorney's fees and costs. Plaintiff's sole reliance upon Mr. Putter's affidavit and the allegations in its amended complaint is misplaced. The court finds that such allegations are conclusory, primarily based upon information and belief, include legal conclusions which are not factually based, and fail to include the evidentiary basis for such allegations.

The allegations are insufficient to establish Plaintiff's damages because they are based primarily on information and belief without explaining or even mentioning the factual source or evidentiary basis upon which such information and beliefs were based (*see Zelnik v Bidermann Indus. U.S.A., Inc.*, 242 AD2d 227, 228 [1st Dept 1997]). Certainly, Mr. Putter has no first-hand knowledge of Defendants' banking transactions, Mr. Landy's intent, purpose or reasons why decisions were made and his affidavit and the amended complaint fail to provide a sufficient basis for the court to draw reasonable inferences to conclude that any transactions were based upon a fraudulent purpose or illicit intent.

Plaintiff failed to introduce any evidence at the inquest to support the allegations set forth in its fraudulent conveyance claim. There was no evidence pleaded or presented as to the dates when monies were deposited or withdrawn, who completed the transactions, the amounts of such transactions, nor the names of the account holders of any accounts involved in the alleged fraudulent transactions. Additionally, Plaintiff failed to introduce any deposition testimony, bank records or any testimony during the inquest regarding the transfer of money from Stone Land to Urban Property or Mr. Landy, let alone anything to infer Mr. Landy's intent. In fact, there was no mention of any monetary transactions between Mr. Landy and any of the corporations or between the corporations.

Therefore, Plaintiff failed to demonstrate its entitlement to attorney's fees or costs in this matter.


As such, it is hereby

ORDERED that after the inquest for the assessment of damages conducted by this court on December 9, 2021, the court awards judgment and directs the Clerk of the Court to enter judgment in favor of Plaintiff 2001 Real Estate Space Catalyst, Inc. as against Defendants Stone Land Capital, Inc. and Urban Property Group, Inc., jointly and severally, in the amount of \$41,000.00, plus prejudgment interest to be calculated as follows: \$15,000.00 as of March 9, 2013 and \$26,000.00 as of May 21, 2013, at the statutory rate of 9% per annum as calculated by the Clerk of the Court; and it is further

ORDERED that a copy of this order with notice of entry shall be served by counsel for Plaintiff 2001 Real Estate Space Catalyst, Inc. upon Defendants Stone Land Capital, Inc., Urban Property Group, Inc. and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this court.



ERIKA EDWARDS, JSC

DATE: 12/10/2021

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify _____)