2001 Real Estate Space Catalyst, Inc. v Stone Land Capital, Inc.
2019 NY Slip Op 30155(U)
January 15, 2019
Supreme Court, New York County
Docket Number: 653398/2015
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: I.A.S. PART 15

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2001 REAL ESTATE SPACE CATALYST, INC.,

Plaintiff,

- against -

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

Defendants.

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DECISION AND ORDER

Index No. 653398/2015

MS #003

MELISSA A. CRANE, J.:

In this dispute concerning the alleged nonpayment of real estate brokerage commissions, defendants Stone Land Capital, Inc. (Stone Land), Benjamin Landy (Landy) and Urban Property Group Inc. (Urban) (collectively, defendants) move, pursuant to CPLR 3211 (a) (7) for dismissal of the first amended complaint against Landy and Urban and for dismissal of the fourth and seventh causes of action. Plaintiff opposes the application and cross-moves, pursuant to CPLR 3025, 1003 and 305, for an order deeming the first amended complaint filed November 10, 2017 (NY St Cts Elec Filing [NYSCEF] Doc No. 52), served as of right, or in the alternative, for an order granting it leave to amend.

FACTUAL AND PROCEDURAL BACKGROUND

According to the verified complaint, plaintiff is a real estate brokerage firm licensed in this state (affirmation of Robert J. Tolchin [Tolchin], exhibit A [NYSCEF Doc No. 56], ¶ 1). Landy is the owner and representative for Stone Land, another licensed real estate brokerage firm (*id.*, ¶ 3). Stone Land served as the listing broker for the ground-floor leaseholds at two properties in New York County owned by nonparties 85 Delancey Corp. and 95 Delancey LLC (*id.*, ¶¶ 6 and 9). In or about 2012, it is alleged that plaintiff, through its agent, Lloyd Putter (Putter), introduced Stone Land to several prospective tenants for the subject leaseholds (*id.*, ¶

11). Plaintiff alleges that Stone Land had agreed to pay plaintiff a 50% share of its commission earned on the two properties, and that it would list plaintiff as the broker on any leases for those leaseholds (*id.*, ¶¶ 13-14). Two of those prospective tenants then executed leases for those properties (*id.*, ¶ 11), but Stone Land purportedly failed to abide by the parties' agreement. Plaintiff commenced this action to recover for breach of contract, unjust enrichment, conversion, quantum meruit, and fraud.

In a decision and order of the undersigned dated September 13, 2017 (Tolchin affirmation, exhibit B [NYSCEF Doc No. 57] [the September Order] at 1), Stone Land's and Landy's second motion to dismiss was partially granted.[1] Plaintiff's claims for fraud in the inducement, punitive damages and recovery of attorneys' fees were dismissed without prejudice with leave to replead, and the complaint against Landy was dismissed without prejudice.

On November 10, 2017, plaintiff filed a summons and first amended complaint [amended complaint] asserting new claims against Landy and adding Urban as a new party defendant (amended complaint [NYSCEF Doc No. 52] at 1). Defendants now move for dismissal of the amended complaint, and plaintiff cross-moves for leave to amend.

DISCUSSION

On a motion to dismiss brought under CPLR 3211, the court must "accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [citations omitted]). Ambiguous allegations must be resolved in the plaintiff's favor (*see JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764 [2015]). A motion to dismiss will be denied "if from its four corners factual

[1] Defendants had moved previously for dismissal under CPLR 306-b and 3211 (a) (8) (affirmation of Merrill O'Brien [O'Brien], exhibit B [NYSCEF Doc No. 70] at 12). The motion was denied in a decision and order of the court (Rakower, J) dated August 2, 2016 (*id.* at 16).

allegations are discerned which taken together manifest any cause of action cognizable at law" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). However, "the court is not required to accept factual allegations that are plainly contradicted by the documentary evidence or legal conclusions that are unsupportable based upon the undisputed facts" (*Robinson v Robinson*, 303 AD2d 234, 235 [1st Dept 2003]). "[F]actual allegations . . . that consist of bare legal conclusions, or that are inherently incredible . . . , are not entitled to such consideration" (*Mamoon v Dot Net Inc.*, 135 AD3d 656, 658 [1st Dept 2016] [internal quotation marks and citation omitted]). Moreover, "[w]hen documentary evidence is submitted by a defendant 'the standard morphs from whether the plaintiff stated a cause of action to whether it has one'" (*Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 135 [1st Dept 2014] [internal citation omitted]).

It is also well settled that a motion for leave to amend the pleadings should be freely granted unless there is prejudice or surprise from the delay or if the amendment is "'palpably insufficient or patently devoid of merit'" (*JPMorgan Chase Bank, N.A. v Low Cost Bearings NY Inc.*, 107 AD3d 643, 644 [1st Dept 2013], quoting *MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499 [1st Dept 2010]). The court must examine the sufficiency of the merits of the proposed amendment and is not required to accept plaintiff's allegations as true (*see Bag Bag v Alcobi*, 129 AD3d 649, 649 [1st Dept 2015]). The party moving to amend the pleadings need not prove the facts (*see Daniels v Empire-Orr, Inc.*, 151 AD2d 370, 371 [1st Dept 1989]), but must tender an affidavit of merit or an offer of evidence similar to that used to support a motion for summary judgment (*see Matthews v City of New York*, 138 AD3d 507, 508 [1st Dept 2016]). The party opposing the motion bears a heavy burden of showing prejudice (*see McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012]), or demonstrating that the facts as alleged are unreliable or insufficient to support the motion (*see Peach Parking Corp. v 346 W. 40th St., LLC*, 42 AD3d 82, 86 [1st Dept 2007], citing *Daniels*, 151 AD3d at 371]).

A. The Complaint Against Urban

Defendants argue that the amended complaint must be dismissed against Urban because plaintiff cannot add new parties without leave of court, and that plaintiff's act of asserting claims against a new party exceeded what was permissible under the September Order. Urban had never been a party to the present action, and the September Order did not expressly grant plaintiff leave to join additional defendants. Plaintiff, in opposition, argues that it was permissible to serve a summons and amended complaint because no party had answered the original complaint.

When a party moves for pre-answer dismissal of a complaint under CPLR 3211 (a) or (b), CPLR 3211 (f) operates to extend the moving party's time to serve a responsive pleading "until ten days after service of notice of entry of the order." Further, service of a pre-answer motion to dismiss not only extends the defendant's time to answer but also the plaintiff's time to amend its complaint as of right (*see Re-Poly Mfg. Corp. v Dragonides*, 109 AD3d 532, 534-535 [2d Dept 2013]; *STS Mgt. Dev. v New York State Dept. of Taxation & Fin.*, 254 AD2d 409, 410 [2d Dept 1998]; *Polish Am. Immigration Relief Comm. v Relax*, 172 AD2d 374, 375 [1st Dept 1991]).

Thus, plaintiff could add Urban as a party defendant as of right. Defendants do not dispute plaintiff's assertion that, following the determination on the second motion to dismiss, they never served an answer to the original complaint. Nor have defendants demonstrated that any party served a copy of the September Order with notice of entry, which would have commenced the running of the 10-day period to serve a responsive pleading. As that 10-day period has not yet begun, plaintiff could serve and file a summons and amended complaint without leave of court.

Support for this position is found in three other provisions of the CPLR. First, CPLR 3025 (a) states that "[a] party may amend his pleading once without leave of court within twenty days after its service, or at any time before the period for responding to it expires, or within

twenty days after service of a pleading responding to it." CPLR 305 (a) also partially reads that, "[w]here . . . as of right pursuant to section 1003, a new party is joined in the action and the joinder is not made upon the new party's motion, a supplemental summons specifying the pleading which the new party must answer shall be filed with the clerk of the court and served upon such party." Importantly, CPLR 1003 provides, in relevant part, that "[p]arties may be added . . . once without leave of court within twenty days after service of the original summons or at anytime before the period for responding to that summons expires or within twenty days after service of a pleading responding to it." "In terms of procedural mechanics, CPLR 1003 must be read in conjunction with the last sentence of CPLR 305 (a) (supplemental summons) and CPLR 3025 (a)-(b) (amendment of pleadings)" (Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C1003:2). Although the September Order is silent as to the joinder of additional parties, interpreting the prior order in the manner defendants suggest would unnecessarily restrict plaintiff from pursuing a claim against a potentially liable party where plaintiff was authorized by statute to amend its complaint and join Urban as a defendant. Because court intervention is not necessary, there is no need for entry of an order deeming the amended complaint served as of right.

As an alternative ground for dismissal, defendants posit that the action against Urban is premature because Stone Land "is still in business and files taxes every year" (Tolchin affirmation, ¶ 11). Plaintiff objects to this assertion and argues that it has adequately stated a claim for successor liability. Plaintiff alleges that Urban has succeeded Stone Land's business, that Landy has transferred his broker's license to Urban, and that Urban operates out of the same office as Stone Land (amended complaint [NYSCEF Doc No. 52], ¶¶ 39-40 and 79-82).

"It is the general rule that a corporation which acquires the assets of another is not liable for the torts of its predecessor" except in four instances (*Schumacher v Richards Shear Co.*, 59 NY2d 239, 244-245 [1983] [citations omitted]). The successor corporation may be liable "if (1)

it expressly or impliedly assumed the predecessor's tort liability, (2) there was a consolidation or merger of seller and purchaser, (3) the purchasing corporation was a mere continuation of the selling corporation, or (4) the transaction is entered into fraudulently to escape such obligations" (*id.* at 245). "This doctrine is also applicable in breach of contract actions" (*Kretzmer v Firesafe Prods. Corp.*, 24 AD3d 158, 158 [1st Dept 2005], citing *Fitzgerald v Fahnestock & Co.*, 286 AD2d 573, 575 [1st Dept 2001]).

Although defendants contend that "Urban . . . is not a proper defendant at this juncture" (Tolchin affirmation, ¶ 11), the formal, legal dissolution of a predecessor corporation is unnecessary "[s]o long as the acquired corporation is shorn of its assets and has become, in essence, a shell" (*Fitzgerald*, 286 AD2d at 575 [citations omitted]). Here, plaintiff claims that Stone Land has transferred its assets to Urban. Defendants also failed to tender any documentary evidence showing that Stone Land has filed taxes or that its business has continued, thereby demonstrating that plaintiff does not have a cause of action (*see Basis Yield Alpha Fund [Master]*, 115 AD3d at 135). Moreover, whether plaintiff may prevail on its claims against Urban is not relevant to a determination on a motion brought under CPLR 3211 (*see EBI I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005] [stating that "[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss"]; *Edelman v New York State Dept. of Taxation and Fin.*, 162 AD3d 574, 576 [1st Dept 2018] [same]). Thus, the court denies that portion of defendants' motion seeking to dismiss the complaint against Urban. The court denies as moot plaintiff's cross-motion for an order declaring the amended complaint served as of right or for leave to amend its complaint.

B. The Complaint Against Landy

Defendants contend that the amended complaint against Landy should be dismissed because plaintiff fails to allege any facts sufficient to pierce the corporate veil of Stone Land.[2] Plaintiff, in response, argues that it has pleaded enough facts to hold Landy personally liable as Stone Land's alter ego.

It is well settled that "a corporation exists independently of its owners, as a separate legal entity, [and] that the owners are normally not liable for the debts of the corporation" (*Matter of Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 140 [1993]). However, courts will pierce the corporate veil and disregard the corporate form "whenever necessary 'to prevent fraud or to achieve equity'" (*id.* [internal quotation marks and citation omitted]). "New York does not recognize a separate cause of action to pierce the corporate veil" (*Chiomenti Studio Legale, L.L.C. v Prodos Capital Mgt. LLC*, 140 AD3d 635, 636 [1st Dept 2016] [internal quotation marks and citation omitted]), and, therefore, application of the doctrine relies upon "an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners" (*Matter of Morris*, 82 NY2d at 141). Thus, to determine whether to pierce the corporate veil, the court may consider the following factors:

> "[D]isregard of corporate formalities; inadequate capitalization; intermingling of funds; overlap in ownership, officers, directors and personnel; common office space or telephone numbers; the degree of discretion demonstrated by the allegedly dominated corporation; whether dealings between the entities are at arm's length; whether the corporations are treated as independent profit centers; and the payment or guaranty of the corporation's debts by the dominating entity"

(*Fantazia Intl. Corp. v CPL Furs N.Y., Inc.*, 67 AD3d 511, 512 [1st Dept 2009], citing *Freeman v Complex Computing Co.*, 119 F3d 1044, 1053 [2d Cir 1997]). Evidence of domination alone, though, is insufficient "without an additional showing that it led to inequity, fraud, malfeasance"

[2] The court observes that the first, second, third, fourth, fifth and seventh causes of action assert claims against Landy.

(*TNS Holdings v MKI Sec. Corp.*, 92 NY2d 335, 339 [1998]). The plaintiff must demonstrate that the defendant took steps to render the corporation judgment proof or insolvent so as "'to perpetrate a wrong or injustice against'" it (*James v Loran Realty v Corp.*, 20 NY3d 918, 919 [2012], quoting *Matter of Morris*, 82 NY2d at 142), or that the defendant treated the business as "a 'dummy' for its individual stockholders who are in reality carrying on the business in their personal capacities for purely personal rather than corporate ends" (*Walkovszky v Carlton*, 18 NY2d 414, 418 [1966]).

Therefore, a plaintiff seeking to pierce the corporate veil must "do more than merely allege that the individual engaged in improper acts or acted in 'bad faith' while representing the corporation" (*East Hampton Union Free School Dist. v Sandpebble Bldrs., Inc.*, 16 NY3d 775, 776 [2011]). To that end, the complaint must allege some form of corporate relationship and domination or control used to perpetrate a wrong against the plaintiff (*see Shawmut Woodworking & Supply, Inc. v ASICS Am. Corp.*, 162 AD3d 486, 487 [1st Dept 2018]). Nonspecific allegations without reference to particularized facts (*see Springut Law PC v Rates Tech. Inc.*, 157 AD3d 645, 646 [1st Dept 2018]), or conclusory allegations made upon information and belief are insufficient (*see Cornwall Mgt. Ltd. v Kambolin*, 140 AD3d 507, 507 [1st Dept 2016]). Nevertheless, "[t]he theory of piercing the corporate veil involves a fact laden inquiry that is not well suited for resolution on a pre-answer, pre-discovery motion to dismiss" (*BT Ams. Inc. v ProntoCom Mktg., Inc.*, 18 Misc 3d 1141[A], 2008 NY Slip Op 50401[U], *4 [Sup Ct, NY County 2008] [citations omitted]).

After reviewing the amended complaint, the court finds that plaintiff has not pleaded particularized facts sufficient to impose personal liability against Landy (*see Andejo Corp. v South St. Seaport Ltd. Partnership*, 40 AD3d 407, 407 [1st Dept 2007] [finding that the complaint was not supported by "particularized facts to warrant piercing the corporate veil"]; *UMG Recs., Inc. v FUBU Records, LLC*, 34 AD3d 293, 294 [1st Dept 2006] [concluding that

allegations of domination and control "unaccompanied by allegations of consequent wrongs" insufficient]). Plaintiff pleads in wholly conclusory terms that Landy essentially dominated or controlled Stone Land, and used that dominion to perpetrate a wrong upon plaintiff. More specifically, the amended complaint alleges that "Landy's domination of Stone Land Capital was used to commit a wrong against the plaintiff by intentionally refusing to pay the co-brokerage commission to plaintiff, and by instead causing Stone Land Capital to pay it out to defendant Landy personally for his own personal gain and enrichment" (amended complaint [NYSCEF Doc No. 52], ¶ 73). However, "'a simple breach of contract, without more, does not constitute a fraud or wrong warranting the piercing of the corporate veil'" (*Skanska USA Bldg. Inc. v Atlantic Yards B2 Owner, LLC*, 146 AD3d 1, 12 [1st Dept 2016], *affd* 31 NY3d 1002 [2018], *rearg denied* 31 NY3d 1141 [2018], quoting *Bonacasa Realty Co., LLC v Salvatore*, 109 AD3d 946, 947 [2d Dept 2013]). Notably, plaintiff did not allege that Landy entered the transaction with plaintiff for the sole purpose of harming it (*see JTS Trading Ltd. v Trinity White City Ventures Ltd.*, 139 AD3d 630, 630 [1st Dept 2016]). Plaintiff merely recites the "typical veil piercing factors." This is insufficient (*Skanska USA Bldg. Inc.*, 146 AD3d at 12 [citation omitted]). Consequently, defendants' motion for dismissal of the complaint against Landy is granted, and the amended complaint is dismissed as against him.

C. Fourth Cause of Action

Defendants submit that the fourth cause of action, seeking recovery of plaintiff's share of the commissions because it was the "procuring cause," is not a cognizable cause of action. Plaintiff argues that New York recognizes a broker's right to receive a commission where the broker is the "procuring cause" of the transaction.

"[I]n the absence of an agreement to the contrary, a real estate broker will be deemed to have earned his commission when he [or she] produces a buyer who is ready, willing and able to purchase at the terms set by the seller" (*SPRE Realty, Ltd. v Dienst*, 119 AD3d 93, 97 [1st Dept

2014] [internal quotation marks and citation omitted]). To prevail on a claim for an unpaid commission, "the broker must be the 'procuring cause' of the transaction, meaning that 'there must be a direct and proximate link, as distinguished from one that is indirect and remote,' between the introduction by the broker and the consummation of the transaction" (*id.* [internal quotation marks and citation omitted]).

However, whether a plaintiff broker is a procuring cause constitutes a necessary component for the recovery of a commission, and is not a separate cause of action. A broker may recover an unpaid commission predicated upon a breach of contract (*see Joseph P. Day Realty Corp. v Chera*, 308 AD2d 148, 149 [1st Dept 2003] [stating that "[a] real estate broker who acts as the procuring cause on a commercial lease, and whose labors and expectation of compensation are expressly acknowledged by the parties to the lease, may recover its commission from either the lessor or lessee under the theory of implied contract of employment"]; *Cassetta Frank, Inc. v. P.G.C. Assoc.*, 264 AD2d 375, 377 [2d Dept 1999] [concluding after trial that the parties had "agreed to be bound by the usual and customary [commission] rate"]), or quantum meruit or unjust enrichment (*see Edward S. Gordon Co. v Peninsula N.Y. Partnership*, 245 AD2d 189, 190 [1st Dept 1997] [awarding damages in quantum meruit after the trial court found that the plaintiff broker was the procuring cause for the lease]). Additionally, a plaintiff broker seeking to recover an unpaid commission need not "plead or prove that it was a 'procuring cause' of the [lease] purchase in order to recover" (*Eastern Consol. Props., Inc. v Waterbridge Capital LLC*, 149 AD3d 444, 444 [1st Dept 2017]).

Applying these principles to the present action, the court hereby dismisses the fourth cause of action because a "procuring cause" is not a separate cause of action, but a prerequisite for the recovery of a commission on its breach of contract or unjust enrichment or quantum meruit claims. As a result, that portion of defendants' motion to dismiss the fourth cause of action is granted, and the fourth cause of action is dismissed.

D. Seventh Cause of Action

Defendants argue that the seventh cause of action for fraudulent conveyance under the Debtor and Creditor Law exceeds what was permissible under the September Order, and that the cause of action is "based on pure guesswork" (Tolchin affirmation, ¶ 22). Plaintiff, in opposition, submits that it has reasonable grounds to maintain the claim. The amended complaint alleges violations of Debtor and Creditor Law §§ 273-a, 276, 276-a and 279.

Preliminarily, the court finds that the September order does not bar plaintiff's assertion of a fraudulent conveyance claim. The September Order concerned the original complaint, the operative pleading at the time that determination was made. As discussed supra, because none of the defendants had interposed an answer, plaintiff was entitled to amend its complaint as of right. Hence, the September Order does not preclude plaintiff from asserting the seventh cause of cause of action.

Further, the court finds that defendants failed to meet their "burden of establishing that the complaint fails to state a viable cause of action" (*Connolly v Long Is. Power Auth*, 30 NY3d 719, 728 [2018]). In a single paragraph comprised of a mere seven sentences, defendants assert that the seventh cause of action should be dismissed because the entirety of the factual allegations is based "upon information and belief" and is not supported by any documentation.

CPLR 3013 reads that "[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense." As such, "conclusory allegations do not satisfy this requirement" (*117 E. 24th St. Assoc. v Karr*, 95 AD2d 735, 735 [1st Dept 1983] [citation omitted]). At a bare minimum, allegations made "[upon] information and belief . . . are to be considered true for the purposes of a motion to dismiss pursuant to CPLR 3211 (a) (7)" (*Roldan v Allstate Ins. Co.*, 149 AD2d 20, 40 [2d Dept 1989]). Notwithstanding the foregoing, the court may dismiss a "complaint [that] is almost

entirely grounded 'upon information and belief', without indication of the sources of said information and belief" (*Apfelberg v East 56th Plaza*, 78 AD2d 606, 607 [1st Dept 1980], *appeal dismissed* 54 NY2d 680 [1981]).

Such is not the case at present. Counter to defendants' position, plaintiff has identified the sources for some of its information. The amended complaint alleges that Stone Land fraudulently transferred funds to Landy and/or Urban while it was a defendant in a prior lawsuit in this county (amended complaint [NYSCEF Doc No. 52], ¶¶ 87 and 92), and plaintiff is intimately familiar with that proceeding as it is also the plaintiff in that action. In addition, certified documents obtained from the New York State Department of State show that Landy applied for and received an additional real estate broker's license as a corporate broker representing Urban close in time to the commencement of that prior action (O'Brien affirmation, exhibits E and F [NYSCEF Doc No. 71] at 1-4). It is also alleged that Urban was formed after Stone Land had refused to pay plaintiff a commission (amended complaint [NYSCEF Doc No. 52], ¶ 4). Although the documents do not conclusively establish that a fraudulent conveyance took place, whether plaintiff may succeed on the claim is not at issue on this motion (*see EBI I, Inc.*, 5 NY3d at 19). Therefore, the factual allegations are not wholly based on "guesswork."

Lastly, defendants do not address whether plaintiff adequately pleaded the elements necessary to sustain its claims under Debtor and Creditor Law §§ 273-a, 276, 276-a and 279. Indeed, defendants did not cite, or even refer to, the statutes mentioned in the amended complaint, and they did not argue whether any pleading requirements in addition to those set forth in CPLR 3013 applied. Thus, the court is constrained to deny this part of defendants' motion.

Accordingly, it is hereby

ORDERED that the motion of defendants Stone Land Capital, Inc., Benjamin Landy and Urban Property Group Inc. to dismiss the amended complaint [NYSCEF Doc No. 52] is granted

to the extent of dismissing the amended complaint in its entirety against defendant Benjamin Landy and dismissing the fourth cause of action against defendants Stone Land Capital, Inc. and Urban Property Group Inc., and the motion is otherwise denied; and it is further

ORDERED that the amended complaint is dismissed against defendant Benjamin Landy, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the fourth cause of action of the amended complaint [NYSCEF Doc No. 52] is dismissed as against defendants Stone Land Capital, Inc. and Urban Property Group Inc.; and it further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; 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); and it is further

ORDERED that the defendants Stone Land Capital, Inc. and Urban Property Group Inc shall each serve an answer to the amended complaint [NYSCEF Doc No. 52] within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the cross-motion of plaintiff 2001 Real Estate Space Catalyst, Inc. for an order finding that the amended complaint was served as of right or for leave to serve and file an amended complaint is denied as moot.

Dated: 1-15-2019

ENTER:

J.S.C.

HON. MELISSA A. CRANE
J.S.C.