

**Ninth Space LLC v Goldman**

2025 NY Slip Op 33646(U)

September 26, 2025

Supreme Court, New York County

Docket Number: Index No. 655957/2017

Judge: Joel M. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

NINTH SPACE LLC, TOBACCO ROAD HOLDING LLC,

Plaintiffs,

- v -

JAMES GOLDMAN, JOSHUA LEBOWITZ, DINING ENTERTAINMENT GROUP LLC, ACC BBQ LLC, ACC BBQ IP, INC., GOOD TIME BBQ LLC, 8TH AVENUE BBQ, LLC, LEXINGTON AVENUE BBQ, LLC, 181 LEXINGTON AVENUE BBQ, LLC, ROOSEVELT FIELD BBQ LLC, BROTHER, 63 IRONGATE HOLDINGS LLC, THE BLUESTONE GROUP, DEG INVESTOR, LLC, ASTOR GROUP, LLC, JOHN/JANE DOES 1-10, XYZ COMPANIES 1-10,

Defendants.

INDEX NO. 655957/2017

MOTION DATE 02/10/2025

MOTION SEQ. NO. 016

DECISION + ORDER ON MOTION

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 016) 1, 98, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 570, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 801, 802, 805, 806, 807, 808, 809, 812, 814, 853, 880, 881, 882, 883, 884, 885, 886, 887, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1018, 1019, 1020, 1021, 1022, 1023, 1026, 1031, 1032, 1037

were read on this motion for

SUMMARY JUDGMENT

Defendants The Bluestone Group (“TBG”) and DEG Investor, LLC (“DEGI,” collectively “Bluestone Defendants”) move for summary judgment dismissing Plaintiffs’ sole claim against them for fraudulent conveyance. For the reasons discussed below, the Bluestone Defendants’ motion is **granted in part** such that the fraudulent conveyance claim against TBG is dismissed without prejudice to seeking to name an appropriate entity amenable to suit, and otherwise **denied**.

### BACKGROUND

Plaintiffs Ninth Space, LLC and Tobacco Road Holding, LLC originally brought this action against Defendant Dining Entertainment Group, LLC (“DEG”) asserting claims arising out of a 2015 agreement between the parties pursuant to which Plaintiffs claim they are owed \$1.75 million (NYSCEF 1). In 2019, Plaintiffs added a fraudulent conveyance claim against DEG, its CEO and managing member, James Goldman (“Goldman”), its former CEO, Joshua Lebowitz, TBG, DEGI, and various entities allegedly owned and/or controlled by Goldman,<sup>1</sup> among others (NYSCEF 98). The crux of Plaintiffs’ claim against the Bluestone Defendants is that they engineered a preferential transfer of assets from DEG to themselves and the Goldman Entity Defendants during the pendency of this case.

In 2016, DEGI acquired an ownership interest in two subsidiaries of DEG, BJJ and Lex BBQ,<sup>2</sup> in exchange for a \$1.2 million contribution to DEG (NYSCEF 895 [Plaintiffs’ Response

---

<sup>1</sup> These so-called “Goldman Entity Defendants” include ACC BBQ, LLC (“ACC”), ACC BBQ IP, LLC (“ACC IP”), Good Time BBQ, LLC, 8<sup>th</sup> Avenue BBQ, LLC, Lexington Avenue BBQ, LLC (“Lex BBQ”), 181 Lexington Avenue BBQ, LLC (“181 Lex”), Irongate Holdings, LLC, and Brother Jimmy’s Franchising, LLC (“BJF”) (NYSCEF 98 ¶ 13).

<sup>2</sup> There is some confusion in the papers regarding which Lexington entity DEGI originally had a revenue share in. While the Bluestone Defendants’ statement of material facts asserts that DEGI made investments in “181 Lexington Avenue BBQ, LLC,” the contemporaneous correspondence

to the Bluestone Defendants' Statement of Material Facts] ¶¶ 1-3; NYSCEF 911 [Letter of Intent]; NYSCEF 984 [DEG bank statement] at 122; NYSCEF 953 [Asset Purchase Agreement] at 5). As a part of this deal, DEGI obtained rights to veto certain transactions that would impair its interests (NYSCEF 895 ¶ 8).

Eventually Lex BBQ fell behind on payments to DEGI (*id.* ¶ 5). Around the same time, DEG was seeking to raise more capital through a variety of means that would have required DEGI's approval (*id.* ¶ 6). DEGI was not inclined to consent to these transactions absent some efforts to reduce the balances it was owed (*id.* ¶¶ 9, 11). Ultimately Goldman and certain other defendants crafted a complex transaction designed to avoid DEG's "legacy issues and...baggage" (NYSCEF 965 [Goldman Deposition Transcript] at 242:9-14). DEGI gave its consent as required for Goldman to execute what the DEG board called "Jimmy's Deal," under which DEG would transfer its assets—including its interests in BJJ—to Goldman's new company, ACC, and Lex BBQ would transfer its assets to ACC's new subsidiary, 181 Lex (NYSCEF 931; NYSCEF 948 [Membership Interest Purchase Agreement] at 4; NYSCEF 953 at 5). In exchange for its consent and a variety of other concessions, DEGI received an additional 12% ownership interest in BJJ, some cash payments, and shares in 181 Lex (NYSCEF 953 at 76, 114; NYSCEF 948 at 154).

---

and letter of intent refers to Lexington Avenue BBQ, LLC, the entity that was operating the restaurant located at 181 Lexington Avenue at that time (NYSCEF 915; NYSCEF 911). The deposition testimony the Bluestone Defendants cite as evidence that they invested in 181 Lexington Avenue BBQ, LLC, does not support that proposition (NYSCEF 884 [DEGI Deposition Transcript] at 10:15-21 ["It invested in...the Lexington Avenue Restaurant. I think the address was 181 Lexington Avenue. I am not sure of the exact..."]). It appears undisputed that 181 Lexington Avenue BBQ, LLC, was not formed until 2018, around the time it acquired the assets of Lexington Avenue BBQ, LLC (NYSCEF 953 [Asset Purchase Agreement] at 5, 76).

## DISCUSSION

Summary judgment is properly granted when there are no genuine disputes of material fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). A party is entitled to summary judgment “if, upon all of the papers and proof submitted, the cause[s] of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party” (CPLR 3212 [b]). The burden to establish a right to summary judgment is a heavy one: the facts must be viewed in the light most favorable to the non-moving party and every available inference must be drawn in the non-moving party's favor (*De Lourdes Torres v Jones*, 26 NY3d 742, 763 [2016]). When the party seeking summary judgment makes a *prima facie* showing of its claim, it then becomes the burden of the summary judgment opponent to present admissible evidence showing the existence of a triable issue of fact or a defense warranting denial of summary judgment (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). Mere conclusions, allegations or assertions are insufficient to raise a triable issue of fact (*Zuckerman v City of New York*, 49 NY 557, 562 [1980]).

“Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such a purchaser...[h]ave the conveyance set aside...to the extent necessary to satisfy his claim” (former DCL § 278 [a], [b]).<sup>3</sup> Conveyances made without fair consideration while the transferor is insolvent or that render the transferor insolvent, or leave the transferor

---

<sup>3</sup> New York Debtor and Creditor Law (“DCL”) was amended in 2019 to enact the Uniform Voidable Transactions Act (2019 McKinney’s Session Law News of NY, ch 580 at A-5622 [Dec. 2019]). These transfers occurred when the former version of the DCL, which tracked the Uniform Fraudulent Conveyance Act, was still in effect.

with unreasonably small capital, or that are made when the transferor believes it will incur debts beyond its ability to pay as they mature are fraudulent as to creditors (former DCL §§ 273, 274, 275). Transfers made with “actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud” creditors are fraudulent as to creditors without regard for the adequacy of consideration (former DCL § 276).

However, “a conveyance which satisfies an antecedent debt made while the debtor is insolvent is neither fraudulent nor otherwise improper, even if its effect is to prefer one creditor over another... It is of no significance that the transferee has knowledge of such insolvency. Nor is the transfer subject to attack by reason of knowledge on the part of the transferee that the transferor is preferring him to other creditors, even by virtue of a secret agreement to that effect” (*Ultramar Energy Ltd. v Chase Manhattan Bank, N.A.*, 191 AD2d 86, 90-91 [1st Dept 1993] [internal citations and quotations omitted]). But if the conveyance *renders* the transferor insolvent, as is alleged here, *Ultramar* does not apply (*see Tap Holdings, LLC v Orix Fin. Corp.*, 109 AD3d 167, 176 [1st Dept 2013]). Further, a conveyance to a pre-existing creditor who is also a “controlling shareholder, officer or director of an insolvent corporation” is “deemed to be lacking in good faith” and “presumptively fraudulent” even if it is in satisfaction of an antecedent debt (*CIT Group/Commercial Services, Inc. v 160-09 Jamaica Ave. Ltd. Partnership*, 25 AD3d 301, 303 [1st Dept 2006]).

*I. The Bluestone Defendants have not demonstrated that Plaintiffs are not creditors*

The Bluestone Defendants adopt certain other defendants’ argument that Plaintiffs cannot sustain a fraudulent conveyance claim because they are not “creditors” under former DCL § 270. The Court has already considered that argument and declined to dismiss the fraudulent

conveyance claim against the other defendants on that basis (NYSCEF 814). As such, the Bluestone Defendants' adoption of this argument is unavailing.

*II. DEGI obtained DEG assets in connection with the transfers*

Despite the central focus of their brief being that “there is no evidence that DEGI was a transferee of the allegedly fraudulently-conveyed assets, or a beneficiary of the conveyance of the same[.]” the Bluestone Defendants conceded at oral argument that DEGI did walk away from the 2017 and 2018 transfers with certain assets (NYSCEF 881 at 12; NYSCEF 1037 [Oral Argument Transcript] at 38-39). These included an additional 12% equity share in BJJ, cash payments, and shares in 181 Lexington Avenue BBQ, LLC. Though not all of these flowed from DEG to the DEGI directly, all agree that at the least the 12% interest in BJJ did (NYSCEF 948 at 154; NYSCEF 1037 at 39-40).

*III. There are disputes of fact regarding the consideration received for transfers to DEGI*

The Bluestone Defendants argue that *Ulramar* precludes liability against DEGI regardless of its intent because the transfers were in satisfaction of an antecedent debt (191 AD2d at 90-91). To prevail at summary judgment on this theory, the Bluestone Defendants would need to demonstrate with undisputed facts that DEG was insolvent when the transfers were made (*see Tap Holdings, LLC*, 109 AD3d at 176). They have not done so.

That is not to say that the Bluestone Defendants cannot argue that the transfers were not fraudulent because fair consideration was given. However, because the Bluestone Defendants spilled much ink insisting that they received nothing, they did not endeavor to explain what fair

consideration was given and could not do so at oral argument when asked directly (NYSCEF 1037 at 40). The fairness of consideration is generally a fact-intensive inquiry, and the Court cannot conclude that these transfers were made for fair consideration on the record as presented (*Madison Hudson Assoc. LLC. v Neumann*, 4 AD3d 257 [1st Dept 2004]). Further, even if the consideration was monetarily fair, Plaintiffs have provided sufficient evidence to create a dispute of fact as to whether the Bluestone Defendants had fraudulent intent to support liability under former DCL 276. Accordingly, summary judgment is denied as to DEGI.

*IV. “The Bluestone Group” is dismissed*

Plaintiffs seek to attach liability to Defendant The Bluestone Group as an alter ego of DEGI. But “The Bluestone Group” does not appear to be an actual entity. The Bluestone Defendants allege that “The Bluestone Group” is a trade name for Bluestone Partners, LLC, an entity owned by Eli Tabak and Mark Mendelsohn that is not named as a party in this action. “The Bluestone Group” could also refer to another non-party entity, TBSG, LLC, which is the 50% owner of Defendant DEGI.

Despite this issue having been raised as early as April 2022 (NYSCEF 809 at 10), Plaintiffs have not sought to name the correct entity or to establish that The Bluestone Group is a corporate entity amenable to suit. While CPLR 2001 provides that the Court may disregard mistakes if a substantial right of a party is not prejudiced, Plaintiffs insist this is not a mistake. In briefing the instant motion, Plaintiffs double-down on their designation: “Bluestone claimed that the ‘correct’ Bluestone defendant, if any, would be Bluestone Partners, LP...Documents produced to Plaintiffs by Bluestone never refer to that entity and instead use ‘The Bluestone Group’ or ‘Bluestone’” (NYSCEF 893 [Plaintiffs’ Memorandum in Opposition] at 2 n 1). Even

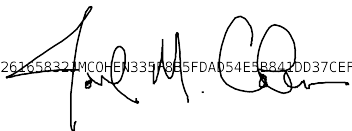
if that is accurate, the parties’ informal use of a trade name does not create an entity that does not otherwise exist that would be amenable to suit or judgment. Accordingly, summary judgment is granted dismissing “The Bluestone Group” as a defendant in this case, though given that this may be more of technical than a substantive defect, the dismissal of the claim will be without prejudice to seeking to name an entity that is amenable to suit.

Therefore, it is

**ORDERED** that the Bluestone Defendants’ motion for summary judgment is **granted in part**, such that the claim for fraudulent conveyance against Defendant The Bluestone Group is dismissed without prejudice to Plaintiffs seeking to name an appropriate entity amenable to suit, and the motion is otherwise **denied**; and it is further

**ORDERED** that the parties appear for an initial pre-trial conference via Microsoft Teams on November 10, 2025 at 10:00 a.m. to discuss scheduling and logistics for trial.

This constitutes the decision and order of the Court.

  
20250926165832 JMC0HEN13397885FDA054E58842DD37CEFB8C295  
\_\_\_\_\_  
**JOEL M. COHEN, J.S.C.**

9/26/2025  
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED