

<b>Cantor Fitzgerald &amp; Co. v 8an Capital Partners Master Fund, L.P.</b>
2015 NY Slip Op 07046
Decided on October 1, 2015
Appellate Division, First Department
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on October 1, 2015

Friedman, J.P., Andrias, Saxe, Richter, Gische, JJ.

15532 156559/14

**[\*1] Cantor Fitzgerald & Co., Plaintiff-Respondent,**

**v**

**8an Capital Partners Master Fund, L.P., et al., Defendants, Philip Eytan, Defendant-Appellant.**

David Bolton, P.C., Garden City (David Bolton of counsel), for appellant.

Cantor Fitzgerald & Co., New York (Michael S. Popok of counsel), for respondent.

Order, Supreme Court, New York County (Melvin L. Schweitzer, J.), entered January 16, 2015, which denied defendant Philip Eytan's motion to dismiss the complaint as against him, unanimously reversed, on the law, without costs, the motion granted, and the complaint dismissed. The Clerk is directed to enter judgment accordingly.

The motion court should have granted defendant's motion.

The complaint alleges that defendant knew of and participated in the alleged fraudulent transfer of assets but fails to allege that he is the transferee, and further fails to allege, in anything other than conclusory fashion, that he benefited from the transfer, as required to state a cause of action for fraudulent conveyance (Debtor and Creditor Law §§ 273, 276; *Federal Deposit Ins. Corp. v Porco*, 75 NY2d 840, 842 [1990]; *Symbax, Inc. v Bingaman*, 219 AD2d 552, 553-554 [1st Dept 1995]). Moreover, while defendant is an officer of both defendant transferor and transferee corporations, "receipt of a salary from the transferee corporation as an officer of the corporation is not sufficient to render the officer a transferee or beneficiary of the transfer" ([D'Mel & Assoc. v Athco, Inc., 105 AD3d 451](#), 452-453 [1st Dept 2013] [internal quotation marks and citation omitted]). As there are no other nonconclusory allegations sufficient to hold defendant individually liable for the fraudulent transfer, the complaint should be dismissed as against him (see [Riback v Margulis, 43 AD3d 1023](#), 1023 [2d Dept 2007]).

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 1, 2015

CLERK

[Return to Decision List](#)