

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CARMINE A. LOPRESTI, etc.

Plaintiff,

-against-

CITIGROUP, INC., et.al.

Defendants.

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Plaintiff's Memorandum of Law in Support
of Plaintiff's Motion for a Default Judgment
Against the Defendant Copeland Associates, Inc. and
for a Final Judgment Against the Defendant
Citistreet

Dated: Freeport, New York
April 21, 2003

HENRY M. GRUBEL, P.C.
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TABLE OF AUTHORITIES

Cases

Ackerman v. Landes
112 AD 2d 1081 (2nd Dept. 1985)-----4

Caplan v. Caplan
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International Controls Corp. v. Vesco,
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PRELIMINARY STATEMENT

Plaintiff, Carmine LoPresti submits this memorandum in support of his motion to enter a default judgment under Rule 55(b) as against the defendant COPELAND ASSOCIATES, Inc., and a direction by the Court for entry of a final judgment pursuant to Rule 54 against the defendant CITISTREET.

Neither defendant has appeared, answered or otherwise defended against the amended or the second amended summonses and complaints that were served upon them. They have both deliberately defaulted herein.

As set forth in the affidavit in support hereof, the defendant known as CITISTREET is a 50/50 joint venture between the co-defendants CITIGROUP, Inc. and STATE STREET CORP.

STATEMENT OF FACTS

CITISTREET

It is beyond argument that the defendant CITISTREET is a 50/50 joint venture co-owned by the co-defendants CITIGROUP, Inc. and STATE STREET CORP. It is a separate entity from its co-owners. CITISTREET has defaulted herein.

COPELAND ASSOCIATES, Inc.

The defendant COPELAND ASSOCIATES, Inc. is operating as a de-facto corporation. It has continued to conduct business as evidenced by the checks it has continued to write in its own name, even though it purportedly merged and no longer exists.

ARGUMENT

1. CITISTREET as a joint venture is subject to suit and a default judgment

CITISTREET exists as a joint venture, and is subject to suit and service of process herein.

Since the rights, duties and liabilities of joint venturers are governed by rules similar ... to those governing ... partners, joint venturers may be jointly and

severally liable to third parties for the debts of the venture. Rowe v. Brooks 329 F.2d 35, 39 (4th Cir. 1964) See 16 N.Y.Jur.2d § 1594.

The CITISTREET joint venture operates without any actual partnership or corporate designation Ackerman v. Landes 112 AD 2d 1081 (2nd Dept. 1985)

The CITISTREET default in answering or appearing in response to either the amended summons and complaint or the second amended summons and complaint was deliberate and willful. Plaintiff is entitled to the relief requested in this motion and a final judgment under Rule 54.

2. The entry of a final default judgment against CITISTREET is appropriate under Rule 54

The liability of the defendant CITISTREET is not dependent or contingent upon the liability of any co-defendant herein. Therefore a final judgment against CITISTREET is appropriate under Rule 54. It stands alone in its default. Its liability to the plaintiff does not necessarily depend upon the liability of any of the other co-defendants herein International Controls Corp. v. Vesco, 535 F.2d 742 (2nd Cir. 1976) (fn4).

3. The legal consequences of operating as a joint venture are equivalent to those of a partnership

CITISTREET is a joint venture. This does not make it immune from suit Caplan v. Caplan, 268 N.Y. 445 (1935) as cited in Teheran-Berkely v. Tippetts-Abbett, 888 F.2d 239 (2nd Cir. 1989). The Teheran case also holds that joint ventures are treated as partnerships under New York law for legal purposes,

see paragraphs 22-27. This holding was cited with approval again in Scholastic, Inc. v. Harris, 259 F.3d 73 (2nd Cir. 2001)

CITISTREET is liable as a joint venture entity for its own acts, as any partnership would be. It has wilfully defaulted herein.

4. The default of COPELAND ASSOCIATES, Inc. was willful, in that it exists as a de-facto corporation

Where a corporation carries on its affairs and exercises corporate powers as before it is a de facto corporation. Garzo v. Maid of the Mist 303 N.Y. 516 (1952).

COPELAND ASSOCIATES, Inc. has continued to do business under this name, as evidenced by the fact that it maintains a bank account and draws checks therefrom. COPELAND ASSOCIATES, Inc. is collecting voluntary section 403 (b) annuity deposits from plaintiff's annuity customers at LMC and remitting the proceeds of the said voluntary contributions to the insurance company that issued the annuity contracts to plaintiff's customers.

COPELAND ASSOCIATES, Inc. can not claim it does not exist. It is still carrying on its business functions as it did prior to its dissolution. This may have been done to avoid taxation of some sort but it it can not be heard to claim it does not exist as a defendant in this action who has wilfully defaulted.

Based upon the foregoing, Plaintiff Carmine A. LoPresti respectfully requests that the Court grant plaintiff's motion for a default and a final judgment against the defaulted defendants.

Dated: Freeport, New York
April 21, 2003

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