

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Joan B. Carey
Interim Administrative Judge

VII WEST 75TH STREET OWNER, LLC,

Plaintiff,

- v -

INDEX NO. 114720/08

THE HEALTH MARKET INC. a/k/a HEALTH
MARKET INC., and VAHIK BABAIAN, individually
and as President of The Health Market Inc.,

Defendants.

Administrative Order:

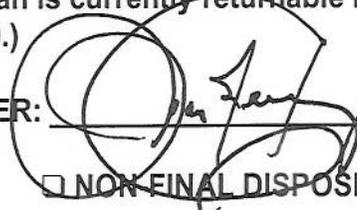
By letter dated January 30, 2009, plaintiff applies for a transfer of this action to the Commercial Division pursuant to Uniform Rule 202.70. The application is timely pursuant to Uniform Rule 202.70 (e). Defendants oppose a transfer, arguing that the case does not meet the standards for assignment to the Commercial Division.

Defendants' counsel served a Request for Judicial Intervention (RJI) on January 20, 2009 designating this action as "Real Property -- Landlord/Tenant," and thus it was assigned to a non-commercial part -- the Hon. Doris Ling-Cohan.

Uniform Rule 202.70 (b) (3) provides that actions in which the principal claims involve transactions concerning commercial real property, not involving the payment of rent only, will be heard in the Commercial Division provided the \$150,000 monetary threshold for New York County is met or the action seeks declaratory or equitable relief. This is an action for breach of a commercial real estate lease. The plaintiff-landlord sues to recover monetary damages totaling over \$280,000 for the tenant's alleged virtual destruction of the store premises and unpaid rent and use and occupancy, and seeks to pierce the corporate veil of the corporate tenant to hold its principal personally liable. I find, therefore, that this action does meet the standards for assignment to the Commercial Division.

Accordingly, the Motion Support Office is directed to reassign this case at random from I.A.S. Part 36 (Ling-Cohan, J.) to a Justice of the Commercial Division. (A motion to dismiss the action against Vahik Babaian is currently returnable in the Motion Submissions Part on February 19, 2009.)

Dated: February 9, 2009

ENTER: 

, A.J.

Check one: FINAL DISPOSITION

NON FINAL DISPOSITION