

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

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

CEDAR & WASHINGTON ASSOCIATES, LLC,

Plaintiff,

- v -

INDEX NO. 651123/10

BOVIS LEND LEASE LMB, INC., BOVIS
LEND LEASE, INC., et al.,

Defendants.

Administrative Order:

By letter dated September 3, 2010, plaintiff requests a transfer of this action from I.A.S. Part 33 (Tingling, J.) to the Commercial Division. Defendants Bovis Lend Lease Inc. and Bovis LMB Inc. (Bovis) object to the request, arguing that this action does not meet the standards for assignment to the Commercial Division under Uniform Rule 202.70(b) and that Bovis does not want to be subject to mandatory electronic filing.

Plaintiff is the lessee and operator of 130 Cedar Street, a property that is located sixty feet west of 130 Liberty Street, otherwise known as the "Deutsche Bank building." The complaint in this action contains causes of action for strict liability, nuisance, and negligence arising out of the August 18, 2007 fire at the Deutsche Bank building and the continuing abatement and deconstruction work being performed at the site. Plaintiff alleges that its adjacent property has sustained fire and water damage; that it was forced to change its development plans for the construction and operation of two hotels; and that it has suffered increased construction and other costs, including the delayed opening of the hotels, as a result of the defendants' malfeasance.

Counsel for Bovis filed, by hard copy, the Request for Judicial Intervention (RJI) on August 26, 2010 in connection with a motion to strike the complaint together with an "Affidavit Re: E-Filing" explaining Bovis' position with respect to the action being subject to mandatory electronic filing. The RJI designated the case as "Tort--Other Negligence--Private Nuisance," and it was assigned to a non-commercial part.

Plaintiff contends that this action meets the standards for assignment to

the Commercial Division, because the complaint seeks approximately \$13 million in damages, and because “complex issues will be litigated such as liability for damage to commercial property and business interruption losses” and “commercial insurance issues will arise in determining damages.” Plaintiff cites to Uniform Rule 202.70(b)(3), (9), and (10) as providing a basis for assignment to the Commercial Division. However, this is not lawsuit in which the principal claims concern “transactions involving commercial real property”(Uniform Rule 202.70[b][3]); “environmental insurance coverage” (Uniform Rule 202.70[b][9]); or “commercial insurance coverage” (Uniform Rule 202.70[b][10]). Rather, this is a private nuisance and negligence action seeking recovery for property damage. While the parties may have insurance coverage, which may be implicated as a result of the claims made in this lawsuit, those are ancillary to the tort claims raised herein, and not the subject of the claims pled in the complaint. Thus, plaintiff’s motion to transfer this action to the Commercial Division is denied.

However, the issue remains as to whether this case remains subject to electronic filing. The court notes that, as of today, this case has been partially e-filed (plaintiff’s papers) and partially filed in hard copy (Bovis’ papers). Since electronic filing may only be imposed on parties to an action in New York County by consent (Uniform Rule 202.5-b[a][1]) or if the action meets the standards for mandatory electronic filing as a commercial action as set forth in Chapter 416 of the Laws of 2009 (Uniform Rule 202.5-bb[a][2]), and neither of those conditions are met here, electronic filing will be discontinued. See Uniform Rule 202.5-b(b)(2)(iv).

For the foregoing reasons, plaintiff’s motion to transfer this action to the Commercial Division is denied. In addition, upon service of a copy of this order on the Local E-Filing Resource Center (Rm. 119A) by counsel for Bovis, the clerk is directed to convert into hard copy those documents comprising the case file which have been received electronically.

Dated: September 15 2010

ENTER:

 A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION