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

PRESENT: Hon. Jacqueline W. Silberman Administrative Judge ~~Justice~~ ~~PART~~

Cartesian Broadcasting Network Inc.

-v-

Robeco USA, LLC

INDEX NO. 602089/2004

~~MOTION DATE~~

MOTION SEQ. NO. 001

~~MOTION CAL. NO.~~

Administrative Order
Interim Order

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

~~Upon the foregoing papers, it is ordered that this motion~~

Defendant applied to Hon. Barbara Kapnick, to whom this action is assigned, to request a transfer of the case into the Commercial Division. Justice Kapnick referred the application to me for decision since my approval of a transfer into the Division is required by Paragraph C of the *Guidelines for Assignment of Cases to the Commercial Division*. Defendant asserts that the matters raised in the complaint are commercial in nature and that the monetary threshold of the Division has been met. Although plaintiff opposes this request, it does not challenge these assertions. In fact, based on the claims made here, this case belongs in the Division.

The letters submitted appear to reflect a misunderstanding as to the procedure to be followed for a Commercial Division assignment. Counsel for plaintiff argues that defendant apparently failed to follow the procedure for preliminary screening set forth in Paragraph C of the *Guidelines for Assignment of Cases to the Commercial Division*. Counsel for defendant states that the original assignment was likely an

~~Dated:~~

~~J.S.C.~~

Check one: ☐ FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

error by the clerk. Counsel states further that it attempted to comply with Paragraph C, noting that it was asked by the clerk whether the case involved more than $125,000 and indicated that it did, but that the clerk did not make any notation that the case should be assigned to the Division.

The clerk did not make any error in this case. The preliminary screening process set out in Paragraph C involves a review of pleadings by the back offices exclusively with regard to monetary amount demanded. The *Guidelines* do not provide for or intend that clerks will screen pleadings with regard to the substance of cases. Paragraph C (i) states that "[t]he appropriate Support Office will review the pleadings to determine the amount of damages claimed to be at issue in the case." (Emphasis added). Subparagraph (ii) indicates that the Justice to whom the case is assigned will review the substantive allegations in the case to see that the case falls within the categories set out in Paragraph B.

The review process in the back office is further limited. Paragraph C (ii) is addressed to "[a]ttorneys who wish to file an RJI seeking assignment to the Commercial Division." It is, in other words, only in cases in which an attorney is seeking to designate a case as "Commercial" on the RJI that the preliminary screening occurs. It would serve no purpose were a back office to screen all tort and other non-commercial cases with regard to the amount of damages sought; only cases that otherwise would go to the Division are involved, as Paragraph C indicates that any of those that fall below the monetary threshold will not be accepted in the Commercial Division and that a clerk can so mark a case. Here, as plaintiff notes, the defendant marked the case as "Other Tort" on the RJI. It did not mark the RJI "Other Commercial," as it should have done had it wished an assignment to the Division. As a result, when the case was initialized in the court's computer, it was assigned at random as a General Assignment matter to Justice Kapnick.

It is clear, however, as pointed out, that, in terms of the issues involved, this case belongs in the Division. As noted above, plaintiff does not assert otherwise. Commercial Division cases should be processed in the Commercial Division. Justice Kapnick has not done any work on this case yet as the motion that began it is still pending in the Motion Support Office Courtroom. Thus, a transfer at this point would produce no waste of judicial resources. The plaintiff cannot be prejudiced by a transfer since the plaintiff itself purchased a commercial index number. The misunderstanding about the relevant procedure therefore should not control here.

Accordingly, the application is granted. The Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division.

Dated: 10/13/04

Administrative Judge