

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

PRESENT: HON. JACQUELINE W. SILBERMANN
Administrative Judge Justice

~~PART~~ _____

Sophie Cohen-Vorburger

INDEX NO. 601395/2004

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

- v -
Jean Louis Vorburger et al.

Administrative Order

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

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

The plaintiff in this case purchased a Commercial Division index number. When a Request for Judicial Intervention was filed, the matter was designated as a General Assignment case (i.e., "Other Matters - - Fraudulent Conveyance"). By virtue of that designation, it was assigned at random to Justice Saralee Evans on September 10, 2004. As of January 2005, Justice Evans was reassigned to a Matrimonial Part and exchanged inventories with Justice Judith J. Gische. As part of this inventory exchange, this case was transferred to Justice Gische by OCA on January 6, 2005. It appears that, with the transfer impending, Justice Evans decided to hold on to various motions in the case with the hope of resolving them and these remained with her after January 6.

Dated: 1/11/05

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION tsb

Check if appropriate: DO NOT POST

On January 25 and 26, 2005, the parties, apparently having been informed that a motion in the case had been assigned to Justice Gische, submitted correspondence to Justice Gische in which the plaintiff indicated a wish to have the case transferred to the Commercial Division, a position the defendants oppose. Counsel for plaintiff recites in a letter to Justice Gische dated January 25, 2005 that Justice Evans had indicated her intention to direct reassignment of the case, counsel states, apparently to the Commercial Division. Justice Evans signed orders dated January 31, 2005 in regard to the various outstanding motions directing that the "motion/case" should be reassigned to a non-matrimonial Part, but not indicating that the assignment should be to the Commercial Division. Since the case had already been transferred to Justice Gische, these orders were not necessary insofar as they directed reassignment to a non-matrimonial Part. The orders do indicate, however, that Justice Evans will not be resolving the various motions after all.

Justice Gische's office has been contacted and indicated that it would not be acting upon the correspondence.

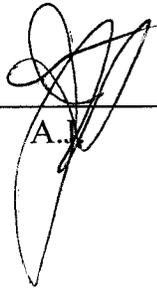
Under these circumstances, and since all transfers into the Commercial Division require the approval of the Administrative Judge (see the *Guidelines for Assignment of Cases to the Commercial Division* on the New York County page on the Commercial Division website at www.nycourts.gov/comdiv), I will address the correspondence.

The *Guidelines* set forth categories of cases which will presumptively be transferred out of the Commercial Division if filed therein, that is, cases that are not appropriate for treatment in the Division. One of these is an action to enforce a judgment regardless of the nature of the underlying action. *Guidelines*, Par. A (4). Even if the underlying action were commercial, an action to enforce the judgment would not be suitable to the Division. Here the judgment in question arose out of a matrimonial matter; the plaintiff was formerly married to the main defendant and is seeking to pursue his assets, which plaintiff claims this defendant has sought to place beyond reach of the judgment. This is clearly not a commercial case as defined in the *Guidelines*. An action to pursue a judgment based upon the alleged fraudulent conduct of a defendant will, by its nature, involve financial transactions; if the fact that such financial transactions have been alleged were sufficient to bring the matter into the Division, the Division would be flooded with such matters. These matters do not involve what is the heart of the Division's inventory - - cases alleging breach of a business contract brought by a party thereto, actions involving the interpretation of business contracts, cases in which parties to a commercial transaction disagree as to whether one or the other in carrying out

the transaction, or purporting to do so, engaged in a breach of fiduciary duty or misrepresentation, unfair competition, and so forth. Paragraphs (B) (1) and (3), relied on here by the plaintiff, contemplate such actions generally arising between the parties to the transaction (or perhaps a third-party beneficiary under standard contract law); here, a non-party is attacking transactions among the defendants intended, it is claimed, to avoid a judgment obtained by the plaintiff in another matter, which has nothing to do with commerce. There may be instances in which an action arising out of commercial dealings and alleging fraudulent conveyances is so exceptionally complicated that it ought to be in the Division (the *Guidelines* speak of presumptions), but this is not such a case.

Therefore, this case shall not be assigned to the Commercial Division. Since the case was assigned to Justice Gische on January 6, 2005, Justice Evans' order of January 31, 2005 effectively provides for the transfer of the various open motions to Justice Gische. Therefore, the Motion Support Office is directed to reassign the motions in question to Justice Gische.

Dated: Feb. 14, 2005



A.J.