

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

**PRESENT: Hon. Jacqueline Silbermann
Administrative Order**

**DAVID KUO LIANG YANG, on behalf of himself
and derivatively,**

Plaintiff,

- against -

INDEX NO. 118728/2006

DENNIS HERMAN,

Defendant,

- and -

**60 EAST 88TH STREET CONDOMINIUM
ASSOCIATION,**

Nominal Defendant.

Administrative Order:

By letters dated February 15 and 21, 2007, counsel for both the defendants and the plaintiff, respectively, apply for the transfer of this action from I.A.S: Part 19 (Lehner, J.) to the Commercial Division pursuant to Uniform Rule 202.70.

Uniform Rule 202.70(f)(2) provides that a party aggrieved by the assignment of a case to a non-commercial part may seek review within 10 days of the party's receipt of the designation of the case to a non-commercial part. Neither side discusses timeliness in their letters. It appears, however, that this case was assigned to Justice Lehner following the filing of a motion to dismiss and Request For Judicial Intervention (RJI) on February 9, 2007; thus the defendants' request is timely.

Uniform Rule 202.70(b)(1) provides that actions in which the principal claims involve or consist of "breach of fiduciary duty . . . where the breach or violation is alleged to arise out of business dealings" will be heard in the Commercial Division provided that the \$100,000 monetary threshold for New York County is met. In addition, Uniform Rule 202.70(b)(4) provides that shareholder derivative actions are commercial matters, without consideration of the monetary threshold. Insofar

as the principal claim in this action is a shareholders derivative action against the president and board managers of a condominium association alleging various breaches of fiduciary duty, the action is one that falls within the jurisdiction of the Commercial Division.

Although defendants' counsel requested assignment of this case to the Commercial Division and prepared the necessary form that must accompany the RJJ (see Uniform Rule 202[d]), the case was assigned to Justice Edward Lehner, as defendants' counsel admits in his letter, "due to the fact that related matters are pending before him." Indeed, the RJJ lists two related actions in this court, Board of Managers of 60 East 88th Street Condo. Assn. v Andrew Stein, David Kuo Liang Yang, Greenpoint Mortgage Funding, Inc., Index No. 109715/03, Lehner, J. (the Stein action), and Land America Fin. Group, Inc. v Board of Managers of 60 East 88th Street Condo. Assn., Index No. 601346/06, Tolub, J. Defendants' counsel represented to this court on the RJJ that both actions are related because they have similar parties and "arise out of the same occurrences within the subject Building."

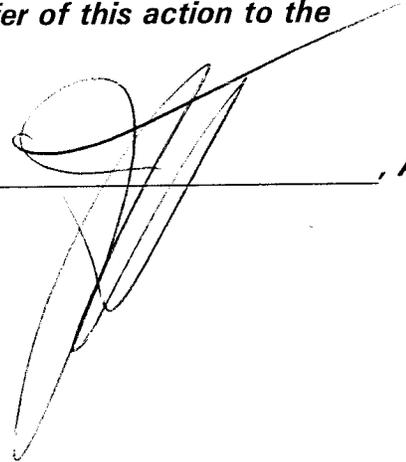
The complaint in the instant action, particularly paragraphs 4, 20-31, references the Stein action and alleges that this prior litigation is evidence of a personal vendetta against plaintiff and partially forms the basis of the alleged breaches of fiduciary duty of which defendant Dennis Herman is charged. Accordingly, I am of the opinion that judicial economy is not served by transferring this action away from Justice Lehner, who is familiar with the parties and a major aspect of their dispute.

Accordingly, defendants' request for a transfer of this action to the Commercial Division is denied.

Dated: February ²⁸ 2007

ENTER

, A.J.



Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION