

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

PRESENT: Hon. Peter H. Moulton  
Administrative Order

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BONNIE KAYE and HERBERT KOZLOV, as  
Co-Executors of THE ESTATE OF FRED  
HOWARD,

Plaintiffs,

- v -

INDEX NO. 650264/16

MICHAEL M. WAHL and JUDITH WAHL,

Defendants.

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Administrative Order:

By letters dated April 4 and April 13, 2016, plaintiffs' counsel requests that this action be transferred from I.A.S. Part 15 (Rakower, J.) to the Commercial Division pursuant to Uniform Rule 202.70 (e). By letter dated April 12, 2016, defendants' counsel objects to this request.

On March 18, 2016, defendants filed a Request For Judicial Intervention (RJI). Although the RJI marked the case as "Other Commercial," no Commercial Division Addendum was attached. In addition, the RJI listed a related case before the Hon. Eileen Rakower, entitled Michael Wahl v Howard International Corp., Index No. 161550/15. This action was assigned to Justice Rakower, who sits in a non-commercial part.

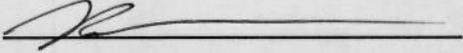
Uniform Rule 202.70 (e) places a 10-day time limit on these applications, measured from the receipt of a copy of the RJI, and the time limit is strictly construed to conserve judicial economy. When an action is e-filed, the New York State Court Electronic Filing System (the NYSCEF) automatically transmits electronic notice to all e-mail addresses in such action, and the electronic transmission of the notification constitutes as service of the document on the e-mail addresses (see Uniform Rule 202.5 [f] [2] [ii]). Further, the RJI specifically states the long standing rule that "[f]or Commercial Division assignment requests [22 NYCRR § 202.70 (D)], complete and attach the COMMERCIAL DIV RJI Addendum." Therefore, upon receipt of the RJI in March via the NYSCEF, plaintiffs' counsel should have known that a Commercial Division Addendum was required for assignment to the Commercial Division and that no such Addendum was filed in this matter. Accordingly, this application is denied as untimely.

In addition, this action, which seeks to set aside the conveyance of a residential

cooperative apartment by defendant Michael Wahl (Wahl) to his wife allegedly undertaken to render himself unable to satisfy a potential multi-million dollar judgment from the Surrogate's Court concerning Wahl's alleged misfeasance as a former co-executor of the Estate of Fred Howard, does not meet the standards for assignment to the Commercial Division (see Uniform Rule 202.70 [c] [3], [5]).

For these reasons, plaintiffs' request to transfer this proceeding into the Commercial Division is denied.

Dated: April \_\_, 2016

ENTER: , A.J.

HON. PETER H. MOULTON  
J.S.C.