

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

PRESENT: HON. JACQUELINE W. SILBERMANN
Administrative Judge Justice

PART

Wilhelmina Models, Inc., et al.

INDEX NO. 117865/2003

- v -

Eric Fleisher, et al.

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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 ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED	

Cross-Motion: Yes No

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

By letter dated August 27, 2004, counsel for defendants applied to the undersigned for a transfer of this case to Hon. Karla Moskowitz of the Commercial Division of this court on the grounds that this matter is related to one previously assigned to her (Case No. 1). Counsel for plaintiffs opposed this application. Several letters have been submitted.

This case was assigned to Hon. Debra James on December 19, 2003. Defendants assert that on the Request for Judicial Intervention they had designated this case as related to Case No. 1. Defendants did not raise a complaint about the failure of the case to be assigned in accordance with the RJI until an appearance before Justice James on August 13, 2004. Defendants state that during the intervening months they assumed that the case was in the course of being reassigned to Justice Moskowitz. They state that they learned that the case had not been assigned in early August 2004, when they received a copy of Justice James's decision on a motion to dismiss and were directed to appear for oral argument on another motion to dismiss.

~~Dated:~~ _____

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION *J.S.C.*

Check if appropriate: DO NOT POST

In early January 2004, a motion to dismiss appeared on the calendar of the Motion Support Office Courtroom. With every calendar there, the outcome of the calendar is published in the Law Journal the day afterward. With a motion in a previously unassigned case, the notation on the calendar for the motion on its first appearance will identify the Justice to whom the matter was assigned. The outcome of the calendar is also published on the court's website every day. The data involved are made available to various lawyers services. If counsel for defendants uses the court system's service, CaseTrac, or a private service, then the firm should have received e-mail notice after the first appearance advising it that Justice James had been assigned to the case. Since defendants had sought an assignment based upon the relation between this case and Case No. 1, defendants should have realized that, for whatever reason, the "related case" designation on the RJI had not resulted in the correct assignment as they viewed the matter.

The case was apparently not assigned as a related case because Case No. 1 had been marked "disposed" after trial on the merits. Our court's procedures, which are set forth in our *Summary of Operations* (published on our website (www.courts.state.ny.us/supctmanh) under "Courthouse Operations" (see "Commencement of Cases")), provide that our back offices will assign a case as related in accordance with the designation of counsel and will make no evaluation of the soundness of the designation, but that if the earlier case cited on the RJI has been disposed of according to the court's computer system, then the case will be assigned at random. The *Summary* further provides that if a case is assigned as a related matter and counsel disagrees with that assignment, he or she should present a complaint to the assigned Justice. Likewise, if a case is assigned at random but an attorney believes that it should have been assigned as a related case, an incorrect designation having been made on the RJI, that issue should be brought before the Justice assigned. Here the RJI was, in defendants' view, correctly marked, but the transfer did not occur due to the qualification with regard to disposed cases set out in the *Summary*. The *Summary* fairly indicates that counsel should bring these issues to the assigned Justice's attention.

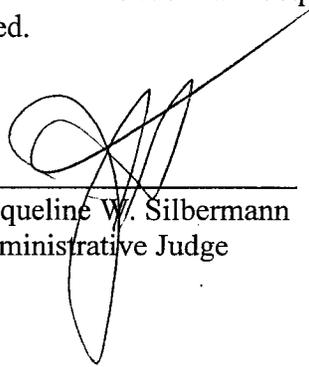
The motions in question here may have been adjourned in the Motion Support Office Courtroom and any such adjournments would, according to our standard procedure, have been noted in the Law Journal and the other places cited above. When the motions were submitted in the Courtroom, the court's marking would have indicated that they had been referred to Justice James. Again, this information would have been published in the Law Journal and in the other outlets.

Defendants should have realized that the case had not been assigned correctly,

as they viewed it, when the original calendar marking about the judicial assignment was published, or after any adjournments and after the submission of the motions. They did not raise the matter with Justice James. A party dissatisfied with the assignment of a case should take action to address the claimed error in the assignment promptly after that assignment occurs by bringing the error to the assigned Justice's attention. The fact that an RJI containing a related case designation, which normally is devoid of any articulation regarding the need for the transfer or the nature of the basis therefor beyond a citation to the other case, is in a file should not suffice since a busy Justice may not notice this form and may assume that the back offices that make the computerized assignments have done so in accordance with standard procedures. Further, our website alerts the Bar to the fact that a "related case" designation may not result in the requested assignment if the prior case has been disposed of, which indicates that counsel need to be alert when a non-random assignment is requested.

Because the issue was not raised until August 13, 2004, months have now gone by and Justice James has familiarized herself with this case. The request to me is therefore untimely and the application is denied.

Dated: September 30, 2004



Jacqueline W. Silbermann
Administrative Judge