

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

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

PAULA ZAHN,

Plaintiff,

- v -

INDEX NO. 602870/2007

RICHARD D. COHEN,

Defendant.

Administrative Order:

By letter dated October 9, 2007, counsel for plaintiff Paula Zahn seeks review of the order of the Hon. Bernard Fried transferring this action to a non-commercial part. By virtue of that order, the case is now assigned to the Hon. Michael D. Stallman (I.A.S. Part 7). Counsel for defendant Richard D. Cohen opposes any re-transfer.

Ms. Zahn commenced this action on August 24, 2007 against her current husband of many years alleging that Mr. Cohen acted as her financial manager and breached his fiduciary and contractual obligations to manage Ms. Zahn's substantial financial resources. The sole cause of action is for an accounting. Mr. Cohen's attorneys filed a Request For Judicial Intervention designating the case as commercial, but reserving the right to have the complaint construed as more properly belonging in the matrimonial division. On September 25, 2007, Justice Fried ordered the case transferred to a non-commercial part pursuant to Uniform Rule 202.70(f)(2) on the ground that this case was, in his words, "a matrimonial dispute masquerading as a commercial dispute." Justice Stallman was assigned to the case the next day, and Justice Fried's order was formally entered in the County Clerk's office on September 27, 2007.

Uniform Rule 202.70(f)(2) provides that any party aggrieved by a transfer of the case to a non-commercial part may seek review by letter application within 10 days of learning the case has been transferred, a time period which is strictly construed. Counsel for plaintiff fails to allege when he learned of Justice Fried's order, and I can only assume that he was, or should have been, aware of the transfer on September 27, 2007, giving him until October 9th to make this application. Thus, the application is deemed timely.

However, the application is denied because I agree with Justice Fried's determination that this is not a commercial case. It is apparent from a reading of the

complaint, that this action, filed in the midst of the parties' ongoing negotiations over dissolution of their matrimonial relationship, is, at its heart, a matrimonial dispute and may seek, in effect, pre-action disclosure concerning the parties' finances and assets. That said, this order shall not be construed in any way as passing on the merits of the claims and defenses in this action.

Accordingly, plaintiff's request that this action be reinstated to the Commercial Division is denied.

Dated: October 12, 2007

ENTER: _____, A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION