

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

PRESENT: Hon. Sherry Klein Heitler  
Administrative Order

---

320 WEST 13<sup>TH</sup> STREET, LLC,

Plaintiff,

- v -

INDEX NO. 603730/2007

WOLF SHEVACK, INC., et al.

Defendants.

---

Administrative Order:

By letter dated January 6, 2010, counsel for plaintiff 320 West 13<sup>th</sup> Street, LLC requests that this action be assigned to the Commercial Division pursuant to Uniform Rule 202.70 (e). Defendants do not join in this application.

In April 2008, two groups of defendants in this action separately filed two Requests for Judicial Intervention (RJI), in connection with their respective motions to dismiss; one RJI was marked commercial, the other was not. Plaintiff's counsel represents that the matter was assigned to both the Honorable Richard B. Lowe, III (Part 56) and the recently retired Honorable Marilyn Shafer (Part 8). After learning of the double assignment, plaintiff's counsel wrote a letter asking that the matter remain with Justice Lowe, but was informed that the matter was proceeding before Justice Shafer, because the motion files were delivered to her. Justice Shafer issued several decisions and orders in this matter. In light of Justice Shafer's retirement in December 2009, plaintiff's counsel requests that this matter be transferred to the Commercial Division.

The application is denied for two reasons. First, there is a 10-day time limit on these applications, which is strictly construed. If plaintiff was dissatisfied with the assignment of the matter to Justice Shafer, it should have filed an application for transfer into the Commercial Division within ten days of receipt of the designation of the case to a non-commercial part. See Uniform Rule 202.70 (f) (2). Second, the retirement of a judge is not a ground for assignment into the Commercial Division, and does not justify a transfer. See Uniform Rule 202.70 (e).

Accordingly, plaintiff's request for re-assignment of this action to the Commercial Division is denied.

Dated: January 22, 2010

ENTER:  \_\_\_\_\_, A.J.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION