

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

PRESENT: Hon. George J. Silver, Acting Administrative Judge
Administrative Order

EHL FUNDING LLC,

Plaintiff,

vs.

INDEX NO. 652546/2017

WILLIAM Z. McFARLAND a/k/a WILLIAM
McFARLAND a/k/a BILLY McFARLAND,
JEFFREY ATKINS a/k/a JA RULE, and
ROBERT NEMETH a/k/a ROBERT NEMATH,

Defendants.

Administrative Order:

By letters dated July 20 and 24, 2017, counsel for plaintiff EHL Funding LLC requests that this action be transferred from I.A.S. Part 29 (Kalish, J.) into the Commercial Division pursuant to Commercial Division Rule 202.70 (e) and, in particular, to the Hon. Eileen Bransten as related to EHL Funding LLC v Fyre Festival LLC and Fyre Media Inc., Index No. 653127/2017 (the CPLR 3213 Action). By letter dated July 21, 2017, counsel for defendant Robert Nemeth opposes the request.

This action arises out of a failed music festival in the Bahamas known as the Fyre Festival. Plaintiff extended a \$3 million loan to Fyre Festival LLC in consideration of a secured promissory note by that entity and guarantees of payment by the festival's organizers, defendants William McFarland (McFarland), Jeffrey Atkins and Robert Nemeth, and a related company, Fyre Media Inc. This action was commenced on May 10, 2017 to enforce the personal guarantees. On July 12, 2017, defendant Nemeth moved, by order to show cause, seeking to stay the action based on the criminal arrest of McFarland on June 30, 2017. No commercial addendum was filed with the Request for Judicial Intervention (RJI), and the only related case listed on the RJI was the federal criminal action against McFarland. That motion is returnable on August 3, 2017 in I.A.S. Part 29.

In the meantime, on June 7, 2017, plaintiff filed a motion for summary judgment in lieu of complaint pursuant to CPLR 3213 against Fyre Festival LLC on the promissory note and against Fyre Media Inc. on its guaranty. Plaintiff filed a Commercial Division Addendum together with the RJI on the same date, and the action was assigned to Justice Bransten. The CPLR 3213 motion was returnable on July 20, 2017, and fully

submitted to Justice Bransten on that date, without opposition. By letter of the same date, Justice Bransten was advised that Fyre Festival LLC was placed into bankruptcy on July 7, 2017.

The request to assign this action to the Commercial Division is granted since the action qualifies for assignment to the Commercial Division pursuant to Commercial Division Rule 202.70 [a], [b] [1]). The request to assign this action to Justice Bransten as related to the CPLR 3213 Action is also granted. Even defendant Nemeth concedes that the two actions are related, since they concern the same underlying transaction and seek to recover the same monetary damages, either via the promissory note or the unconditional guarantees of payment. Judicial economy is not served by keeping this action before Justice Kalish, since he has had no substantive involvement in this action other than signing the order to show cause for a stay. Where related actions are pending, the general rule is that both matters are assigned to the justice who is presiding over the action in which the first RJJ was filed.

For these reasons, plaintiff's request for a transfer to the Commercial Division is granted. The General Clerk's Office is directed to reassign this case to Commercial Division Part 3 (Bransten, J.) as related to EHL Funding LLC v Fyre Festival LLC and Fyre Media Inc., Index No. 653127/2017. Counsel for the parties are directed to jointly contact Justice Bransten's part clerk to reschedule the return date of the order to show cause to a date consistent with Justice Bransten's calendar practices.

Dated: July 28, 2017

ENTER: George J. Silver, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

HON. GEORGE J. SILVER