

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

PRESENT: Hon. Peter H. Moulton
Administrative Order

STANLEY WOLFSON,

Plaintiff,

- v -

INDEX NO. 158025/14

TODD A. ERNST and ERNST ARCHITECT,
PLLC,

Defendants.

Administrative Order:

By letters August 28, 2015, October 2, 2015, and January 4 and 14, 2016, counsel for the plaintiff requests that this action, remanded from federal court on July 10, 2015, be assigned to Commercial Division Justice Charles Ramos. Plaintiff contends that this action is related to the following three actions for which Justice Ramos was the assigned judge: (1) Sigurd A. Sorenson v. Bridge Capital Corp. and Stanley Wolfson, Index No. 601289/05 (the Contract Action); (2) Stanley Wolfson and Bridge Capital Corp. v. Todd A. Ernst, et al., Index No. 105020/06 (the Defamation Action); and (3) Sigurd A. Sorenson v. 257/117 Realty, LLC, Bridge Capital Corp. and Stanley Wolfson, Index No. 600533/06 (the Fraudulent Conveyance Action).

Defense counsel opposes the request, by his email correspondence and letters dated September 15, 2015, December 22, 2015, and January 13 and 14, 2016. It is defendants' position that this matter does not meet the \$500,000 monetary threshold for assignment to the Commercial Division in New York County, as previously determined by Justice Eileen Bransten, and that there is no relevant factual or legal overlap between this case and the prior three actions.

This action was commenced on August 14, 2014. The complaint alleges that the defendants aided and abetted a fraud and committed a "fraud on the court" by signing false affidavits in connection with a now concluded federal court copyright infringement action entitled Sigurd A. Sorenson v. Robert Friedman, Bernard Friedman, Stanley Wolfson, 257/117 Realty, LLC. and Penmark Realty Corp., 10 CV 4596 (SDNY). Plaintiff claims that the federal court would have dismissed the copyright claim by Sigurd A. Sorenson at the summary judgment stage but for the false affidavits. The complaint alleges damages of "not less than

\$500,000.”

On September 10, 2014, defendants filed a motion for an extension of time to answer the complaint. Although a Request for Judicial Intervention (RJI) was filed at that time, it was "returned for correction." The following day, September 11, 2014, defendants filed a notice removing the action to federal court. The notice of removal was served on plaintiff's counsel by regular mail and email that same day.

Despite the removal of the case, on September 12, 2014, plaintiff's counsel filed her own RJI seeking a preliminary conference and requesting assignment to the Commercial Division pursuant to Uniform Rule 202.70 (b) (1). In the required Commercial Division addendum, plaintiff's counsel certified that the damages being sought were \$300,000. Plaintiff's counsel also listed the Contract Action, the Defamation Action, and the Fraudulent Conveyance Action as related cases. In a separate affirmation filed together with the RJI and addendum, plaintiff's counsel again stated that plaintiff is seeking \$300,000 in compensatory damages in this matter.

Despite the removal of the case to federal court, the clerk's office assigned this case to the Hon. Eileen Bransten on September 16, 2014. The matter was not assigned to Justice Ramos, since all three of the cases listed as related on the RJI were marked "disposed" in the court's case management system (CCIS) (see Dec. 2011 Operations Manual, § [I] [D] [2]). There is no question that both the Defamation and the Fraudulent Conveyance Actions are concluded, and, while a note of issue was filed in the Contract Action on July 14, 2014 after many years of inaction, it does not appear that any further proceedings have occurred since that time.

By order dated November 3, 2014, Justice Bransten directed the Trial Support Office to randomly re-assign this case to a non-commercial part on the ground that the amount in controversy, as per the addendum filed by plaintiff's counsel, was only \$300,000. However, this order was never processed, and, in July 2015, when the SDNY remanded the case back to this court, and, as of today, CCIS lists the matter as being assigned to Justice Bransten. So the question of which judge should be assigned to this now remanded case remains to be determined.

Even if the November 3, 2014 order is void ab initio since the case had been removed to federal court (see 28 USC § 1446 [d]; Fenton v. Dudley, 761 F3d 770, 772 [7th Cir 2014]; Ackernan v. ExxonMobil Corp., 734 F3d 237, 249 [4th Cir 2013]), Justice Bransten was entirely correct. The purpose of the Commercial Division addendum is to certify that a case meets the standards for assignment to the Commercial Division (see Uniform Rule 202.70 [d]). Plaintiff's counsel now contends that \$300,000 is a typographical error. Be that as it may, assignment to the Commercial Division must be judged based on the addendum, particularly when it is filed by counsel for the plaintiff.

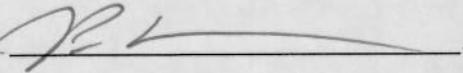
However, even if a case fails to qualify independently for assignment to the Commercial Division, to preserve judicial resources, it can be assigned to a sitting

Commercial Division justice as a related matter. Accordingly, I have conferred with Justice Ramos as to whether this action is related to the Contract Action, the Defamation Action, and/or the Fraudulent Conveyance Action (see Dec. 2011 Operations Manual, § [I] [D] [2]). We both are in agreement that, given the age of these prior actions and the lack of any factual overlap between the claims in this lawsuit, which concern the prosecution of a federal court copyright infringement action, judicial economy is not served by assignment to Justice Ramos.

The request for sanctions against plaintiff and/or his counsel is denied.

The General Clerk's Office is directed to reassign this case to a non-commercial part and to schedule a preliminary conference.

Dated: January 19, 2016

ENTER:  , A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION