

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

PRESENT: Hon. Peter H. Moulton  
Administrative Order

DINING ENTERTAINMENT GROUP, LLC,

Plaintiff,

- v -

INDEX NO. 651497/2015

BANK OF HAPOALIM, B.M.,

Defendant.

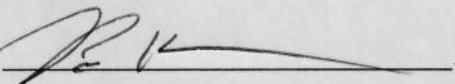
Administrative Order:

By letter dated July 2, 2015, counsel for defendant requests a transfer of this action (Action #1) and the related action, Bank Hapoalim B.M. v Dining Entertainment Group, LLC, et al., Index No. 651536/2015 (Action #2), from I.A.S. Part 55 (Kern, J.) to the Commercial Division pursuant to Uniform Rule 202.70. To date, no opposition to the request has been received.

On May 29, 2015, defense counsel filed a Request For Judicial Intervention (RJI) in connection with a motion to dismiss. Although, the RJI was properly marked as a commercial case and was accompanied with a Commercial Division Addendum, Action #1 was assigned to Justice Cynthia Kern (Part 55) on June 3, 2015. On June 22, 2015, plaintiff's counsel filed an RJI in Action #2, marking the case related to Action #1. Therefore, Action #2 was also assigned to Justice Kern.

Uniform Rule 202.70 (e) states that "[i]f a case is assigned to a non-commercial part because the filing party did not designate the case as 'commercial' on the RJI, any other party may apply by letter application . . . within ten days after receipt of a copy of the RJI, for a transfer of the case into the Commercial Division." Where, however, the RJI designates the case as a commercial matter, but it is not assigned to the Commercial Division due to the absence of the required statement in support, an error by the clerk's office or some other reason, the court has construed the 10-day time limit as running from the assignment of the case to a non-commercial part. Further, where related actions are at issue, the court will look to the first-filed action to determine timeliness. Action #1 was assigned to the Hon. Cynthia Kern on June 3, 2015, and the application for a transfer was made on July 2, 2015. Accordingly, the request is denied as untimely.

Dated: July 8, 2015

ENTER: , A.J.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION