

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

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

In the Matter of the Application of Morgans Hotel
Group Management LLC,

Petitioner,

For an Order Pursuant to CPLR 3103 for a
Protective Order in Connection with a
Subpoena Pursuant to CPLR 3119 issued by
JPMCC 2005-CIBC13 Collins Lodging, LLC

INDEX NO. 152429/2012

Respondent,

In the action entitled *JPMCC 2005-CIBC13
COLLINS : LODGING, LLC v. Philips South
Beach, LLC*, Case : No. 10-61128 CA 06, pending
in the Circuit court of The Eleventh Judicial
Circuit, in and for Miami-Dade County, Florida.

Administrative Order:

By letter dated May 11, 2012, counsel for respondent JPMCC 2005-CIBC13 Collins Lodging, LLC (JPMCC) requests re-assignment of this special proceeding from the Hon. Joan Lobis (I.A.S. Part 6) to the Hon. Charles Ramos (Commercial Division Part 53) on the grounds that this action is related to Philips South Beach, LLC v. NYLIM Real Estate Mezzaine Fund II, L.P., et al., Index No. 652995/11 (the Ramos action). Petitioner Morgans Hotel Group Management LLC (Morgans) opposes the application by its counsel's letter dated May 11, 2012, arguing that the issues raised in this special proceeding are unrelated to the Ramos action.

On May 3, 2012, petitioner filed this special proceeding seeking a protective order in connection with a Subpoena Duces Tecum with Deposition served on Morgans by JPMCC in connection with a foreclosure action currently pending in Florida regarding the Shore Club Hotel. The Shore Club Hotel is owned by Philips South Beach, LLC (Philips) and managed by Morgans. Morgans did not seek assignment to the Commercial Division and did not mark the Ramos action as a related matter, and thus this special proceeding was randomly assigned to the Hon. Joan Lobis. The petition is returnable on May 31, 2012. The stated grounds for quashing the subpoena to Morgans is that service is defective, the document requests are overbroad and the date chosen for the deposition inconvenient.

On May 11, 2012, JPMCC filed an Order to Show Cause seeking to compel

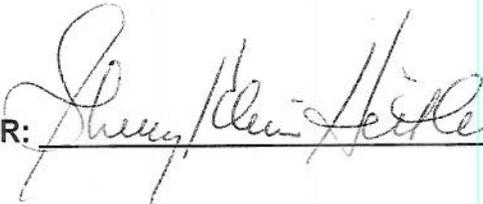
Morgans' immediate production of documents, denying Morgans' petition for a protective order, and seeking an expedited hearing (the OSC). Judge Lobis made the OSC returnable on May 15, 2012 at 9:30 a.m.

The Ramos action concerns claims by Philips that certain entities and/or persons affiliated with its mortgage lender improperly used confidential information about the Shore Club Hotel to its detriment and improperly serviced the mortgage loan. Motions to dismiss and to stay the Ramos action, pursuant to CPLR 3211 (a) (4), based on the pendency of the Florida foreclosure action are pending.

Counsel for JPMCC states in her letter that a motion very similar to the instant proceeding was filed last week in the Ramos action. On May 4, 2012, a motion was filed by one of the defendants in the Ramos action, NYLIM Real Estate Mezzanine Fund, II, L.P. (NYLIM), to quash subpoenas served by Philips on non-parties John Kim, the Chairman and Chief Executive Office of New York Life Investment Management LLC, and Kevin Smith, a managing director of NYLIM. NYLIM contends that neither gentlemen has personal knowledge of the mortgage loan at issue.

The decision as to whether this special proceeding is related to the Ramos action belongs, in the first instance, to the assigned Justice (see Section I[B] of the "Summary of Courthouse Procedures"). Therefore, this request must be made to Justice Lobis. It is only if further review is required after Justice Lobis's determination, that the issue is raised before the Administrative Judge. I am forwarding this order along with a copy of the parties' letters to Justice Lobis, along with a full copy of the motions papers filed in the Ramos action and a copy of the petition in this proceeding.

Dated: May 14, 2012

ENTER:  A.J.

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