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

PRESENT: Hon. Jacqueline Silbermann
Administrative Order

OVERSEE.NET,

Plaintiff,

- v - INDEX NO. 602843/08

ESTATE OF AUDREY J. WICHMANN, JOHN WICHMANN, ADVANCE MAGAZINE PUBLISHERS, INC., d/b/a THE CONDE NAST PUBLICATIONS, d/b/a THE GOLF DIGEST COMPANIES, and ADVANCE PUBLICATIONS, INC.,

Defendants.

Administrative Order:

By letter dated November 18, 2008, counsel for the plaintiff, Oversee.net, timely requests assignment of this action to the Commercial Division pursuant to Uniform Rule 202.70. The attorney for Gregory Barry, Temporary Administrator of the Estate of Audrey J. Wichman, opposes the application.

According to the pleadings filed to date in this action, Oversee.net brings this interpleader action because the defendants have filed competing claims to approximately $423,000 in funds held by Oversee.net and owed to the account of the late Audrey J. Wichmann who died in May 2007.

Oversee.net is an online marketing solutions company that assists owners of Internet domain names in generating advertising revenue from Internet traffic. Oversee.net is the owner and operator of DomainSponsor, a domain monetization platform that enables Internet domain name owners to earn revenue from Internet traffic to the web pages associated with their Internet domain names that participate in the program. In December 2004, an account was opened with DomainSponsor in the name of the late Audrey J. Wichmann. Defendant John Wichmann, one of Ms. Wichmann's sons, contends that he is the rightful owner of the domain names that were participating in DomainSponsor through the Audrey J. Wichmann account and that he is entitled to the revenues earned from such domain names. Another son, Gregory Barry, who is the Temporary Administrator of the Estate, has challenged John Wichmann's claim.

Defendants Advance Magazine Publishers, Inc. and Advance Publications, Inc. (AMPI) are judgment creditors of John Wichmann, allegedly having obtained a money

judgment against him for cyberpiracy, trademark infringement and unfair competition in the United States District Court of the Southern District of New York in the amount of $376,186 plus costs on May 28, 2004, which remains mostly unsatisfied.

Uniform Rule 202.70(b) provides that actions in which the principal claims are for "breach of contract or fiduciary duty, fraud, misrepresentation, business tort . . . or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings" should be heard in the Commercial Division, provided the $100,000 monetary threshold is met or equitable or declaratory relief is sought.

Transfer into the Commercial Division is appropriate. The claims in this action arise from business dealings and other business arrangements between the late Audrey J. Wichmann and John Wichmann, as well as efforts to satisfy a judgment arising from a commercial dispute between John Wichmann and AMPI, and the action satisfies the monetary threshold for assignment to the Commercial Division in addition to seeking equitable and declaratory relief. While the claims may concern assets belonging to a decedent's estate and the administration of that estate, they are still commercial in nature.

Accordingly, the request for a transfer to the Commercial Division is granted. The Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division. (A motion for removal to the Surrogate's court is presently returnable on December 3, 2008 in the Initial Motion Part.)

Dated: November 26, 2008 ENTER: _____, A.J.

Check one: ❑ FINAL DISPOSITION ❑ NON-FINAL DISPOSITION