

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. DEBORAH A. KAPLAN

PART

*Administrative Judge*INDEX NO. 653018/2018

MOTION DATE _____

MOTION SEQ. NO. _____

WILMINGTON TRUST, NATIONAL
ASSOCIATION, AS TRUSTEE FOR THE
BENEFIT OF THE REGISTERED HOLDERS OF
WELLS FARGO COMMERCIAL MORTGAGE
TRUST 2016-LC25, COMMERCIAL MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2016-
LC25,

Plaintiffs,

- v -

381 BROADWAY REALTY CORP., GARY TSE,
TITAN CAPITAL ID, LLC, NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE,
JOHN DOE NO. 1 TO JOHN DOE NO. 100
INCLUSIVE, THE LAST ONE HUNDRED NAMES
BEING FICTITIOUS AND UNKNOWN TO
PLAINTIFF, THE PERSONS OR PARTIES
INTENDED BEING THE TENANTS,
OCCUPANTS, PERSONS OR CORPORATIONS,
IF ANY, HAVING OR CLAIMING AN INTEREST
IN OR LIEN,

Defendants.

-----X
Administrative Order:

By letter dated November 14, 2018, counsel for defendant 381 Broadway Lender (381 Lender) requests assignment of this action to the Honorable Barry Ostrager, Justice of the Commercial Division, pursuant to Commercial Division Rule 202.70 (e). No response to the letter request has been received.

The summons and complaint in this action were filed on June 15, 2018. The RJL was filed together with a Commercial Division Addendum, on June 19, 2018. The Commercial Division Addendum was rejected, and the action was instead assigned to a General IAS Part (Hon. Judith McMahon) because the property which plaintiff seeks to foreclose is residential in whole or in part. No objection to

the assignment of this case to a non-Commercial Division part was made at that time (see Commercial Division Rule 202.70 [e]).

On November 7, 2018, 381 Lender filed a proposed order to show cause (labeled an ex parte order) seeking the following relief:

a) Ordering reassignment of this action to Justice Barry Ostrager as related to the action *Wilmington Trust, N.A. v. C.T.W Realty Corp.*, Index No. 850165/2018 (Sup. Ct. N.Y. Cty.); b) Appointing a receiver for the property located at 381 Broadway, New York, New York (the "mortgaged premises") pursuant to Section 254(10) of the Real Property Law (the "RPL") and authorizing the receiver to take actions reasonable or necessary, in the receiver's business judgment, to operate and manage the Property. . .

On November 19, 2018, Justice McMahon issued a short form order recusing herself from the case and instructing the General Clerk's office to reassign it to a new judge. To date, this action has not been reassigned and the order to show cause has not been signed.

In the letter application, 381 Lender's attorney asserts that this litigation is related to another mortgage foreclosure action filed by Wilmington against another property, *Wilmington Trust, N.A. v. C.T.W Realty Corp.*, Index No. 850165/2018 (Sup. Ct. N.Y. County) (Ostrager, J.) 381 Lender's attorney submits that, following Judge McMahon's recusal, instead of reassigning this case to another General I.A.S. part, it should be transferred to Justice Ostrager.

However, contrary to 381 Lender's claims, the two cases involve different properties and different loans, and the posture of the two cases is very different. For that reason, 381 Lender's claim that the two cases are related is rejected.

The request is additionally denied on the ground that it is untimely. Here, no application was prepared contesting the rejection of the Commercial Division addendum in June 2018. More than four months later, 381 Lender claims that the action is related to an action currently pending in the Commercial Division. 381 Lender's counsel has failed to demonstrate that the two cases are related. Nor has he shown that judicial economy would be served by the assignment of this case to Justice Ostrager at this point in time.

Accordingly, the request is denied, and the Clerk's Office is directed to randomly reassign this case to a justice of this court presiding over a General I.A.S. part forthwith.

Further, 381 Lender's proposed order to show cause under motion sequence number 002 is denied to the extent it requests assignment of this action to Justice Ostrager. Should 381 Lender seek to have the remainder of that motion heard and the order to show cause signed, it should arrange to present the papers to the justice of this court to whom this action will be reassigned. Counsel for 381 Lender is directed to delete the request for reassignment of this case to Justice Ostrager from the proposed order to show cause before it is presented for signature.

Dated: December 5, 2018

ENTER: Deborah A. Kaplan, A.J.

Hon. Deborah A. Kaplan
Administrative Judge
Supreme Court, New York County
Civil Branch
60 Centre Street
New York, NY 10007