

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

PRESENT: HON. DEBORAH A. KAPLAN

Administrative Judge

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ALP, INC.,

INDEX NO. 153949/2019

Plaintiff,

- v -

PARK WEST GALLERIES, INC., GENE LUNTZ, GENE
LUNTZ MANAGEMENT, INC.,

Defendant.

**ADMINISTRATIVE
ORDER**

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By letters dated April 22, 2019 and April 25, 2019, Luke Nikas, Esq., counsel for defendant Park West Galleries, Inc., requests that this action be assigned to the Commercial Division pursuant to Uniform Rule 202.70.

Plaintiff's counsel, Jeffrey M. Eilender, Esq., by letters dated April 24, 2019 and April 25, 2019, opposes the application and contends that the case is related to actions pending before Judge Nancy Bannon, and were properly assigned to her.

This action, involving works of the iconic artist, Peter Max, was commenced on April 16, 2019. The following day, plaintiff's counsel filed an order to show cause seeking a preliminary injunction and a temporary restraining order, enjoining defendants from, inter alia, selling, transferring, encumbering, hypothecating or otherwise disposing of certain works of art, and related relief. The RJI filed by plaintiff in conjunction with the motion listed three related cases, all pending before Justice Nancy Bannon.

Unhappy with this designation, defendant's counsel filed this letter application for a transfer to the Commercial Division. Defendant's counsel primarily argues that: (1) this action is not related to the cases before Justice Bannon and therefore should not be assigned to her; and (2) this case squarely meets the requirements for assignment of cases to the Commercial Division and should therefore be transferred to a Commercial Division part.

In response, plaintiff's counsel counters that defendant's application should be denied for the following reasons:

First . . . [i]f a party believes that a "related-case designation and resulting assignment were made in error," it must raise the issue "before the assigned justice, who may send the matter to the back office for random reassignment or transfer if the complaint is justified" with only "further review before the Administrative Judge." N.Y. C2I Rules re RJIs and Assignments Section D (emphasis added). Thus, these applications should have been made to Justice Bannon, who is best positioned to determine whether this action is related to other matters before her. . . .

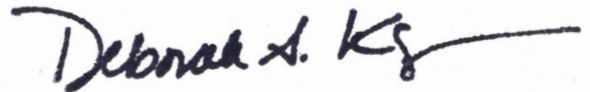
Second, since July 2017, the following five cases have been assigned to Justice Bannon: *Libra Max v. ALP, Inc. and Adam Max*, Sup. Ct. N.Y. Cty. Index No. 156641/2017; *ALP, Inc. v. Libra Max and Lawrence Flynn*, Sup. Ct. N.Y. Cty. Index No. 161352/2018; *Adam Max v. ALP, Inc. and Libra Max*, Sup. Ct. N.Y. Cty. Index No. 650618/2019; *ALP, Inc. and Libra Max v Adam Max*, Sup. Ct. N.Y. Cty. Index No. 651181/2019; *ALP Inc. v. Park West Galleries, Inc., et al.*, Sup. Ct. N.Y. Cty. Index No. 153949/2019. . . . The inter-relatedness of these cases militates in favor of keeping all of them, including this one, with the jurist who has been presiding over all of these disputes for so long—Justice Bannon.

Third, Peter Max has had an Article 81 court appointed financial guardian, Lawrence L. Flynn, Esq., since December 2016. That guardian has joined in the claims by ALP . . . and has told us that he opposes transferring this case away from Justice Bannon, who knows it best.

Upon careful review, the court is satisfied that this action is related to those pending before Judge Bannon. All of these cases have interrelated allegations and issues. Having them all before one Judge would be beneficial and serve judicial economy. Accordingly, the court concludes that this case was properly assigned to Judge Bannon. In view of this determination, the court need not review whether this action meets the criteria for assignment to the Commercial Division. The request for transfer to the Commercial Division is therefore denied.

DATE:

6/5/19



Hon. Deborah A. Kaplan
Administrative Judge
Supreme Court, New York County
Civil Branch