

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

**PRESENT: Hon. Jacqueline Silbermann
 Administrative Order**

MARYANNE FLETCHER,

Plaintiff,

- v -

INDEX NO. 114698/2007

**BOIES, SCHILLER & FLEXNER LLP, DAVID
BOIES, JONATHAN SCHILLER, DONALD
FLEXNER, ANDREW HAYES, HAYES &
HARDY LLP, OLAV HAAZEN, CHRISTINA
LEWICKY, MERRILL DAVIDHOFF, BERGER &
MONTAGUE, P.C., BRIAN A. RISHWAIN,
JOHNSON & RISHWAN, LLP, NEVILLE
JOHNSON,**

Defendants.

Administrative Order:

By letter dated April 16, 2008, counsel for defendants Boies, Schiller, & Flexner LLP, David Boies, Jonathan Schiller, Donald Flexner, Olav Haazen, and Christine Lewicky (the BSF Defendants) requests a transfer of this action from I.A.S. Part 48 (Diamond, J.) to the Commercial Division pursuant to Uniform Rule 202.70. Defendant Andrew Hayes, Esq., on behalf of himself and his dissolved former partnership, joins the BSF Defendants' application. Plaintiff objects to the application.

Plaintiff filed a Request for Judicial Intervention (RJI) on April 4, 2008 in connection with her motion to extend plaintiff's time to complete service on all defendants. Plaintiff's counsel did not designate the case as a commercial matter; rather, the box for "Malpractice-Other Professional" was checked. The action was thus assigned to a non-commercial part.

Uniform Rule 202.70(e) places a 10-day time limit on these applications, measured from the "receipt" of a copy of the RJI by the non-filing party. This time limit is strictly construed in order to prevent judge shopping. There is a dispute as to whether the defendants were served with a copy of the RJI. Counsel for the BSF Defendants states that he discovered that the case was assigned to Justice Diamond for the first time on April 16, 2008, after checking the court's SCROLL

system. However, this court is bound to accept the certificate of service attached to the RJL, affirmed by plaintiff's counsel that he served defendants with the RJL via regular mail on April 3, 2008. Nevertheless, the court also gives the defendants the benefit of CPLR 2103(b)(2), which adds five days to the prescribed time period where service is by mail. Thus, assuming that the papers were received by April 8th, five days after the alleged mailing, defendants had until Friday, April 18th to make this request for a transfer. Therefore, the defendants' application is timely.

Counsel for the BSF Defendants contends that the action should be reassigned to the Commercial Division, because this lawsuit involves claims of legal malpractice arising out of representation in a matter currently pending in the Commercial Division. Plaintiff's counsel argues that this case should not be assigned to the Commercial Division, because the alleged legal malpractice does not exclusively involve the pending Commercial Division matter. He asserts that it also involves a federal action and other acts by the defendants. This court does find that this matter is one suited for the Commercial Division, as one of the major claims is for legal malpractice arising out of representation in a commercial matter (see Uniform Rule 202.70 [b] [8]).

Counsel for the BSF Defendants, joined by defendant Andrew Hayes, Esq., also requests that this matter be assigned to Justice Ramos of the Commercial Division, because it is related to an action currently before him. Plaintiff's counsel objects to assigning this case to Justice Ramos on the grounds that the judge may be in a conflicted position based on his observations of acts by defendants in the underlying action. The defendants' request to specifically assign this action to Justice Ramos is denied without prejudice. The decision as to whether this action is properly related to the pending action before Justice Ramos must be raised, in the first instance, with the assigned Justice. Therefore, defendants may make an application directly to the newly-assigned Commercial Division Justice in accordance with Section I(B) of the "Summary of Courthouse Procedures."

Accordingly, the Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division. (A motion to extend time (seq. 001) is on for submission in Room 130 on April 28, 2008).

Dated: April 25 2008

ENTER:


~~HON. JACQUELINE W. FELDMMANN~~

, A.J.

Check one: ☐ FINAL DISPOSITION

☐ NON-FINAL DISPOSITION