

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

PRESENT: Hon. Walter B. Tolub, Acting Administrative Judge
Administrative Order

RAO'S CITY VIEW, LLC,

Plaintiff,

- v -

Action No. 1
INDEX NO. 112328/06

A&J RAPAPORT PARTNERS d/b/a J. RAPAPORT
FLOORING,

Defendant.

[and Action Nos. 2-4, Index Nos. 103512/06,
112518/06 and 601773/06]

Administrative Order:

By letter dated August 21, 2008, counsel for Rao's City View, LLC ("Rao's") requests a transfer of this action, together with three other related actions, from I.A.S. Part 23 (Braun, J.) to the Commercial Division pursuant to Uniform Rule 202.70(b)(3).

Rao's counsel contends that these four actions were consolidated for joint trial pursuant to a so-ordered stipulation signed by Justice Braun on April 22, 2008. He argues that, as a result of the consolidation, the principal claims in the majority of these actions, which are for the foreclosure of various mechanic's liens on commercial real property, now meet, collectively, the \$100,000 threshold for New York County. He further contends that Rao's seeks damages in excess of \$100,000 due to the defective installation of floors on said commercial real property, presumably referring to the claims in Action No. 1 in which Rao's is plaintiff and is suing A&J Rapaport Partners d/b/a J. Rapaport Flooring.

These actions were not fully consolidated into one action, with one caption, but were merely consolidated for purposes of joint trial. Thus, the four cases are still separate actions, and the claims may not be aggregated in order to meet the monetary threshold for assignment to the Commercial Division. Even if the monetary threshold was met, the 10-day time period to seek a transfer has long since expired. See Uniform Rule 202.70(e), (f). In addition, while counsel for Rao's contends that Action No. 1 is a commercial matter and itself meets the monetary threshold, he himself filed the RJ1 in that action on June 28, 2007 and designated the matter as "Other Torts -- Negligent Floor

Installation.”

The request for a transfer to the Commercial Division is denied. Counsel for Rao's is directed to immediately serve a copy of this order on all other counsel of record, by facsimile transmission, and mail copies to any unrepresented parties.

Dated: August 25, 2008

ENTER:


WALTER B. TOLUB

, A.J.

Check one: ☐ FINAL DISPOSITION

☐ NON-FINAL DISPOSITION