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

PRESENT: Hon. Peter H. Moulton
Administrative Order

JASON ILARDO, PAUL BARBER, MICHELA BURATTI, KELLY RIPPY, and ANTONIO D'AIUTO,

Plaintiffs.

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INDEX NO. 450607/2016

MICHELE IULIANO and GIOVANNA IULIANO,

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Administrative Order:

By letter dated November 15, 2016, counsel for defendant Michele Iuliano (Mr. Iuliano) requests that this action be assigned to the Commercial Division pursuant to Uniform Rule 202.70 (e) and, in particular, to the Hon. Anil C. Singh as related to: (1) La Magica LLC v 145 Atlantic LLC, Index No. 654010/15 (the La Magica Action); and (2) Luzzo's 211, LLC v Chito Inc., Index No. 155421/16 (the Luzzo's 211 Action). No opposition to the request has been received.

This case was commenced in Queens County on February 25, 2016, and service of process was allegedly accomplished the same day. The parties consented to change venue and the case was transferred to this court on May 19, 2016. A Request For Judicial Intervention (RJI) was filed by prior counsel for defendant Giovanna Iuliano on June 2, 2016. No Commercial Division Addendum was filed at that time and the case was assigned to the Hon. Debra James (I.A.S. Part 59).

This application is untimely for two reasons. First, assignment to the Commercial Division must be made within 90 days of the service of the summons and complaint (see Uniform Rule 202.70 [d]). Second, any party objecting to the assignment of a case to a non-commercial part must make a letter application to the Administrative Judge within 10 days after receipt of the RJI (see Uniform Rule 202.70 [e]). Typically, this would warrant denial of the application.

However, here, counsel for Mr. Iuliano also seeks assignment of this case to Justice Singh as related to the La Magica and the Luzzo's 211 Actions. Notably, the RJI that was filed in the present case did not list the then pending La Magica Action as a

related action. Counsel for Mr. Iuliano contends that all three actions involve restaurants in the Luzzo's Restaurant Group, and all three actions attempt to wrest ownership and control of these restaurants from Mr. Iuliano. However, the Luzzo's 211 Action was filed by present counsel for Mr. Iuliano and it concerns the closing of a restaurant located at 211 First Avenue, New York, New York. The present action concerns a different restaurant, located at 275 Church Street, New York, New York, and involves different parties. The complaint in the present action alleges that Mr. Iuliano breached the parties' shareholder agreement by under reporting sales taxes, paying unauthorized fees to a management company, and misappropriating \$25,000 in May of 2015, and plaintiffs seek only monetary damages.

Accordingly, I am directing that this action be reassigned to Justice Singh for a determination as to whether this action is related to either the La Magica Action or the Luzzo's 211 Action (see Dec. 2011 Operations Manual, § [I] [D] [2]), and whether judicial economy would be served by his presiding over all three actions. If Justice Singh determines that the actions are not truly related, he may direct that this case be reassigned back to I.A.S. Part 59.

Dated: November 17, 2016 ENTER: ______, A.J.

Check one: ☐ FINAL DISPOSITION

HON. PETER H. MOULTON
SUPREME COURT JUSTICE
HON. PETER H. MOULTON
UNON-FINAL DISPOSITION