

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

PRESENT: Hon. Peter H. Moulton
Administrative Order

JEAN TOUCH, INC.,

Plaintiff,

- v -

INDEX NO. 650087/2015

A.H. SCHREIBER CO. INC. and
ESRT 1400 BROADWAY, L.P.,

Defendants.

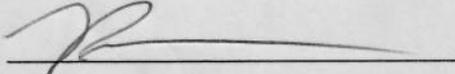
Administrative Order:

By letter dated May 4, 2015, counsel for defendant ESRT 1400 Broadway, L.P. (ESRT) requests a transfer of this action from I.A.S. Part 47 (Wright, J.) to the Commercial Division pursuant to Uniform Rule 202.70. There is no opposition to the request.

The Request For Judicial Intervention (RJI) in this action was filed on February 9, 2015 in connection with a proposed order to show cause (OSC) filed by the plaintiff and the case was assigned to a non-commercial part. Although ESRT had not yet been served with the summons and complaint, counsel for ESRT was given notice of, and, in fact, appeared in this court to oppose the OSC. Thereafter, ESRT was served with the summons and an amended complaint on March 10, 2015. Present counsel for ESRT was granted two extensions of time to answer or move against the amended complaint, first to April 30, 2015, and then to May 14, 2015 by stipulations dated March 27, 2015 and April 21, 2015.

Uniform Rule 202.70 (e) provides that an application of this nature be made within 10 days of receipt of the RJI. The obvious purpose of the rule is to ensure that a request to transfer a case into the Commercial Division be made on a timely basis once a party learns that the case is not going into the Commercial Division. It is not an open-ended period of time. Whether measured from service of process on ESRT on March 10, 2015, or the date ESRT's first extension of time was granted, namely March 27, 2015, the 10-day time period for ESRT to request a transfer into the Commercial Division has expired. Accordingly, the request is denied as untimely.

Dated: May 12, 2015

ENTER: , A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION