

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

PRESENT: Hon. Joan B. Carey
Administrative Order

BANK OF AMERICA, N.A., as Lender and
Administrative Agent,

Plaintiff,

- v -

INDEX NO. 602513/09

OLIVER, LLC, 951 LLC, SIMON ELIAS, IZAK
SENBAHAR, STEVEN ELGHANAYAN, BANK OF
AMERICA, N.A., GATEWAY DEMOLITION
CORP., FCV SEWER & WATER, INC.,
EDDINGTON SECURITY, INC., MAYRICH
CONSTRUCTION COMPANY, TWIN COUNTY
SHEET METAL, INC., LOUIS L. BUTTERMARK
& SONS, INC., RC DOLNER LLC, SEN
CONSULTING CORP., POLO ELECTRIC CORP.,
DFC STRUCTURES, LLC, BW REPROGRAPHICS
LLC, ACTIVE FIRE SPRINKLER CORP.,
ENVIRONMENTAL CONTROL BOARD, CITY OF
NEW YORK DEPARTMENT OF FINANCE,
STATE OF NEW YORK, and "JOHN DOE" NOS.
1-25,

Defendants.

Administrative Order:

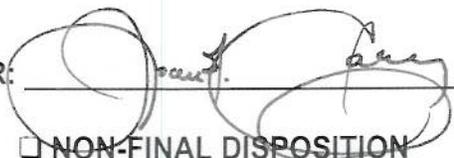
By letter dated November 30, 2009, plaintiff Bank of America, N.A. requests that this mortgage foreclosure action be assigned to the Commercial Division pursuant to Uniform Rule 202.70. Defendants Oliver, LLC, 951 LLC, Simon Elias and Izak Senbahar (the owner defendants) oppose the request by letter dated December 1, 2009.

This is a commercial mortgage foreclosure action arising out of an abandoned luxury housing development owned by Oliver, LLC located along the west side of First Avenue between 52nd and 53rd Streets. The principal balance of the mortgages totals over \$30 million. Although not noted on the Request for Judicial Intervention filed in this

action by counsel for the owner defendants, this action is related to an action now pending before Justice Debra James entitled RC Dolner, LLC v. Oliver L.L.C., et al., Index No. 109397/09. RC Dolner, LLC, an alleged mechanic's lienor, commenced its action on or about July 2, 2009. The defendants in that action include, among others, Oliver LLC, 951 LLC and Bank of America. Mayrich Construction Company, a defendant in both actions, has recently filed a motion to consolidate the two actions, contending that there are common questions of law and fact, namely the amounts that are owed to the various parties and whether the bank's mortgages have priority over the contractors' mechanic's liens.

In view of the fact that this action should have been assigned to Justice James in the first instance as a related action (see Supreme Court, Civil Branch, New York County Operations Manual, § I[B]), the request for a transfer to the Commercial Division is denied. Judicial economy compels the assignment of this action to the judge handling the RC Dolner action, and therefore, the Motion Support Office is directed to assign this action to I.A.S. Part 59 (James, J.)

Dated: December 4, 2009

ENTER:  , A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION