

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

PRESENT: Hon. Joan B. Carey
Administrative Order

SPENCER TRASK VENTURES, INC. and
SPENCER TRASK & CO.,

Plaintiffs,

- v -

INDEX NO. 108253/09

UBS SECURITIES LLC and
BANK OF AMERICA, N.A.,

Defendants.

Administrative Order:

By letter dated June 22, 2009, defendant Bank of America, N.A. applies for a transfer of this action from I.A.S. Part 23 (Braun, J.) to the Commercial Division pursuant to Uniform Rule 202.70. Plaintiffs' counsel, by letter dated June 23, 2009, opposes the application and defendant UBS Securities LLC takes no position. The application is timely (see Uniform Rule 202.70[e]).

The action meets the standards for assignment to the Commercial Division under both subsections (b)(1) and (b)(3) of Uniform Rule 202.70. Plaintiffs are sub-tenants of commercial space located at 535 Madison Avenue in Manhattan, and defendant UBS Securities LLC is their sub-landlord. As required under the terms of the parties' sublease, plaintiffs obtained from Bank of America, N.A. a letter of credit in the amount of \$846,531 for the plaintiffs' rental obligations. Plaintiffs allege that UBS Securities LLC has recently served a notice of default under the sublease, and plaintiffs bring this action to obtain a declaration that no default has occurred and an injunction prohibiting Bank of America, N.A. from honoring any draw upon the letter of credit. In addition to the fact that the \$150,000 monetary threshold for New York County is met, the action seeks both declaratory and injunctive relief (see Uniform Rule 202.70[a],[b]).

The argument of plaintiffs' counsel, that there is no need to transfer this case to the Commercial Division because plaintiffs "only seek an injunction and a judicial declaration that a certain notice of default relating to a letter of credit is defective on its face," merely reaffirms the nature of this clearly commercial dispute.

In addition, there is a related action entitled Bank of America, N.A. v Spencer Trask & Co. and Kevin Kimberlin, Index No. 650041/09, pending before J.H.O. Ira

Gammerman in Part 27 of the Commercial Division.

For these reasons, the application by defendant Bank of America, N.A. to transfer this action to the Commercial Division is granted. The Motion Support Office is directed to reassign this action to J.H.O. Ira Gammerman in Part 27 of the Commercial Division. Counsel for Bank of America, N.A. is directed to serve a copy of this administrative order on the clerk of Part 27 and arrange for a new date for the conference (currently scheduled in Part 23 on June 30, 2009 at 10:00 a.m.) and to notify all parties of the new date and time. An additional copy of the administrative order should be served on the clerk of Part 23.

Dated: June 26, 2009

ENTER: *Ron J. [unclear]*, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION