

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

PRESENT: Hon. Joan B. Carey
Administrative Order

iSTAR FM LOANS LLC,

Plaintiff,

- v -

INDEX NO. 115753/2008

855 REALTY OWNER LLC, YITZCHAK TESSLER,
MEYER CHETRIT, JACOB CHETRIT, PAVARINI
McGROVERN LLC, GEORGE LANGER
ASSOCIATES CONSULTING, ENVIRONMENTAL
CONSULTING & MANAGEMENT, COSTA
KONDYLIS & PARTNERS LLP, NEW YORK
CITY ENVIRONMENTAL CONTROL BOARD,
NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE and JOHN DOES
1-10, the last ten names being fictitious and
unknown to plaintiff, the persons or parties
intended being the tenants, occupants, persons,
or corporations, if any, having or claiming an
interest in or lien upon the premises described
in the complaint,

Defendants.

Administrative Order:

By letter dated January 16, 2009, plaintiff timely applies for a transfer of this action to the Commercial Division pursuant to Uniform Rule 202.70. Defendants 855 Realty Owner LLC, Yitzchak Tessler, Meyer Chetrit and Jacob Chetrit (collectively, the 855 Realty Defendants) oppose a transfer on the grounds that this action does not fall within the standards for assignments of cases to Commercial Division, because it involves the foreclosure of a mortgage.

Counsel for the 855 Realty Defendants filed a Request for Judicial Intervention (RJI) on January 13, 2009, in connection with an Order to Show Cause, designating this action as "Real Property - Foreclosure." The action was first assigned to I.A.S. Part 23 (Braun, J.), but was reassigned to I.A.S. Part 35 (Edmead, J.) after Justice Braun recused

himself. Plaintiff contends that this action meets the standards for assignment to the Commercial Division, because the plaintiff seeks to foreclose on a mortgage of a commercial property whose outstanding balance is over \$105,000,000. The 855 Realty Defendants contend that "the issues in this action are neither more or less complex than in any other foreclosure action involving the financing and development of commercial property in Manhattan. Thus, unless all such mortgage foreclosures will now be assigned to the Commercial Division, there is no cogent reason advanced why the present action should be treated any differently." Further, counsel for the 855 Realty Defendants alleges that, upon presentation of the motion papers to the intake clerk of the Commercial Division, he was advised that the Commercial Division does not handle foreclosures.

Uniform Rule 202.70 (b) (3) provides that actions involving commercial real property, not involving the payment of rent, will be heard in the Commercial Division provided the \$100,000 monetary threshold for New York County is met or the action seeks declaratory or equitable relief. Thus, there is no question but that the nature of the action makes it one that should be assigned to the Commercial Division.

Accordingly, the Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division. (There is an Order to Show Cause scheduled for oral argument in I.A.S. Part 35 on February 17, 2009).

Dated: January 21, 2009

ENTER:  _____, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION