



designation of the matter as a Division case. The staff of the County Clerk's Office also does not review the merit of requests for Commercial index numbers. Not all cases are accepted in the Division even if all parties so request, as is apparent from the *Guidelines for Assignment of Cases to the Commercial Division*. Therefore, the assignment of a Commercial index number does not mean that the case is or will be assigned to the Division.

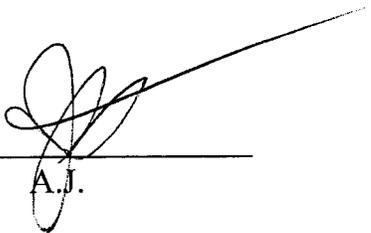
Furthermore, the only Justices assigned to the Division are those listed on the court's website and in other similar information. Justice Tolub is assigned to a General Assignment Part. He obtained this case because the case was designated on the RJI as a General Assignment case, not a Commercial Division matter. Specifically, on the RJI, dated November 15, 2002, counsel for defendant designated this case as one involving "Real Property - - Landlord/Tenant." The Real Property category is different from the Commercial category on the RJI. A General Assignment Justice will handle a case that could be or is in the Division only if (i) the parties do not seek a Commercial Division assignment; (ii) they seek such an assignment, but the case involves less than the Division damage threshold and it is therefore assigned by a back office as a non-Commercial matter (see the *Guidelines*, Par. C (i)) or it is assigned by the back office as a Commercial matter but a Division Justice directs that the case be transferred out of the Division (see *Guidelines*, Par. C (ii)); or (iii) at the trial stage the Division Justice is unable to try the case and, as occurs from time to time, it is transferred to a non-Division Justice for trial via the Administrative Coordinating Part (Part 40) if no other Division Justice can handle it. Apart from these situations, there is no "overflow" of Commercial Division cases to General Assignment Justices. Therefore, if this request were being made in a different context, a transfer to the Commercial Division would be impossible for this request would come far too late, Justice Tolub having had this matter since 2002 without any party having objected to the General assignment. A party seeking such transfer must act expeditiously. See *Guidelines*, Par. G. However, there is no possibility of a waste of judicial resources from an assignment to the Division at this point since, although the case has already been reassigned by a back office independent of the current request, the new General Assignment Justice has not had time to become involved in the case.

The question, then, is whether pursuant to the *Guidelines*, the case belongs in the Division. The complaint seeks \$60 million in damages so the Division's financial threshold is not a factor. The defendant states that the case involves "complicated commercial real estate issues...." Plaintiff is the owner of real property and improvements thereon located at 63 Wall Street in Manhattan. In 1968, plaintiff's predecessor leased the premises to defendant

for a term expiring on April 30, 2003. Plaintiff alleges that defendant assumed all obligations for the operation, maintenance and control of the premises for the entire lease term. Plaintiff claims that defendant was required to make all necessary repairs during the lease term, including structural repairs, in order to maintain the building in proper condition. Plaintiff asserts that defendant failed to make the necessary repairs and replacements (e.g., repair of the facade, replacement of windows and roofs) and that defendant's neglect has caused a \$ 60 million diminution in the value of the building, for which plaintiff demands recompense.

We are dealing, then, with a commercial lease dispute allegedly involving a very substantial sum. At issue in this action appears to be a disagreement about the meaning of the terms of the commercial lease, which will, it seems, require the court to engage in contractual interpretation. One can argue that cases of this sort ought to be in the Commercial Division. However, the bounds of the Division do not have to be as broad as they might conceivably be. The *Guidelines* provide in Paragraph A (3) that landlord/tenant matters will presumptively be transferred out of the Division. This provision is not limited to residential real estate disputes or those involving modest sums. As noted above, this is obviously a landlord/tenant matter and was so characterized on the RJI. Paragraph B (3) provides for the retention in the Division of "complicated transactions involving commercial real property," but the aim of that provision is to reach disputes involving or arising out of transactions in such property, such as sales or investment programs. Accordingly, the request that this case be transferred to the Division is denied.

Dated: Feb. 15, 2004



A.J.