

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

PRESENT: Hon. JACQUELINE W. SILBERMANU PART  
Administrative Judge Justice

Chris Post

INDEX NO. 117471/2001

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

- v -

General Motors Corp.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

~~Upon the foregoing papers, it is ordered that this motion~~

Defendant appeals, pursuant to Paragraph G of the *Guidelines for Assignment of Cases to the Commercial Division*, from a directive of Justice James denying defendant's application of November 18, 2003 for a transfer of this case to the Commercial Division. The issue of where a matter ought properly to be assigned should be raised expeditiously. In this instance, the alleged erroneous assignment occurred because defendant designated the case as an "Other Tort" on the Request for Judicial Intervention (although in a letter on the current application defendant taxed the plaintiffs with having brought about the assignment, an assertion which defendant withdrew in a subsequent communication). A misdesignation on an RJJ should not be fatal. However, defendant should have become aware shortly after the filing whom the case had been assigned to, that is, that the case had been assigned as a General matter, not a Commercial Division one. Defendant had occasion to withdraw a motion to dismiss. It also had occasion to submit and obtain a ruling on a motion for *pro hac vice* admission and to become aware that a conference had been scheduled in the case. Then, in November 2003, the conference was held. Only afterward, on November 18, 2003, four months after the filing of the RJJ, did defendant request a transfer to the Division. By now, Justice James has had two

J.S.C.

JUSTICE  
DATED:

Dated: \_\_\_\_\_

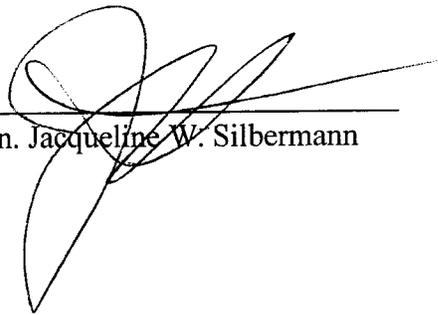
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

conferences on the matter. The familiarity with the case she has acquired would be wasted were the matter to be transferred at this stage, more than seven months after the initiation of the case in this court, and a new Justice would have to start from scratch. Under the circumstances, I conclude that this application should be denied.

I note that the Amended Complaint has effected a change in the caption of this case. However, the court system's computer continues to carry the original caption, as presumably do the records of the County Clerk. The parties are advised to inform the Trial Support Office (Room 158) and the County Clerk (Law and Equity, Room 141B) that the caption has been changed so that the records of the court and the County Clerk are accurate.

Dated: March 11, 2004



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Hon. Jacqueline W. Silbermann