

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

PRESENT: HON. JACQUELINE W. SILBERMANN  
Administrative Judge Justice

PART \_\_\_\_\_

EOS Partners SBIC, L.P.

INDEX NO.

601530/2005

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

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

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

Jonathan B. Levine, et al.

Administrative Order

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

PAPERS NUMBERED

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

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

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

Cross-Motion:  Yes  No

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

Counsel for a defendant, joined by a co-defendant, has applied to the undersigned to have this case transferred "back" to the Commercial Division. Counsel for plaintiff has submitted a letter indicating agreement that the matter belongs in the Commercial Division, but expressing concern that any motion to renew or reargue a motion to dismiss should be assigned to the Justice to whom the case is now assigned, Hon. Harold Beeler, who recently decided the original motion. The applicant agrees that a motion to renew/reargue should be referred to Justice Beeler and suggests that the case not be transferred until that motion is decided.

The Request for Judicial Intervention designated this case as a commercial matter. The complaint does not set forth a precise demand for damages, but, pursuant to Par. C (i) of the *Guidelines for Assignment of Cases to the Commercial Division*, the case should have been assigned to the Division. Initially, the RJI was so marked by a clerk in the back office. The data entry clerk entered the case in the computer as a Division case and it was assigned at random to Justice Bernard J. Fried, but the clerk immediately decided that that was an error and reassigned it, three minutes later, at random as a General Assignment case. Probably the clerk thought that the absence of a demand in the complaint meant that the case should be assigned as a General matter.

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

J.S.G.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Normally, a party that disagrees with a General assignment is required to apply to the assigned Justice for a transfer into the Division promptly after the assignment is made. See *Guidelines* Par. G. Here, the issue was not raised for months. However, because of how the case was marked in the computer, Justice Fried's initials continued to be associated there with the motion although the case itself had been assigned to Justice Beeler, as shown on the main computer screen. Data including the initials of Justice Fried were fed from the computer system to, and reconfigured by, the court system's Future Court Appearance System and were published on that System's site. This would have caused the attorneys on the case to believe, for months afterward, that the case in fact was assigned to Justice Fried. Thus, it is not untimely for counsel to raise the assignment issue now, shortly after the decision on the motion revealed that the case was actually assigned to Justice Beeler. Although this application ordinarily should be made to the assigned Justice in the first instance (see *Guidelines* Par. G), it is understandable that it was made to me under the erroneous impression that Justice Fried had directed that the case be reassigned as a General case. Under the circumstances, the most efficient and best course is for me to address the application on its merits.

The parties agree that the case belongs in the Division. Substantively, it is clear that it does since it concerns a dispute over who has rights in products and trademarks under various business agreements. It is apparent from the complaint that plaintiff is asserting that defendant, in violation of plaintiff's rights, sold a minority interest in an enterprise for at least \$ 1.5 million. Thus, it seems clear that the case involves potential damages sufficiently great as to make the matter appropriate for the Division.

There is an additional factor. Pursuant to a normal rotation process that occurs at year-end in many years, Justice Beeler will undertake a matrimonial assignment with the beginning of the new year. He would have to give up this case in any event.

As to the contemplated motion to reargue/renew, such a motion would, in the normal course, be referred to Justice Beeler even if this case is reassigned and he is in a matrimonial Part. I will forward a copy of this directive to Justice Beeler, as well as to Justice Fried, so that it will be clear that that motion should be referred to Justice Beeler. In addition, the movant should submit a copy of this directive to the Motion Support Office along with the moving papers and bring this directive to the staff's attention at that time to ensure that the motion is referred properly. I note that the computer reflects that an appearance for a preliminary conference is currently scheduled for January 24, 2006 at 3 PM in Justice Beeler's Part.

Accordingly, the Motion Support Office is directed to reassign this case to Justice Fried, who was previously chosen at random by the computer. A motion to renew/reargue the motion to dismiss should, however, be referred to Justice Beeler.

I regret that there was a clerical error in this case. The Motion Support Office handles an enormous volume of work (almost 34,000 motions last year), and has other responsibilities as well. It rarely makes errors, which is remarkable given that volume of work, but we are sorry whenever such an error, however rare, occurs and will strive to avoid any at all in the future.

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

1/3/06

\_\_\_\_\_  
A.J.