

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

**PRESENT: Hon. Jacqueline Silbermann
Administrative Order**

DANIEL KANE,

Plaintiff,

- v -

INDEX NO. 601415/2007

**ALEX KISLIK, ANNA SLAVIN, EDUARD
FINKELSHTEYN, STANISLOW PAVLENKO,
EDWARD LINETSKY, MICHAEL WAGNER,
ORCHID ENTERTAINMENT, INC. d/b/a
"NEOGEA", FICTION 28, INC., and PALM
TREE, INC., d/b/a MOOD,**

Defendants.

Administrative Order:

By letter dated October 9, 2007, counsel for plaintiff Daniel Kane requests that this action be assigned to the Commercial Division.

The Request For Judicial Intervention was filed in this case by plaintiff's counsel on July 17, 2007 in connection with a motion for a default judgment. Plaintiff designated the case as "Commercial--Contract" and the matter was assigned to Commercial Division Justice Richard B. Lowe, III. Justice Lowe issued an order on September 10, 2007 directing the case be re-assigned to a non-commercial part, and the case was re-assigned to Justice Richard F. Braun (I.A.S. Part 23) on that date. On September 12, 2007, Justice Braun issued an order on plaintiff's motion, and that order was filed in the County Clerk's office on September 19, 2007. Thus, Justice Braun's involvement in this case has been a matter of record for several weeks.

Uniform Rule 202.70(f)(2) provides that any party aggrieved by a transfer of the case to a non-commercial part may seek review by letter application within 10 days of learning the case has been transferred. Counsel for plaintiff fails to detail the history of this case in her October 9th letter and fails to allege when she learned of the re-assignment, and I can only assume that she was, or should have been, aware of the transfer at least by September 19, 2007. Thus, this application is past the 10-day time period provided for in the Uniform Rules, a time period that is strictly construed.

In addition, I note that plaintiff's Statement In Support of Request For Assignment

to Commercial Division improperly describes this shareholder dispute as “an action for breach of a commercial insurance policy.”

Accordingly, plaintiff’s request to transfer this action back to the Commercial Division is denied.

Dated: October 12, 2007

ENTER: _____, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION