

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

PRESENT: Hon. Jacqueline Silbermann
Administrative Order

RICHARD ILCHERT, in his own behalf and derivatively
in the right of Richardson & Lucas, Inc.,

Plaintiff,

- v -

INDEX NO. 101482/06

FRED ILCHERT, MARY ILCHERT, RICHARDSON
& LUCAS, INC., Nominal Defendant, and
FIVE MILE RIVER WORKS, INC.,

Defendants.

Administrative Order:

By letter dated July 14, 2006, defendants seek review, pursuant to Uniform Rule 202.70(f)(2), of the Hon. Bernard J. Fried's Order dated May 23, 2006 transferring this action from a commercial part to a non-commercial part. Plaintiff joins in defendants' application.

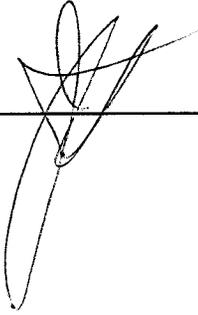
Uniform Rule 202.70(f)(2) provides that an aggrieved party may seek review of the designation of an action to a non-commercial part within ten days of the party's receipt of such designation. Defendants assert that they were not informed of the transfer until July 13, 2006, and therefore, the Court finds the application timely.

Uniform Rule 202.70(b)(1) provides that actions seeking damages in excess of \$100,000 or equitable relief will be heard in the Commercial Division where the principal claims involve or consist of "fiduciary duty, fraud, misrepresentation, business tort . . . where the breach or violation is alleged to arise out of business dealings. . . ." There is no question but that the nature of this action makes it one that should be assigned to the Commercial Division. A review of the amended complaint reveals that this action meets the monetary threshold and involves individual and shareholder derivative claims for breach of fiduciary duty, fraud, fraudulent conveyance and promissory estoppel, all arising out of a business relationship between the parties and based on plaintiff's status as a minority shareholder of one of the corporate defendants.

Accordingly, the Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division. (A motion to dismiss (seq. 001) is currently returnable on August 9, 2006).

Dated: August 9, 2006

ENTER: _____, A.J.

A handwritten signature in black ink is written over a horizontal line. The signature is stylized and appears to be a name with a large initial.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION