

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

PRESENT: Hon. Jacqueline Silbermann
Administrative Order

MATTHEW KENNEY and WHITELASH LLC.,

Plaintiffs,

for judgment pursuant to Limited Liability
Laws § 720 judicially dissolving FOOD
ON ORCHARD, LLC,

- v -

INDEX NO. 105409/2006

FOOD ON ORCHARD, LLC, JAMES DUFFY,
EDWARD SHEEHAN, and GERALD
MCENTEE,

Defendants.

Administrative Order:

By letter dated May 24th, counsel for defendants have applied for a transfer of this action from I.A.S. Part 35 (Edmead, J.) to the Commercial Division pursuant to Uniform Rule 202.70. Plaintiffs object to defendants' application.

Plaintiffs filed a Request for Judicial Intervention (RJI) on April 21, 2006, with their Order to Show Cause. Defendants acknowledge that they were served with the RJI on or around April 21, 2006, but argue that personal jurisdiction was not properly obtained over at least three of the four defendants.

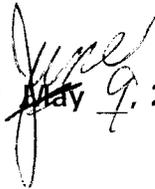
On April 25, 2006, Justice Edmead heard plaintiffs' Order to Show Cause, and denied the requested relief. Justice Edmead ordered defendants to answer or otherwise move in response to the summons and complaint. On May 19, 2006, defendants served a motion to dismiss on the plaintiffs, which is returnable on June 13, 2006.

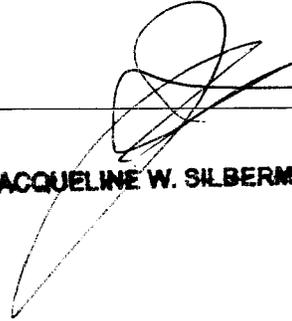
Defendants' counsel contends, in his May 24th letter, that the action should be reassigned to the Commercial Division, because it involves the judicial dissolution of a Limited Liability Company, and raises other issues regarding relationships of the members of a Limited Liability Company when no written operating agreement exists.

Defendants' application for a transfer is untimely pursuant to Uniform Rule 202.70(e). Uniform Rule 202.70(e) places a 10-day time limit on these applications, measured from the receipt of a copy of the RJI. The RJI was filed on April 21, 2006, over a month ago. Defendants had a 10-day time limit to make this application, running from their receipt of a copy of the RJI, which they acknowledge was on or around April 21, 2006.

Defendants fail to set forth a sufficient excuse as to why their application is untimely, such as that they lacked legal counsel during the 10-day time limit. Further, defendants' argument that personal jurisdiction was not properly obtained is irrelevant to this application. Therefore, the Court finds that the defendant's application is untimely.

Accordingly, for these reasons, the request is denied.

Dated:  May 9, 2006

ENTER: _____, A.J.

HON. JACQUELINE W. SILBERMANN

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION