

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

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

NORTHBROOK CONTRACTING CORP.,

Plaintiff,

- v -

INDEX NO. 402064/2005

CENTENNIAL INSURANCE CO.,

Defendants.

Administrative Order:

By letter dated May 11th, counsel for defendant has applied for a transfer of this action from I.A.S. Part 59 (James, J.) to the Commercial Division pursuant to Uniform Rule 202.70. Plaintiff objects to defendant's application.

Defendant filed a Request for Judicial Intervention (RJI) in the Supreme Court, Westchester County, on April 1, 2005, when defendant moved to change the venue from Westchester County to New York County. Defendant identified the nature of the action as "Commercial - Contract." On May 19, 2005, Justice Barone, a Non-Commercial Division Judge, granted defendant's motion for change of venue, and ordered the Westchester County Clerk to forward all pleadings and proceedings to the County Clerk of New York County for assignment to a Justice of the Court. Defendant asserts that the County Clerk did not assign this action to a Judge after the transfer.

On February 17, 2006, plaintiff filed a second RJI with the New York County Clerk, when plaintiff moved for a default judgment on the grounds that defendant's answer was untimely. The second RJI identifies the nature of the action as "Surety Contract" under the heading "Other Matters." The action was assigned to Justice James, and the plaintiff's motion was made returnable on February 24, 2006. Plaintiff's motion was adjourned, and is currently on for oral argument before Justice James on May 23, 2006.

Defendant's counsel contends, in his May 11th letter, that the action should be reassigned to the Commercial Division because it involves a breach of contract claim seeking damages in excess of the \$100,000 monetary threshold. Defendant's counsel further contends that the first RJI filed by defendant in

Westchester County requested that the action be assigned to the Commercial Division. However, the second RJI is the operative RJI, because it assigned the case to a Judge to be heard on its merits, as opposed to the first RJI which was only filed when defendant sought to change venue.

Defendant's 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 second RJI was filed on February 17, 2006, over three months ago. Defendant had a 10-day time limit to make this application, running from defendant's receipt of a copy of the second RJI. Defendant fails to state in its application that it has complied with the 10-day rule. Further, defendant does not offer proof, nor does its counsel assert, that defendant was served with a copy of the RJI on May 1, 2006, or thereafter. Therefore, the Court finds that the defendant's application is untimely.

Further, the court notes that, after the defendant filed the first RJI, the action was assigned to a Non-Commercial Division Judge in Westchester County to hear defendant's change of venue motion. Defendant also does not assert or offer proof that it objected to this assignment.

Accordingly, for these reasons, the request is denied.

Dated: May 12, 2006

ENTER: _____, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION