

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

PRESENT: Hon. Jacqueline Silbermann  
Administrative Order

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NYTECH, INC.,

Plaintiff,

- v -

INDEX NO. 400300/2006

KREISLER BORG FLORMAN GENERAL  
CONSTRUCTION COMPANY, INC.,

Defendant.

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**Administrative Order:**

By letter dated June 30, 2006, plaintiff requests that this action be transferred to the Commercial Division pursuant to Rule 202.70(e) of the Uniform Rules of the Trial Courts. Defendant has not submitted any opposition.

Plaintiff filed an RJI in the Supreme Court, Westchester County, in December of 2004 seeking a preliminary conference, marking the case as "Commercial - Contract." There is no indication that the initial RJI was accompanied by a "Commercial Division certification," then required in that county, identifying the nature of the lawsuit and the reason for the assignment to the Commercial Division. Defendant moved to change the venue from Westchester County to New York County and for summary judgment dismissing the complaint. On January 17, 2006, Justice Nastasi, a non-Commercial Division judge, granted defendant's motion only to the extent of ordering a change of venue, and ordered the Westchester County Clerk to forward all pleadings and proceedings to the County Clerk of New York County.

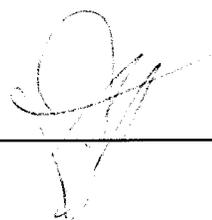
On June 15, 2006, defendant filed a second RJI with the New York County Clerk in connection with its renewed motion for summary judgment dismissing the complaint. The second RJI identifies the nature of the action as "ADR per agreement" under the heading "Other Matters." The action was assigned to I.A.S. Part 7 (J. Faviola Soto), and the motion is currently returnable in the Initial Motion Part on July 17, 2006.

Plaintiff's counsel maintains that this action should be transferred to the Commercial Division, because it involves a commercial contract dispute over a construction project and plaintiff seeks damages in excess of \$350,000. Plaintiff's counsel also claims that her application for a transfer is timely pursuant to Uniform Rule

202.70(e), because the request is being made within 10 days from her receipt of the second RJI, although she does not state when the RJI was served, how it was served and when exactly it was received. According to the affidavit of service attached to defendant's moving papers, the RJI was served by regular U.S. mail on June 13, 2006. Adding five (5) days for service by mail (see CPLR 2103[b][2]), plaintiff had until June 28, 2006 to make this application. Therefore, the Court finds that plaintiff's application is untimely.

Accordingly, for these reasons, the request is denied.

Dated: July 12, 2006

ENTER:  \_\_\_\_\_, A.J.

Check one:  FINAL DISPOSITION       NON-FINAL DISPOSITION