

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

PRESENT: Hon. Jacqueline W. Silbermann
Administrative Judge

JOSEPH WASSERSTEIN, et al.,

Plaintiffs,

- v -

INDEX NO. 600556/06

MITCHELL KAUFMAN,
S.W. REALTY MANAGEMENT, INC.,

ADMINISTRATIVE ORDER

Defendants.

By letter dated April 21st, counsel for plaintiffs have applied for a transfer of this action from I.A.S. Part 19 (Lehner, J.) to the Commercial Division pursuant to Uniform Rule 202.70.

Uniform Rule 202.70(e) places a 10-day time limit on these applications measured from the receipt of a copy of the Request for Judicial Intervention (RJI). Defendants filed an RJI on March 31, 2006. Plaintiffs' counsel contends that she had not yet been served with the RJI as of April 21st. Defendants' counsel contends in its responsive letter dated April 25, 2006 that a copy of the RJI was mailed to plaintiffs' counsel the next business day after its filing, namely April 3, 2006. However, he fails to provide proof of such service, and the proof of service attached to defendants' motion to dismiss merely indicates that the motion was served by regular mail on March 30th. Thus, the court is unable to make a determination regarding untimeliness on the papers presented.

Plaintiffs' counsel contends that this action meets the standards for assignment to the Commercial Division because the sums at issue are well in excess of the \$100,000, and entails claims for breaches of contract and breaches of fiduciary duty arising out of business dealings. The court notes that although plaintiffs purchased a commercial index number, the action was identified as a real property, landlord tenant matter on the RJI by defendants' counsel. The latter does not oppose plaintiffs' request for a transfer, but contends that the action is essentially a family dispute wherein owners of real property formerly managed by defendant S.W. Realty Management, Inc. (S.W.) seeks to oust S.W. from its office space.

Uniform Rule 202.70(b) (1) and (3) provide that actions in which the principal claims involve or consists of breach of contract or fiduciary duty where the breach or violation is alleged to arise out of business dealings, or transactions involving commercial real property not involving the payment of rent, will be heard in the Commercial Division.

A review of the complaint filed with the County Clerk¹ reveals that this action concerns the plaintiffs' purported termination of S.W. on May 1, 2005 as managing agent for plaintiffs' real property, and seeks to recover what is alleged to be a series of unauthorized commissions and brokerage fees totaling over \$560,000. The complaint also seeks to void defendants' office lease as a below-market "sweetheart" deal, and eject defendants from this space. There is no question but that the nature of the action makes it one that should be assigned to the Commercial Division.

Accordingly, the Motion Support Office is directed to reassign this case at random to a Justice of the Division. (A motion to dismiss (seq. 001) was marked submitted to Part 19 on May 2, 2006).

Dated: May 2, 2006

ENTER: _____, A.J.



Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

¹Counsel is advised that any future applications of this nature should be accompanied by a copy of the pleadings. See Uniform Rule 202/70(d)(2).