

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

PRESENT: Hon. Jacqueline Silbermann
Administrative Order

NORMAN ALEXANDER,

Plaintiff,

- v -

INDEX NO. 105535/07

SPANIERMAN GALLERY, LLC, IRA SPANIERMAN,
UNIVERSE ANTIQUES, INC., JACK SHAOUL, THE
RAFAEL COLLECTION, LTD., BENJAMIN ARYEH,
ALEXANDRIA BUCKLEY-WEYSIDE and MAJORIE
BUCKLEY,

Defendants.

Administrative Order:

By letter dated September 10, 2007, counsel for defendants Spanierman Gallery, LLC, Ira Spanierman, Universe Antiques, Inc., Jack Shaoul, The Rafael Collection, Ltd. and Benjamin Aryeh (the Spanierman defendants) applies for a transfer of this action from I.A.S. Part 61 (Rolando T. Acosta, J.) to the Commercial Division pursuant to Uniform Rule 202.70. Counsel for defendant Majorie Buckley joins in the application. Plaintiff opposes defendants' application, and argues that if the action is re-assigned, it should be sent to I.A.S. Part 10 (Judith Gische, J.) on the ground that it is related to a special proceeding Justice Gische previously presided over that was commenced by plaintiff to obtain pre-action discovery, entitled Matter of Norman Alexander v Spanierman Gallery, LLC, Universe Antiques, Inc. and The Rafael Collection, Ltd., Index No. 117221/05.

Uniform Rule 202.70(e) provides that an application of this nature be made within 10 days of the party's receipt of the Request For Judicial Intervention (RJI). There is no dispute that counsel for the Spanierman defendants received the RJI on August 29, 2007. His application is timely as it was filed on the first business day following the expiration of the ten-day period.

The Spanierman defendants contend that this action meets the standards for assignment to the Commercial Division since the case involves the sale of a painting governed by the Uniform Commercial Code (UCC) and the plaintiff is seeking compensatory damages in the amount of \$500,000. However, a review of the complaint

reveals that the claims in this action are for replevin of a single item of personal property (a sculpture by the artist Edgar Degas) that plaintiff alleges was stolen from him by a now incarcerated thief and/or damages for conversion, intentional infliction of emotional distress, negligence and gross negligence. While some of the defendants may have defenses based on UCC Article 2, it is not at all clear that this is a "principal" claim in this action. See Uniform Rule 202.70(b). For these reasons, the defendants' request to transfer this action to the Commercial Division is denied.

Plaintiff's request to transfer this action to Justice Judith Gische on the ground that it is related to the prior proceeding for pre-action disclosure is also denied. That proceeding was concluded in this court on April 26, 2006, when the petition was granted, and the matter was limited to plaintiff's request, pursuant to CPLR 3102(c), for disclosure of the current owner of the sculpture prior to the commencement of a plenary action. This action involves new parties and different legal claims. To the extent that any issues were necessarily decided against any current party who had a full and fair opportunity to contest the issue, the doctrine of collateral estoppel will prevent inconsistent rulings. To depart from the random assignment of judges in this instance would promote judge-shopping by the successful party in the prior matter.

Dated: September 17, 2007

ENTER: _____, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION