

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

PRESENT: Hon. Joan B. Carey
Administrative Judge

WINSTON CHIU,

Plaintiff,

- v -

INDEX NO. 603128/08

1-9 BOND STREET REALTY, INC. and
CHOI CHIU,

Defendants.

Administrative Order:

By letters dated April 23 and May 6, 2009, counsel for the defendants objects to the assignment of this action to the Commercial Division.

By e-mail dated April 22, 2009, defense counsel was advised by counsel for the plaintiff that this action had been assigned to the Hon. Richard B. Lowe, III of the Commercial Division. Defense counsel timely objected to that assignment in his April 23, 2008 letter, arguing that this case does not meet the monetary threshold of \$150,000 for assignment to the Commercial Division in New York County, because the face amount of the promissory note at issue was only \$137,000 and that plaintiff admits that defendants paid a total of \$112,000 on this note, leaving a balance of only \$25,000. Plaintiff's counsel responded by letter dated April 23, 2009, arguing that at least \$200,000 in unpaid principal and interest are due and owing. Upon receipt of these letters, my staff noted that although a Request For Judicial Intervention (RJI) had apparently been filed, seeking only the "assignment of a Judge," no judicial assignment had yet occurred and inquired of plaintiff's counsel in a conference call on April 28th why he believed Justice Lowe had been assigned to the case. Counsel was advised to contact the appropriate clerk's office to straighten out why no judicial assignment had occurred.

By letter dated May 5, 2009, plaintiff's counsel advised that a revised RJI had been served and filed seeking a preliminary conference. This new RJI both designates the actions as "Commercial - Contract" and lists an article 78 proceeding entitled Winston Chiu v 42-52 Northern Boulevard LLC, Helen Chiu and Man Choi Chiu, Index No. 103310/08, as a related case currently pending before the Hon. Shirley Kornreich. Accordingly, this action was assigned to Justice Kornreich by the clerk's office.

By letter dated May 6, 2009, defense counsel objected to the assignment of this action both to the Commercial Division in general, and to Justice Kornreich, for several

reasons. First, defense counsel argues that the revised RJL contains a material misstatement of fact, because there is no related action "pending" in this court. Apparently, despite the fact that the court's CCIS system still lists Index No. 103310/08 as an active proceeding,¹ that case was transferred to Queens County by Justice Kornreich's predecessor, the Hon. Herman Cahn, by order dated May 13, 2008 (copy attached). Second, defense counsel renewed his objection to the action meeting the standards for assignment to the Commercial Division, contending that plaintiff has grossly exaggerated his damages. Third, defense counsel contends that Justice Kornreich will have to recuse herself, not only because Bruce H. Wiener, the attorney in charge of handling this matter for the defendants has known Justice Kornreich for over 30 years, but because Mr. Wiener's spouse is one of Justice Kornreich's court attorneys.

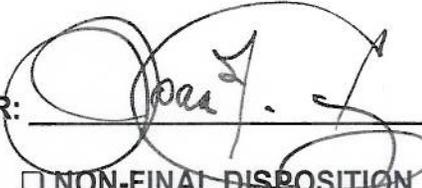
Normally, the issue of whether an action is truly related to another case pending in this court is addressed, in the first instance, to the assigned justice, and the Administrative Judge is involved only if further review is required. Court's Operations Manual, §I (B). However, there is no doubt that no related case is currently pending before Justice Kornreich and she had no involvement in the Article 78 proceeding filed under Index No. 103310/08. Accordingly, I find that the revised RJL improperly listed Index No. 103310/08 as a related case and that it should not have been assigned to Justice Kornreich.

I also find that this action does not meet the standards for assignment of a case to the Commercial Division. Uniform Rule 202.70 (a) is crystal clear that the \$150,000 monetary threshold for New York County is "exclusive of . . . interest, costs, disbursements and counsel fees." To claim that an action on a \$137,000 note that has been paid down to \$25,000 meets the monetary threshold borders on frivolous conduct on the part of plaintiff's counsel, Jeffrey M. Eilender.

Since I find that this action does not belong in the Commercial Division, there is no need to address the recusal issue.

The Trial Support Office is hereby ordered to reassign this case, at random, to a general I.A.S. Part and to schedule a new date for a preliminary conference.

Dated: May 7, 2009

ENTER:  , A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

¹This occurs when a Justice, having issued an order which disposes of the case for purposes of this court, fails to mark the box for "Final Disposition" on the bottom of the gray sheet. This is apparently what happened in the transferred article 78 proceeding.