

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

PRESENT: HON. JACQUELINE W. SILBERMANN  
Administrative Judge *Justice*

~~PART~~ \_\_\_\_\_

ITT Industries, Inc.

INDEX NO. 602828/2004

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

Rayonier Inc.

Administrative Order

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

Answering Affidavits – Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

~~Upon the foregoing papers, it is ordered that this motion~~

Respondent has applied to confirm an arbitration award. Petitioner has requested that this matter remain in the Commercial Division rather than be assigned to Honorable Leland DeGrasse.

In 2002, petitioner commenced a special proceeding in this court seeking to stay arbitration of a dispute between the parties. Respondent sought a transfer of that proceeding to the Commercial Division on the ground that the issues then raised were complex and the sum involved exceeded the Division's threshold. Counsel for petitioner states that the assigned Justice granted that request, but that the matter was resolved between the parties and the case was closed. The dispute proceeded to arbitration.

During the arbitration, the arbitrator, Dean John D. Feerick, was appointed a Special Master by Justice DeGrasse in Campaign for Fiscal Equity v. State of New York, Index No. 111070/1993. Counsel for respondent, E.

Dated: \_\_\_\_\_ *LSQ*

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Leo Milonas, was also designated a Special Master in that case. Petitioner requested that Dean Feerick recuse himself as arbitrator, which he declined to do, and petitioner then commenced a special proceeding, under Index No. 602828/2004, seeking Dean Feerick's disqualification. This proceeding was assigned to Justice DeGrasse. Petitioner purchased a Commercial Division index number for this matter, but it does not explain in its papers how the matter came to be assigned at random to a General Assignment Justice. After the matter was assigned, petitioner requested a transfer to the Division or that Justice DeGrasse recuse himself. Justice DeGrasse did not transfer the case or recuse himself but dismissed the petition. That ruling is currently on appeal to the First Department.

Counsel for petitioner reiterated the request in a letter to Justice DeGrasse dated September 28, 2004 and copied the undersigned on that letter, in which counsel included a request that I transfer the matter to the Division. By the time the undersigned had an opportunity to consider the case, it appears that Justice DeGrasse had disposed of the matter. Hence, I did not issue any determination.

The arbitration proceeded to a conclusion and respondent now seeks to confirm the award. Counsel for petitioner asks, as noted, that the case remain in the Division.

Counsel in his letter application uses the word "remains" perhaps for two reasons. First, respondent's notice made the current application returnable in the "Commercial Division Support Office, Room 130." That, however, is an error. Room 130 is the Motion Support Office Courtroom, wherein all motions or petitions brought on by notice are calendared, including those in Commercial Division cases. The Commercial Division Support Office does not maintain a calendar for motions or petitions.

Second, it may be that counsel uses the word because respondent had requested an assignment to the Commercial Division in connection with the original petition of 2002. That case, however, was concluded several years ago and the application to disqualify Dean Feerick was brought as a different matter under a new index number. This second matter was never "in" the Commercial Division and so, strictly speaking, it would not be accurate to seek to have the case "remain" there; if anything, it would have to be transferred there.

Although an application to confirm an arbitration award by itself would proceed as a special proceeding, CPLR 7502 (a) (iii) provides that it should be brought in this matter notwithstanding entry of judgment on the original application to disqualify. That is what has occurred. Since Justice DeGrasse was the assigned Justice in Index No. 602828/2004 and remains so in the court's computer and is the Justice to whom any applications in this matter should be assigned, the current application should properly be assigned to him under the court's normal procedures.

As noted earlier, petitioner's papers do not explain why the original petition to disqualify the arbitrator was not assigned to the Commercial Division. Paragraph E of the *Guidelines for Assignment of Cases to the Commercial Division* indicates that special proceedings are assigned at random to the Justices of this court generally. That Paragraph provides, however, that when the petitioner believes that a matter is extraordinarily complex, the petitioner may, prior to assignment, apply to the Administrative Judge for a directive that the computer be overridden and the matter be assigned at random to a Justice of the Division. It does not appear that petitioner followed this procedure on its application to disqualify the arbitrator. As a result, the matter was assigned generally. The Justice so assigned, Justice DeGrasse, proceeded to handle the disqualification aspect of the case months ago. The question of the proper assignment of any matter should be addressed and resolved promptly, as soon as possible after the filing of the Request for Judicial Intervention. The issue of a possible transfer of this proceeding to the Division thus comes too late at this stage in the case.

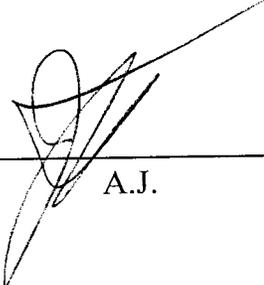
Further, petitioner does not explain why the matter is so complex that it needs to be adjudicated in the Division. It merely refers back to the position taken by respondent in 2002 when the issue of the requested stay of arbitration was before the court. However, the posture of this dispute, the arbitration having been concluded, is now different; once an arbitration is completed, the review the court is permitted to conduct is a circumscribed one. Thus, in order to prevail on its request, it would be necessary for petitioner to demonstrate the complexity of the matter in its current posture by appropriate argument.

It appears that the heart of petitioner's discomfiture with the assignment of this matter has to do with the perceived need for recusal of Justice DeGrasse. As to that, petitioner states that it intends to file a formal motion for that relief with Justice DeGrasse so that it will have its day in court on that issue. It is also in the Appellate Division on the assertion of bias on the part

of the arbitrator. In addition, it is pressing a case in Federal court.

Accordingly, the application to transfer this matter to the Commercial Division is denied.

Dated: 5/31/05

  
\_\_\_\_\_  
A.J.