

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

PRESENT: Hon. Jacqueline Silbermann
Administrative Order

JPMORGAN CHASE BANK, N.A.,

Plaintiff,

- v -

INDEX NO. 600886/08

BARCLAY REX PIPE SHOP, INC. and
LINCOLN BUILDING ASSOCIATES, LLC,

Defendants.

Administrative Order:

By letter dated September 8, 2008, counsel for plaintiff JPMorgan Chase Bank, N.A. (Chase) requests a transfer of this case from I.A.S. Part 48 (Diamond, J.) to the Commercial Division. Defendant Lincoln Building Associates, LLC opposes the application, by letter dated September 10, 2008, on the ground that this action does not meet the requirements for assignment to the Commercial Division.

Chase contends that this action meets the standards for assignment to the Commercial Division, first, because Chase sues to recover over \$750,000 in damages in addition to injunctive relief, and, second, the claims concern a transaction involving commercial real property, citing Uniform Rule 202.70(b)(3). However, a review of the complaint reveals that the principal claim in this action is a claim based on an alleged private nuisance allegedly caused by cigar, cigarette and pipe smoke emanating from a cigar store located in the same building that houses one of Chase's branch offices. The smoke fumes have allegedly permeated portions of the bank offices, causing a loss of business, loss of use and enjoyment of the branch offices and other monetary damages. Thus, this is not a complex commercial or business dispute that belongs in the Commercial Division, but rather a real estate nuisance case that properly should be heard in a general I.A.S. part.

For these reasons, plaintiff's request for a transfer of this action to the Commercial Division is denied.

Dated: September 12, 2008

ENTER: _____, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION