

**Matter of Weiss**

2005 NY Slip Op 30617(U)

February 14, 2005

Supreme Court, New York County

Docket Number: 112930/2004

Judge: Jacqueline Silbermann

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JACQUELINE W. SILBERMAN  
Administrative Judge Justice

*g...*

PART

*In re Weiss*

INDEX NO.

112930/2004

MOTION DATE

MOTION SEQ. NO.

002

MOTION CAL. NO.

Administrative Order  
Supplemental Order

- v -

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~~

**FILED**

FEB 15 2005

NEW YORK  
COUNTY CLERK'S OFFICE

In In re Weiss, Index No. 112930/2004, the assigned Justice, Sheila Abdus-Salaam, Part 13, has issued an order, dated Feb. 2, 2005, directing that the matter, and a related case also pending before her, JSC Foreign Economic Association Technostroyexport v. Reich, Index No. 604013/2004, be transferred to the Commercial Division provided that the Administrative Judge approves. This is in accord with the procedures set out in the *Guidelines for Assignment of Cases to the Commercial Division*, which provide that the Administrative Judge must approve all transfers into the Division.

Plaintiff in JSC submitted a letter to Justice Abdus-Salaam dated January 27, 2005 seeking a transfer of the case to the Commercial Division. I understand that Justice Abdus-Salaam expressed to the parties an inclination to transfer the cases. I believe that no party has submitted any opposition to the transfer.

Dated: \_\_\_\_\_

JSC

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

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

Justice Abdus-Salaam is assigned to a Medical Malpractice Part. Justice Abdus-Salaam is also "open" in the court's computer system for assignment, from time to time, of special proceedings. These tend generally to be matters somewhat narrow in scope and do not usually involve discovery proceedings and complicated and lengthy motion practice.

On September 14, 2004, In re Weiss was assigned to Justice Abdus-Salaam as a special proceeding. This case seeks the judicial dissolution of Lopers/Noyack, LLC on the ground that one of the two members of the limited liability company has failed to provide funds required to defend a related Federal action, JSC Foreign Economic Association Technostroyexport v. IDTS, and failed to carry forward an investment project, the acquisition, development and construction of what will apparently be a luxurious residential house in Bridgehampton, New York.

On January 6, 2005, the state JSC case was assigned to Justice Abdus-Salaam. Although the plaintiff there had purchased a Commercial Division index number and the case was designated commercial on the Request for Judicial Intervention, it was assigned as a case related to In re Weiss. The court's back office acted correctly in making the assignment in accordance with the related case designation. Our standard procedure is to assign as related all cases so designated on the RJI so long as the related case has not been disposed of. The back office performs no evaluation of the relatedness of any action. The Justice so assigned can then sort out where the case properly belongs if there should be any doubt about the matter.

In the complaint in JSC, the plaintiff, a Russian corporation headquartered in Moscow, asserts nineteen causes of action in an effort to enforce and collect on a judgment for over \$ 200 million that it obtained against International Development and Trade Services, Inc. ("IDTS") arising out of a series of contracts for the provision of Russian bulk metals to IDTS for sale in world markets. Plaintiff obtained awards in arbitration in Moscow now valued at over \$ 275 million and a subsequent judgment confirming the awards in the United States District Court. At present, there is an action pending before Judge Koeltl in the Southern District that apparently seeks to enforce the judgment. In the JSC case here, plaintiff seeks to enforce the judgment against the alleged alter egos of IDTS, defendants Edith Reich and Brigitte Jossem. The complaint alleges that these defendants looted IDTS and engaged in a series of complicated transactions, including transactions in land in the Hamptons and art works, jewelry, furniture and other objects consigned to Christie's, involving numerous other defendants. It is asserted that these transactions were intended to convey assets fraudulently and to place them

beyond the reach of plaintiff.

Lopers/Noyack, LLC is a defendant in JSC and so is the entity, Elgar Enterprises, SA, that, according to the petition, has a 75 % ownership interest in Lopers/Noyack. The petitioner is also alleged to have been involved in the finances of Reich and Jossem. The JSC complaint, as noted, asserts that transactions involved in real estate on the East End were fraudulent and names Lopers/Noyack and Elgar as among the entities allegedly involved. These two matters are thus sufficiently related that it would be in the interests of the parties and would conserve judicial resources if both matters are assigned to the same Justice.

The special proceeding is much narrower in scope than is the JSC action. The latter covers numerous transactions of various types allegedly involving many entities and persons, some with connections to the British Virgin Islands, Israel and the Isle of Man. There may well be extensive discovery and motion practice in JSC and a trial could be complicated. Although the court's procedures regarding related cases are sound, they can, through no one's fault, lead to a situation such as that present here, one requiring adjustment. It is not the intention of these procedures or the practice regarding assignment of special proceedings to produce a situation in which a Medical Malpractice Part, which carries a substantial and demanding tort inventory, is required to adjudicate a complicated action alleging fraudulent conveyances and a related special proceeding seeking a judicial dissolution of a limited liability company. It is clear that the two matters should be assigned to the same Justice, but just as clear that they do not belong in a Medical Malpractice Part. It is relevant to note that if there had been no related special proceeding and the JSC action had been assigned to the Commercial Division, and if the Division Justice had directed that the matter be reassigned outside the Division, it would have been reassigned as a General Assignment matter and could not have been assigned to a Medical Malpractice Part.


The only issue, then, is whether these matters belong in the Commercial Division or in a General Assignment Part. Although the Division does not accept special proceedings as commercial matters in the first instance, that would not be an insurmountable obstacle, as the *Guidelines* do permit the Division to handle such matters if they are complicated. The key question, then, is whether the JSC action belongs in the Division. The *Guidelines* provide in Paragraph (A) (4) that the Division generally does not entertain actions to enforce judgments regardless of the nature of the underlying matter. Although it is, of course, not controlling, the same approach is taken in the draft statewide *Guidelines* released to the Bar for comment this week. The

provision of the current *Guidelines* does not, however, bar all such cases from the Division since it speaks of presumptions. This case, clearly, is an unusually complicated one of its type, as is evident from the summary of it set out above. In addition to the factual complexity and the legal issues to which that may give rise, it may also be necessary for this action to be coordinated with the Federal case. At the least, that case may have an impact on this one, which further complicates the situation. In my view, this is sufficiently complicated a matter to warrant assignment to the Commercial Division.

It is plain that this case will require a significant investment of judicial time and energy. In view of that, I am assigning this case to Honorable Bernard J. Fried, who as the Division Justice most recently assigned to the Division carries the smallest inventory of the active Division Justices.

Accordingly, the Motion Support Office is directed to reassign both the special proceeding and the JSC action to Hon. Bernard J. Fried, Commercial Division Part 60.

Dated: February 14, 2005

  
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