

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

PRESENT: Hon. Geroge J. Silver, Acting Administrative Judge  
Administrative Order

PEPI SCHAFLER,

Plaintiff,

- v -

INDEX NO. 155650/2017

ESTHER SUMMER, individually and as EXECUTOR  
OF THE ESTATE OF DONALD L. SUMMER and as  
TRUSTEE OF THE DONALD L. SUMMER TRUST  
DATED FEBRUARY 11, 2011,

Defendant.

Administrative Order:

By letter dated November 9, 2017, plaintiff's counsel requests that this action be assigned to the Commercial Division pursuant to Commercial Division Rule 202.70 (e). Defendant opposes the request by her counsel's letter dated November 13, 2017.

The complaint in this action was filed on June 21, 2017, and service of process occurred on June 23, 2017. Thus, the last day for any party to seek assignment to the Commercial Division by filing a Request For Judicial Intervention (RJI) and Commercial Division Addendum was Monday, September 25, 2017 (see Commercial Division Rule 202.70 [d]). An RJI was filed by plaintiff's counsel on November 3rd, but the case was identified as "Torts - Fraud." Plaintiff's counsel contends that the failure to meet the 90-day deadline was "inadvertent," but he does not explain why he did not identify this action as commercial on the RJI. In addition, the Erie County proceeding filed by defendant to change venue was not assigned to the Commercial Division. Defendant's counsel also described the dispute as a tort action, specifically fraud, on the RJI he filed in that county, and no Commercial Division Addendum was filed.

This action also does not meet the standards for assignment to the Commercial Division. This is basically a family dispute arising out of matrimonial litigation, and plaintiff is seeking to enforce a Judgment of Divorce concerning an alleged entitlement to a 50% interest in a real estate investment (see Commercial Division Rule 202.70 [b] [1], [c] [5]).

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

Dated: November 16, 2017

ENTER: Geroge J. Silver, A.J.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION