

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

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

KENNETH ORR,

Plaintiff,

- v -

INDEX NO. 603423/06

DANIEL YUN and BELSTAR GROUP, LLC,

Defendants.

Administrative Order:

By letter dated June 7, 2012, counsel for plaintiff Kenneth Orr requests a transfer of this action from I.A.S. Part 19 (Scarpulla, J.) to the Commercial Division pursuant to Uniform Rule 202.70 (e).

According to the County Clerk's minutes of this action, plaintiff commenced this action on September 28, 2006. Plaintiff's former counsel filed the Request For Judicial Intervention (RJI) on January 25, 2007, but did not designate the case as a commercial matter, instead marking the box for "Other Matters" and typing in "Contract." According, the case was assigned to a non-commercial part. Upon Justice Lehner's retirement, the case was assigned to the Hon. Saliann Scarpulla. By orders dated entered October 24, 2011, Justice Scarpulla, inter alia, denied the plaintiff's motion for recusal and granted the defendants' motion for summary judgment dismissing the complaint. On appeal, the First Department affirmed the recusal order, but ruled that fact issues precluded summary judgment on plaintiff's breach of contracts claims (Orr v Yun, 2012 WL 1836347 [1st Dept May 22, 2012]).

Plaintiff's request for assignment to the Commercial Division is denied. There is a 10-day time limit on these applications, which begins when a party is served with the RJI, and thus learns that a non-commercial designation was chosen by the filing party -- here, the plaintiff himself. See Uniform Rule 202.70 (e). Furthermore, the right to appeal an RJI designation is limited to "any other party."

Dated: June 11, 2012

ENTER: Sherry Klein Heitler, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION