

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

PRESENT: Hon. Martin Shulman, Acting Administrative Judge¹
Administrative Order

ESSEX UNIT 3903 LLC,

Plaintiff,

- v -

INDEX NO. 601577/09

DIG EH HOTEL LLC;
DUBAI INVESTMENT GROUP;
DUBAI GROUP; et al.,

Defendants.

Administrative Order:

By letter dated March 16, 2010, counsel for the plaintiff, Randall T. Sims, Esq., requests that this action be transferred to the Commercial Division. Mr. Sims represents to the court that counsel for all remaining defendants in the case consents to, and supports, the application.

Uniform Rule 202.70(e) provides that any party, other than the party filing the Request For Judicial Intervention (RJI), has 10 days from their receipt of the RJI to apply for a transfer to the Commercial Division. The RJI in this action was filed on September 21, 2009, in connection with a motion to dismiss by defendant Essex House Condominium Corp. Although the filing party marked the matter as a "Commercial - Contract" dispute, it was not assigned to the Commercial Division, apparently due to the absence of the supporting statement required by Uniform Rule 202.70(d). Accordingly, a non-commercial judge was assigned on October 8, 2009, since the discontinuance of the initial motion in the case would not affect the processing of the RJI. Mr. Sims does not deny receiving notification of the assignment of this E-filed case to the Hon. Richard Braun (I.A.S. Part 23), and fails to adequately explain why he waited months to make this application. The purpose of the ten-day rule is not only to ensure that cases are transferred during their infancy stage to avoid the waste of judicial resources, but also to prevent judge-shopping. Thus, the time limit is strictly construed.

In addition to being untimely, the action does not meet the standards for

¹ Administrative Judge Sherry Klein Heitler has recused herself from this application.

assignment to the Commercial Division. A review of the complaint reveals that the "principal claim" in this action is for monetary damages occurring as a result of mold contamination in a residential condominium unit in the Essex House condominium building in Manhattan. Uniform Rule 202.70(c) provides that "residential real estate disputes" will not be heard in the Commercial Division even if the monetary threshold is met.

For these reasons, the application to transfer this matter to the Commercial Division is denied.

Dated: March 19, 2010

ENTER: _____, A.J.


MARTIN SHULMAN
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION