

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

PRESENT: Hon. Peter H. Moulton
Administrative Order

MAXIM INC. and SARDAR BIGLARI,

Plaintiffs,

- v -

INDEX NO. 654137/15

JASON FEIFER and WAYNE GROSS,

Defendants.

Administrative Order:

By letter dated February 5, 2016, counsel for plaintiffs requests that this action and Maxim Inc. v Jason Feifer and Charna Sherman, Index No.162933/15 (the Second Action) be assigned to Justice Joan Kenney (General IAS Part 8) as related. By letter dated February 8, 2016, counsel for defendant Jason Feifer (Feifer), along with his co-defendant in the Second Action, Charna Sherman, Esq. (Sherman), request that both actions be assigned to the Commercial Division. By letter dated February 9, 2016, counsel for defendant Wayne Gross joins in the request for assignment of this action into the Commercial Division.

This action was commenced by plaintiffs on December 10, 2015. On February 3, 2016, defendant Feifer filed a Request for Judicial Intervention (RJI), marking the matter "Commercial, Contract" and related to the Second Action. Counsel also filed the required Commercial Division Addendum. To date, this action has yet to be assigned.

On December 22, 2015, plaintiff Maxim, Inc. (Maxim) filed the Second Action against defendants Feifer and Sherman. On that same day, Maxim filed an RJI in connection with an Order to Show Cause (OTC). The RJI did not list the Second Action as related to this action, and, while it did mark the case "Commercial, Contract," Maxim did not file the required Commercial Division Addendum. On December 23, 2015, the Second Action was assigned to the Honorable Joan Kenney.

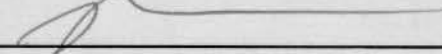
Uniform Rule 202.70 (e) places a 10-day time limit on applications requesting assignment to the Commercial Division, measured from the receipt of a copy of the RJI, and that time limit is strictly construed. The RJI in the Second Action was e-filed on December 22, 2015. Thus, defendants Feifer and Sherman had 10 days from the receipt of that RJI to request assignment of the Second Action into the Commercial Division. Although it is not clear from the court's docket exactly when this RJI was served on defendants Feifer and Sherman, even if the court measured from January 22, 2016, the date their counsel filed a Notice of Appearance, the current application to transfer the Second Action into the Commercial Division is still untimely.

In regard to this action, which is currently unassigned, the RJI filed on February

3, 2016 is marked related to the Second Action, and, thus, it must be assigned to Justice Kenney.

The General Clerk's Office is directed to reassign this action to Justice Kenney (General IAS Part 8).

Dated: February 17, 2016

ENTER:  _____, A.J.