

**HAMILTON COUNTY COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO**

<b>CARMEN THORNTON, et al.</b>	:	<b>Case No. A 2304252</b>
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<b>Plaintiffs-Respondents</b>	:	<b>Judge Thomas Heekin</b>
	:	
<b>v.</b>	:	<b>DEFENDANT- COUNTERCLAIMANT</b>
	:	<b>PAUL WOESTE’S MEMORANDUM</b>
<b>PAUL WOESTE</b>	:	<b>IN OPPOSITION TO PLAINTIFFS-</b>
	:	<b>RESPONDENTS’ MOTION TO TRANSFER</b>
<b>Defendant-Counterclaimant</b>	:	<b>THIS ACTION TO THE COMMERCIAL</b>
	:	<b>DOCKET</b>
	:	
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The Motion of the Plaintiffs-Respondents (“the Plaintiffs”) for the transfer of this case to a judge of the Commercial Docket must be denied because, the Rules requiring the transfer of a eligible new-filed or pending cases do not apply to actions in which the Complaint was filed prior to the establishment of Hamilton County’s Commercial Docket.

Sup. R. 36.012 (formerly Sup. R. 36.014(B)(4)) addresses the assignment of newly-filed eligible civil cases to the Commercial Docket. It states,

A case eligible for assignment into a commercial docket of a court of common pleas pursuant to Sup. R. 49.05 shall be assigned as follows:

(A) If the court has established a commercial docket pursuant to Sup. R. 49.01, the case shall be assigned to the commercial docket pursuant to Sup. R. 49.07;

(B) If the court has not established a commercial docket pursuant to Sup. R. 49.01, the cases shall be assigned by lot to a judge of the court or division pursuant to the individual assignment system.

Furthermore, Sup. R. 49.07 states the manner in which a newly-filed eligible case will be assigned to the Commercial Docket and, if it is not so assigned, how that case may be transferred to the Commercial Docket. It states, in pertinent part,

Notwithstanding the case assignment requirements of Sup. R. 36(B)(2) (now Sup. R. 36.011(A)), the following shall apply when a case is filed with a court of common pleas that has established a commercial docket pursuant to Sup. R. 49.02:

(A) If the case is eligible for assignment to the commercial docket pursuant to Sup. R. 49.05, the attorney filing the case shall include with the initial pleading a notification that it is a commercial docket case. Upon receipt of the pleading and notification, the clerk shall randomly assign the case to one of the commercial docket judges.

(B) If the case is eligible for assignment to the commercial docket pursuant to Sup. R. 49.05, but the attorney filing the case fails to file the notification pursuant to division (A) of this rule and the case is assigned to a non-commercial docket judge, an attorney representing any other party shall file a motion for transfer of the case to the commercial docket with that party's first responsive pleading. Copies of the motion shall be delivered to the administrative judge.

(C) If the case is eligible for assignment to the commercial docket pursuant to Sup. R. 49.05, but the attorney filing the case does not file the notification pursuant to division (A) of this rule, no attorney representing a party in the case files a motion for transfer pursuant to division (B) of this rule, and the case is assigned to a non-commercial docket judge, the judge shall *sua sponte* request the administrative judge to transfer the case to the commercial docket. If the judge requests the transfer of the case to the commercial docket one-hundred and twenty days or more after the case was filed, the transfer of the case to the commercial docket shall be at the discretion of the commercial docket judge to whom the case would be assigned...

(Emphasis added.)

Loc. R. 7(A) states, in pertinent part, that “[i]n accordance with the Rules of Superintendence, upon the filing or transfer of a civil case... such case shall be immediately assigned by the Administrative Judge or by court personnel at the Administrative Judge’s direction, by lot to a judge of the division [and] {e}xcept as otherwise provided herein, the assigned judge is responsible for the determination of all matters pertaining to the case.” (Emphasis added.)

Neither the Rules of Superintendence nor the Local Rules address, require, or provide a procedure for the transfer of an action which was filed and properly assigned to a sitting judge prior to Hamilton County’s establishment of its Commercial Docket. The framers of the stated Rules undoubtedly recognized that imposing the requirements of those Rules on cases filed and properly assigned before the establishment of the Commercial Docket would necessitate the transfer of scores of cases at various stages in the litigation of those actions.

Pursuant to Loc. R. 48, “[e]ffective March 1, 2024, the Hamilton County Court of Common Pleas, General Division, established a commercial docket pursuant to Sup. R. 49 through 49.12.”

However, the Plaintiffs filed their Complaint herein on October 3, 2023. And, since no Commercial Docket existed at that time, Judge Thomas Heekin was properly assigned to handle the disposition of this action, pursuant to the County's individual assignment system.<sup>1</sup> Since Judge Heekin's assignment, the parties have fulfilled the disclosure requirements of Civ. R. 26(B)(3) and the inter-party conference and discovery planning/reporting requirements of Civ. R. 26(B)(3), the Court has issued a Case Scheduling Order (setting a trial date of January 27, 2025), the parties have been engaged in discovery, and the parties have filed multiple discovery-related Motions which have been fully "briefed" and are awaiting the scheduling of an oral arguments hearing.<sup>2</sup> As stated above, there is nothing in the Rules which addresses or, more importantly, requires the transfer of a case which was properly assigned to a judge prior to the establishment of the Commercial Docket. And given the current posture of this case, transferring this case would not serve the purposes of judicial economy, expedite the disposition of this action, or achieve a better result for the parties.

Even if the Rules pertaining to the transfer of a pending action to the Commercial Docket apply to this case, the Plaintiffs' Motion for the transfer of this case to a judge of the Commercial Docket must be denied because, under the present circumstances of this case, it may not be properly brought by the motion of a party or its attorney. As stated above, Sup. R. 49.07(A)-(C) states the manner in which a newly-filed eligible case will be assigned to the Commercial Docket and, if it is not so assigned, how that case may be transferred. to the Commercial Docket. Specifically, it requires that "the attorney filing the case [must] include with the initial pleading a

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<sup>1</sup> Judge Heekin's assignment took place on October 11, 2023.

<sup>2</sup> While Judge Heekin has taken a medical leave until July, 2024, until his return, retired Judge Robert Ruehlman has been delegated responsibility this action. Judge Ruehlman is a highly-qualified jurist, having overseen the successful disposition of hundred, if not thousands, of business-related cases during his thirty-six years on the Common Pleas bench.

notification that it is a commercial docket case”; “...if the attorney filing the case fails to file the notification... and the case is assigned to a non-commercial docket judge, an attorney representing any other party [must] file a motion for transfer of the case to the commercial docket with that party's first responsive pleading”; and “[i]f the case is eligible for assignment to the commercial docket, but the attorney filing the case does not file the notification... no attorney representing [any other] party in the case files a motion for transfer, and the case is assigned to a non-commercial docket judge, the [assigned] judge shall *sua sponte* request the administrative judge to transfer the case to the commercial docket...” Assuming only for the sake of argument that the foregoing Rule is applicable to this case, under that Rule, the Plaintiffs’ attorney has no standing and is not authorized at this point to file a Motion to Transfer and, therefore, the Plaintiffs Motion must be denied.

Finally, even if the Rules pertaining to the transfer of a pending action to the Commercial Docket apply to this case, at this point in the litigation of this case, the commercial docket judge to whom the case would be assigned should, in the exercise of his or her sound discretion, deny the transfer to the Commercial Docket. Under the last sentence of Sup. R. 49.07 (C), “[i]f the [assigned non-commercial] judge requests [that the administrative judge] transfer...the case to the commercial docket one-hundred and twenty [120] days or more after the case was filed, the transfer of the case to the commercial docket shall be at the discretion of the commercial docket judge to whom the case would be assigned...” In this case, neither Judge Heekin nor Judge Ruhlman have requested the transfer of this case to the Commercial Docket so there is no proper request for transfer to be considered. But, if they had and this Rule applied, the Commercial Docket Judge to who this case would be assigned would have ample reason to deny the requested transfer in the exercise of his or her sound discretion. This action is more than one hundred twenty (120) days old and, as stated above, the parties have already fulfilled the disclosure requirements of Civ. R.

26(B)(3) and the inter-party conference and discovery planning/reporting requirements of Civ. R. 26(B)(3), the Court has already issued a Case Scheduling Order (setting a trial date of January 27, 2025), the parties have been engaged in discovery, and the parties have filed multiple discovery-related Motions which have been fully “briefed” and are awaiting the scheduling of an oral arguments hearing. As also stated above, while Judge Heekin has taken a medical leave until July, 2024, until his return, retired Judge Robert Ruehlman has been delegated responsibility this action. Judge Ruehlman is a highly-qualified jurist, having overseen the successful disposition of hundred, if not thousands, of business-related cases during his thirty-six years on the Common Pleas bench. Otherwise stated, if Sup. R. 49.07 (C) is applicable hereto, this case is far enough “down the road” of litigation and is already in the hands of capable judges that the Commercial Judge to whom this case would be assigned should, in the exercise of his or her sound discretion, deny the transfer of this case to the Commercial Docket.

For the foregoing reasons, the Plaintiffs’ Motion to Transfer this case to the Commercial Docket should b denied.

Respectfully submitted,

/s/ *Michael J. Bergmann*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 26<sup>th</sup> day of April, 2024, I served a true copy of the foregoing Memorandum by email on PAUL R. KERRIDGE, ESQ., Attorney for the Plaintiffs-Respondents, at the email address of paul@durst.law.

/s/ *Michael J. Bergmann*  
Michael J. Bergmann, Esq. (#0023154)  
*ATTORNEY FOR THE DEFENDANT-  
COUNTERCLAIMANT*