

**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>Trial Judge Thomas Heekin</b>
	:	<b>Admin. Judge</b>
	:	
<b>v.</b>	:	<b>DEFENDANT- COUNTERCLAIMANT</b>
	:	<b>PAUL WOESTE’S OBJECTIONS TO</b>
<b>PAUL WOESTE</b>	:	<b>AND APPEAL FROM THE ENTRY</b>
	:	<b>TRANSFERRING THIS CASE TO</b>
<b>Defendant-Counterclaimant</b>	:	<b>THE COMMERCIAL DOCKET</b>
	:	

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Pursuant to Sup R. 49.08(A)(1) and Loc. R. 48(E), the Defendant-Respondent (“Defendant”) hereby objects to and appeals from the Entry transferring this case to the Commercial Docket and requests its return to the trial judge originally assigned hereto.<sup>1</sup>

Loc. R. 48(F) states that. “unless otherwise ordered in a specific case, or contrary to the within rules and/or Sup R 49-49.12, the general local rules of the Hamilton County Court of Common Pleas apply in all commercial docket cases.” (Emphasis added.) The transfer of this case to the Commercial Docket should be reversed because, Sup R 49-49.12 do not apply to actions in which the Complaint was filed prior to the establishment of 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;

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<sup>1</sup> The Defendant timely file a Memorandum in Opposition to the Plaintiffs’ Motion to Transfer, however, it appears from the case docket Entry transferring this case was signed and entered before that Memorandum was filed and considered.

(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. (Emphasis added.)

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.)

The Rules of Superintendence are drafted to address, require, or provide a procedure for the transfer of an action which is filed after the County's establishment of its Commercial Docket. In drafting Sup R 49-49.12, the framers of the stated Rules undoubtedly recognized that imposing the requirements of those Rules on cases already in progress before the County's establishment of the Commercial Docket would necessitate the transfer of and disrupt the orderly disposition of scores of cases at various stages in the litigation of those actions.

The Hamilton County Court of Common Pleas, General Division, established its Commercial Docket “[e]ffective March 1, 2024”. *Loc. R 48(A)*. 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>2</sup> Pursuant to *Loc. R. 49(F)*, *Sup R 49-49.12*, and the circumstances of this case, the Court should reverse the transfer of this action to the Commercial Docket and return it to the originally assigned non-commercial trial judge.

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 should have been 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 discussed 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 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, insofar as the Plaintiff’s attorney

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<sup>2</sup> Judge Heekin’s assignment took place on October 11, 2023.

had not included with the Plaintiffs' initial pleading (i.e., the Complaint) a notification that it is a commercial docket case, the Plaintiffs' attorney had no standing and was not authorized at this point to file a Motion to Transfer and, therefore, the Plaintiffs' Motion should have been 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 Ruehlman 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, through the present, 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), Judge Heekin 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. 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. In

summary, even 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 Defendant hereby asks the Court to reverse the Entry transferring this case to the Commercial Docket and return this matter to the trial judge originally assigned hereto.

Respectfully submitted,

/s/ *Michael J. Bergmann*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 29<sup>h</sup> day of April, 2024, I served a true copy of the foregoing Filing by email on PAUL R. KERRIDGE, ESQ., Attorney for the Plaintiffs-Respondents, at the email address of paul@durst.law.

/s/ *Michael J. Bergmann*

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