

**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 Wende C. Cross</b>
	:	
<b>v.</b>	:	<b>DEFENDANT- COUNTERCLAIMANT</b>
	:	<b>PAUL WOESTE'S MEMORANDUM IN</b>
<b>PAUL WOESTE</b>	:	<b>REPLY TO PLAINTIFF-RESPONDENTS'</b>
	:	<b>BRIEF IN OPPOSITION TO HIS</b>
<b>Defendant-Counterclaimant</b>	:	<b>OBJECTIONS TO AND APPEAL FROM</b>
	:	<b>THE ENTRY TRANSFERRING THIS</b>
	:	<b>CASE TO THE COMMERCIAL DOCKET</b>
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In the Defendant's Objections and Appeal from the Entry Transferring This Case to the Commercial Docket, the Defendant argued that:

- (1) The transfer of this case to the Commercial Docket should be reversed because, according to Sup. R. 49.07, the provisions of Sup R 49-49.12 (upon which Loc. R. 48 is premised) not apply to actions in which the Complaint was filed prior to the establishment of County's Commercial Docket;
- (2) Even if the Rules pertaining to the transfer of a pending action to the Commercial Docket apply to cases in which the Complaint was filed before Hamilton County's Commercial Docket was created, the transfer of this case to the Commercial Docket must be reversed because, according to Sup. R. 49.07, at this stage of this case, such transfer may only be done *sua sponte* by the judge and the Court's Entry shows that it was transferred pursuant to the Plaintiffs' Motion to Transfer; and
- (3) 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 (i.e., 6-1/2 months after the Complaint was filed and a trial date scheduled), 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.

In the Plaintiffs' "Opposition Brief", they essentially argue in response thereto that, regardless of whether the Rules specifically required, directed, or authorized the transfer of this case to the Commercial Docket, the Court should allow this transfer to Commercial Docket to stand because "a trial court has the inherent power to control its own docket and the progress of the proceedings in its court" and that "Judge Ruehlman exercised [his] wealth of knowledge and experience when deciding to transfer the case to the commercial docket." The latter part of that assertion (i.e., what happened in this instance) is a complete fabrication. When the Plaintiffs' attorney filed the Plaintiffs Motion to transfer this case to the Commercial Docket, the Defendant timely filed a Memorandum in Opposition thereto and e-mailed a courtesy copy to Eric Dorfner, Judge Heekin's constable. However, before receiving that Memorandum, Judge Ruehlman (acting in Judge Heekin's absence) signed and submitted to the Clerk of Courts an "Entry Directing Transfer of Case to the Commercial Docket".<sup>1</sup> This counsel contacted the Assignment Commissioner's office seeking an explanation regarding the course of events which had led to the transfer of the case and the procedure for appealing from the stated Entry and was directed by that office to Mr. Dorfner. Mr. Dorfner advised this counsel that when the Motion to Transfer was received, Judge Ruehlman signed the stated Entry because he was instructed to do so (when a Motion to Transfer was received) in a memorandum which had been issued to all of the Common Pleas Court judges, and that no consideration of the Defendant's Memorandum in Opposition or exercise of discretion had been involved. He further explained that the establishment of the Commercial Docket was so new that the Plaintiffs' Motion to Transfer was the first and only one that Courtroom had had to address

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<sup>1</sup> This information was provided by Mr. Dorfner during the same phone conversation that the other statements recited in this paragraph were made.

thusfar and that, therefore, he/they had no experience dealing with such filings. So, the transfer of this case to the Commercial Docket was not an example of Judge Ruehlman exercising his discretion or inherent power to control his docket, but rather an automatic action taken pursuant to a memorandum issued to all of the Common Pleas judges regarding how to deal with Motions to Transfer in civil cases involving facially-“eligible” business or commercial matters.<sup>2</sup>

Finally, the transfer of this Case to the Commercial Docket should be reversed and this case returned to Judge Heekin because the Plaintiffs’ attorney’s filing of the Motion to Transfer was nothing more than “judge shopping”. The instant case was randomly assigned to Judge Heekin pursuant to Loc. R. 7, under Hamilton County’s individual assignment system, and this litigation has proceeded smoothly under his administration. However, despite those facts and that neither the Rules of Superintendence nor the Local Rules direct, require, or authorize the transfer of cases filed before the Commercial Docket was instituted, the Plaintiffs moved the Court to transfer this case to the Commercial Docket.<sup>3</sup> While the Plaintiffs’ attorney would undoubtedly argue that his clients wanted to have the benefit of the expertise of the newly-designated Commercial Docket judges, in actuality, at this juncture in their tenures, Judge Heekin’s judicial and private practice experience and familiarity with business and commercial matters is at least comparable to theirs. So why would the Plaintiffs’ attorney want the case transferred? According to the Plaintiffs’ attorney’s firm website, lauding the creation of the Commercial Docket, “Durst Kerridge has handled a considerable number of commercial litigation cases before both Judge Jenkins and Judge Branch [and] are familiar with their standing orders and Chambers practices.”<sup>4</sup> That firm makes no similar representations regarding its experiences with Judge Heekin’s courtroom. Furthermore,

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<sup>2</sup> The Entry signed by Judge Ruehlman upon receiving the Motion to Transfer, a true and accurate copy of which is attached hereto as “Exhibit A”, shows the automatic nature of the action to be taken, leaving only to the judge to circle whether the transfer was made pursuant to the filing of a Motion to Transfer or *sua sponte*.

<sup>3</sup> See Sup. R. 48.07 and Loc. R. 48(F).

<sup>4</sup> <https://durst.law/hamilton-county-commercial-docket/>

in the parties' attorneys' last communications with Judge Heekin before the Plaintiffs' attorney filed his clients' Motion to Transfer, Judge Heekin made certain decisions in the handling of this case which were contrary to the result the Plaintiffs' attorney was seeking.<sup>5</sup>

In summary, the Court should reverse the Entry transferring this case to the Commercial Docket and re-assign it to Judge Heekin because (1) this case was properly assigned to Judge Heekin under the individual assignment system, before the Commercial Docket was instituted in Hamilton County, (2) the Rules of Superintendence and Loc. Rules—specifically, Sup. R. 47.07 and Loc. R. 48 (A) and (F)—do not direct, require, or authorize the automatic transfer to the Commercial Docket of cases filed before that Docket was created, (3) the Plaintiffs' attorney had no standing or authorization under Super. R. 49.07 to file the Motion to Transfer or to obtain the transfer of this case pursuant thereto, and (4) the Plaintiffs should not be allowed to use a Motion to Transfer to obtain a change of judges to one more to their liking.

Respectfully submitted,

/s/ *Michael J. Bergmann*

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### **CERTIFICATE OF SERVICE**

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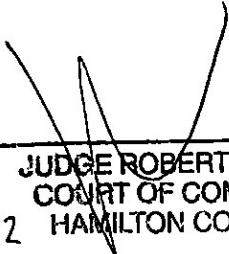
<sup>5</sup> Judge Heekin decided, contrary to the Plaintiffs' requests, that the Defendant did not have to preserve security camera footage going forward in connection with a spoliation of evidence accusation and that the parties would not be permitted to provide testimony at an oral argument hearing on several discovery-related motions which are pending.

I hereby certify that, on this 30th 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  
Michael J. Bergmann, Esq. (#0023154)  
*ATTORNEY FOR THE DEFENDANT-  
COUNTERCLAIMANT*

ENTERED  
APR 25 2024

COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

  
JUDGE ROBERT P. RUEHLMAN  
COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

Max Thornton et al.  
PLAINTIFF(S),

v.  
Paul Woeste  
DEFENDANT(S).

Case No. 2304252

JUDGE Heekin

**ENTRY DIRECTING TRANSFER  
OF CASE TO THE COMMERCIAL  
DOCKET  
(ETCD)**

This case is eligible to be placed on the Commercial Docket of the Court pursuant to Sup.R. 49.05. The Assignment Commissioner is hereby directed to transfer the above captioned case from this Court's to the Commercial Docket. The case shall be re-rolled to one of the Commercial Docket Judges.

This Order is made sua sponte in response to a motion to transfer by a party to this case (circle one).

It is so Ordered.

\_\_\_\_\_  
Judge

This being a Sua Sponte Transfer Order, it is hereby approved by the Administrative Judge.

It is so Ordered.

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Administrative Judge



EXHIBIT A