

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

PRESENT: Hon. Peter H. Moulton
Administrative Order

SHENZHEN KEHUAXING INDUSTRIAL LTD.,
ARTISAN MANUFACTURING CORP.,
LIANSHENG YAO, EZHONG HAN, and
HUAQIONG HAN,

Plaintiffs,

vs.

INDEX NO. 150005/15

CURTIS, MALLET-PREVOST, COLT & MOSLE,
LLP, DANIEL L. PORTER, ESQ., ROSS
BIDLINGMAIER, ESQ., and JOHN DOE and
JANE DOE,

Defendants.

Administrative Order:

By letter dated October 13, 2015, defendants' counsel requests that this action be transferred into the Commercial Division pursuant to the Rules of the Commercial Division, Uniform Rule 202.70 (e). Plaintiffs' counsel opposes the request by his two letters dated October 14, 2015, arguing that the request is untimely and procedurally improper.

Uniform Rule 202.70 (b) (1) provides that actions may be assigned to the Commercial Division if the principal claims are for "breach of contract or fiduciary duty, fraud, misrepresentation, business tort . . . where the breach or violation is alleged to arise out of business dealings. In addition, Uniform Rule 202.70 (b) (8) defines a commercial case as including claims for "legal malpractice arising out of representation in commercial matters."

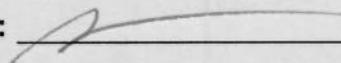
In this action, plaintiffs assert claims for legal malpractice and breach of fiduciary duty arising out of the defendants' legal representation of the plaintiffs in investigations and proceedings before the International Trade Administration and the U.S. Department of Commerce concerning the plaintiffs' businesses. The complaint seeks damages of "not less than \$20 million." Accordingly, the action meets the standards for assignment to the Commercial Division.

However, the Request For Judicial Intervention (RJI) and required Commercial Division Addendum were not filed within 90 days of the May 2015 service of the original complaint, as required by Uniform Rule 202.70 (d). In addition, defendants

did not designate the matter as a commercial case on the RJI, rather the box for "Torts - Other Professional Malpractice: legal malpractice" was checked. However, new defendants were added to the case on August 11, 2015, and the RJI was filed within 90 days of that date. Accordingly, I find that defendants have demonstrated good cause to extend the 90-day time period and that the failure to check one of the commercial boxes on the RJI was inadvertent since the required addendum was separately e-filed at the exact same time as the RJI to the minute -- 5:26 p.m. on October 6, 2015 (see Uniform Rule 202.70 [e]).¹

Accordingly, the request for a transfer to the Commercial Division is granted. The General Clerk's Office is directed to randomly reassign this case to a Justice of the Commercial Division. (A motion to dismiss the complaint is returnable on December 1, 2015 in the E-Filed Submissions Part.)

Dated: October 7, 2015

ENTER: , A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

¹ Although Uniform Rule 202.70 (d) provides that the addendum must be "attached" to the RJI, since the NYSCEF system has separate categories for the RJI and "Addendum - Commercial Division (840C)," a party cannot be faulted for filing the two documents separately as long as it is done simultaneously.