

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

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

DANIEL W. DIENST and JILL C. DIENST,

Plaintiffs,

- v -

INDEX NO. 651450/2013

CARY PAIK and PAIK CONSTRUCTION, INC.,

Defendants.

Administrative Order:

By letter dated June 4, 2013, plaintiffs' counsel timely requests assignment of this action to the Commercial Division. Defendants' counsel opposes a transfer on the grounds that this action is related to Paik Construction, Inc. v. Dienst, Index No. 100319/13, a special proceeding disposed of by Justice Lobis (the Paik proceeding).

Uniform Rule 202.70(b)(1) provides that actions in which the principal claims are for "[b]reach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings" will be heard in the Commercial Division, provided the \$150,000 monetary threshold for New York County is met or equitable or declaratory relief is sought.

This case meets the standards for assignment to the Commercial Division. The complaint asserts claims for breach of contract and fraud in the inducement arising out of an agreement to renovate the plaintiffs' condominium. Further, the complaint alleges damages in excess of the \$150,000 monetary threshold.

In opposition, defendants' counsel asserts that this action is related to the Paik proceeding, a proceeding brought pursuant to New York Lien Law § 76. On March 27, 2013, Justice Lobis granted defendants' petition in that proceeding and disposed of the matter. When the earlier case is marked as "disposed" in the court's computer system, the new case will not be assigned to the Judge who handled the earlier case (see Section D[2] of the "New York County Supreme Court's Operations Manuel"), even when the earlier case has a motion pending.

Accordingly, the Motion Support Office is directed to randomly reassign this case to a Justice of the Commercial Division.

Dated: June 7, 2013

ENTER: _____

 A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION