

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

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

MARCIA ROGERS, BARTHOLOMEA M.
ROGERS, JR., JOHN S. ROGERS, MARIANNE
ROGERS DROZAK, JOHN C. CLARK, and
KRISTA CLARK,

Plaintiffs,

- v -

INDEX NO. 652078/2012

HARVEY KRAUSS and SNOW BECKER KRAUSS,
P.C.,

Defendants.

Administrative Order:

By letter dated September 13, 2012, counsel for plaintiffs requests that this action be assigned to the Commercial Division. Defendants oppose the application.

A Request for Judicial Intervention (RJI) was e-filed on August 24, 2012 by defendants' counsel in connection with a motion to dismiss the complaint. Defendants' counsel did not designate the case as a commercial matter, marking the box for "Torts - Other." Thus, the case was assigned to a non-commercial part.

Uniform Rule 202.70 (e) states that "[i]f a case is assigned to a non-commercial part because the filing party did not designate the case as 'commercial' on the RJI, any other party may apply by letter application . . . within ten days after receipt of a copy of the RJI, for a transfer of the case into the Commercial Division." Plaintiffs' counsel acknowledges that his application is untimely, but asserts that he was never served with a copy of the RJI, and did not know of the non-commercial assignment until September 11, 2012. However, electronic notice of the filing of the RJI was sent to plaintiffs' counsel at his designated e-mail address, as evidenced by a receipt from the New York State Court Electronic Filing System (NYSCEF), submitted by defendants' counsel in opposition to this application. When an action is e-filed, the NYSCEF automatically transmits electronic notice to all e-mail addresses in such action, and the electronic transmission of the notification constitutes as service of the document on the e-mail addresses. See Uniform Rule 202.5 (f) (2) (ii). Therefore, this application is denied as untimely.

Dated: September 20, 2012

ENTER: , A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION