

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

PRESENT: Hon. Paul Feinman (Acting Administrative Judge)
Administrative Order

DMDB ADULTS, INC. and DMDB KIDS, INC.,

Plaintiffs,

vs.

INDEX NO. 103977/09

BANK OF AMERICA CORP. d/b/a BANK OF
AMERICA,

Defendant.

Administrative Order:

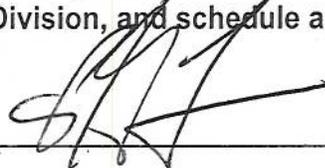
By letter August 25, 2009, counsel for defendant Bank of America timely requests that this action be transferred into the Commercial Division pursuant to the Rules of the Commercial Division, Uniform Rule 202.70 (e). Plaintiffs' counsel advises that she has no objection to the request.

Subdivision (b) (1) of the Rules of the Commercial Division provides that actions in which the principal claims are for breach of contract, where the breach or violation is alleged to arise out of business dealings, should be heard in the Commercial Division, provided the \$150,000 monetary threshold for New York County is met or equitable or declaratory is sought. Also designated as commercial matters are transactions involving the Uniform Commercial Code (UCC) (Uniform Rule 202.70 [b] [2]). In addition, the Commercial Division will hear claims arising out of dealings with commercial banks (Uniform Rule 202.70 [b] [6]).

In this action, plaintiffs seek to recover from Bank of America over \$950,000 in funds allegedly diverted from the plaintiffs' corporate checking accounts by a dishonest bookkeeper. Although plaintiffs sue on theories of breach of contract, conversion, fraud and gross negligence, Bank of America maintains that the claims are governed by Articles 3 and 4 of the UCC. There is no question that this action meets the standards for assignment to the Commercial Division under Uniform Rule 202.70 (b) (1), (2) and (6).

Accordingly, the request for a transfer to the Commercial Division is granted. The Trial Support Office is directed to randomly reassign this case from I.A.S. Part 44 (Tingling, J.) to a Justice of the Commercial Division, and schedule a preliminary conference as soon as possible.

Dated: September 1, 2009

ENTER:  , A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION