

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

PRESENT: Hon. Jacqueline Silbermann
Administrative Order

MATTHEW ADELL and LEONARD ADELL,

Plaintiffs,

- v -

INDEX NO. 114104/2005

CURTIS, MALLET-PREVOST, COLT & MOSLE
LLP, WILLIAM L. BRICKER, JR., JAY I.
GORDON, SYNTRIO, INC. f/k/a
NETSYNDICATE, INC., ATWOOD, LLC,
BRICOLAGE CAPITAL, LLC, SAMYAK C.
VEERA, ANDREW D. BEER, FORTREND
INTERNATIONAL LLC, JEFFREY FURMAN,
JOHN DOES 1-10, and ABC COMPANIES 1-
10,

Defendants.

Administrative Order:

By letter dated May 10TH, counsel for plaintiffs have applied for a transfer of this action from I.A.S. Part 59 (James, J.) to the Commercial Division pursuant to Uniform Rule 202.70.

The Request for Judicial Intervention (RJI) was filed on May 3, 2006, and therefore, the plaintiffs' application is timely. The Court has not received opposition to this request.

Plaintiffs' counsel contends that this action meets the standards for assignment to the Commercial Division, because the sums at issue are in excess of the \$100,000, and the action entails claims for breach of contract, breach of fiduciary duty, and conspiracy. However, when defendants Curtis, Mallet-Prevost, Colt & Mosel (Curtis Mallet-Prevost) and William L. Bricker filed an RJI, in connection with their motion to compel disclosure, their counsel checked the "Other Negligence" box.

The complaint alleges that plaintiffs have been damaged in an amount to be determined at trial, including, inter alia, tax penalties of over \$1 million dollars and

the cost of the tax shelters. In their application, plaintiffs claim that their damages exceed \$2 million dollars, not including punitive damages. Therefore, plaintiffs meet the monetary threshold of the Commercial Division, as set forth in Uniform Rule 202.70 (a).

Uniform Rule 202.70 (b) (1) provides that actions in which the principal claims involve or consist of breach of contract or fiduciary duty, and the breach or violation is alleged to arise out of business dealings, the action will be heard in the Commercial Division.

A review of the complaint filed reveals that this action concerns claims arising out of tax opinions rendered by defendant Curtis Mallet-Prevost, the law firm retained by plaintiffs, that were allegedly used to induce the plaintiffs to participate in illegal tax shelters. Plaintiffs' claims arise out of tax shelter investments which are clearly business transactions. Thus, there is no question that the nature of the action makes it one that should be assigned to the Commercial Division.

Accordingly, the Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division. (A motion to compel disclosure (seq. 001) is on for submission in Room 130 on May 22, 2006).

Dated: May 18, 2006

ENTER: _____, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION