

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

PRESENT: Hon. Jacqueline Silbermann  
Administrative Order

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THE BOARD OF MANAGERS OF TRUMP  
PALACE CONDOMINIUM,

Plaintiff,

-against-

INDEX NO. 602544/2007

FELD KAMINETZKY & COHEN, P.C.,  
SCORCIA & DIANA ASSOCIATES, INC.,  
and ARROW RESTORATION, INC.,

Defendants.

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Administrative Order:

By letter dated July 28, 2008, counsel for plaintiff requests that this action be assigned to the Commercial Division pursuant to Uniform Rule 202.70. Counsel for defendant Scorcia & Diana Associates, Inc. ("S&D") opposes the application on the ground that this is not a commercial action.

This action was assigned to the Hon. Emily Jane Goodman on July 21, 2008 after counsel for defendant S&D filed a Request For Judicial Intervention ("RJI") in which they designated the nature of this action as "Other Matters - Contract." It appears that S&D's counsel served an earlier RJI, in which the case was designated as "Commercial - Contract," but that the clerk's office rejected this RJI on the ground that this is not a commercial action. Plaintiff's counsel argues that this action, which involves claims for breach of contract, is a commercial action under the standards set forth in Uniform Rule 202.70, and that the court should reject the second RJI.

I agree with both counsel for defendant S&D and the clerk's office that this is not a commercial case. Rather, this is an action by a residential condominium against the professional engineers, construction manager and general contractor hired to detect and repair leaks in the plaintiff's building. The "principal claims" in this case are professional negligence and defective construction work, and is not the type of action that belongs in the Commercial Division.

Accordingly, the request for a transfer to the Commercial Division is denied.

Dated: August 1, 2008

ENTER: \_\_\_\_\_, A.J.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION