

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

PRESENT: Hon. George J. Silver, Acting Administrative Judge
Administrative Order

VARDARIS TECH INC.,

Plaintiff,

- v -

INDEX NO. 654721/2017

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,

Defendant.

Administrative Order:

By letter dated October 16, 2017, defendant's counsel timely requests assignment of this action to the Commercial Division pursuant to Commercial Division Rule 202.70 (e). No response to the request has been received.

Actions in which the principal claims are for breach of contract or fiduciary duty, where the breach or violation is alleged to arise out of business dealings, may be heard in the Commercial Division, provided the \$500,000 monetary threshold for New York County is met or equitable or declaratory relief is sought (Commercial Division Rule 202.70 [a], [b] [1]). This action arises out of two public improvement construction projects on which plaintiff was a subcontractor and later a completion general contractor and defendant was the performance bond surety. Both parties accuse the other of breaching a Completion Contract dated December 2014. While plaintiff's alleged damages do not exceed the monetary threshold for New York County's Commercial Division, defendant filed a counterclaim on October 10, 2017, seeking damages in excess of \$925,000. Accordingly, defendant's request for assignment to the Commercial Division is granted (see Boom Fitness Park Ave., Inc. v Crunch, LLC, Index No. 651428/2017, Admin. Order dated May 9, 2017).

The General Clerk's Office is directed to randomly reassign this action from I.A.S. Part 42 (Bannon, J.) to a Justice of the Commercial Division, and to reschedule the preliminary conference currently scheduled on November 7, 2017.

Dated: October 30, 2017

ENTER: George J. Silver, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION