

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

PRESENT: Hon. Peter H. Moulton
Administrative Order

ANTHONY PANICCIOLI and ACP PROPERTIES
LLC,

Plaintiffs,

- v -

INDEX NO. 157882/2016

HOWARD MULLIGAN, Esq., and KLEINBERG,
KAPLAN, WOLFF & COHEN, P.C.,

Defendants.

Administrative Order:

By letters dated January 4 and 9, 2017, defendant Kleinberg, Kaplan, Wolff & Cohen, P.C. (KKWC) timely requests that this action be reassigned from the Honorable Lucy Billings (I.A.S. Part 46) to the Commercial Division. By his letter dated January 5, 2017, plaintiffs' counsel does not oppose the request, but argues that this action is inextricably intertwined with Leonora Volpe v Anthony Carmine Paniccioli and ACP Properties LLC, Index No. 159739/2015 (the Volpe Action), currently pending before Justice Billings, and, at a minimum, discovery should be jointly administered.

In this action, plaintiffs seek damages in excess of \$2.6 million based on claims of, inter alia, legal malpractice, breach of contract, fraud and breach of fiduciary arising out of defendants' alleged legal representation of the plaintiffs in connection with their investment in a motion picture, including the creation of corporate entities and advice related to several loans made to facilitate the production of the film. There is no question that the action meets the standards for assignment to the Commercial Division under Uniform Rule 202.70 (b) (1) and (8).

However, the complaint alleges that, in 2015, sensing that a legal malpractice action was imminent, the defendant Howard Mulligan, Esq. went on the defensive and, with the help of his wife, Leonora Volpe, commenced the Volpe Action by filing a salacious complaint accusing plaintiff Anthony Paniccioli (Panicciolo) of various misdeeds in an attempt to smear Paniccioli publicly and discourage him from seeking recourse against Mulligan and his former law firm, KKWC. In the Volpe Action, Paniccioli and ACP Properties LLC have filed counterclaims. The second, third and fourth counterclaims in the Volpe Action are shortened versions of the fraud claims in this action, and based on the same facts and occurrences.

A litigant's preference for the Commercial Division must sometimes give way to

the interests of judicial economy. Since the two actions are substantially related, keeping this present action with Justice Billings would best serve the interests of judicial economy. However, any consolidation or joint administration of these two cases is strictly the prerogative of Justice Billings.

For these reasons, KKWC's request for assignment to the Commercial Division is denied.

Dated: January 9, 2017

ENTER: , A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION