

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

PRESENT: HON. DEBORAH A. KAPLAN

Administrative Judge

STEVEN LEBETKIN,

INDEX NO. 152745/2019

Plaintiff,

- v -

RICHARD FELDMAN, MICHAEL SMITH, STEPHEN
SASSOON, ROSENBERG FELDMAN SMITH LLP, ADILE
BATUK

Defendant.

**ADMINISTRATIVE
ORDER**

By letters dated April 24, 2019, April 25, 2019 and April 30, 2019, Paul Verner, Esq., counsel for plaintiff requests that this action be assigned to the Commercial Division pursuant to Uniform Rule 202.70. By letter dated April 25, 2019, Michael H. Smith, Esq., counsel for defendants opposes the application.

The summons and complaint were filed on March 14, 2019, and the amended summons and complaint were filed on March 19, 2019. By notice of motion, dated April 18, 2019, defendants moved to dismiss the amended complaint. Contemporaneously therewith, defendants filed an RJI. Since no Commercial Division addendum was filed, the action was assigned to a General Part (Hon. Lynn Kotler).

Plaintiff promptly filed this letter application, arguing that this action should be transferred to Judge Saliann Scarpulla because it is related to a prior action, *Giray v. Chobani et al.*, Index No.: 652838/2012. In the event that the matter is not transferred to Judge Scarpulla, plaintiff asserts that the action meets the requirements for assignment of cases to the Commercial Division and should therefore be transferred to another Justice of the Commercial Division.

Defendants' counsel disagrees on both counts. He argues that this action is not related to the *Giray* case and it does not meet the qualifications for assignment to the Commercial Division.

Here, the *Giray* action has been disposed and plaintiff's counsel has not shown that exceptional considerations of judicial efficiency support the re-assignment of

the new proceeding to Justice Scarpulla (see, <http://www.nycourts.gov/courts/1jd/supctmanh/RJIs-Assignments.shtml>). Therefore, plaintiff's counsel's request to transfer this action to Justice Scarpulla is denied.

With respect to plaintiff's argument that the facts of this case meet the qualifications for assignment to the Commercial Division, counsel states:

The Amended Complaint seeks damages arising from breaches of fiduciary duty alleged against the defendants arising from a breached Litigation Consulting Contract and damages claimed are in excess of the jurisdictional limit in that plaintiff seeks 3 percent of claims made in excess of \$530 million. See, Exhibit A (ECF# 003).

Upon review, the court is satisfied that the action falls within the standards for assignment of cases to the Commercial Division (see, Uniform Rule 202.70[a]). Accordingly, the request for assignment to the Commercial Division is granted to the extent that the General Clerk's office is directed to randomly assign this action to a Justice of the Commercial Division.

DATE:

6/13/19



Hon. Deborah A. Kaplan
Administrative Judge
Supreme Court, New York County
Civil Branch