

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY
PRESENT: Hon. Sherry Klein Heitler
Administrative Order

ADAM BROOK, M.D., PH.D., and ADAM BROOK, M.D.
PH.D., P.L.L.C,

Plaintiffs,

- v -

INDEX NO. 650921/12

PECONIC BAY MEDICAL CENTER, et al.,

Defendants.

Administrative Order:

By letter dated June 15, 2012, counsel for plaintiffs requests a transfer of this action to the Commercial Division pursuant to Uniform Rule 202.70.

On May 29, 2012, defendants filed the Request for Judicial Intervention (RJI), marking the case commercial. Defendants allege that, while they marked the RJI commercial, they purposely did not file the required Commercial Division Addendum. Thus, the case was assigned to a non-commercial part. Plaintiffs were not notified of the assignment to a non-commercial part until June 5, 2012, as they believed the RJI designated the case for the Commercial Division. Under these circumstances, the application is deemed timely. See Uniform Rule 202.70 (e).

This dispute is brought by the former employer of defendant Peconic Bay Medical Center (PBMC), seeking monetary and declaratory relief for the alleged breach of PBMC's By-Laws, as well as for breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, fraud, negligent misrepresentation, promissory estoppel, and defamation. As such, it clearly falls with the definition of a commercial case. Uniform Rule 202.70 (b) (1) provides that actions in which the principal claims involve "breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), . . . where the breach . . . is alleged to arise out of business dealings (e.g., . . . ; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices)" may be brought in the Commercial Division provided that the \$150,000 monetary threshold for New York County is met or equitable or declaratory relief is sought. Therefore, plaintiffs' request for a transfer to the Commercial Division is granted.

The Motion Support Office is directed to randomly reassign this case from I.A.S. Part 63 (Coin, J.) to a Justice of the Commercial Division.

Dated: June 20 2012

ENTER: Sherry Klein Heitler, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION