

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

**PRESENT: Hon. Jacqueline Silbermann
 Administrative Order**

KEVIN DAVIS and SUSAN DAVIS,

Plaintiffs,

- v -

INDEX NO. 602588/07

**ALEX GERMAINE d/b/a ACE PAINTING
CONTRACTORS and TRANSBRASIL
HARDWOOD FLOORING, INC.,**

Defendants.

Administrative Order:

By letter dated October 4, 2007 addressed to the Hon. Ira Gammerman, counsel for defendant Alex Germaine objects to the plaintiffs' request for assignment of what he terms a "simple negligence case" to the Commercial Division. By letter dated October 11, 2007, plaintiffs oppose reassignment.

Plaintiffs' counsel served by mail and filed a Request For Judicial Intervention (RJI) on September 24, 2007 in connection with his request for a preliminary conference. The case was designated on the RJI as a commercial breach of contract action. The case was assigned to the Hon. Ira Gammerman, a J.H.O. presiding over Part 27 in the Commercial Division and handling commercial actions on consent of all parties to the action. At the first preliminary conference held on October 15, 2007, both sides refused to consent to the action remaining before J.H.O. Gammerman. Accordingly, the case was randomly re-assigned to the Hon. Herman Cahn, another justice of the Commercial Division.

Uniform Rule 202.70(e) provides that an application of this nature be made to the Administrative Judge of the court within 10 days of the party's receipt of the RJI. Although defense counsel made the request to the wrong judge, it is timely under the rule, and thus I will consider his objection to the Commercial Division.

Plaintiffs contend that this action meets the standards for assignment to the Commercial Division, because they seek over \$2 million in damages and the action falls within the scope of Uniform Rule 202.70(b)(1), in that plaintiff is suing both defendants

for breach of contract and negligence arising out of business dealings, to wit, a home improvement contract. However, a review of the complaint reveals that the principal claim in this action is property damage to the plaintiffs' apartment allegedly caused when volatile hardwood floor staining materials and waste were left overnight in their apartment by employees of defendant Transbrasil Hardwood Flooring, Inc. and ignited via spontaneous combustion causing a fire and extensive damage. I agree with defendant Alex Germaine that this is not a complex commercial or business dispute and that this property damage case does not belong in the Commercial Division.

Plaintiffs argue that another case handled by the Commercial Division in this county involving a home improvement contract illustrates that the complaint in the instant action has been properly assigned to the Commercial Division. However, Moonstone Judge, LLC v Shainwald, Index No. 108444/04, N.Y. County (Fried, J.), was not a property damage case, and it may be the case that no party or the assigned judge ever objected to the case being in the Commercial Division. The fact that any particular action is handled by the Commercial Division without objection does not expand or change the standards for assignment to the Commercial Division set forth in Uniform Rule 202.70.

For these reasons, defendant Alex Germaine's request that this court deny plaintiffs' request for assignment to the Commercial Division is granted. The Trial Support Office is directed to randomly re-assign this action to a non-commercial part and to schedule a preliminary conference before the newly-assigned judge as soon as possible. (A preliminary conference is currently scheduled on November 16, 2007 in Part 49.)

Dated: November __, 2007

ENTER: _____, A.J.

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION