

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

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

KAREN BRADLEY and GARY BRADLEY,

Plaintiffs,

- v -

INDEX NO. 603696/07

MARTIN R. GILMARTIN, ESQ.,

Defendant.

Administrative Order:

By letter dated February 11, 2008, defendant requests a transfer of this action from I.A.S. Part 36 (Ling-Cohan, J.) to the Commercial Division pursuant to Uniform Rule 202.70. Plaintiffs have filed no objection to this request and it is timely pursuant to Uniform Rule 202.70(e).

Uniform Rule 202.70(b)(2)(8) provides that actions in which the principal claims involve legal malpractice arising out of representation in commercial matters should be heard in the Commercial Division provided the \$100,000 monetary threshold is met or equitable or declaratory relief is sought. In this action, plaintiffs allege that defendant committed legal malpractice in connection with the sale of plaintiffs' property located in Water Mill, New York for \$1.4 million and their subsequent attempt to purchase property in New York City. More specifically, defendant allegedly failed to properly effectuate what is known as a "1031 exchange" for the legitimate deferral of taxes by placing the proceeds of the sale of the Water Mill property with a bankrupt "qualified intermediary." Although defense counsel does not specify the types of properties involved, the court notes that a 1031 exchange can only be used for property held for productive use in a trade or business or for investment purposes. Therefore, there is no question that the action involves malpractice arising out of legal representation in a commercial matter, and defendant's request for a transfer to the Commercial Division is granted.

The Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division, who is directed to hold a preliminary conference as his or her schedule permits.

Dated: February 19 2008

ENTER: _____, A.J.

Check one: ☐ FINAL DISPOSITION

☐ NON-FINAL DISPOSITION