

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

PRESENT: Hon. Peter H. Moulton
Administrative Order

JONATHAN S. AARON and ERIC L. GARBER, AS
THE PERSONAL REPRESENTATIVES OF THE
ESTATE OF WILLIAM M. DAVIDSON, AND AS
THE TRUSTEES OF THE WILLIAM M.
DAVIDSON TRUST, DATED SEPTEMBER 24,
2008, AS AMENDED,

Plaintiffs,

- v -

INDEX NO. 653203/15

DELOITTE TAX LLP,

Defendant.

Administrative Order:

By letters dated October 7 and 8, 2015, counsel for both plaintiffs and defendant seek review of Justice Eileen Bransten's order, dated October 1, 2015, transferring this action to a non-commercial part pursuant to Uniform Rule 202.70 (f) (1). The case is presently assigned to I.A.S. Part 15 (Rakower, J.).

The parties argue that this action qualifies for assignment to the Commercial Division pursuant to Uniform Rule 202.70 (b) (1) and (8). Subdivision (b) (1) provides that actions in which the principal claims are for breach of contract or fiduciary duty, fraud, misrepresentation, business tort, where the breach or violation is alleged to arise out of business dealings, will be heard in the Commercial Division, provided that the \$500,000 monetary threshold for New York County is met or equitable or declaratory relief is sought. Pursuant to subdivision (b) (8), "malpractice by accountants or actuaries, and legal malpractice arising out of representative in commercial matters," also qualify for assignment to the Commercial Division (Uniform Rule 202.70 [b] [8]).

The complaint in this action asserts claims for, inter alia, fraud, malpractice, and negligent misrepresentation in connection with the defendant's design, implementation and defense of a complex estate plan for the late William M. Davidson. In particular, plaintiffs allege that defendant recommended risky self-


canceling installments notes, referred to as "SCINs," which were given in exchange for over \$500 million of the decedent's stock in Guardian Industries and the subsequent transfer of certain of these SCINs to Grantor Retained Annuity Trusts (GRATS). Allegedly, as a result of the defendant's malpractice, plaintiffs have suffered \$500 million in damages, including additional estate and gift taxes and related fees, penalties and interest. While I agree with Justice Bransten that this litigation arises out of a personal estate plan, this type of tax advisor malpractice is presumptively commercial in nature pursuant to subdivision (b) (8). Consistent with the view that the phrase "arising out of representation in commercial matters" in subdivision (b) (8) modifies only "legal malpractice" and not the entire subsection, this Court has assigned other accountant malpractice cases to the Commercial Division without consideration of whether they arose out of representation in commercial matters.

Accordingly, the Motion Support Office is directed to reassign this case back to Justice Bransten (Part 3).

I disclose that the signatory of plaintiff's letter, Steven Cooper, is a friend of mine. However, this had no affect on my analysis of the court's rules concerning eligibility for the Commercial Division. Additionally, both sides join in the application to return this case to the Commercial Division.

Dated: October 29, 2015

ENTER:

 A.J.
HON. PETER H. MOULTON
SUPREME COURT JUSTICE

Check one: ☒ FINAL DISPOSITION

☐ NON-FINAL DISPOSITION