

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

PRESENT: Hon. Paul Feinman (Acting Administrative Judge)
Administrative Order

In the Matter of the Application of

ALAN D. GORDON,

Petitioner,

For an Order, Pursuant to CPLR Article 75,
Disqualifying the law firm of Dechert LLP,
Andrew J. Levander, Esq., Adam B. Rowland,
Esq., et al., as Attorneys for Respondents,

vs.

INDEX NO. 111401/09

SKYLINK AVIATION, INC., WALTER ARBIB,
SURJIT BABRA and MAURICE SINGER,

Respondents.

Administrative Order:

By letters dated August 18 and 27, 2009, counsel for the respondents timely requests that this Article 75 proceeding be transferred from I.A.S. Part 48 (Diamond, J.) into the Commercial Division pursuant to the Rules of the Commercial Division. Petitioner Alan D. Gordon opposes the request by his counsel's letter of August 27, 2009.

Subdivision (b) (1) of the Rules of the Commercial Division provides that actions in which the principal claims are for "[b]reach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings" should be heard in the Commercial Division, provided the \$150,000 monetary threshold for New York County is met or equitable or declaratory relief is sought. Also designated as commercial matters are claims involving the internal affairs of business organizations (Uniform Rule 202.70 [b] [7]). In addition, the Commercial Division will hear "[a]pplications to stay . . . arbitration . . . and related injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues – without consideration of the monetary threshold" (Uniform Rule 202.70 [b] [12]).

This is a special proceeding, brought pursuant to CPLR Article 75, in which the petitioner seeks to disqualify certain counsel from representing the respondents in an arbitration entitled Gordon v Skylink Aviation, Inc., et al., 50 517 T 00228 09, now pending with the International Center for Dispute Resolution of the American Arbitration Association. The underlying arbitration concerns the petitioner's claims that he has been denied, in breach of an April 2003 shareholders agreement for a company known as Skylink Aviation (Wyoming) Inc. (Skylink Wyoming), his rights as a 30% shareholder, director and corporate officer of that company. In the arbitration, petitioner seeks an accounting and unspecified damages for the respondents' alleged breach of contract, breach of fiduciary duty, fraud, misrepresentation and other misconduct. Respondents have counterclaimed, alleging that petitioner is their former attorney and exploited their trust by wrongfully inducing a restructuring of Skylink Wyoming and inducing them to enter into the shareholder's agreement whereby petitioner obtained a 30% stake in Skylink Wyoming for only \$1,000. Respondents seek declaratory relief, restitution, and disgorgement of all legal fees he collected as Skylink Wyoming's legal counsel and as a director.

This proceeding was commenced by order to show cause. On August 13th, Justice Diamond signed the order to show cause, setting the matter down for a hearing on September 14, 2009. Pending the hearing, Justice Diamond stayed all proceedings in the arbitration, although this was on consent of the parties and is somewhat redundant since the AAA had already placed the matter in abeyance pending a court decision on the disqualification issue.

There is no question that the underlying arbitration proceeding involves commercial issues. Petitioner argues that this special proceeding does not seek a stay of the arbitration proceeding or "injunctive relief" related thereto, and thus does not fall within Uniform Rule 202.70 (b) (12). This ignores the fact that petitioner himself sought an interim stay of the arbitration. In addition, the relief he seeks herein -- disqualification of counsel -- is injunctive relief, because it is an order preventing the respondents from using the counsel of their choice to represent them in the underlying arbitration (see Black's Law Dictionary [8th ed 2004] ["injunction" is a "court order commanding or preventing an action").

I find, therefore, that this special proceeding meets the standards for assignment to the Commercial Division under Uniform Rule 202.70 (b) (1), (7) and (12).

Accordingly, the respondents' 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. Counsel for the parties are directed to jointly contact the part clerk of the new Commercial Division judge to arrange for a new date and time for the pending order to show cause, currently returnable in Part 48 on September 14, 2009.

Dated: September 1st, 2009

ENTER: [Signature], A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION