

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

PRESENT: Hon. Barbara R. Kapnick, Acting Administrative Judge
Administrative Order

EDWARD LIEBERMAN, INDIVIDUALLY AND
AS REPRESENTATIVE OF STOCKHOLDERS and
OPTIONHOLDERS OF PHOENIX COLOR CORP.,

Plaintiff,

- v -

INDEX NO. 603250/08

VISANT CORPORATION,

Defendant.

Administrative Order:

By letter dated August 23, 2010, supplemented by an e-mail dated August 24, 2010, counsel for defendant Visant Corporation requests that this action be transferred into the Commercial Division pursuant to Uniform Rule 202.70(e). By e-mail dated August 25, 2010, plaintiff opposes the application.

The complaint filed in this action alleges a breach of contract dispute arising out of the merger of two companies, Phoenix Color Corp. and Visant Corporation. At issue is the parties' entitlement to funds held in escrow in the amount of \$325,955.42. Thus, there is no question that the action meets the standards for assignment to the Commercial Division in New York County. See Uniform Rule 202.70(a), (b)(1).

On the issue of timeliness, while plaintiff's counsel contends that he amended the RJI after service on August 6th, and prior to filing it on August 13th, to change the designation from "Commercial - Contract" to "Other Matters - Breach of Contract," the RJI on file with the court is the RJI that was served on defendant's counsel. In any event, since defendant's counsel only learned on August 18th that the case was not being designated as a commercial case, his application for a transfer is deemed timely.

Accordingly, defendant's request for assignment of this case to the Commercial Division is granted. The Motion Support Office is directed to reassign this case at random from I.A.S. Part 46 (Billings, J.) to a Justice of the Commercial Division. (A motion for summary judgment is currently returnable on September 30, 2010 in the Motion Submissions Part.)

Dated: August 26, 2010

ENTER:  , A.J.

BARBARA R. KAPNICK
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION