

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

PRESENT: Hon. Sherry Klein Heitler  
Administrative Order

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U.S.A. DESIGN, INC. and ALBERT NIGRI,

Plaintiffs,

- v -

INDEX NO. 114547/09

JOSEPH SITT, THOR EQUITIES LLC,  
THOR CB/BP EQUITY, LLC,  
THOR GALLERY AT BEACH PLACE LLC,  
THOR GALLERY AT BEACH PLACE HOLDINGS LLC,  
THOR GALLERY AT BEACH PLACE INVESTORS LLC,  
THOR GALLERY AT COCO WALK LLC,  
THOR GALLERY AT COCO WALK HOLDINGS LLC,  
THOR GALLERY AT COCO WALK INVESTORS LLC,  
and WACHTELL AND MASYSR, LLP

Defendants.

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Administrative Order:

By letters dated January 28 and February 2, 2010, counsel for the Thor defendants and defendant Joseph Sitt requests a transfer of this action to the Commercial Division pursuant to Uniform Rule 202.70. Defendant Wachtell and Masysr, LLP consents to a transfer and plaintiffs do not object.

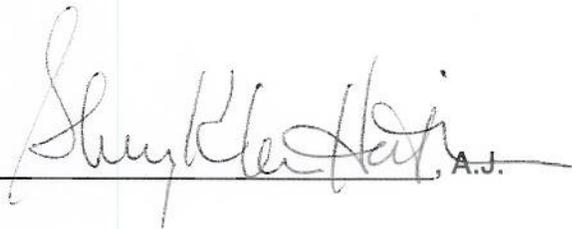
This action arises from plaintiffs' \$1 million investment in a real estate venture for which they were allegedly guaranteed a 7% minimum rate of return. Plaintiffs allege that, in August 2004, they entered into an oral agreement with Joseph Sitt that their investment would be held in escrow by defendant Wachtell and Masysr, LLP and not released until a formal written agreement outlining the terms of their investment was signed. Although a draft agreement was circulated, it was never signed. Plaintiffs' funds were invested, and, at various times since August 2004, they have received some "disbursements, letters and purported accountings." Despite this, plaintiffs contend that defendant Joseph Sitt and the Thor defendants have failed to properly account to plaintiffs about their investment. Wachtell and Masysr, LLP is sued for breach of an implied escrow agreement and breach of fiduciary duty; the Thor defendants are sued for, inter alia, moneys had and received, unjust enrichment, and an accounting.

Uniform Rule 202.70 (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 the \$150,000 monetary threshold for New York County is met or equitable or declaratory relief is sought. This case clearly falls within this category, and therefore, the request for a transfer to the Commercial Division is granted.

The Motion Support Office is directed to randomly reassign this case to a Justice of the Commercial Division. (A motion to dismiss the complaint is currently returnable in the Initial Motion Part on February 16, 2010.)

Dated: February 3, 2010

ENTER:

 A.J.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION