

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

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

CAMOFI MASTER LDC and CAMHZN MASTER, LDC,

Plaintiffs,

- v -

INDEX NO. 650411/12

U.S. COAL CORP. et al.,

Defendants.

Administrative Order:

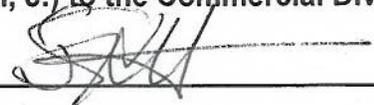
By letter dated March 16, 2012, counsel for plaintiffs requests that this action be transferred into the Commercial Division pursuant to Uniform Rule 202.70 (e). Defendant U.S. Coal Corp. (U.S. Coal) opposes the request on the grounds that it should be assigned to the Hon. Debra James, as she is presiding over a related case, Kaplan v. U.S. Coal Corp., Index No. 112252/10 (the Kaplan Action). The Kaplan Action is disposed of, with a motion to reargue currently pending before Justice James.

On March 13, 2012, counsel for U.S. Coal filed a Request for Judicial Intervention (RJI). The RJI did not designate the case as commercial and listed it related to the Kaplan Action. As the Kaplan Action is currently disposed of, the case was assigned to another non-commercial part, as per the court's policy that an action is not related if the other action is disposed of.

The current action is clearly commercial in nature. Uniform Rule 202.70 (b) (1) 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. Here, the complaint asserts claims against defendants for breach of contract, breach of fiduciary duty, and tortious interference with contract involving commercial entities. The complaint seeks damages of approximately \$6.7 million.

Accordingly, the request for a transfer to the Commercial Division is granted. In view of the pending motion to reargue in the Kaplan Action, this transfer is granted without prejudice to U.S. Coal to raise the issue of the related case with the newly assigned Commercial Division Justice. The Trial Support Office is directed to randomly reassign this case from I.A.S. Part 61 (Singh, J.) to the Commercial Division.

Dated: March 23 2012

ENTER: , A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION