

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

PRESENT: Hon. Jacqueline Silbermann
Administrative Order

DR. PAUL A. FIRESTONE,

Plaintiff,

- v -

INDEX NO. 602533/2006

KEVIN MCKEOWN,

Defendant.

Administrative Order:

By letter dated September 11, 2006, counsel for plaintiff has objected to the transfer of this action from Commercial Division Part 60 (Fried, J.) to a non-commercial part.

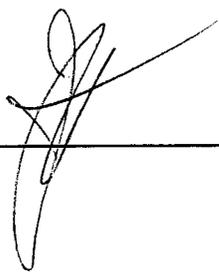
Justice Fried transferred the action on September 7, 2006, and thus the plaintiffs' application is timely. See Uniform Rule 202.70(f)(2).

Plaintiff's counsel contends that this action meets the standards for assignment to the Commercial Division, because the first cause of action seeks damages in excess of \$1,000,000 and the second cause of action requests judgment for an additional amount in excess of \$50,000. These two causes of action, on their face, are sufficient to surpass the \$100,000 monetary threshold for New York County, as set forth in Uniform Rule 202.70(a).

Uniform Rule 202.70(b)(1) provides that actions in which the principal claims involve or consist of breach of contract arising out of business dealings will be heard in the Commercial Division. This action concerns claims arising out of alleged business dealings between the parties whereby the plaintiff assigned a 25% interest in a certain patented invention in exchange for defendant's assistance in marketing and commercializing the invention. Plaintiff also sues for breach of defendant's promise to repay a promissory note dated February 20, 2001, and other loans plaintiff made to the defendant. Thus, the nature of the action makes it one that should be assigned to the Commercial Division.

Accordingly, the Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division. (A note of issue was filed on August 31, 2006 (Cal. No. 2006L-03582), and plaintiff is requesting a trial preference pursuant to CPLR 3403(b), as he is over the age of 70 years).

Dated: September 21, 2006

ENTER:  _____, A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION