

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

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

STEVE VASSI, PAT PHILLIPS-STRATTA,
GEORGE VELLA and RAJARAM SUBRAMANIAN,

Plaintiffs,

- v -

INDEX NO. 103647/10

THE SALEM HOUSE CONDOMINIUM BOARD,
T-MOBILE NORTHEAST, LLC, f/k/a OMNIPOINT
COMMUNICATIONS, INC.,

Defendants.

Administrative Order:

By letter dated March 22, 2010, counsel for defendant T-Mobile Northeast, LLC (T-Mobile) requests that this action be transferred to the Commercial Division. Plaintiffs oppose the request by their counsel's letter of the same date.

This action was commenced by Order to Show Cause on March 19, 2010. Plaintiffs are a group of residents of a condominium building located on East 81st Street in Manhattan. They seek to halt an ongoing construction project underway where T-Mobile is installing wireless telecommunications equipment (the Equipment) on the building's roof, as was allegedly authorized by a lease T-Mobile signed with co-defendant The Salem House Condominium Board in September 2009.

T-Mobile contends that this case primarily concerns a commercial lease and the interpretation of corporate documents governing the condominium board's corporate authority and powers, and thus qualifies as a commercial case under Uniform Rule 202.70 (b) (3) and (b) (7). Plaintiffs argue that T-Mobile waived its right to seek a transfer by failing to raise the issue before Justice York to whom the action was assigned and who signed a TRO on March 19th in plaintiffs' favor. Plaintiffs also contend that the building at issue is a residential condominium, that there are no commercial uses associated with the building, and that the Equipment is not a permanent fixture and is capable of being removed. Plaintiffs furnish a copy of page 2 of the lease, which provides that the Equipment is personal property of T-Mobile and not a fixture.

Neither side offers a copy of the complaint. However, a review of counsel's

affirmation in support of plaintiffs' motion for a preliminary injunction reveals that the principal claim in this action is for an injunction to halt the installation of the Equipment on the ground that the condominium board exceeded its authority in entering into the lease, because: (1) the Equipment will emit radio frequencies which exceeds the FCC rules for human exposure; (2) neither notice nor an opportunity to vote on the lease was given to the unit owners; and (3) the roof of the building is a common element of the building and the Equipment interferes with the plaintiffs' use and enjoyment of the roof.

The application for a transfer to the Commercial Division is denied. Uniform Rule 202.70 (c) provides that "residential real estate disputes" will not be heard in the Commercial Division. This lawsuit is a dispute between certain unit owners of a residential condominium building and their condominium board about the installation of personal property on the building's roof. As such, this action does not qualify as a "commercial real property" dispute under Uniform Rule 202.70 (b) (3). Nor does it concern the "internal affairs of a business organization" (Uniform Rule 202.70 [b] [7] [emphasis added]).

For these reasons, the application to transfer this matter to the Commercial Division is denied.

Dated: March 23 2010

ENTER: _____



_____, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION