

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

PRESENT: Hon. Sherry Klein Heitler  
Administrative Order

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WEST 43<sup>RD</sup> STREET REALTY LLC,

Plaintiff,

- v -

INDEX NO. 650292/2012

WOLF L. JAKUBOWSKI and RITA JAKUBOWSKI,  
GALLET DREYER & BERKEY, LLP, and GOTHAM  
BANK OF NEW YORK,

Defendants.

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Administrative Order:

By letter dated February 17, 2012, counsel for defendants Wolf and Rita Jakubowski timely seeks review of Justice O. Peter Sherwood's order dated February 10, 2012 transferring this action to a non-commercial part pursuant to Uniform Rule 202.70 (f) (1). Counsel's letter was mistakenly sent to Chief Administrative Judge Gail Prudenti, who forwarded this request to my attention. Opposition has not been received to date.

Counsel contends that this action meets the standards for assignment to the Commercial Division, because this action involves a claim for breach of an escrow agreement arising out of a real estate transaction.

Uniform Rule 202.70 (b) (1) and (3) provide that actions in which the principal claims involve or consist of breach of contract where the breach or violation is alleged to arise out of business dealings, or transactions involving commercial real property not involving the payment of rent, will be heard in the Commercial Division, provided the monetary threshold is met or equitable or declaratory relief is sought. However, Uniform Rule 202.70 (c) (3) specifically provides that cases involving residential real estate disputes are non-commercial. Here, plaintiff seeks to recover monies placed in escrow in connection with the sale of residential real property. I agree with Justice Sherwood that this action does not qualify for assignment to the Commercial Division.

For the foregoing reasons, the request is denied.

Dated: March 3, 2012

ENTER: , A.J.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION