

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

PRESENT: HON. JACQUELINE W. SILBERMANN
Administrative Judge Justice

PART

J. T. Falk & Co. et ano.

INDEX NO.

602409/2004

MOTION DATE

MOTION SEQ. NO.

MOTION CAL. NO.

- v -

RC Dolner, Inc., et al.

Administrative Order

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

Answering Affidavits – Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

~~Upon the foregoing papers, it is ordered that this motion~~

By letter dated November 15, 2004, counsel for plaintiffs requests that this matter be transferred to the Commercial Division. Counsel advises that the request was submitted to the assigned Justice, Hon. Marilyn Shafer, who directed that the request be referred to the undersigned. The *Guidelines for Assignment of Cases to the Commercial Division* provide that the Administrative Judge must approve any transfer into the Commercial Division.

Plaintiffs purchased a Commercial index number. Certain defendants later made a motion and filed a Request for Judicial Intervention. It appears that this RJI triggered the assignment of the case outside the Division. Defendants checked off "Commercial -- Contract" on the RJI. This should have resulted in an assignment to the Commercial Division, assuming that the complaint seeks damages in excess of the Division's monetary threshold, which it does. The motion in question was described as one to stay pending arbitration. It appears that the back office assigned the case as an Article 75

Dated: _____

p. 1

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

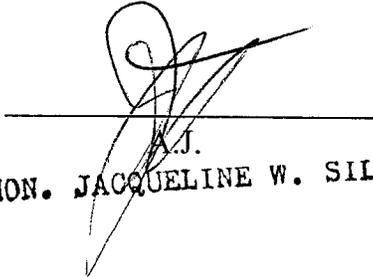
special proceeding based upon this description. This was an error. This case is not a special proceeding. Plaintiffs filed a complaint seeking damages for over \$ 1 million, among other things. In the complaint, plaintiffs did not seek to compel or stay arbitration.

Around the same time, plaintiffs filed an RJI. The computer indicates that the other RJI was acted upon earlier so this one had no effect. Had it been utilized, however, an assignment outside the Division would also have occurred because plaintiffs checked off, not "Commercial -- Contract," but rather "Other Matters - Breach of Contract, etc.," which is a non-Commercial category. However, as noted, plaintiffs had already obtained a Commercial index number and it is plain from this request that their true intention has been to have this matter proceed within the Division.

No party has responded with a communication opposing plaintiffs' request.

For the reasons stated, the Motion Support Office is hereby directed to reassign this case at random to a Justice of the Commercial Division. The Office is further directed, before doing so, to correct the listing for this case in the court's Civil Case Information System to reflect the fact that this is an action, not a special proceeding, and to note therein that the original assignment had been made in error.

Dated: November 22, 2004


HON. JACQUELINE W. SILBERMANN