

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

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

BDO USA, LLP,

Plaintiff,

INDEX NO. 650114/13

-v-

PHOENIX FOUR, INC., et al.,

Defendants.

Administrative Order:

By letter dated March 27, 2013, counsel for plaintiff BDO USA, LLP (BDO) applies for a transfer of this action to the Commercial Division pursuant to Uniform Rule 202.70. By letters dated March 28, 2013, counsel for defendants Strategic Resources Corporation, Paul Schack, and James J. Hopkins, III (the SRC Defendants) and counsel for defendant Phoenix Four, Inc. (Phoenix) oppose assignment to the Commercial Division.

On October 16, 2012, BDO filed a summons and complaint in BDO USA, LLP v Phoenix Four, Inc., et al., Index No. 653618/12 (the Initial Action). The Initial Action sought damages from the SRC Defendants and Phoenix for breach of a settlement agreement. The Initial Action was assigned to Judge Anil Singh.

On January 3, 2013, BDO's counsel made an application before this Court seeking a transfer of the Initial Action into the Commercial Division. On January 8, 2013, I issued an Administrative Order denying BDO's request for a transfer on the ground that the application was untimely (January Administrative Order). On January 11, 2013, BDO filed a Notice of Voluntary Discontinuance in the Initial Action. In response to this Notice, the SRC Defendants made a motion before Judge Singh to discontinue the Initial Action "with prejudice" on the ground that BDO's decision to voluntarily discontinue was solely based on its desire to circumvent the January Administrative Order. By order dated February 4, 2013, Judge Singh denied the SRC Defendants' motion.

On January 11, 2013, BDO filed the complaint in the present action, which is virtually identical to the complaint in the Initial Action. As this present action is identical to the Initial Action, and the Court previously denied BDO's application

to transfer, it would be inappropriate for the Court to consider another application for assignment to the Commercial Division. Regardless of whether the present application is timely, in light of the procedural history of the dispute, the Court adheres to the January Administrative Order, and BDO's current application is denied. This action shall be assigned to the Honorable Anil Singh (I.A.S. Part 61), as he presided over the Initial Action.

Dated: April 6, 2013

ENTER:



A handwritten signature in black ink, appearing to read 'Anil Singh', is written over a horizontal line. The signature is cursive and somewhat stylized.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION