

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

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

PETROCELLI ELECTRIC CO. INC., et al.,

Plaintiffs,

- v -

INDEX NO. 651159/2013

BROADWAY ICL LLC f/k/a IBEX CONSTRUCTION
LLC, et al.,

Defendants.

Administrative Order:

By letter dated May 31, 2013, counsel for plaintiff Petrocelli Electric Co. Inc. (Petrocelli) requests a transfer of this action to the Commercial Division pursuant to Uniform Rule 202.70. Defendants oppose this request.

On April 30, 2013, defendants filed the Request for Judicial Intervention (RJI). Defendants state that, while they marked the RJI as "Commercial -Contract," they purposely did not file the required Commercial Division Addendum. Thus, the case was assigned to a non-commercial part. Petrocelli was not notified of the assignment to a non-commercial part until May 30, 2013, as it believed the RJI had designated the case for assignment to the Commercial Division. Under these circumstances, the application is deemed timely. See Uniform Rule 202.70 (e).

This action seeks the recovery of New York Lien Law Article 3-A trust funds which Petrocelli alleges were improperly diverted by the defendants. As such, it falls with the definition of a commercial case. Uniform Rule 202.70 (b) (1) provides that actions in which the principal claims are for "[b]reach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings . . ." should be heard in the Commercial Division, provided the \$150,000 monetary threshold for New York County is met or equitable or declaratory relief is sought.

Therefore, Petrocelli's request for a transfer to the Commercial Division is granted. The Motion Support Office is directed to randomly reassign this case from I.A.S. Part 59 (James, J.) to a Justice of the Commercial Division. (A motion to dismiss was fully submitted on June 7, 2013.)

Dated: June 7, 2013

ENTER: , A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION