

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

PRESENT: Hon. Peter H. Moulton
Administrative Order

CARD PAYMENT SERVICES, LLC, SEYMOUR
WEISSMAN, and MBA-CPS, LLC,

Plaintiffs,

- v -

INDEX NO. 652240/16

SEAN TARRY, MBA NEW YORK, LLC, and SWIFT
CAPITAL OPPORTUNITIES, LLC,

Defendants.

Administrative Order:

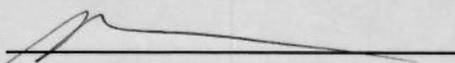
By letter dated May 6, 2016, counsel for defendant Swift Capital Opportunities, LLC timely requests that this action be transferred into the Commercial Division pursuant to Uniform Rule 202.70 (e). Plaintiffs' counsel objects to a reassignment if it will cause delay in the adjudication of the Order to Show Cause (OSC) currently scheduled for oral argument before Justice Reed (IAS Part 43) on June 2, 2016. To date, there is no response to this request from defendants Sean Tarry (Tarry) and MBA New York, LLC (MBA).

Uniform Rule 202.70 (b) (1) provides that actions in which the principal claims involve or consist of breach of contract or business tort, where the breach or violation is alleged to arise out of business dealings, will be heard in the Commercial Division, provided the \$500,000 monetary threshold for New York County is met or equitable or declaratory relief is sought.

This dispute involves the payment of certain credit card merchant processing commissions referred to as residuals. Here, the complaint alleges that defendants Tarry and MBA wrongfully diverted residuals to themselves in violation of a Joint Venture and Operating Agreement, "bilk[ing] Plaintiffs out of hundreds of thousands of dollars" (Cmplt., ¶ 1). While plaintiffs seek damages of only \$200,000, they also seek injunctive relief to prevent any further diversion of residuals. Therefore, this action meets the standards of the Commercial Division.

Accordingly, the Motion Support Office is directed to reassign this case at random from IAS Part 43 to a Justice of the Commercial Division. To avoid any prejudice from delay, the assigned Commercial Division Justice is requested to schedule oral argument on the pending OSC, as close as possible to the original scheduled date of June 2, 2016.

Dated: May 17, 2016

ENTER: , A.J.

HON. PETER H. MOULTON
SUPREME COURT JUSTICE