

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

PRESENT: Hon. George J. Silver, Acting Administrative Judge
Administrative Order

GUY J. JACOBSON, derivatively on behalf of
99-105 THIRD AVENUE REALTY, LLC,

Plaintiff,

- v -

INDEX NO. 654627/2017

STEVEN CROMAN and EDWARD CROMAN,

Defendants,

-and-

99-105 THIRD AVENUE REALTY, LLC,

Nominal Defendant.

Administrative Order:

By letter dated July 12, 2017, counsel for defendant Steven Croman (Croman) requests assignment of this action to the Commercial Division pursuant to Commercial Division Rule 202.70 (e), and, in particular, to the Hon. Eileen Bransten, Commercial Division Part 3 as related to Jacobson v Croman, Index No. 600886/2007 (Jacobson I). Plaintiff's counsel does not oppose the request.

Actions in which the principal claims are for breach of contract or business torts, where the breach or violation is alleged to arise out of business dealings, may 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 (Commercial Division Rule 202.70 [a], [b] [1]). In addition, shareholder derivative actions will be heard in the Commercial Division without consideration of the monetary threshold (Commercial Division Rule 202.70 [b] [5]).

In this action, plaintiff sues as the minority owner of 99-105 Third Avenue Realty, LLC (the LLC) and alleges that Croman has breached his fiduciary duties as manager of the LLC. Plaintiff seeks the appointment of a receiver as well as unspecified monetary damages. The complaint alleges that the Attorney General of the State of New York commenced a special proceeding in this court under Executive Law § 63 in May 2016, contending that Croman and his business associates have engaged in a pattern of criminal activity by harassing, coercing and deceiving rent-regulated tenants to give up

their apartments in numerous apartment buildings in Manhattan, including one of the buildings owned by the LLC, in order to convert the apartments to more profitable market-rate units (see People of the State of New York v Steven Croman, et al., Index No. 450545/2016). That proceeding is assigned to Justice Shlomo Hagler.

When plaintiff's counsel filed the Request for Judicial Intervention in this action, she listed both Jacobson I and the Attorney General proceeding as related actions, and this case was assigned to Justice Hagler. However, counsel for defendant Croman argues that a central issue in Jacobson I concerns a buy out provision of the LLC's Operating Agreement, pursuant to which Croman allegedly exercised his option to buy out the plaintiff's minority interest in the LLC as of September 2006. Although there are disputes between the parties regarding this development, a valid buy out may extinguish the plaintiff's interest in the LLC as of that date, and, thus, the resolution of Jacobson I may dispose of this new action, which is predicated on later occurring events. In addition, this new action relates strictly to management of the LLC, while the Attorney General's proceeding is brought against over 100 other limited liability companies owned or controlled by Croman and operating other apartment buildings in Manhattan.

The request for a transfer to the Commercial Division is granted since the case meets the standards for assignment to the division (see Commercial Division Rule 202.70 [a], [b] [1]). I am directing that this action be assigned to Justice Eileen Bransten (Commercial Division Part 3) for a determination as to whether this action is related to Jacobson I (see Dec. 2011 Operations Manual, § [I] [D] [2]). If Justice Bransten determines that the actions are not related, she may direct that this action be assigned at random to a Justice of the Commercial Division."

An order to show cause is presently returnable on November 20, 2017 in I.A.S. Part 17 (Hagler, J.). Counsel for the parties are directed to jointly contact Justice Bransten's part clerk to reschedule the return date of the order to show cause to a date consistent with Justice Bransten's calendar practices.

Dated: September 27, 2017

ENTER: George J. Silver, A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION