

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

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

**THE STATE OF NEW YORK, and certain legal
subdivisions thereof, ex rel. JAMES A.
HUNTER and KEENAN D. KMIEC,**

Plaintiffs,

- v -

INDEX NO. 101069/2015

STARBUCKS CORPORATION,

Defendant.

Administrative Order:

By letters dated August 2 and 8, 2017, counsel for defendant Starbucks Corporation (Starbucks) requests assignment of this case to the Commercial Division pursuant to Commercial Division Rule 202.70 (e). Counsel for plaintiffs James A. Hunter and Keanan D. Kmiec (the Relators) objects by their counsel's August 4th letter.

This is a qui tam action, brought pursuant to the New York False Claims Act (NYFCA), New York State Finance Law §§ 187-194. The Relators allege that Starbucks has failed to collect sales tax on warmed baked goods that were for "dine-in," rather than "take-out," in violation of section 1105 (d) of the Tax Law, and knowingly defrauded the State of New York and local governments of at least \$10 million in sales tax revenue over the past ten years.

Counsel for Starbucks maintains that this NYFCA action belongs in the Commercial Division, because it may be fairly characterized as a fraud action covered by Commercial Division Rule 202.70 (b) (1). This rule provides that 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. Counsel for the Relators disagrees, contending that the complaint fails to allege a breach or violation which arise out of business dealings.

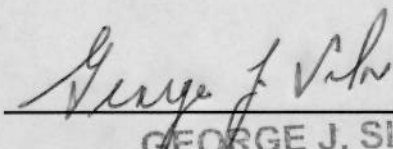
I agree with the Relators' position. Unlike other NYFCA actions which have been assigned to the Commercial Division, this action does not arise from business dealings, but from the sale of certain food items to consumers for "dine-in" consumption which allegedly triggers Starbucks' statutory duty to collect and remit sales tax on those items. In People of the State of N.Y. ex rel. Empire State Ventures, LLC v Sprint Nextel Corp., et

al., Index No. 103917/2011 (Admin. Order dated May 2, 2012), not only did the complaint allege that the defendants had knowingly failed to pay sales tax on the sale of wireless telephone services, but also that the defendants' failure to pay such taxes arose from a nationwide scheme to gain an advantage over its competitors.

For these reasons, Starbucks' request for assignment to the Commercial Division is denied.

Dated: August 21, 2017

ENTER:



, A.J.

GEORGE J. SILVER
J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION