

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

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

---

BATAVIA OPERATING, LLC,

Plaintiff,

vs.

INDEX NO. 655291/2017

BATAVIA HEALTH CARE CENTER, LLC and TENZER  
AND LUNIN LLP, in its capacity as Escrow Agent and  
Stakeholder,

Defendants,

---

Administrative Order:

By letter dated August 16, 2017, plaintiff's counsel timely requests that this action, as well as Mohawk Operating, LLC v MVNH Associates, LLC, et al. (Index No. 655290/2017), be assigned to the Commercial Division pursuant to Commercial Division Rule 202.70 (e). No objection to the request has been received.

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 is sought (Commercial Division Rule 202.70 [a], [b] [1]).

These actions arise out of the purported termination of two contracts to purchase the assets of a nursing home. In this action, plaintiff, the buyer, seeks to recover its \$300,000 down payment, less an admittedly non-refundable payment of \$50,000. In the Commercial Division Addendum plaintiff's counsel filed, he reported plaintiff's claim for compensatory damages as \$250,000. The clerk's office rejected the addendum on the ground that it did not satisfy the \$500,000 monetary threshold for New York County. In my view, the clerk's office was correct. Plaintiff argues that since the complaint also seeks a declaratory judgment that plaintiff properly terminated the contract, that defendant has no right to any part of the down payment other than \$50,000, and that the escrow agent must return \$250,000 to plaintiff, assignment to the Commercial Division is proper. However, this case is clearly about the plaintiff's recovery of the sum of \$250,000, whether it be by way of a money judgment or judicial directive to the alleged escrow agent, and thus does not belong in the Commercial Division in this county.

The plaintiff's request for assignment to the Commercial Division is denied. However, this case is clearly related to Mohawk Operating, LLC v MVNH Associates, LLC (Index No. 655290/2017), and the General Clerk's Office is directed to assign both actions to the same non-commercial part.

Dated: September 11, 2017

ENTER: George F. Riba, A.J.

Check one: ☐ FINAL DISPOSITION

☒ NON-FINAL DISPOSITION