

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

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

THE CITY OF NEW YORK,

Plaintiff,

- v -

INDEX NO. 451648/2017

FC 42nd STREET ASSOCIATES, L.P.,

Defendant.

Administrative Order:

By letter dated August 24, 2017, counsel for defendant FC 42nd Street Associates, L.P. (FC) timely requests assignment of this action to the Commercial Division pursuant to Commercial Division Rule 202.70 (e). The court has not received any opposition to the request.

Transactions involving commercial real property, excluding actions for the payment of rent only, should 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] [3]).

This action arises out of a 99-year commercial lease of certain real property and improvements in Times Square to FC. The leased premises consist of a 312,000 square-foot complex at 234-242 West 42nd Street that has been home to AMC Theaters, Madame Tussauds, and other businesses since 1996. The ground lease is divided into various rental periods. The first rental period will end on September 14, 2018, at which time the rent for the second rental period must be calculated based on a percentage of fair market value (FMV). The parties have different interpretations of how FMV is to be calculated and have arrived at vastly different appraisals of the value of the leased land (\$342 million by the City versus 27.24 million by FC), resulting in this lawsuit by the City seeking a declaratory judgment that the existing subleases for the leased premises be disregarded in determining FMV.

The Commercial Division Addendum filed by FC's counsel states that the relief sought is a "declaratory judgment concerning the calculation of a rent reset where the parties' divergent positions result in a difference of millions of dollars regarding rent payable under the Ground Lease." I agree that this is not an action for the payment of rent only, and that the complaint raises complex questions of commercial and arbitration

law and belongs in the Commercial Division.

The General Clerk's Office is directed to reassign this case at random to a Justice of the Commercial Division. (A motion to compel arbitration is presently returnable on October 4, 2017 in the E-Filed Submission Part.)

Dated: September 11, 2017

ENTER: George J. Silver, A.J.

Check one: ☐ FINAL DISPOSITION

☒ NON-FINAL DISPOSITION