

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

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

MARY ZOUHADANIS,

Plaintiff,

- v -

INDEX NO. 306271/2017

CHARLES RUTENBERG LLC,

Defendant.

Administrative Order:

By letter dated August 25, 2017, counsel for defendant Charles Rutenberg LLC requests assignment of this action to the Commercial Division pursuant to Commercial Division Rule 202.70 (e). No opposition 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 relief is sought (Commercial Division Rule 202.70 [a], [b] [1]).

Defendant's counsel filed a Commercial Division Addendum on or about August 11, 2017, in which he reported that plaintiff's claim for compensatory damages was \$42,725. He also reported that his client's "not yet filed" counterclaims will include breach of contract and tortious interference with business and other causes of action "based on a number of factual scenarios," and that damages are expected to exceed \$500,000. While this court has ruled on multiple occasions that the monetary threshold can be met by the ad damnum clause of a counterclaim (see e.g. LCS Restoration Corp. v Workspace, Inc., Index No. 155032/2016 [Admin. Order dated Oct. 4, 2016]; Goldberg v Kooser, Index No. 651601/2016 [Admin. Order dated Aug. 17, 2016]; Krauter & Co. v Ross, Index No. 160972/2015 [Admin. Order dated Jan. 27, 2016]), in each of these cases, a responsive pleading with actual counterclaims had been filed in the action. Whether a case belongs in the Commercial Division must be based on the actual claims and counterclaims in the action, and not on proposed or anticipatory pleadings.

For these reasons, the request is denied.

Dated: September 11, 2017

ENTER: George J. Silver, A.J.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION