

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

PRESENT: Hon. Peter H. Moulton
Administrative Order

BOOM FITNESS PARK AVE., INC.; 4 PARK
FITNESS CORP.; BOOM FITNESS THIRD AVE.,
INC.; 81 FITNESS CORP.; and FITNESS CORP.,

Plaintiffs,

- v -

INDEX NO. 651428/2017

CRUNCH, LLC,

Defendant.

Administrative Order:

By letter dated April 28, 2017, defendant's counsel requests assignment of this action to the Commercial Division pursuant to Commercial Division Rule 202.70 (e). Plaintiffs' counsel does not oppose the request, and it is deemed timely.

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]). The complaint in this action alleges claims for breach of an Asset Purchase Agreement, pursuant to which defendant acquired substantially all of the plaintiffs' assets. Defendant has asserted counterclaims alleging that plaintiffs breached their agreement by making a number of false representations and material omissions relating to revenues, membership rolls, and relevant contracts. Defendant seeks more than \$2.65 million on its counterclaims. 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]).

The request is granted. The General Clerk's Office is directed to randomly re-assign this case from I.A.S. Part 7 (Lebovits, J.) to a Justice of the Commercial Division.

Dated: May 9, 2017

ENTER: P. H. Moulton, A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION