

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

PRESENT: HON. DEBORAH A. KAPLAN

Administrative Judge

SHEPARDSON STERN & KAMINSKY LLP

INDEX NO. 654264/2018

Plaintiff,

- v -

TOMMY JOHN, INC.,

Defendant.

**ADMINISTRATIVE
ORDER**

By letter dated January 24, 2019, David G. Ebert, Esq, counsel for defendant Tommy John, Inc. requests that this action be assigned to the Commercial Division pursuant to Uniform Rule 202.70.

Plaintiff commenced this action on August 27, 2018, and the complaint was served on defendant on October 5, 2018. Defendant filed the answer on November 23, 2018. On January 14, 2019, defendant filed a Request for Judicial Intervention (RJI) and a Commercial Division Addendum. Since the filing was more than 90 days after service of the Complaint the case was assigned to a general part (Crane, J).

Although Section 202.70 (d) of the Rules of the Commercial Division of the Supreme Court requires filing of the RJI and Commercial Division addendum within 90 days of service of the complaint, subsection (e) further provides that:

... notwithstanding the time periods set forth in subdivisions (d) and (e) of this section, for good cause shown for the delay a party may seek the transfer of a case to the Commercial Division by letter application (with a copy to all parties) to the Administrative Judge.

Here, counsel writes:

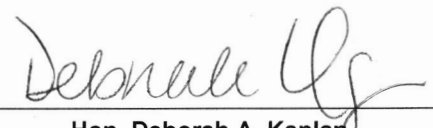
We respectfully submit that there is good cause to have the case assigned to the Commercial Division. For the past few months, including after the filing of the Complaint, the parties were and have

been in discussions to resolve the matter consensually. As a result, the parties did not seek judicial intervention for any reason, while their respective pleadings were served and filed. Moreover, this case satisfies all of the threshold factors for designation as a Commercial Division case under Rule 202.70. The amount in controversy is significantly over the threshold specified in Rule 202.70(a), and the subject matter of the case falls under Rule 202.70(b)(1), as it is a dispute arising from damages pursuant to an agreement relating to corporate stock and related counterclaims. In addition, the parties have conferred and both are in agreement that the case should be adjudicated in the Commercial Division. For these reasons, we respectfully request that this case be designated as a Commercial Division case and that it should be assigned to an appropriate justice in that Part.

The court is satisfied that the causes of action alleged in the complaint arise out of business dealings, and that the action falls within the standards for assignment of cases to the Commercial Division (see Uniform Rule 202.70 [a]). Although the RJL and Commercial Division addendum were not filed within 90 days of service of the complaint (see Uniform Rule 202.70 [d]), good cause to excuse the delay (which was relatively slight) has been demonstrated.

Accordingly, the request for assignment to the Commercial Division is granted. The General Clerk's office is directed to randomly transfer this action from IAS Part 15 (Crane, J.) to a Justice of the Commercial Division.

DATE: Feb 6, 2019



Hon. Deborah A. Kaplan
Administrative Judge
Supreme Court, New York County
Civil Branch