

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

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

STEPHANIE MELILLO,

Plaintiff,

- v -

INDEX NO. 655110/2017

MASS COMMUNICATIONS,

Defendant.

Administrative Order:

By letter September 19, 2017, defendant's counsel timely 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, including employment agreements containing restrictive covenants, 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 that the plaintiff was terminated as an employee of the defendant without just cause. The complaint seeks monetary damages of approximately \$260,000 as well as a declaration that the restrictive covenant in her written employment agreement is unenforceable. Defendant has filed a counterclaim seeking a declaration that the restrictive covenant is enforceable and an injunction preventing plaintiff from taking any action prohibited under its terms. The Clerk's office rejected the Commercial Division Addendum on the ground that "this action primarily involves claims for monetary damages (less than the monetary threshold for the Comm Div), despite the technical inclusion of equitable &/or declaratory claims."

Defense counsel maintains that the issue of the enforceability of the restrictive covenant is a principal issue in the case. Accordingly, the request is granted and the General Clerk's Office is directed to randomly re-assign this case to a Justice of the Commercial Division. However, if the newly-assigned Commercial Division Justice determines, after further inquiry, that the primary issue in the case is a dispute over unpaid salary and compensation in an amount less than \$500,000, he or she may transfer this action to a non-commercial part in accordance with Commercial Division Rule 202.70 (f) (1).

Dated: September 29, 2017

ENTER: George J. Silver, A.J.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION