

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

PRESENT: Hon. Peter H. Moulton
Administrative Order

LIGHT OF DAY FX, LLC,

Plaintiff,

vs.

INDEX NO. 651173/2015

CHARLES NORDEEN and ALL GOOD THINGS
MEDIA LLC f/k/a WE BUT ONE LLC,

Defendants,

Administrative Order:

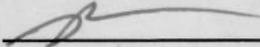
By letter dated April 9, 2015, counsel for plaintiff timely requests that this action be transferred from I.A.S. Part 15 (Rakower, J.) into the Commercial Division pursuant to the Rules of the Commercial Division, Uniform Rule 202.70 (e). No objection to the request has been received.

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 monetary threshold is met or equitable or declaratory is sought (Uniform Rule 202.70 [a], [b] [1]).

In this action, plaintiff asserts claims against a former member of the plaintiff limited liability company (LLC) for breach of the LLC agreement, breach of an employment agreement, breach of fiduciary duty, unjust enrichment and conversion. It is not disputed that the amount in controversy does not meet the \$500,000 threshold for New York County. Plaintiff argues that since the complaint also seeks a declaratory judgment, assignment to the Commercial Division is proper. However, the ninth cause of action seeks only a declaration that the two agreements were breached by the defendants, excusing the plaintiff's non-performance. This declaratory relief is clearly ancillary to the plaintiff's claims for monetary damages and is not the "principal claim" in the lawsuit.

Accordingly, the request for a transfer to the Commercial Division is denied.

Dated: April 15, 2015

ENTER:  _____, A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION