

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

TOPTAL, LLC,

Plaintiff,

v.

BLOOMBERG L.P.,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

C.A. No. N25C-01-266 FJJ

ORDER

Having considered Defendant Bloomberg L.P.’s Motion for a 12-Person Jury and the response thereto, it appears to the Court that:

1. Defendant has filed a motion for a 12-person jury trial. The caption of the Complaint included a demand for a jury without indicating the number of jurors desired. The caption of Defendant’s Answer similarly included “Jury Trial Demanded” without a specified number of jurors. The Prayer for Relief in Defendant’s Answer did include a demand for a jury of 12 on all triable issues. This does not comply with the requirements of Superior Court Rule 38(bb) which provides that “[w]here a demand for a trial by jury is endorsed on a pleading . . . it shall be typed or written on the first page of the pleading, immediately following the caption of the case.”

2. The Motion papers reflect that Defendant reached out to Plaintiff in April 2026 to advise that it desired a 12-person jury and request Plaintiff stipulate to the same. Plaintiff responded that it would not stipulate a 12-person jury trial, resulting in the instant motion.

3. By failing to follow the technical rules of Superior Court Rule 38, Bloomberg has waived its right to a 12-person jury trial.¹ Therefore, it is appropriate to analyze the instant motion under the body of law that deals with a party's initial waiver of a jury trial followed by a later request for one. Under Superior Court Rule 39(b), the Court may exercise its discretion to order a jury trial where a party has previously waived that right.² In exercising its broad discretion to decide whether or not to grant relief from waiver, the Court is guided by the following factors: (1) the timeliness of the request; (2) whether the failure to make the jury trial demand was due to mistake or excusable neglect; (3) whether the action is particularly suit for a jury trial or is better suited for a bench trial; and (4) whether allowing a jury trial would prejudice the rights of the adverse party, substantially delay the trial, or would interfere with the orderly disposition of the Court.³

¹ Del. Super. Ct. Civ. R. 38(e).

² Del. Super. Ct. Civ. R. 39(b).

³ See *Lost in Rehoboth, LLC v. Broadpoint Constr., LLC*, 2025 WL 1483411, at *2-3 (Del. Super. May 23, 2025); *Kalix v. State*, 2020 WL 865406, at *1 (Del. Super. Feb. 18, 2020); *Commonwealth Const. Co. v. Cornerstone Fellowship Baptist Church, Inc.*, 2005 WL 3098924, at *3 (Del. Super. Nov. 14, 2005).

4. Applying the above factors, I am granting Defendant's motion for a 12-person jury trial. First, Defendant indicates that when it first discovered its error, it was immediately brought to the attention of the Plaintiff. I find Defendant's action timely. Second, despite Plaintiff's argument, I find that the failure to put the number of jurors in the caption was due to a mistake on the part of the Defendant. This is strongly supported by the fact that the Prayer for Relief contained a request for 12 jurors. The third factor is not relevant to the instant inquiry given that all parties agree and have asked for a jury trial. The question is not whether there should be a jury trial, but how many jurors should decide the case. To grant Defendant's request would not prejudice the Plaintiff, nor substantially delay the trial or interfere with the orderly disposition of the Court. This request comes well before the jury is to be impaneled and well before trial. The fact that there will be 12 jurors not 6 will not substantially delay trial. Nor will the impaneling of 12 jurors as opposed to 6 interfere with the orderly disposition of the matter.

Defendant's Motion for a 12-Person Jury is **GRANTED**.

SO ORDERED this 13th day of August 2026.

/s/ Francis J. Jones
Francis J. Jones, Jr., Judge

cc: All Counsel of record via File & ServeXpress