

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

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

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ROBERT GLADSTONE and MADISON EQUITIES  
LLC,

Plaintiffs,

- v -

INDEX NO. 152738/2017

ANDREW HEIBERGER, TOWN NEW DEVELOPMENT  
SALES AND MARKETING LLC, and TOWN  
RESIDENTIAL LLC,

Defendants.

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Administrative Order:

By letter dated June 26, 2017, counsel for the defendants timely seeks assignment of this case to the Commercial Division pursuant to Commercial Division Rule 202.70 (e). Plaintiffs oppose the request by their counsel's letter of the same date.

This is an action for defamation and intentional infliction of emotional distress. The complaint alleges that the defendants published false and offensive statements about the plaintiffs via email to reporters at The Real Deal online publication, employees of plaintiff Madison Equities LLC, and other business associates of the plaintiffs via email on three occasions in March 2017. Among other statements, the emails accuse Robert Gladstone, the owner of Madison Equities, of "cheating and stealing;" asserted that Gladstone "had a very troubled record, such that "I don't know who would ever invest in you;" and maligned four of plaintiffs' real estate development projects. The complaint alleges that the emails are false and defamatory and has caused harm to Gladstone's personal and professional reputation as well as emotional distress. Monetary damages in an amount not less than \$1 million are sought.

This court has previously ruled that, where the principal claim is defamation not arising out of business dealings between the parties, it does not satisfy the standards for assignment to the Commercial Division under Uniform Rule 202.70 (b) (1). See American Stock Transfer & Trust Co., LLC v Alliance Advisors, LLC, Index No. 104249/11, Admin. Order dated April 15, 2013; Felix Investments, LLC v Advanced Equities, Inc., Index No. 114935/10, Admin. Order dated March 29, 2011; Pitcock v Kasowitz, Benson, Torres & Friedman, LLP, Index No. 601984/08, Admin. Order dated August 11, 2008.

Defendants' counsel contends that the defamatory emails arise out of the parties' business dealings, which was the subject of a lawsuit in this court (see 212 Fifth Avenue Venture, LLC v Town New Development and Marketing, LLC, Index No. 650244/2017). However, the complaint makes no mention of any of these business dealings or this lawsuit, which was discontinued on May 22, 2017 and is marked disposed. Since assignment to the Commercial Division is based on the allegations of the pleadings, defendants' request for assignment to the Commercial Division is denied.

Dated: June 27, 2017

ENTER: George J. Silve, A.J.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION