

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

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

GLENN J. MENDOZA, M.D.,

Plaintiff,

- v -

INDEX NO. 650771/12

AKERMAN SENTERFITT LLP and
ERIC W. OLSON,

Defendants.

Administrative Order:

By letters dated May 17 and 23, 2012, counsel for the plaintiff timely requests a transfer of this action to the Commercial Division. Defendants object as per their counsel's letter dated May 22, 2012.

Plaintiff Glenn J. Mendoza, M.D. was a partner in Children's & Women's Physicians of Westchester LLP (CWPW), which has an exclusive contract to administer the Neonatal Intensive Care Unit at Good Samaritan Hospital Medical Center. Plaintiff was terminated by CWPW in March 2011 as a result of his participation in the practice known as Pranic Healing and Arhatic Yoga. Defendant Akerman Senterfitt LLP is the law firm that represented CWPW and Eric W. Olson is a partner of the firm. Akerman Senterfitt is also defending CWPW in a lawsuit filed by plaintiff last year in Rockland County Supreme Court against both CWPW and Good Samaritan Hospital Medical Center. The complaint in the action here in New York County alleges that the defendants conspired with CWPW "to gather grounds to effect Plaintiff's ouster, and, at the same time, covertly amended the partnership agreement to facilitate Plaintiff's termination from the partnership by changing the procedures and grounds for termination, and then they schemed to obtain the unwitting approval of said amendments by the partners, including Plaintiff, Dr. Mendoza" (Complaint, ¶ 1). The complaint asserts claims for aiding and abetting breach of fiduciary duty, breach of fiduciary duty, fraud, negligent misrepresentation, attorney malpractice and tortious interference with contract.

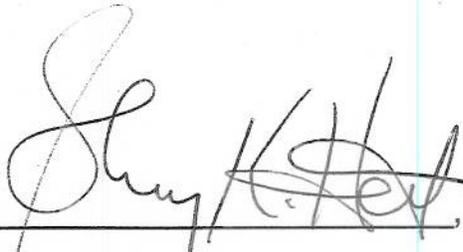
Plaintiff contends that this action falls within the guidelines for assignment to the Commercial Division, relying on Uniform Rule 202.70(b) (1), (7) and (8). Uniform Rule 202.70 (b) provides, inter alia, that actions may be assigned to the Commercial Division if

the principal claims are for: (1) "breach of contract or fiduciary duty, fraud, misrepresentation, business tort . . . where the breach or violation is alleged to arise out of business dealings (e.g., . . . trade secrets, restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices);" or (7) the internal affairs of business organizations; or (8) legal malpractice arising out of representation in commercial matters.

After much consideration, I agree with the defendants that this action does not meet the criteria for assignment to the Commercial Division. Plaintiff's tort claims do not arise from any business relationship between plaintiff and the defendants, and defendants were not parties to plaintiff's Employment Agreement with CWPW or the CWPA Partnership Agreement. This case is not about the internal affairs of CWPW or plaintiff's relationship with his fellow partners, but the involvement of the partnership's legal counsel in the investigation and termination of one of its partners. Although a claim for legal malpractice is alleged, it does not stem from any representation of the plaintiff in a commercial transaction. In short, the overriding nature of this action is not commercial.

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

Dated: May 2nd, 2012

ENTER: , A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION