

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

PRESENT: Hon. Peter H. Moulton
Administrative Order

L.Y.E DIAMONDS LTD., E.G.S.D. DIAMONDS LTD.,
GREGORI ELIZAROV (a/k/a GAVRIEL YELIZAROV),
YOSEF YLAZAROV, MIKHAEL YLAZAROV, and
NATANEL YLAZAROV (a/k/a NATI YIZROV),

Plaintiffs,

- v -

INDEX NO. 151771/2016

GEMOLOGICAL INSTITUTE OF AMERICA, INC.,
RAPAPORT USA, INC., RAPAPORT DIAMOND CORP.,
THOMAS MOSES, JOHN AND JANE DOES 1 THROUGH
10, and OTHER JOHN DOE ENTITIES 1 THROUGH 10,

Defendants.

Administrative Order:

By letter dated May 8, 2017, counsel for defendants Gemological Institute of America, Inc. and Thomas Moses (the GIA defendants) requests that this action be assigned to the Commercial Division pursuant to Commercial Division Rule 202.70. Plaintiffs' counsel opposes the request by his letter dated May 9, 2017, contending that this action does not satisfy the standards for assignment to the Commercial Division.

The plaintiffs in this action are two Israeli diamond trading companies and their owners. The complaint alleges that the plaintiffs' diamond business was harmed beginning on May 12, 2015, when the GIA defendants issued a "GIA Laboratory Alert," and a letter signed by Mr. Moses, notifying the diamond industry that it reasonably suspected that approximately 500 diamonds submitted by the plaintiff companies for testing and grading were subjected to a temporary treatment to temporarily mask the color of the diamond and thus lead to a higher grade. This alleged libel was also reported by the Rappaport defendants on its "Diamond.net" website. Mr. Moses, an officer of GIA, testified as to GIA's conclusions at an Israeli arbitration proceeding between the two corporate plaintiffs and others who had purchased diamonds from the corporate plaintiffs. The complaint alleges that these publications, and Mr. Moses' testimony, were defamatory and seeks \$180,000,000 in compensatory and punitive damages. The causes of action alleged are defamation, false light, trade libel, intentional

and negligent interference with a prospective business advantage, tortious interference with a contractual relationship, breach of fiduciary duty, fraud, fraudulent inducement, negligent misrepresentation, civil conspiracy, mail and wire fraud in violation of the Racketeer Influenced and Corrupt Organizations Act (18 USC §§ 1341, 1343), and prima facie tort.

The GIA defendants filed a Request For Judicial Intervention and a Commercial Division Addendum on April 28, 2017. The clerk's office rejected the addendum on May 1, 2017. Although the addendum was not filed within 90 days of service of the complaint, good cause to excuse the delay exists by virtue of the fact that this case was removed to federal court on May 19, 2016 and was not remanded back to this court until April 13, 2017 (see Commercial Division Rule 202.70 [e]).

The GIA defendants contend that this action qualifies for the Commercial Division under Commercial Division Rule 202.70 (b) (1). That section provides that an action will be assigned to the Commercial Division if the principal claims are for breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings, provided the \$500,000 monetary threshold for New York County is met or equitable or declaratory relief is sought. Plaintiffs contend that this is a tort action that does not qualify for assignment to the Commercial Division and that there are no contractual agreements between the individual plaintiffs and any of the defendants. However, the business relationship between the corporate plaintiffs and the GIA defendants is defined by written Client Agreements, pursuant to which GIA agreed to grade the diamonds submitted by the corporate plaintiffs for color, cut, clarity and carat weight, and issue certificates with its findings for each diamond. A defamation case that arises out of commercial business dealings satisfies the standards of Commercial Division Rule 202.70 (b) (1).

Accordingly, the request for assignment to the Commercial Division is granted. The General Clerk's Office is directed to randomly re-assign this case from I.A.S. Part 42 (Bannon, J.) to a Justice of the Commercial Division.

Dated: May 10, 2017

ENTER:  , A.J.

**HON. PETER H. MOULTON
SUPREME COURT JUSTICE**

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION