

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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MARC JACOBOWITZ, YERACHMEAL JACOBSON,
BLUEJAY MANAGEMENT, LLC, BLUEJAY CAPITAL, LLC,
1704 OCEAN AVENUE LLC,

Plaintiffs,

FIRST
AMENDED
COMPLAINT

- against -

MEYER GUTNICK, BEDFORD REALTY MANAGEMENT,
LLC

Index No.:
511754/2020

Defendants.

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Plaintiffs, by their attorneys, Berg & David PLLC, as and for their complaint, allege:

NATURE OF THE ACTION

1. Plaintiffs bring this action against Defendants for defamation per se and a declaratory judgment.

PARTIES

2. Plaintiff Marc Jacobowitz (“Jacobowitz”) is an individual residing in Nassau County, NY.

3. Plaintiff Yerachmeal Jacobson (“Jacobson”) is an individual residing in Nassau County, NY.

4. Plaintiff Bluejay Management, LLC (“Bluejay Management”), is a New York Domestic Limited Liability Company with a business address at 301 Mill Road, Suite L6, Hewlett, NY 11557.

5. Plaintiff Bluejay Capital, LLC (“Bluejay Capital”), is a Delaware Limited Liability Company with a business address at 27 Frost Lane, Lawrence, NY 11559.

6. Plaintiff 1704 Ocean Avenue, LLC (“1704 Ocean”), is a Delaware Limited Liability Company with a business address at 301 Mill Road, Suite L6, Hewlett, NY 11557.

7. Upon information and belief, Defendant Meyer Gutnick (“Gutnick”) is an individual residing at 827 Montgomery Street, Brooklyn, NY 11213.

8. Defendant Bedford Realty Management, LLC (“Bedford”), is a Domestic Limited Liability Company with a business address at 827 Montgomery Street, Brooklyn, NY 11213.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this matter and venue is proper in Kings County because: (a) Defendants reside in and transacts business in Kings County; and (b) the conduct and acts of Defendants complained of herein occurred, all or in substantial part, in Kings County.

FACTS COMMON TO ALL CLAIMS

10. Jacobowitz is an individual engaged in real estate investment, development, and management.

11. Jacobson is an individual engaged in real estate investment, development, and management.

12. Jacobowitz and Jacobson (the “Individual Plaintiffs”) are co-founders and managing members of Bluejay Capital, a limited liability company engaged in real estate investment, development, and management. Jacobowitz is the managing member of Bluejay Management, a limited liability company engaged in the management of real estate (Bluejay Capital and Bluejay Management are collectively referred to herein as “Bluejay”)

13. Jacobowitz, Jacobson and Bluejay identify real estate investment opportunities and solicit investments for said opportunities from individuals and entities, as well as contributing their own capital.

14. In or before 2010, the Individual Plaintiffs began a business relationship with Defendant Meyer Gutnick.

15. Over the ensuing several years, Gutnick invested in a number of real estate projects arranged and managed by the Individual Plaintiffs.

16. The real estate investments were structured such that the investors in a particular property formed a limited liability company to purchase and own the property, with each investor receiving a membership share in the LLC proportionate to their overall investment.

17. Gutnick invested in several projects through Defendant Bedford Realty Management LLC. On information and belief, Gutnick is the managing and only member of Bedford.

18. Through Bedford, Gutnick invested in the following LLCs¹

- Eastern Parkway Investors, LLC
- Asbury Partners, LLC
- Arlington 2651 Partners, LLC
- Empire Tower Partners, LLC
- Freds Partners, LLC
- 1704 Ocean Avenue, LLC

19. Plaintiff 1704 Ocean is one of the LLC's in which Gutnick, through Bedford, invested. Individual Plaintiffs are the managing members of 1704 Ocean. Bedford is a member of 1704 Ocean.

¹ The list of real estate investment LLCs is intended as illustrative and is not exhaustive.

20. Jacobowitz, Jacobson and/or Bluejay, as managing members of the LLCs, regularly provided the investor members, including Gutnick, with updates on the operation of the various LLCs.

21. Beginning in or around 2014, Gutnick and/or his representatives/agents began requesting detailed information on the entities, including monthly profit and loss reports, annual partnership tax returns, and “detailed calculation[s] for all distributions made to Meyer Gutnick for all years of these investments”.

22. Plaintiffs provided Gutnick with all documents requested.

23. Gutnick and/or his accountant sought clarification and explanation of the details contained in the documents, and Individual Plaintiffs took time to go over the documents, answer questions, and provide clarification.

24. Despite receiving documents responsive to his requests, Gutnick continued to ask for the same documents, over a period of several years. Gutnick himself acknowledged that some of the documents he was requesting may already have been in his possession.

25. After responding in full to the same requests, and providing the same documents to Gutnick, several times over, Individual Plaintiffs informed Defendant that they had no more documents to provide.

COUNT I
Defamation of Marc Jacobowitz by Meyer Gutnick

26. Plaintiffs hereby incorporate by reference the allegations contained in Paragraphs 1- 25 above.

27. On or about June 22, 2020, Gutnick sent text messages to many close investors and potential investors, including David Junik, an individual who is known to all parties and

professionally involved in real estate development in New York City. In reference to Jacobowitz, Gutnick stated “They weren’t transparent”. That statement was false.

28. The false statement made by Gutnick caused injury to Jacobowitz in his trade, business, or profession.

29. Jacobowitz is entitled to recover compensatory damages, nominal damages and damages for emotional distress resulting from Gutnick’s defamation.

COUNT II

Defamation of Yerachmeal Jacobson by Meyer Gutnick

30. Plaintiffs hereby incorporate by reference the allegations contained in Paragraphs 1- 29 above.

31. On or about June 22, 2020, Gutnick sent text messages to many close investors and potential investors, including to David Junik, an individual who is known to all parties and professionally involved in real estate development in New York City. In reference to Jacobson, Gutnick stated “They weren’t transparent”. That statement was false.

32. The false statement made by Gutnick caused injury to Jacobson in his trade, business, or profession.

33. Jacobson is entitled to recover compensatory damages, nominal damages and damages for emotional distress resulting from Gutnick’s defamation.

COUNT III

Defamation of Bluejay Management LLC and Bluejay Capital LLC by Meyer Gutnick

34. Plaintiffs hereby incorporate by reference the allegations contained in Paragraphs 1- 33 above.

35. On or about June 22, 2020, Gutnick sent text messages to many close investors and potential investors, including to David Junik, an individual who is known to all parties and

professionally involved in real estate development in New York City. In reference to Bluejay, Gutnick stated “They weren’t transparent”. That statement was false.

36. The false statement made by Gutnick caused injury to Bluejay by directly affecting its credit or the management of its business and necessarily caused pecuniary loss.

37. Bluejay is entitled to recover compensatory damages and nominal damages resulting from Gutnick’s defamation.

COUNT IV

Defamation of Marc Jacobowitz by Meyer Gutnick

38. Plaintiffs hereby incorporate by reference the allegations contained in Paragraphs 1- 37 above.

39. On or about June 29, 2020, Gutnick sent an email to Steven Nachman, an individual who is known to all parties and is an attorney involved in real estate development in New York City. Gutnick copied several other individuals on the email, including Yossi Samuels, an individual unrelated to Defendants’ dealings with Plaintiffs. In reference to Jacobowitz and requests to produce documents, Gutnick stated “[s]ome of these requests were answered but many important documents which I repeatedly requested for were not sent to me and my request for their production was repeatedly ignored.” That statement was false.

40. In the same email to Steven Nachman, Gutnick wrote that Jacobowitz was “blatantly in breach of Section 9.2 of the Operating Agreements which states ‘The Managing Members must maintain complete and accurate books of [Eastern Parkway Investors LLC], which includes without limitation, all receipts and expenditures, assets and liabilities, profits and losses, and all other records necessary for recording the Company's business and affairs.’” Section 9.2 further requires [Eastern Parkway Investors LLC’s] books ‘to be open to inspection and

examination by each Member.” The statement that Jacobowitz was in breach of Section 9.2 of the operating agreement for any of the LLC’s was false.

41. The false statements made by Gutnick caused injury to Jacobowitz in his trade, business, or profession.

42. Jacobowitz is entitled to recover compensatory damages, nominal damages and damages for emotional distress resulting from Gutnick’s defamation.

COUNT V
Defamation of Yerachmeal Jacobson by Meyer Gutnick

43. Plaintiffs hereby incorporate by reference the allegations contained in Paragraphs 1- 42 above.

44. On or about June 29, 2020, Gutnick sent an email to Steven Nachman, an individual who is known to all parties and is an attorney involved in real estate development in New York City. Gutnick copied several other individuals on the email, including Yossi Samuels, an individual unrelated to Defendants’ dealings with Plaintiffs. In reference to Jacobson and requests to produce documents, Gutnick stated “[s]ome of these requests were answered but many important documents which I repeatedly requested for were not sent to me and my request for their production was repeatedly ignored.” That statement was false.

45. In the same email to Steven Nachman, Gutnick wrote that Jacobson was “blatantly in breach of Section 9.2 of the Operating Agreements which states ‘The Managing Members must maintain complete and accurate books of [Eastern Parkway Investors LLC], which includes without limitation, all receipts and expenditures, assets and liabilities, profits and losses, and all other records necessary for recording the Company's business and affairs.’” Section 9.2 further requires [Eastern Parkway Investors LLC’s] books ‘to be open to inspection and

examination by each Member.” The statement that Jacobson was in breach of Section 9.2 of the operating agreement for any of the LLC’s was false.

46. The false statements made by Gutnick caused injury to Jacobson in his trade, business, or profession.

47. Jacobson is entitled to recover compensatory damages, nominal damages and damages for emotional distress resulting from Gutnick’s defamation.

COUNT VI

Defamation of Bluejay Management LLC and Bluejay Capital LLC by Meyer Gutnick

48. Plaintiffs hereby incorporate by reference the allegations contained in Paragraphs 1- 47 above.

49. On or about June 29, 2020, Gutnick sent an email to Steven Nachman, an individual who is known to all parties and is an attorney involved in real estate development in New York City. Gutnick copied several other individuals on the email, including Yossi Samuels, an individual unrelated to Defendants’ dealings with Plaintiffs. In reference to Bluejay and requests to produce documents, Gutnick stated “[s]ome of these requests were answered but many important documents which I repeatedly requested for were not sent to me and my request for their production was repeatedly ignored.” That statement was false.

50. The false statement made by Gutnick caused injury to Bluejay by directly affecting its credit or the management of its business and necessarily caused pecuniary loss.

51. Bluejay is entitled to recover compensatory damages and nominal damages resulting from Gutnick’s defamation.

COUNT VII

Declaratory Judgment

52. Jacobson and Jacobowitz are the managing members of Plaintiff 1704 Ocean.

53. Bedford is a member of 1704 Ocean.

54. The operating agreement for 1704 Ocean states, in relevant part:

Section 8.5. Removal of Member. In the event that any member of the Company or, for any member which is an Entity, then in the event that any manager, officer, director, trustee, member, shareholder or beneficiary of such member... (iii) engages in or performs any act or omission which, in the reasonable judgment of the Managers, is in bad faith and is detrimental to the interests of the Company, its Members or its Managers, then the Managers shall have the right to remove and expel such Member (the "Removed Member") from the Company. With[in] 7 of notice of such removal, the Company shall pay to the Removed Member the full balance of his capital account less... (ii) any amount which the Managers, in their good faith judgment, believe is owed to the Company by such Removed Member, include[ing] to compensate the Company for damages sustained by reason of the conduct described in Subsections (i) through (iii) of this Section 8.5.

55. Bedford is an entity-member of the 1704 Ocean. Upon information and belief, Gutnick is the managing member of Bedford.

56. In the reasonable judgment of 1704 Ocean's managers, Jacobowitz and Jacobson, Gutnick's acts, as detailed herein, were in bad faith and detrimental to the interests of 1704 Ocean.

57. By letter dated June 23, 2020, in accordance with 1704 Ocean's operating agreement, Jacobowitz and Jacobson gave notice to Gutnick and Bedford removing and expelling Bedford as member due to Gutnick's acts. More than seven days have elapsed since 1704 Ocean served notice of removal on Gutnick.

58. In the good-faith judgment of Jacobowitz and Jacobson, the amount owed to 1704 by Gutnick/Bedford to compensate 1704 Ocean for the damages sustained by reason of the conduct complained of herein exceeds the amount in Bedford's capital account.

59. Plaintiffs 1704 Ocean, Jacobowitz and Jacobson are entitled to a declaratory judgment that the damages sustained as a result of Gutnick's defamation exceeds the balance of Bedford's capital account and that Plaintiff 1704 Ocean is entitled to withhold the balance of Bedford's capital account as compensation for said damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs hereby pray for judgment against Defendants on (1) Count I through VI herein, and for recovery for economic and emotional damages in an amount to be proven at trial but not less than \$20 million, and on (2) Count VII herein, for declaratory judgment that the amount necessary to compensate 1704 Ocean Avenue LLC for Defendants' conduct detrimental to the interests of the company exceeds the balance of Bedford's capital account and that Plaintiff 1704 Ocean is therefore entitled to withhold the balance of Bedford's capital account as compensation for said damages.

Dated: Brooklyn, New York
July 9, 2020

BERG & DAVID PLLC

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