

Exhibit 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

<p>IN THE MATTER OF THE APPLICATION OF NISSIM KASSAB,</p> <p style="text-align: center;"><i>Petitioner,</i></p> <p>For An Order Dissolving Mall 92-30 Associates LLC Pursuant To N.Y. LLC Law §702 And An Order Dissolving Corner 160 Associates Inc. Pursuant To N.Y. Bus. Corp. Law § 1104-a And For Appointment Of A Receiver Under § 1202(A)(1).</p> <p style="text-align: center;">-against-</p> <p>AVRAHAM KASSAB</p> <p style="text-align: center;"><i>Respondent.</i></p>	<p style="text-align: center;">Index No.: 14428/2013</p> <p style="text-align: center;">AMENDED VERIFIED PETITION</p>
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Petitioner Nissim Kassab (“Nissim”), through his undersigned counsel, submits this amended verified petition for judicial dissolution of Corner 160 Associates, Inc. (“Corner”) pursuant to N.Y. Bus. Corp. Law (“BCL”) § 1104-a, and appointment of a receiver for Corner pursuant to BCL § 1202(a)(1); for judicial dissolution of Mall 92-30 Associates LLC (“Mall”), pursuant to N.Y. Limited Liability Company Law (“N.Y. LLCL”) § 702 and for the appointment of a temporary receiver for Mall pursuant to CPLR 6401. Alternatively, Petitioner seeks to withdraw as a member of Mall and to obtain the fair value of his membership interest pursuant to the operating agreement and/or the N.Y. LLCL, or to exercise his common law right to an appraisal and equitable buyout, or to rescind the Operating Agreement of Mall for the material breaches thereof by Respondent Avraham Kasab (“Avraham”), likewise resulting in Nissim obtaining the fair value of his membership interest. In addition, Nissim seeks damages for

breach of contract, damages for breach of fiduciary duty and a declaratory judgment seeking to invalidate the purported contract under which Respondent claims to own his shares in Corner, and other equitable relief, including without limitation removal of Avraham from management of Corner and Mall and direction to appraise and sell the Properties owned by Corner and Mall together and distribute the proceeds in accordance with the parties' membership interests.

INTRODUCTION

1. This is a hybrid special proceeding seeking the (a) judicial dissolution of Corner 160 Associates, Inc. ("Corner") pursuant to Section 1104-a of the Business Corporations Law; (b) judicial dissolution of Mall 92-30 Associates LLC ("Mall"), pursuant to Section 702 of the N.Y. LLCL; (c) alternatively, the withdrawal of Petitioner's membership interest in the LLC and the payment of the fair value of that interest and appointment of a temporary receiver for Mall; (d) alternatively, enforcement of Nissim's common law right to an appraisal and equitable buyout from Mall, and/or rescission of the Operating Agreement of Mall, also resulting in Nissim obtaining the fair value of his membership interest; (e) the appointment of a receiver for Corner under BCL Section 1202(a)(1) and for Mall pursuant to CPLR 6401; (f) damages for breach of contract; (g) damages for breach of fiduciary duty; (h) a declaratory judgment seeking to invalidate the Option Agreement under which Respondent claims to own his shares in Corner, and (i) other equitable relief, including without limitation removal of Avraham from management of Corner and Mall and direction to appraise and sell the Properties owned by Corner and Mall together and distribute the proceeds in accordance with the parties' membership interests. Those of Petitioner's claims that were asserted in the previous version of the Petition and dismissed by the Court's Order dated March 12, 2014, are asserted herein subject to reinstatement by the Court and/or as a result of the Petitioner's appeal from the said Order.

2. This case is about the oppression and freezing out of a minority member of an LLC and a minority shareholder of a corporation, by his brother. Briefly, in 1992 and 1994, Nissim acquired two parcels of realty in Jamaica, Queens, in the name of Corner, of which Nissim was then the sole shareholder. In the context of the Kassab family, Avraham took on the role of Nissim's father, because Nissim and Avraham's actual father was elderly by the time the family immigrated to the United States and was never involved in the business. Thus, Nissim looked up to Avraham and always placed special trust and confidence in him. When Avraham proposed that Nissim give him an option to purchase 75% (without any consideration whatsoever) of Corner for \$25,000 at any time in the 25 years after 1992, Nissim believed that Avraham was acting in his best interests. Nissim was even convinced to prepare a will naming Avraham as his beneficiary in the event of his death. The deep level of trust Nissim had in Avraham was not merited. In fact, Avraham was using his undue influence over Nissim to prepare the way to push Nissim out of the family business at a time of his choosing.

3. In or about 2001, Nissim and his brother Avraham (who is also sometimes known as "Albert" and spells the family name with one "s") formed Mall and acquired a contiguous parcel of real property in Jamaica, Queens. In or about 2002, Avraham purportedly exercised the option he had convinced Nissim to grant him in 1992 and thereby claims to have obtained a 75% stake in Corner. Mall and Corner (the "Companies") together hold substantial real estate in Jamaica, Queens, real estate that has become highly valuable over the years. On information and belief, the value of each of the properties held by the Companies is maximized if these contiguous properties are sold together.

4. Since 2001, Nissim and Avraham have been in business together at the site of the property owned by Mall and Corner. At all relevant times, Nissim is and has been a 25%

managing member of Mall; and since 2002, Nissim has been at least the 25% owner of Corner (and in reality the 100% owner). Avraham purportedly holds the balance of the membership interests and shares in Mall and Corner respectively. Before 2011, the relationship between Avraham and Nissim had seemed to be cooperative. In reality, it was not.

5. Recently, Avraham decided to execute on the plan he conceived long ago to freeze Nissim out of both Corner and Mall. Beginning in November 2011, Avraham has been attempting to appropriate to himself the development potential of the underlying properties by insisting that Nissim sign agreements that would permit Avraham to buy out Nissim's interest subject to an absolute cap of \$5 million for Nissim's interest in the two Companies regardless of the fair value of his interests (and recently, that offer has fallen to \$3.25 million). Because Nissim has refused to sign those agreements, Avraham has been trying to put financial and other pressure on him to force him to do so, including trying to cancel the health insurance policy heretofore provided by the Companies for Nissim and his family of five children while maintaining the health insurance coverage provided by the Companies for Avraham and his family.

6. Avraham has also attempted to force Nissim to agree to cede all management and control of Corner and Mall to him.

7. Because Nissim has refused to accept Avraham's efforts to appropriate the value of Nissim's interest in the Companies, Avraham has now come up with a third tactic to achieve his goal. In March 2013, Avraham (by his attorney) issued a notice for a so-called shareholder meeting for Corner and Mall, at which Avraham proposed to adopt resolutions removing Nissim from management, excluding Nissim from the business's premises and demanding an accounting and making a capital call upon Nissim to dilute his ownership interests.

8. This latest attack on Nissim's rights demonstrates what has already become obvious: neither Mall nor Corner is a viable business. Both entities must be dissolved and the assets distributed. Indeed, leaving the issues of shareholder oppression aside, both men are managing members of the LLC, as well as the sole board members and shareholders of the corporation. They are hopelessly deadlocked. Dissolution or its equivalents are the only means to resolve this impasse.

9. Petitioner has commenced a single Special Proceeding to wind up the affairs of both entities because the two entities own adjacent plots of land in Queens which Nissim and Avraham have treated as a single development opportunity, and currently operate as a single parking lot. In reality Mall and Corner operate as a single business, and the underlying real estate should be treated as a single piece of property. At present, a parking lot runs across the lots, and the only business of the two Companies is to own the shared real property and operate the parking lot.

10. Petitioner has brought all of his claims relating to Mall and Corner in a single proceeding because a corporate dissolution proceeding must be brought by special proceeding under BCL § 1104, and the New York courts have long allowed the consideration of other causes of action in a special proceeding for the dissolution of corporation—especially where, as here, the issues are intertwined—in the interests of judicial economy.

FACTUAL BACKGROUND

A. The Parties

11. Petitioner Nissim Kassab is an individual who resides in Brooklyn, New York.

12. Respondent Avraham Kasab, sometimes known as Albert Kasab, is Nissim's brother, although he spells the family name slightly differently. He is substantially older than

Nissim; the relationship between them has been more akin to father and son rather than older and younger brother. Avraham resides in Nassau County, New York.

13. Respondent Mall is a New York Limited Liability Company, with a principal place of business in Jamaica, Queens, New York. Pursuant to its operating agreement, the Managing Members of Mall are Avraham and Nissim. Avraham is the 75% Managing Member of Mall. Nissim is the 25% Managing Member of Mall. A true and correct copy of Mall's operating agreement, which was signed March 13, 2001, is attached hereto as Exhibit 1.

14. The operating agreement provides that the "business and affairs of [Mall] shall be managed by the Members." (Ex. 1, §5). The operating agreement provides that the purpose of Mall is to engage "in any lawful act or activity for which limited liability companies may be formed under the LLCL and engaging in any and all activities necessary or incidental to the foregoing." (Ex. 1, § 3). Further, the operating agreement specifically provides that "[n]o Member is required to make any additional capital contributions to the Company." (Ex. 1, § 6). Further, the Mall Operating Agreement provides that it "shall be governed by, and construed under, the laws of the State of New York." (Ex. 1, § 14).

15. Paragraph 10 of the operating agreement provides that "a Member may withdraw from the Company in accordance with the LLCL." (Ex. 1, ¶ 10). Since its founding in March 2001, Mall's sole business has been to own and maintain the real property described below.

16. Respondent Corner is a New York corporation, formed in 1992, with a principal place of business in Jamaica, Queens, New York. Its premises are shared with those of Mall. Corner's Certificate of Incorporation is attached hereto as Exhibit 2.

17. Corner was founded by Nissim Kassab, and was 100% owned by Nissim when it was founded in 1992.

18. In that year, however, Avraham induced Nissim to enter into an agreement purportedly granting Avraham the right to purchase 75% of the shares of Corner at any time in the next 25 years for \$25,000 (*See* Ex. 3) (the “Option Agreement”). No consideration was exchanged or was expected to be exchanged in connection with that agreement. As a result, it is null and void, and should be invalidated.

19. In or about 2002, Avraham purportedly exercised the Option Agreement, supposedly transferring 75% of the shares of Corner to himself. That transaction was null and void because the Option Agreement should be invalidated. Nonetheless, pursuant to the supposed Option Agreement, the only members of Corner’s Board of Directors since 2002 have been, and are today, Avraham and Nissim. Avraham currently purports to be a 75% owner of Corner’s shares of common stock. Thus, Nissim Kassab is at least a 25% owner of Corner’s shares of common stock. However, because the Option Agreement is null and void and must be invalidated, Nissim is in fact the 100% shareholder of Corner.

20. In addition, to the extent the Option Agreement was a valid agreement, it was the product of a grave breach of fiduciary duty by Avraham with respect to Nissim. He knew that, as the older brother, he had a special relationship with Nissim, his younger brother, and that Nissim reposed a special confidence in him. Indeed, as late as January 11, 2013, Avraham still insisted that “he dealt with u [i.e., Nissim] with the interest of both of us in front of me (and with rahmanut like u said)¹ and this time will be the same.” (Ex. 4, E-mail from Avraham (a/k/a “Albert”) to Nissim, dated January 11, 2013, 17:26:57).

¹ Rahmanut is the transliteration of a Hebrew term roughly meaning “mercy” or “pity,” but with deep familial connotations. *See* Dr. William Chomsky, HEBREW: THE ETERNAL LANGUAGE, *excerpted at* http://www.myjewishlearning.com/culture/2/Languages/Hebrew/History_and_Centrality/Vitality.shtml (“There is, likewise, a wide semantic gulf between the Hebrew *rahamim* or *rahmanut* and the English equivalent ‘pity’ or ‘mercy.’ The Hebrew word connotes love, family feeling (see Genesis 43:30, etc.), even motherliness, since it is related to *rehem* (mother's womb) of the same stem. None of these connotations is implied in the English equivalents.”).

21. Thus, Avraham had a fiduciary duty to Nissim to deal fairly with him. Yet, he caused Nissim to enter into Option Agreement knowing that the transaction was unfair and inequitable, and would allow him to displace Nissim in the future. Nissim trusted his brother, and relied on the oral understandings and agreements between them, pursuant to which the brothers would eventually develop the real property in Jamaica, and share jointly in the substantial profits and income that they expected the property, when developed, to generate. Without those oral understandings and agreements, Nissim would never have been induced to sign the Option Agreement (which is in any event null and void due to lack of consideration). As a further example of the complete trust Nissim had in Avraham, Nissim was also persuaded to execute a will making Avraham his beneficiary.

22. Nissim only became aware of Avraham's scheme to appropriate to himself the substantial profits and income that the property, when developed, is expected to generate, in or about January 2012, when Avraham presented Nissim with two agreements that Nissim had to sign before Avraham would proceed with the brothers' long-standing plan to develop the property. Copies of those two agreements, which Nissim refused to sign, are annexed as Exhibits 5 and 6.

23. Since its formation, Corner's sole business has been to own and maintain the real property discussed below.

B. The Business And The Property.

24. Mall and Corner together own three contiguous parcels of land, designated lots 79, 150 and 24 in Block 10101, in Jamaica, Queens (totaling approximately 41,000 square feet in total). (*See* Ex. 7). Corner acquired Lot 79 in 1992, followed by Lot 150 in 1994. Mall acquired

Lot 24 in 2001. The properties are buildable as of right to about 380,000 square feet (together, the “Property” or “Properties”).

25. Lot 79 was initially improved with buildings for retail businesses, including a discount clothing store, while Lot 150 was initially (and remains today) a parking lot. Lot 24 initially contained retail stores and then was vacant for many years. In 2011, the buildings on Lots 24 and 79 were demolished and the entire Property became a commercial parking lot and the venue for an outdoor flea market. Lot 24, parts of Lot 79 and Lot 150 currently house a commercial parking lot, while the outdoor flea market is on part of Lot 79. The revenue from the parking lot and flea market operations is minor in comparison to the value of the properties if developed.

C. Avraham Attempts To Force Nissim Out Of Corner And Mall.

26. For quite some time, Avraham has been trying to force Nissim out of both Companies on unfavorable terms. The harassment began in earnest in November 2011, when Avraham started to insist that Nissim give him full control of Corner and Mall. In January 2012, Avraham demanded that Nissim sign a Shareholders Agreement for Corner and a new Operating Agreement for Mall (*See* Ex. 5 and 6). These agreements would have entirely divested Nissim from any control over either Mall or Corner, despite the fact that Nissim has long been in charge of day-to-day operations at Mall and Corner. On February 4, 2013, Avraham’s lawyers threatened Nissim that if he did not sign the unfair agreements within a week, Avraham would “be forced to exercise other legal remedies available to him.” (*See* Ex. 8.)

27. When Nissim refused to sign the proposed new Shareholders Agreement and new Operating Agreement, Avraham determined to take even more drastic measures to destroy Nissim’s interest in Corner and Mall, and to force Nissim out. By January 2013, Avraham told

Nissim he was “giving me a lot of headache” and therefore was refusing to “talk or think of anything” (that is, refusing to run the Mall and Corner businesses and directly refusing to give Nissim any information about his plans for developing the Property despite Nissim’s demand) until he was “in the driver seat.” (*See* Ex. 9, E-mail from Avraham to Nissim, dated January 15, 2013, 3:24 pm).

28. For example, the health insurance plan for Nissim, his wife and his five children, has long been provided for him by the Companies. Since setting into motion his plan to remove Nissim, Avraham has been taking steps to force Nissim out of the Companies’ health insurance plan and to leave him and his family without health insurance, while still seeing to it that the Companies paid for health insurance for Avraham and his family. (*See* Ex. 10, letter from Avraham, dated February 4, 2013, changing contact information for insurance plan). Respondent has been attempting to remove Nissim and his family from the medical plan to intimidate him. In addition, prior to 2011, Nissim had access to Mall and Corner’s bank accounts, as a Managing Member of Mall and a Director of Corner. That access was taken away from Nissim in January 2011. Nissim also previously had the right to distributions and salary from both Mall and Corner. These rights were summarily cut off by Avraham during 2011 and 2012, in another effort to drive Nissim out of the business.

29. Nissim and Avraham are parties to a separate written agreement entitling Nissim to 40% of the revenue from the parking lot, dated August 27, 2012 (*See* Ex. 11) (the “40% Agreement”). Specifically, the agreement provides that “All distributions of net income (after operating expenses) from CORNER 160 ASSOCIATES INC and MALL 92-30 ASSOCIATES, LLC shall be made by Albert as follows: (a) to Nissim 25% on account of his interest plus 15% for management services.” (*See* Ex. 11.) That agreement arose out of an agreement between

Nissim and Avraham that Nissim would invest \$125,000 into the companies, to demolish the existing buildings and turn the property into a parking lot. Nissim invested that money in reliance on Avraham's promise that Nissim would be entitled to the Nissim would never have invested those funds if he had knew Avraham's plans to expel him.

30. Nissim has fully performed under the 40% Agreement, providing management services to the parking lot. Yet, Respondent has repeatedly and materially breached this agreement by refusing to pay Petitioner his rightful share from the parking lot, which is in excess of \$1,000,000. Moreover, Avraham has intentionally made sure that the Properties generate almost no money in comparison to their value. Rather than allowing the Property to be developed or sold, or package the property as a ground lease for a "big-box" type store (as was proposed to Avraham) the original purposes of Mall and Corner, Avraham has made sure that the Property be kept as a parking lot and thus produce a miniscule return on investment. Avraham knows that Nissim needs the Property to generate substantial revenue in order to support his family, and has made sure that the Property does not do so.

31. Respondent has repeatedly threatened Nissim with dire consequences if he does not sign written agreements giving Avraham the right, in his sole discretion, to buy out Nissim's interest in the Companies at a low buyout number (never to exceed \$5 million in total, regardless of the fair value of Nissim's interest) with many provisions to reduce further even this unfairly low sum. Indeed, even the \$3.25 million Avraham offered to pay in January of this year was to be paid in installments over 7 years at highly unfavorable interest rate of prime plus 1% interest. (See Ex. 12, E-mail from Avraham to Nissim, dated January 17, 2013). For example, as recently as January 31, 2013, Avraham approached Nissim's assistant and told her that Nissim

needed to sign the documents giving up control of Mall and Corner because otherwise the companies might not “have enough funds to pay our bills for the next 30-45 days.” (*See Ex. 13*).

32. Avraham has also, for quite some time, refused to provide Petitioner with any information concerning the entities, including refusing to give Nissim access to financial statements of either Mall or Corner, or permit him to participate in their management. Indeed, Avraham forced Nissim to hand over control of the financial statements of the Companies to him, and never sent the documents as promised to Nissim’s lawyer. (*See Ex. 13*).

33. When these tactics failed to force Nissim to agree to Avraham’s demands, Respondent threatened that he would unilaterally remove Petitioner from both Companies.

34. A stark example of Avraham’s overreaching occurred on March 4, 2013, when Avraham found Nissim in the offices of the companies and told him to leave, otherwise he would call the police and have him forcibly removed, even though Nissim is a member of the LLC and a shareholder of the Corporation which owns those properties, and has every right to be there. On April 10, 2013, when Petitioner did enter the property, he was met by the employee who has handled the day-to-day operations of the parking lot, and whom Petitioner has known for years. The employee told Nissim that Avraham had directed him not to give Nissim any information whatsoever regarding the parking lot or any aspect of its business, and told Nissim that Avraham had already collected the receipts of the parking lot. The employee added that he had been told Nissim would no longer be involved with the business. Prior to April 10, 2013, the same employee had always answered Nissim’s inquiries about how the parking lot had done in terms of receipts the day before.

D. Having Failed To Coerce Nissim To Leave, Avraham Illegally Attempts To Depose Nissim

35. Because Petitioner refused to knuckle-under these threats and the harassing behavior of Respondent, the Respondent has gone a step further and has attempted to remove Petitioner unlawfully from the management and ownership of the two entities. This is classic oppressive conduct.

36. On March 26, 2013, Corner and Mall each issued a Notice of Special Meeting. A true and correct copy of the Notice of Special Meeting for Corner is attached hereto as Exhibit 14 (the “Corner Notice”). A true and correct copy of the Notice of Special Meeting for Mall is attached hereto as Exhibit 15 (the “Mall Notice”).

37. The Corner Notice purported to set forth an agenda for an April 11, 2013 meeting of the Corner Board of Directors. Among other things, the Corner Notice indicated that the purpose of the April 11 meeting was to (a) remove Nissim Kassab from any management positions; (b) exclude Nissim from Corner’s premises; (c) demand an accounting from Nissim; and (d) demand a capital call from Nissim.

38. Each of these demands is illegal. First, Nissim cannot be removed from his management position at Corner. This action can only be taken by a vote of a majority of Corner’s Board. Because Avraham and Nissim are the only members of Corner’s Board, and Nissim will vote against the proposal, the Board will be deadlocked. Second, Nissim cannot be excluded from Corner’s premises for the same reasons—he will not vote in favor of his own exclusion. Third, no accounting can be demanded from Nissim because, again, such an accounting would require a vote of the majority of shareholders, and Nissim will not vote in favor of such an accounting. Fourth, a corporation (as opposed to a partnership or an LLC) has no authority to raise capital by making a capital call. The only mechanism for raising equity

capital for Corner is to sell common stock. Nissim would vote against any attempt to do so. Thus, the Board would have had no authority to raise additional capital at the April 11 meeting.

39. The Mall Notice purposes to set forth an agenda for an April 11, 2013 meeting of the Mall members. Among other things, the Mall Notice indicates that the purpose of the April 11 meeting is to (a) remove Nissim Kassab from any management positions; (b) exclude Nissim from Mall's premises; (c) demands an accounting from Nissim; (d) demands a capital call from Nissim.

40. Each of these demands was also illegal. First, Nissim cannot be removed from his management position at Mall. Under Section 401(a) of the N.Y. LLCL and Paragraph 5 of Mall's operating agreement, Mall's affairs to be managed by its two managing members, Avraham and Nissim. Thus, unless and until Nissim withdraws from being a managing member of Mall, he continues to have both actual and apparent authority to continue in the management of Mall's affairs. Second, although Avraham may have formal authority as 75% Managing Member to exclude Nissim from Mall's premises, such an effort would be both futile (because Corner and Mall share the same premises) and oppressive. Third, the demanded accounting is improper because any accounting must take into account all of the LLC's affairs, because Avraham has excluded Nissim from management. Fourth, Paragraph 6 of Mall's operating agreement provides that no member of Mall can be required to make any additional capital contributions to Mall, and the operating agreement contains no provision permitting Nissim's membership interest from being diluted if he refuses to make a capital call.

41. By letter dated April 9, 2013, Richard H. Dolan, Esq., counsel to Petitioner, demanded that Respondent withdraw the Notice and cancel the unlawful meeting. (Ex. 16).

42. On April 10, 2013, Jeffrey M. Eilender, counsel to Petitioner, informed Respondent's counsel that unless the Notices were withdrawn and the illegal meetings cancelled, Petitioner would seek injunctive relief on the morning of April 11, 2013. (Ex. 17).

43. Later on April 10, 2013, Respondent agreed to withdraw the Notices. Respondent did not agree however to resolve the disputes between the brothers by negotiation. (Ex. 18).

44. Accordingly, because Petitioner believes that his position in Mall and Corner may be compromised at any moment, and that neither Corner nor Mall remain viable businesses given the disagreements between Petitioner and Respondent, Petitioner has had no choice but to commence this Special Proceeding to seek the dissolution of Corner and Mall and the other remedies to which he is entitled.

E. Avraham's Further Oppressive Actions Towards Nissim

45. As a further act of hostility, oppression and harassment, and in retaliation for Nissim's filing of this Petition, on or about August 28, 2013, Avraham filed a separate action against Nissim in the Supreme Court of New York, Nassau County (the "Nassau County Action"), in which he asserted claims of default (and therefore accelerated payment) under two promissory notes dated August 27, 2012 (the "Notes"), signed the same day as the August 2012 Agreement and as part of the same transaction between Avraham and Nissim. The Notes are not set to mature until 2016, and Avraham's claims of default under the Notes were frivolous.

46. Avraham commenced the Nassau County Action by a motion for summary judgment in lieu of complaint. On or about October 28, 2013, Nissim opposed the motion, and cross-moved to dismiss for failure to state a claim, or alternatively to stay the action or transfer it to this Court for consolidation with this action to which it is related.

47. On February 27, 2014, Justice Steven M. Jaeger of Nassau County denied Avraham's motion for summary judgment in lieu of complaint, granted the aspect of Nissim's motion seeking to have the case transferred to this Court, and ordered the case to be so transferred for consolidation with this proceeding.

DEMAND FOR RELIEF

As And For Petitioner's First Demand For Relief **Dissolution of Corner Under BCL 1104-a**

48. Petitioner realleges and restates paragraphs 1-44 of this Petition as if fully stated herein.

49. BCL § 1104-a provides:

(a) the holders of shares representing twenty percent or more of the votes of all outstanding shares of a corporation . . . entitled to vote in an election of directors may present a petition of dissolution on one or more of the following grounds:

(1) The directors or those in control of the corporation have been guilty of illegal, fraudulent or oppressive actions towards the complaining shareholders;

(2) The property or assets of the corporation are being looted, wasted or diverted for non-corporate purposes by its directors, officers or those in control of the corporation.

50. Nissim is at least a 25% owner of Corner's shares of common stock entitled to vote in an election of directors. As the alleged-75% owner of Corner's shares of common stock, Avraham claims to be the controller of Corner and its business operations.

51. By attempting to improperly force out Nissim, cut off his salary and rights to distributions and cut off his rights to the financial records and corporate records of Corner, Avraham has engaged in oppression actions towards Nissim.

52. Further, by refusing to either sell or develop the property owned by Corner and insisting on keeping it as a parking lot, Avraham minimizes Nissim's return on his investment into Corner, also with an apparent intention to squeeze Nissim out. This conduct by Avraham constitutes not only oppression but also waste of corporate resources, which is a separate and sufficient ground for dissolution.

53. Moreover, by paying disproportionately large "management fees" for Corner and by paying legal fees in this proceeding from Corner's funds, Avraham has engaged in looting and diverting corporate resources of Corner, which is a separate and sufficient ground for dissolution.

54. In addition, both Petitioner and Respondent are the sole members of the Board and are deadlocked. This deadlock is a separate and sufficient reason for dissolution.

55. Therefore, this Petition for Dissolution should be granted under BCL § 1104-a, Corner dissolved and the fair value of Nissim's shares should be granted to Nissim, in an amount to be determined at trial.

As And For Petitioner's Second Demand For Relief
Dissolution of Mall Under N.Y. LLCL §702 And The Appointment Of A Receiver

56. Petitioner realleges and restates paragraphs 1-55 of this Petition as if fully stated herein.

57. N.Y. LLCL §702 provides that "On application by or for a member, the supreme court in the judicial district in which the office of the limited liability company is located may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement."

58. Here, the Operating Agreement of Mall expressly provides that the business and affairs of Mall "shall be managed by the Members." (Ex. 1, § 5).

59. Avraham, as 75% Managing Member, is in control of Mall. He has used that control to oppress the minority Managing Member, to wit, Nissim. Specifically, he has refused to consider the sale of the property held by Mall, and has instead tried, illegally and improperly, and in direct violation of the Operating Agreement, to remove Nissim from management of Mall. Thus, as a result of Avraham's actions, Mall is no longer able to carry on its intended purpose pursuant to the Operating Agreement, and it is no longer reasonably practicable to carry on Mall's business pursuant to the Operating Agreement. Under the LLC Operating Agreement and New York law, Nissim is entitled to dissolution of Mall.

60. Moreover, as a result of Avraham's actions, including without limitation his refusal to develop or sell the property owned by Mall, the waste of the company's resources, exclusion of Nissim from management in violation of the Operating Agreement, and inadequate management by Avraham, it has become financially unfeasible to continue the entity. That is a separate and sufficient ground for dissolution of Mall.

61. N.Y. LLCL §704 provides that "upon the winding up of a limited liability company", the assets shall be distributed (after distribution to creditors and for certain liabilities) "to members first for the return of their contributions, to the extent not previously returned, and second respecting their membership interests, in the proportions in which the members share in distributions." Nissim requests a judgment dissolving the LLC, requiring that he be re-paid his investment plus any additional value attributed to his interest in Mall, and that all losses and obligations of Mall be allocated to Avraham because of their oppressive and illegal conduct.

62. Further, CPLR 6401 provides for the appointment of a temporary receiver "[u]pon motion of a person having an apparent interest in property which is the subject of an action in the

[supreme court] where there is danger that the property will be removed from the state, or lost, materially injured or destroyed.”

63. There is danger that the assets of Mall are being materially injured or destroyed because Avraham is using his oppressive tactics to Nissim out of Mall, and to appropriate the revenues deriving from Mall to himself.

64. Petitioner therefore requests the dissolution of Mall, the appointment of a temporary receiver under CPLR 6401 in order to properly value the Property, sell the Property, and manage Mall’s dissolution upon liquidation of its material assets, by overseeing resolution of any claims among the members of Mall and distributing the sale proceeds in an amount to be determined at trial, among them accordingly.

As and for Petitioner’s Third Demand For Relief
Withdrawal From Mall Under N.Y. LLCL §606 and the Operating
Agreement of Mall

65. Petitioner realleges and restates paragraphs 1-64 of this Petition as if fully stated herein.

66. Petitioner may withdraw from the LLC pursuant to NY LLCL § 606 because the operating agreement provides for such a withdrawal. The Operating Agreement expressly states: “A Member may withdraw from the Company in accordance with the LLCL.” (Ex. 1, § 10).

67. Under § 606 of the LLCL, Petitioner is entitled withdraw from the LLC where, as here, the Operating Agreement allows such withdrawal, and is entitled to the distributions that were due to him at the time of the withdrawal and the “fair value” of his membership interest. *See also* NY LLCL § 701; § 509.

68. In the alternative to seeking dissolution of the LLC, Petitioner, by this Petition, gives notice of his withdrawal as a member of the LLC and demands all of the monetary and any

non-economic rights that he has under the operating agreement and the NY LLCL, in an amount to be determined at trial.

As And For Petitioner's Fourth Demand For Relief
Appointment Of Receiver Under BCL § 1202(a)(1)

69. Petitioner realleges and restates paragraphs 1-68 of this Petition as if fully stated herein.

70. BCL§ 1202(a)(1) provides as follows.

Appointment of receiver of property of a domestic or foreign corporation.

(a) A receiver of the property of a corporation can be appointed only by the court, and in one of the following cases:

(1) An action or special proceeding brought under article 10 (Non-judicial dissolution) or 11 (Judicial dissolution).

71. In connection with the dissolution of Corner under Article 11 sought hereby, and as set forth in the accompanying affirmation of Jeffrey M. Eilender, Nissim requests the appointment of a temporary receiver under BCL § 1202(a)(1) in order to properly value the Property, sell the Property, and manage Corner's dissolution upon liquidation of its material assets, by overseeing resolution of any claims among the shareholders and distributing the sale proceeds among them accordingly.

As And For Petitioner's Fifth Demand For Relief
Breach of Fiduciary Duty

72. Petition realleges and restates paragraphs 1-71 of this Petition as if fully stated herein.

73. Nissim always reposed special trust and confidence in Avraham. Avraham, as the older brother, took on the role of Nissim's surrogate father, and Nissim believed that Avraham meant only the best for him. Thus, when Nissim founded Corner in 1992, Nissim believed

Avraham's representation that it was in Nissim's best interest to give Avraham an option to purchase 75% of Corner at any time in the following 25 years for only \$25,000. When Nissim was induced to enter into the Option Agreement, Nissim placed a special confidence in the integrity and fidelity of Avraham based on the extremely close familial bonds between the brothers and on Nissim's long experience with Avraham. Indeed, as late as January 11, 2013, Avraham conceded that he had (and always has had) a fiduciary duty to Nissim, writing that he "dealt with u [i.e., Nissim] with the interest of both of us in front of me (and with rahmanut like u said) and this time will be the same." (*See Ex. 4*).

74. Nissim's trust was misplaced and Avraham's assurances of rahmanut false. In fact, Avraham's insistence on entering into the option contract hid his true motive: to have control over Nissim, and to leave open the option to throw him out of his own company at a moment's notice in the future. When Avraham purportedly exercised his option to take the 75% stake in 2001, he set that plan in motion. The plan came to full fruition in 2011, when Avraham began to force Nissim out of Corner.

75. By the actions described above and otherwise, including, without limitation, by inducing Nissim to enter into the option agreement and then using the increased leverage provided by his supposed 75% share to destroy Nissim's role in Corner, Avraham breached his duty to Nissim.

76. Nissim has been injured as a result of these actions in an amount in excess of \$3,000,000, but ultimately to be determined at trial.

77. The aforesaid acts were outrageous and exhibited a willful and wanton disregard for the rights of Nissim, justifying an award of punitive damages in an amount to be determined at trial.

As And For Petitioner's Sixth Demand For Relief
Breach of Contract

78. Petitioner realleges and restates paragraphs 1-77 of this Petition as if fully stated herein.

79. Nissim and Avraham are parties to a separate written agreement entitling Nissim to 40% of the revenue from the parking lot. (*See* Ex. 11.) Nissim has fully performed under that agreement. Yet, Respondent has repeatedly and materially breached this agreement by refusing to pay Petitioner his rightful share from the parking lot. Moreover, Avraham has intentionally made sure that the Properties generate almost no money in comparison to the value of the Properties. Rather than allowing the Property to be developed or sold, the original purposes of Mall and Corner, Avraham has made sure that the Property be kept as a parking lot and thus produce a miniscule return on investment. Avraham knows that Nissim needs the revenue from the 40% Agreement to take care of his family, and thus has attempted to force Nissim out of the companies by depriving him of this income, and more broadly by refusing to allow the companies to generate appropriate revenues.

80. Avraham breached the contract by failing to perform, and Nissim was damaged thereby in an amount in excess of \$1,000,000, but ultimately to be determined at trial. In addition, Nissim is suffering irreparable harm through Avraham's breach of the 40% Agreement because he depends on that income to take care of his family, and Avraham's breach of the agreement means that Nissim has no income.

As And For Petitioner's Seventh Demand For Relief
Declaratory Judgment

81. Petitioner realleges and restates paragraphs 1-80 of this Petition as if fully stated herein.

82. Nissim was induced to sign the Option Agreement in June 1992. The Option Agreement purported to provide Avraham with an option to purchase a 75% share of Corner.

83. No consideration was provided to Nissim exchange for providing such option. To the extent the Option Agreement recites that \$10.00 forms the consideration for the Option Agreement, such consideration was a sham and inadequate. Moreover, it was never paid to Nissim, nor was it expected to be paid.

84. This is a justiciable and ripe controversy and Nissim has no adequate remedy at law.

85. The parties require a declaration from the Court with respect to this dispute.

86. Thus Petitioner is entitled to a declaratory judgment that the Option Agreement never took effect, and was otherwise invalid and unenforceable, because it lacked consideration.

As and for Petitioner's Eighth Demand For Relief
Appraisal and Buyout of Petitioner's Interest In Mall

87. Petitioner realleges and restates paragraphs 1-86 of this Petition as if fully stated herein.

88. Respondent has offered the Petitioner to buy out his interest in Mall, but only for an extremely low price that does not reflect the fair market value of Nissim's interest or of the property owned by Mall.

89. In this light, and in light of Respondent's refusal to consent to dissolution of Mall or to Petitioner's withdrawal from Mall, the Petitioner, as a 25% owner of Mall, has a common law right to an appraisal proceeding for the purpose of determining the fair market value of his membership interest in Mall, and is entitled to an equitable buyout of his interest by Respondent.

90. Accordingly, in the alternative to seeking dissolution of Mall or withdrawal from Mall, Petitioner seeks an order directing appraisal of the fair market value of his membership

interest in Mall and an equitable buyout of his interest by Respondent, including all of the monetary and any non-economic rights that he has under the Operating Agreement and the NY LLCL, in an amount to be determined at trial.

As and for Petitioner's Ninth Demand For Relief
Rescission of the Operating Agreement of Mall and Buyout of Petitioner's Interest

91. Petitioner realleges and restates paragraphs 1-90 of this Petition as if fully stated herein.

92. The Operating Agreement of Mall provides: "The business and affairs of the Company shall be managed by the Members." (Ex. 1, § 5). The Operating Agreement as well as the course of the parties' relationship and dealings establish that this provision confers on Avraham and Nissim equal management powers with regard to Mall.

93. By his conduct set forth above, including without limitation by his repeated efforts to exclude Nissim from management of Mall, Avraham has materially breached the Operating Agreement of Mall, including the express requirements of Section 5 and the implied duty of good faith and fair dealing under the Operating Agreement, and has effectively repudiated the Operating Agreement of Mall.

94. Nissim has no adequate remedy at law that could properly compensate him for the damages caused by Avraham's breach.

95. Accordingly, Nissim seeks the equitable remedy of rescission of the Operating Agreement and, as a consequence of such rescission, seeks an order directing appraisal of the fair market value of his membership interest in Mall and an equitable buyout of his interest by Respondent, including all of the monetary and any non-economic rights that he has under the Operating Agreement and the NY LLCL, in an amount to be determined at trial.

As and for Petitioner's Tenth Demand For Relief
Breach of Fiduciary Duty

96. Petitioner realleges and restates paragraphs 1-95 of this Petition as if fully stated herein.

97. In the course of the business and personal relationship between the parties spanning over two decades, Avraham convinced Nissim that, regardless of the corporate or other business entities they employ, the parties would always conduct their business together as equal partners, and conduct it to maximize value for their joint business, such value to be shared equally between them.

98. As the much older brother and a father figure, Avraham owed a fiduciary duty to Nissim.

99. By his conduct set forth above, including without limitation by his repeated efforts to exclude Nissim from management of Corner and Mall, and by his refusal to agree to Nissim's requests for dissolution or withdrawal, Avraham breached his fiduciary duty to Nissim.

100. Avraham further breached his fiduciary duty to Nissim by refusing to either sell or develop the Properties owned by Corner and Mall together in order to maximize value for the parties' joint business, and instead attempting to squeeze Nissim out of the joint business by offering him unrealistically and unfair low buyout terms.

101. In addition, Avraham further breached his fiduciary duty to Nissim by using Corner's funds to pay his legal counsel during the course of this proceeding.

102. In summary, the totality of Avraham's conduct set forth herein constitutes a grave and continuous breach of the fiduciary duty Avraham owes to Nissim as his older brother and business partner.

103. Nissim has been damaged as a result of this breach and demands monetary compensation from Avraham in an amount to be determined at trial.

104. Nissim further demands equitable relief for the consequences of Avraham's breach for which Nissim has no adequate remedy at law, including removal of Avraham from management of Corner and Mall, direction to appraise and sell the Properties owned by Corner and Mall together and distribute the proceeds in accordance with the parties' membership interests in Corner and Mall, and other equitable relief as the Court finds appropriate.

WHEREFORE, Petitioner demands relief as follows:

- a. On the First Demand for Relief, for dissolution of Corner under BCL § 1104-a, granting such dissolution, together with costs and such other relief as is deemed just and proper by the Court;
- b. On the Second Demand for Relief, for dissolution of Mall under Section 702 of the N.Y. LLCL, granting such dissolution together with costs and such other relief as is deemed just and proper by the Court, and for the appointment of a temporary receiver under CPLR 6401;
- c. On the Third Demand for Relief, for an order permitting Nissim to withdraw from Mall, and for an order paying to Nissim the fair value of his membership interest in Mall;
- d. On the Fourth Demand for Relief, for appointment of a temporary receiver under § 1202(a)(1), appointing a temporary receiver for Corner, at Corner's expense, together with costs and such other relief as is deemed just and proper by the Court.
- e. On the Fifth Demand for Relief, for breach of fiduciary duty, for a judgment of an amount to be determined at trial, in excess of \$3,000,000 together with costs and such other relief as is deemed just and proper by the Court.
- f. On the Sixth Demand for relief, for breach of contract, for a judgment of an amount to be determined at trial, in excess of \$1,000,000, together with costs and such other relief as is deemed just and proper by the Court.

- g. On the Seventh Demand for relief, for declaratory judgment, for a judgment that the Option Agreement is invalid for lack of consideration, together with costs and such other relief as is seemed just and proper by the Court.
- h. On the Eighth Demand for relief, for appraisal and buyout, for an order directing appraisal of the fair market value of Nissim's membership interest in Mall and an equitable buyout of his interest by Respondent, in an amount to be determined at trial.
- i. On the Ninth Demand for relief, for rescission of the Operating Agreement of Mall, for an order rescinding the Operating Agreement of Mall and directing appraisal of the fair market value of Nissim's membership interest in Mall and an equitable buyout of his interest by Respondent, in an amount to be determined at trial.
- j. On the Tenth Demand for Relief, for breach of fiduciary duty, for a judgment of an amount to be determined at trial, removal of Avraham from management of Corner and Mall, direction to appraise and sell the Properties owned by Corner and Mall together and distribute the proceeds in accordance with the parties' membership interests in Corner and Mall, and such other relief as is deemed just and proper by the Court.

Dated: New York, New York
April 2, 2014

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VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF KINGS)

NISSIM KASSAB, being duly sworn, deposes and says:

1. I am a 25 percent shareholder of Corner 160 Associates, Inc.
2. I am the 25 percent Managing Member of Mall 92-30 Associates LLC.
3. I have reviewed the foregoing Petition for Dissolution. The factual allegations in that document are true to my own knowledge, except as to matters therein stated on information and belief and as to those matters; I believe them to be true.

~~NISSIM KASSAB~~
NISSIM KASSAB

Sworn to before me this
2nd day of April, 2014


NOTARY PUBLIC

MAYA VAX
Notary Public, State of New York
No. 01VA6070629
Qualified in Kings County
Commission Expires 3/4/18