

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

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GABRIEL BRAUN, :

Plaintiff :  
-against- :

AVRAHAM GREEN, and :  
SPRING CENTER, INC., :

Defendants. :

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Index No. \_\_\_\_\_

Date purchased: December 15, 2015

**SUMMONS**

Venue is based on agreement of the parties.

**TO THE ABOVE-NAMED DEFENDANTS:**

AVRAHAM GREEN  
3630 Flamingo Drive  
Miami Beach, Fl 33140

SPRING CENTER, INC.  
c/o Avraham Green  
3630 Flamingo Drive  
Miami Beach, Fl 33140

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete, if the Summons is not delivered personally to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default, in accordance with the complaint herein.

Venue is proper in this Court based on agreement of the parties.

Plaintiff hereby demands a trial by jury.

Dated: New York, New York  
December 15, 2015

Respectfully submitted,

BERG & ANDROPHY

By: 

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

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GABRIEL BRAUN, :  
 : Index No.  
 :  
 Plaintiff :  
 :  
 -against- :  
 : **VERIFIED COMPLAINT**  
 :  
 AVRAHAM GREEN, and : **JURY TRIAL DEMANDED**  
 SPRING CENTER, INC., :  
 :  
 Defendants. :  
 :  
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**PRELIMINARY STATEMENT**

1. Plaintiff, Gabriel Braun is a 71-year old man who has spent a significant portion of the last 20 years of his life working on behalf of Defendant Avraham Green. He is an 8% minority shareholder in Spring Center, Inc.<sup>1</sup> (“Spring Center”), a Florida corporation and S-Corp whose sole asset is a piece of commercial property just North of Houston, Texas. Green owns the other 92% of the corporation.<sup>2</sup>

2. In the early 1990s, Gabriel found the Spring Center property, and recommended that Green purchase it because the property was located in the path of a proposed “super highway” and was likely to both increase in value and benefit from condemnation proceedings related to a proposed highway by the State of Texas. It was an ideal investment property. Green, with no knowledge of the real estate market in Houston, took Gabriel’s recommendation and purchased the property for less than \$2.5 million. The land was recently the subject of its third condemnation proceeding, and Spring Center received a settlement of approximately \$13

<sup>1</sup> Spring Center is named as a nominal defendant in this lawsuit.

<sup>2</sup> The Shareholder Agreement contains a choice of law provision stating that claims under the Agreement shall be heard in New York state courts. Exhibit 1, at ¶ 7(e).

million. Defendants have refused to distribute Gabriel's nearly \$1 million share in this settlement, and have outright refused to issue any distributions to him since Green began actively managing Spring Center in January 2014. Gabriel now brings suit against Green to vindicate his rights as an 8% shareholder and to dissolve Spring Center.

3. This lawsuit against Green and Spring Center is based on more than two decades of oppressive conduct by Green against Gabriel, including repeated breaches of Green's fiduciary duties to Gabriel in failing to issue distributions totaling more than \$1 million. Gabriel asserts claims against Green and Spring Center for:

- Count One - Fraud;
- Count Two - Breach of fiduciary duty and duty of loyalty;
- Count Three - Declaratory Judgment;
- Count Four - Breach of contract/shareholders' agreement;
- Count Five - Breach of implied duty of good faith and fair dealing;
- Count Six - Accounting, based on denial of access to corporate books and records or accounting;
- Count Seven - Unjust enrichment;
- Count Eight - Conversion; and
- Count Nine - Common Law Dissolution.

4. More than 20 years ago, Gabriel identified a large commercial property just north of Houston, Texas. He agreed to partner with Green, and they entered into a shareholder agreement, in which Gabriel received an 8% ownership interest for locating the property and for putting the deal together while Green arranged financing and solicited capital investors for the purchase, among other terms. Green retained G. J. Braun Corporation d/b/a Braun Enterprises, a third-party commercial entity, to manage the day-to-day operations of the Spring Center property, including leasing commercial warehouse space and the contiguous vacant land,

overseeing tenant improvements, remodeling, and other related matters to generate revenue for the shareholders.<sup>3</sup>

5. From the 1990s to December 2013, Green's conduct toward Gabriel was erratic, abusive, and oppressive. Green's misconduct, detailed below, included refusing to sign the original shareholder agreement (the "Agreement") for years after Spring Center was purchased in order to coerce Gabriel into agreeing to unfavorable contract terms; verbal tirades directed at Gabriel, Gabriel's son, and employees of Braun Enterprises; and threats to wrongly withhold distributions unless Gabriel agreed to find more properties for Green to purchase.

6. Despite Green's tempestuous and abusive behavior, which is captured in notes and records from the period, Spring Center (acting through Green) would eventually make distributions to Gabriel as required by the Agreement. These distributions came from rental profits, but also included capital proceeds relating to two separate condemnation proceedings by the State of Texas. In 1994 and again in 2001, Defendants paid Gabriel his 8% share of the proceeds from these two condemnations as required by the Agreement. These payments established both a precedent and a course-of-dealing under the Agreement to distribute capital derived from condemnations to the shareholders.

7. Every month, with few exceptions since the property was purchased in 1994, Spring Center distributed monies as (i) interest payments to Green for the loan to finance the property's purchase; (ii) principal payments to the bank financing the property, and (iii) distributions to shareholders, including Gabriel.

8. After 20 years, Braun Enterprises resigned as property manager in December 2013. Since that time, Defendants have refused to issue any distributions to Gabriel as a

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<sup>3</sup> Gabriel and Green are the current shareholders in Spring Center. Green's mother, Miriam Green, was the third original shareholder. On information and belief, Miriam Green is no longer a shareholder.

shareholder. Specifically, on November 6, 2015, Green’s attorney wrote that Spring would *not* distribute to Gabriel either the money owed to him for (i) past-due distributions earned from rent and other sources or (ii) Gabriel’s 8% share from the third condemnation. Gabriel is owed approximately \$1 million<sup>4</sup> by Defendants. Defendants have also refused to grant Gabriel meaningful access to certain books and records, instead choosing to limit his access on an *ad hoc* basis.

9. Gabriel files this lawsuit against Defendants because they have both refused to issue regular distributions and to distribute capital proceeds to him as a shareholder since early 2014. Unless enjoined, Defendants will keep these proceeds for themselves, depriving Gabriel of his 8% share of distributable operating income and approximately \$1 million in proceeds from a condemnation. Gabriel therefore asks the Court to grant injunctive relief—or alternatively, attachment—to preserve and protect the status quo and to hold the wrongly withheld amounts from rental profits and the condemnation in place until trial.

10. Finally, based on Green’s history of bad faith conduct toward Gabriel, and the likelihood that such conduct will continue indefinitely into the future, Gabriel asks the Court sitting in equity to dissolve Spring Center and to distribute its assets to Green and Gabriel as shareholders according to their percentage of shares.

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction under New York Gen. Oblig. Law Sections 5-1401(1) and 5-1402, based on the Agreement. *See* Exhibit 1. Under paragraph 7(e), the Agreement states that “the laws of the State of New York” govern any disputes and that “the courts of that state shall have exclusive jurisdiction over claims arising hereunder.”

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<sup>4</sup> This number cannot be confirmed absent an accounting of the books and records for Spring Center.

## **PARTIES**

12. Plaintiff, Gabriel Braun is an individual who resides in Houston, Texas. He may be contacted through his attorneys.

13. Defendant, Avraham “Abe” Green is an individual and a resident of the State of Florida and may be served with process at 3630 Flamingo Drive, Miami Beach, FL 33140.

14. Defendant, Spring Center, Inc. is a Florida corporation that may be served through its registered agent at 3630 Flamingo Drive, Miami Beach, FL 33140.

## **FACTUAL BACKGROUND**

15. In 1978, Gabriel started a real estate development and management firm called G. J. Braun Enterprises d/b/a Braun Enterprises in Houston, Texas. At the time, Braun Enterprises was a “one-man shop.”<sup>5</sup> Gabriel sourced deals for commercial real estate properties. He would locate properties that he thought were undervalued, solicit investors, and purchase properties by and through a business entity, in this case a corporation. Gabriel’s goal was to increase property value by managing it properly and realizing higher income from rent, while also capturing the long-term appreciation of the land. Gabriel (and not Braun Enterprises) retained an equity stake in all properties that he located and purchased with an investor. The properties, after being bought, were managed by Braun Enterprises.

16. In 1994, Gabriel discovered and presented to Green the opportunity to purchase the Spring Center property that became the sole asset of Spring Center, Inc. The Spring Center property is located in a rapidly growing market, spurred in part by major oil and gas companies relocating to the area. Exhibit 2 at § VII, “The Market.” The property included nine multi-tenant buildings and two other “free standing” buildings consisting of approximately 237,000 square

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<sup>5</sup> Braun Enterprises is now an Acquisition, Development and Management Company owned 100% by Gabriel’s son, Dan Braun.

feet. In addition to the buildings, the property contains approximately 15 acres of undeveloped land. The purchase price for the Spring Center Property in 1994 was less than \$2.5 million.

Exhibit 2.

17. Gabriel identified the Spring Center property as a valuable investment property for two reasons. First, Gabriel projected that with proper management by Braun Enterprises, the income from renting warehouse and commercial space on the property would increase from \$320,000 in 1994 to nearly \$500,000 in 1997. Gabriel believed that this growth would continue or stabilize over time, resulting in profits. He was correct, and by 2004 the Spring Center property was generating nearly \$800,000 in free cash flow.

18. Second, the State of Texas planned to build a “Grand Parkway” or super highway through or near the property. Exhibit 2, § IX, “Highway Access.” Spring Center is adjacent to Interstate 45, which runs roughly north and south, connecting Houston and Dallas. Gabriel predicted that the State of Texas was likely to condemn some, if not all of the Spring Center property for the Grand Parkway project. The property would generate substantial additional income if Gabriel were correct.

19. Gabriel and Green eventually entered into the Agreement, *see* Exhibit 1, which was “effective” on December 29, 1994. But the effective date is misleading. Green refused to sign the Agreement for years after Gabriel brought him the property to purchase, instead threatening to cut Gabriel out of any share unless Gabriel identified more properties for Green to purchase, something Gabriel was under no obligation to do. Green also refused to sign the Agreement and recognize Gabriel’s ownership interest unless Gabriel agreed to unfavorable contractual terms, including a prohibition against his selling or otherwise transferring his shares. Green refused to sign the Agreement until Gabriel capitulated in 1998, over three years after the



effective date stated in the Agreement. During this period, Braun Enterprises managed Spring Center even though Green refused to acknowledge in writing that Gabriel was an 8% shareholder.

20. It was under these circumstances, and to protect his interests, that Gabriel agreed to have Braun Enterprises manage the Spring Center property<sup>6</sup> and to continue locating properties for Green to purchase as investments.

**A. The Shareholder Agreement**

21. The Agreement covers the property and “any other assets related to the business of the Corporation.” Exhibit 1.<sup>7</sup>

22. Under the Agreement, Spring Center issued capital stock to Gabriel constituting 8% of the total shares.<sup>8</sup> The Agreement defines “Capital Proceeds” to be any events relating to the property, including “any condemnation or taking for public or quasi-public purposes.”<sup>9</sup> The term “Cash Available for Distribution” is defined as “All Capital Proceeds received and Net Cash Flow from operations generated by the Corporation . . . .”<sup>10</sup> The Agreement mandates that Spring Center will distribute Capital Proceeds to Gabriel as a shareholder on a monthly basis “in proportion to the stock held by [each shareholder.]”<sup>11</sup>

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<sup>6</sup> Although Braun Enterprises managed the property, Green retained the authority to manage the property and make financial decisions under the Shareholder Agreement.

<sup>7</sup> Exhibit 1, Agreement at ¶ 1(a).

<sup>8</sup> *Id.* at ¶ 2(b).

<sup>9</sup> *Id.* at ¶ 1(c).

<sup>10</sup> *Id.* at ¶ 1(b).

<sup>11</sup> *Id.* at ¶ 4(a)(ii).

23. The Agreement further states that Spring Center “shall” pay distributions, but may defer distributions to pay for capital improvements.<sup>12</sup> The term “capital improvements,” however, is not defined in the Agreement. At no time in the 20-year history of the Agreement has Spring Center fully withheld distributions to Gabriel under a claim that it was funding capital improvements.

24. Green’s refusal to sign the Agreement for years after the property was purchased created leverage that he used against Gabriel. The result is the Agreement has no “exit” provision or clause that allows Gabriel as a minority shareholder to redeem the value of his shares. Indeed, the only way that Gabriel can liquidate his 8% ownership interest is if Green sells the property or if Gabriel dies or is permanently disabled.<sup>13</sup> In that event, Green may purchase Gabriel’s shares for 8% of the “value” of the property, or an amount equal to Spring Center’s total Net Cash Flow from operations for seven years. This latter amount is likely, on information and belief, to be significantly less than Gabriel’s 8% that would be due from future distributions and is substantially less than the 8% overall appraised value of the property.<sup>14</sup> Gabriel thus faces the real possibility that he will never receive the millions of dollars in profit that he is directly responsible for generating by identifying, developing, and managing Spring Center, and to which he is entitled.

**B. Green’s Erratic and Abusive Conduct Toward Gabriel**

25. Throughout the 1990s and 2000s, Green routinely used his power as majority shareholder to threaten and bully Gabriel. Green routinely threatened to stop making

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<sup>12</sup> *Id.* at ¶ 4(a)(ii).

<sup>13</sup> *Id.* at ¶ 6(i)(ii), ¶ 5(a)(ii).

<sup>14</sup> Indeed, the value of the property today is largely associated with the land of which 15 acres are not developed or generating cash flow.

distributions to Gabriel unless Gabriel helped Green acquire more property for no additional compensation; Green falsely accused Gabriel of conspiring with third-parties; he fired attorneys selected by Gabriel on false pretenses and without consulting Gabriel. Green also refused to pay vendors for work that he preapproved.<sup>15</sup>

26. Green also verbally abused Gabriel and Braun Enterprise employees, yelling at secretaries, demanding that Gabriel stop documenting his concerns in writing, and telling Braun Enterprises' receptionist to have Gabriel "shove-it you know where" when Green disagreed with Braun Enterprises' management.

27. In the early 2000's, Gabriel developed health issues that Green was acutely aware of and which he used to leverage his power as majority shareholder. Green would call Gabriel during his chemotherapy treatments and would berate him or his family if they did not immediately answer his calls. Green falsely accused Gabriel of not "being straight with him" and of changing his mind based on how "the wind blows." Throughout the years, Green repeatedly berated Gabriel, telling him that he had to "do your job right the first time" and that Gabriel was allegedly filled with "excuses." Green wrongly claimed that Gabriel "flunked, misled, and mismanaged" his properties, including Spring Center.<sup>16</sup> Despite his false and often paranoid claims, Green refused to buy out Gabriel and he even insisted that Braun Enterprises continue managing Spring Center. Gabriel's net worth during much of this period was almost entirely invested in Spring Center and other partnerships with Green, and he felt that that he

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<sup>15</sup> Gabriel, for his part, told Green that it was Gabriel's reputation on the line when Green refused to pay vendors in a timely manner and demanded that the owners—including himself—forego distributions to upgrade the properties.

<sup>16</sup> Gabriel is also an 8% shareholder in two other corporations and properties with Green. Those properties are located in Houston, Texas, and are commonly referred to as "Crosstimbers" and "6008 W. 34<sup>th</sup> Street." Those two properties and corporations are not at issue in this proceeding because they are Texas corporations governed by Texas law.

would forfeit the profits likely to be realized through Spring Center if he did not continue managing the property, despite Green's abuse and Gabriel's declining health.

**C. Three Condemnation Proceedings**

28. Since purchasing the property, the State of Texas instituted three separate condemnation proceedings relating to Spring Center.

29. **Condemnation No. 1.** On November 23, 1994, the State of Texas condemned a section of the property to expand an existing highway. Gabriel, acting through Braun Enterprises, retained an appraiser, engineer, attorney, land planner, and other professionals to represent Spring Center. Gabriel negotiated a settlement that resulted in Spring Center receiving \$644,734. Exhibit 3. Green had no active involvement in securing the condemnation award.

30. Proving that no good deed goes unpunished, Green threatened to withhold Gabriel's 8% distribution share unless Gabriel agreed to find more properties in the Houston area for Green to purchase. Gabriel, in turn, offered to sell his shares in Spring Center, but Green refused to purchase the shares and told Gabriel that he would not receive any distribution unless he located other properties.<sup>17</sup>

31. Green, acting through Spring Center, ultimately distributed \$51,578.70 to Gabriel, which is 8% of the \$644,734 that the State paid Spring Center for the first condemnation. Exhibit 4. Green made this distribution only after Gabriel agreed to continue managing the property through Braun Enterprises.

32. **Condemnation No. 2.** In early 2001, the State of Texas condemned a small part of the Spring Center property for a detention pond. Once again, Gabriel and Braun Enterprises,

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<sup>17</sup> During his visit to Houston during the first condemnation, Green's erratic behavior included being arrested for public urination. Green was jailed, and he called Gabriel to engage a lawyer to assist Green in bonding out of jail. Braun Enterprises effectively managed Green's personal problems, as well as the property.

not Green, negotiated a settlement with the State resulting in a payment of nearly \$200,000 to Spring Center. Exhibit 5. Gabriel negotiated the payment without the assistance of any third parties and, in the course of negotiations, was able to convince the State to exempt a large portion of the property from the taking, which protected the value of the remaining parcel. Gabriel handled the condemnation almost exclusively by himself and is responsible for retaining a large amount of acreage, which retained and increased the value of the property.

33. Once again, Green was personally abusive to Gabriel. Foreshadowing the issues before this Court, Green said that Gabriel would not receive a distribution, but instead all the condemnation proceeds would be used for capital improvements. Green also demanded that Gabriel identify more investment property for him to purchase before he would distribute Gabriel's 8% share.

34. Gabriel, under duress, agreed to Green's demands. Green eventually distributed \$16,000 to Gabriel, which is 8% of the \$200,000 that the State paid Spring Center for the second condemnation. Exhibit 5.

35. **Condemnation No. 3.** On October 5, 2015, the State of Texas settled its third condemnation action with Spring Center relating to a significant portion (but not all) of the property for use as part of the Grand Parkway highway project. Gabriel predicted this outcome nearly 20 years earlier. The State agreed to pay Spring Center \$13 million for the taking (only 3.3 acres of the approximately 30 acres). *See* Exhibit 6. This total is approximately \$10.5 million more than the Spring Center property's original purchase price of \$2.425 million negotiated by Gabriel in 1994. Green readily concedes that Gabriel and his son handled the

“bulk of the oversight” of the third condemnation proceeding. Exhibit 7, 10:8-11.<sup>18</sup> Gabriel, not Green, is largely responsible for the \$13 million condemnation award relating to Spring Center.<sup>19</sup>

**D. Green refuses to distribute Gabriel’s 8% share for the third condemnation proceeding.**

36. Prior to Braun Enterprises’ resignation as property manager in December 2013, Green concedes that it was Spring Center’s practice, with his authorization, to make distributions to Gabriel as an individual shareholder in proportion to his 8% ownership interest in the Spring Center property. Exhibit 7 at 61:2 to 63:4. There is no basis to justify Green or Spring Center’s refusal to distribute Gabriel’s 8% ownership share from rentals and the third condemnation.

37. But now that Spring Center has settled the third condemnation proceeding with the State of Texas for \$13 million, Green has decided to change course and is refusing to distribute Gabriel’s 8% share. Gabriel wrote to Green asking to confirm that Spring Center would distribute 8% of the condemnation award to him, as required by the Agreement and established by the parties’ 20-year course-of-dealing. Green, through his attorney, replied that he would *not* distribute Gabriel’s 8% share. *See* Exhibit 8.<sup>20</sup>

38. Braun Enterprises resigned as Spring Center’s property manager in 2014. The resignation occurred before the third condemnation was settled in 2015. Despite Green’s refusal to issue Gabriel’s distributions, both Plaintiff and his son, Dan Braun, have cooperated with

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<sup>18</sup> Throughout his sworn deposition testimony in the condemnation proceedings, Green continuously admitted that he knew little about the facts of the case and referred counsel to Braun Enterprises for answers to basic questions. Exhibit 7.

<sup>19</sup> Gabriel’s net share cannot be determined without a full accounting, which Green has refused to conduct.

<sup>20</sup> The Spring Center property was only partially condemned for the Grand Parkway, however, and the estimated value of Gabriel’s 8% interest in Spring Center as a shareholder is significantly higher than the distributions Green is withholding in bad faith.

Spring Center's attorneys to successfully resolve the condemnation suit for the benefit of Spring Center.

39. Braun Enterprises resigned as Spring Center's property manager because it was no longer willing to accept Green's continuing abuse and erratic behavior. The final straw occurred in 2013, when Green wanted to distribute excessive profits to himself. Gabriel told Green that there were insufficient funds in the operative bank account for the properties to both satisfy outstanding expenses and cover the amount Green wanted distributed. Green instructed Gabriel to issue distribution checks anyway. Gabriel wrote the checks as instructed by Green, but told Green not to deposit his check because there were insufficient funds to cover all distributions to the shareholders. Green, however, knew there were sufficient funds to cover *his* distribution check (but not the others). He secretly deposited his check without Gabriel's knowledge. As a result, from August 2013 through December 2013, Green wrongly received more than \$155,000 in distributions while Gabriel received nothing.

40. Green subsequently instructed Gabriel to close the operative bank account on which the distribution checks were issued. Gabriel complied. Green then refused to reissue distribution checks to Gabriel, effectively depriving Gabriel of his rightful distribution.<sup>21</sup>

41. Green is continuing his bad faith and oppressive conduct by refusing to issue distributions to Gabriel for rental revenue since 2014 and the 2015 condemnation settlement. This, despite the fact that in August 2014, Green's attorney acknowledged Green's obligation to issue distributions, stating in an e-mail response to Gabriel's attorney that, "BTW, Abe [Green] has told me that he plans to resume distributions shortly[.]" Exhibit 9.

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<sup>21</sup> This issue involved not only Spring Center, but also a second property owned by Green, Gabriel, and a third shareholder.

42. Gabriel is responsible for creating 100% of the value (other than capital and financing associated with purchasing the property) relating to Spring Center since the time it was purchased until Braun Enterprises resigned. Indeed, Green testified during the third condemnation proceedings that he had little or no involvement in managing the property for almost twenty years. Green testified that he relied on Braun Enterprises to rent the property and to make the best deal possible to rent the property's warehouse and office space. Exhibit 7 at 71:7-11. There is no dispute that Gabriel, not Green, is responsible for identifying the property and realizing the opportunity to have it condemned as part of the Grand Parkway project. Gabriel, not Green, handled the condemnations, and went far beyond the scope of duties that Green paid Braun Enterprises for as property manager. *See, e.g.*, Exhibit 7 at 110:3-12 (“Braun handled it, so – you know, Braun always took care of it.”)

43. Green also admits that all of the properties he has owned in Houston—and the value created through these properties—were connected to Gabriel. Exhibit 7, 27:10-13. Green conceded that he hasn't followed the Houston real estate market during the 20 years that he has owned Spring Center with Gabriel. Exhibit 7 at 106:7-12.<sup>22</sup>

44. Despite the value created by Gabriel over the years that is directly attributable to his work and foresight, Green's attorney notified him that he would not receive his 8% share from the third condemnation. Exhibit 8.

45. On December 9, 2015, Gabriel was notified that Green had settled all issues with the State of Texas regarding the amount due to Spring Center and that the State would transfer the funds relating to the condemnation to Green and Spring Center in the next few days. Based on this information, Gabriel now files this lawsuit.

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<sup>22</sup> Green has little knowledge of Houston and, during a deposition held as part of the third condemnation suit, he could not name the streets that he drove on in Houston to travel to Spring Center. Exhibit 7 at 37:9-11.



## CAUSES OF ACTION

46. Braun asserts the following claims to enforce his legal and equitable rights under the Agreement:

### FIRST CAUSE OF ACTION

#### FRAUD

47. Plaintiff repeats and incorporates by reference the facts and allegations stated in the preceding paragraphs.

48. In signing the Agreement and acting as majority shareholder and President of Spring Center, Green has made representations to Gabriel Braun that Gabriel would receive distributions from cash available for distributions and capital proceeds. These representations were material to Gabriel's agreeing to enter into the Agreement with Green. These representations were false, as Green has wrongly withheld distributions of any kind from Gabriel since January 2014 while, on information and belief, issuing *de facto* distributions to himself.

49. Green has further stated that Gabriel will not receive distributions from the third condemnation proceeding relating to Spring Center because he intends to make capital improvements to the property, a statement that on information and belief is false.

50. Green, by negotiating and executing the Agreement, made representations to Gabriel regarding distributions that he intended Gabriel to act upon. Gabriel relied on these representations and has suffered injury through Green's wrongful withholding of distributions and related oppressive conduct.

## **SECOND CAUSE OF ACTION**

### **BREACH OF FIDUCIARY DUTY**

51. Plaintiff repeats and incorporates by reference the facts and allegations stated in the proceeding paragraphs.

52. At all times material hereto, Defendant Green was a shareholder and President in Spring Center with Plaintiff. As such, Green owed a fiduciary duty to Gabriel to act with absolute fidelity, good faith, due care, and diligence.

53. Green breached his fiduciary duties by making distributions to himself but not Gabriel, and by breaching the terms of the Shareholders' Agreement.

54. As a result of the breach of fiduciary duty by Green, Gabriel has been damaged.

## **THIRD CAUSE OF ACTION**

### **DECLARATORY JUDGMENT**

55. Plaintiff repeats and incorporates by reference the facts and allegations stated in the proceeding paragraphs.

56. The parties have engaged in a course of conduct under the Agreement for more than twenty years. Now that Gabriel's foresight to recommend purchase of the property has been confirmed by a \$13 million condemnation settlement, millions in cash flow, and acreage that was protected against the condemnation taking (and retains significant value), Green is breaching the Agreement by refusing to distribute Gabriel's 8% distribution share.

57. Based on representations made by Green, his breach of the Agreement and the parties' course-of-dealing is founded on the Agreement's reference to "capital improvements," an undefined term in the Agreement that Green has never invoked. Green is further refusing to distribute Gabriel's 8% share.

58. Under the Uniform Declaratory Judgment Act, N.Y. C.P.L.R. sec. 3001, Gabriel is entitled to have this Court settle and afford relief from uncertainty and insecurity with respect to the rights, status, and other legal relations regarding his interests under the Agreement.

#### **FOURTH CAUSE OF ACTION**

##### **BREACH OF CONTRACT/BREACH OF SHAREHOLDERS' AGREEMENT**

59. Plaintiff repeats and incorporates by reference the facts and allegations stated in the proceeding paragraphs.

60. Pursuant to the terms of the Shareholders' Agreement, distributions following the repayment of the initial loan amount shall be made to shareholders in proportion to the stock held by them.

61. Notwithstanding their obligations under the Shareholders' Agreement, Defendants have wrongly withheld distributions to Gabriel, including distributions from rentals and distributions relating to the third condemnation.

62. The actions of Defendants described herein constitute material breaches of the Shareholders' Agreement.

63. As a result of the breach of contract and violation of the terms of the Shareholders' Agreement by Defendants, Plaintiff has been damaged.

#### **FIFTH CAUSE OF ACTION**

##### **BREACH OF IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING**

64. Plaintiff repeats and incorporates by reference the facts and allegations stated in the proceeding paragraphs.

65. At all times material hereto, Defendant Green was a shareholder with Plaintiff and the President and 92% owner of Spring Center with Plaintiff. As such, Green owed Gabriel a duty to act fairly and in good faith.

66. As more particularly described herein, Green breached his duty to act in good faith and to deal fairly with Plaintiff, to Gabriel's financial detriment. Gabriel has suffered substantial damages as a direct and proximate result of Defendant Green's breach of his duties to him.

## **SIXTH CAUSE OF ACTION**

### **ACCOUNTING & INSPECTION OF CORPORATE RECORDS**

67. Plaintiff repeats and incorporates by reference the facts and allegations stated in the proceeding paragraphs.

68. Defendants Green and Spring Center have engaged in acts and practices, as described in this complaint, which constitute material breaches of the Shareholders' Agreement, in an unlawful, unfair, and fraudulent manner.

69. As a result, Defendants owe Gabriel damages in an amount unknown to Gabriel, and which amount cannot be ascertained without an accounting of the receipts and disbursements, profit and loss statements, and other financial materials, statements, and books from Defendants.

70. Defendants had agreed to permit Gabriel to have access to certain books and records in Houston, Texas and Fort Lauderdale, Florida; but Defendants have failed to permit Gabriel to have access to basic financial records and data that he is entitled to relating to withheld distributions. Plaintiff is further entitled to, but has been denied, access to information or documents related to Defendants' claim that Braun Enterprises somehow mismanaged operations for Spring Center.

**SEVENTH CAUSE OF ACTION**

**UNJUST ENRICHMENT**

71. Plaintiff repeats and incorporates by reference the facts and allegations stated in the proceeding paragraphs.

72. By the conduct alleged herein, Defendants Green and Spring Center have been and continue to be unjustly enriched at the expense of Gabriel.

**EIGHTH CAUSE OF ACTION**

**CONVERSION**

73. Plaintiff repeats and incorporates by reference the facts and allegations stated in the proceeding paragraphs.

74. By the conduct alleged herein, Defendant Green has converted and continues to convert Gabriel's property to his own use and benefit without the authority to do so.

75. Green's conversion of Gabriel's property has been knowing, intentional, wanton, willful, and an outrageous violation of Gabriel's rights.

76. As a proximate result of Green's conversion of Gabriel's property, Gabriel has suffered substantial damages.

**NINETH CAUSE OF ACTION**

**COMMON LAW DISSOLUTION OF THE CORPORATION**

77. Plaintiff repeats and incorporates by reference the facts and allegations stated in the proceeding paragraphs.

78. At all times material hereto, Defendant Green acted for his own benefit and to Gabriel's detriment. Green and Spring Center failed and refused to make distributions to Gabriel, while paying such distributions to Green. Further, Green and Spring Center have refused to provide a full and complete accounting of corporate books and records and have denied Gabriel access to crucial information regarding Spring Center. Green's erratic behavior

occurred over a 20-year period and there is no indication that it will not continue into the future. The oppressive conduct of Defendants has substantially defeated the reasonable expectations held by Plaintiff as a shareholder of Spring Center. As a result of Defendants' oppressive conduct, Plaintiff has sustained substantial damages.

79. In the alternative, Gabriel moves in equity for an order compelling Green and Spring Center to purchase or buy out Gabriel's 8% ownership interest in Spring Center based on a methodology for appraising Spring Center's value as determined by the court or the appointment of a receiver.

#### **CONDITIONS PRECEDENT**

80. All conditions precedent have been performed or have occurred.

#### **PRAYER FOR RELIEF**

81. For these reasons, Plaintiff Gabriel Braun asks for a judgment and order against Defendants for the following:

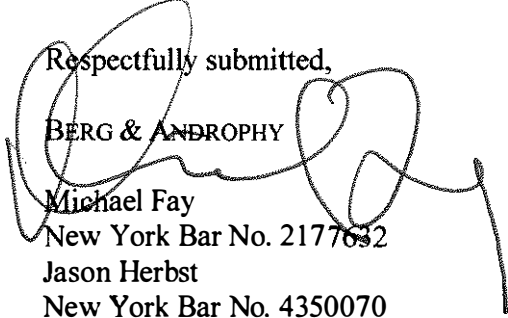
a. Declaration that Gabriel owns an 8% interest in Spring Center and is entitled to Cash Available for Distribution and Capital Proceeds, as those terms are defined in the Agreement, including but not limited to all Capital Proceeds received by Spring Center and Green and net cash flow from operations generated by Spring Center, as well as proceeds from the third condemnation;

- b. Joint and several liability;
- c. Accounting;
- d. Prejudgment and post judgment interest;
- e. Actual, compensatory, and punitive damages;
- f. Attorneys' fees;

g. The equitable remedy of dissolution, and specifically the dissolution of Spring Center and the distribution to Gabriel Braun of 8% of the assets of Spring Center. Alternatively, a buyout of Gabriel Braun's 8% share of Spring Center based on a methodology for appraisal determined by the court or the appointment of a receiver; and

h. All other and further relief, in law or equity, that the Court deems appropriate in the interests of justice.

DATED and FILED on December 15, 2015.

Respectfully submitted,  
  
BERG & ANDROPHY  
Michael Fay  
New York Bar No. 2177632  
Jason Herbst  
New York Bar No. 4350070  
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OF COUNSEL:

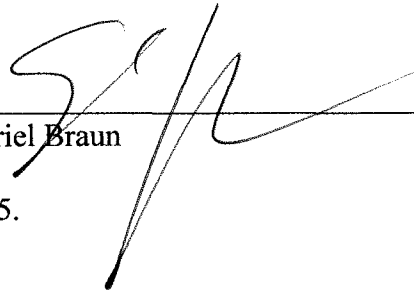
Eric J. Cassidy  
Texas State Bar No. 24031807  
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**VERIFICATION**

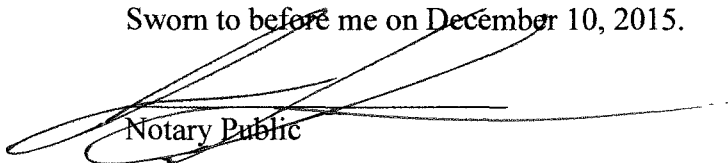
STATE OF TEXAS       §  
COUNTY OF HARRIS   §

GABRIEL BRAUN, being duly sworn, deposes and says:

My name is Gabriel Braun and I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof, which are to my knowledge true, except as to those matters stated to be alleged on information and belief, and to these matters I believe them to be true.

  
\_\_\_\_\_  
Gabriel Braun

Sworn to before me on December 10, 2015.

  
\_\_\_\_\_  
Notary Public

