



Mary F. Strickland , County Clerk
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6 Court Street, Room 201
Geneseo, New York 14454
(585) 243-7010 ~ Fax (585) 243-7928

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Document Type: CIVIL ACTION - MISC

Document Desc: PETITION

Plaintiff
BRADY BRANDON M

Defendant
BRADY MYRON O BRADY MYRON C

Recorded Information:	
Index #: 000216-2019	

State of New York
County of Livingston

EFiling through NYSCEF

A handwritten signature in cursive script, appearing to read "Mary F. Strickland".

Livingston County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

STATE OF NEW YORK
SUPREME COURT COUNTY OF LIVINGSTON

In the matter of the Application of
BRANDON M. BRADY,

Petitioner,

VERIFIED PETITION

For the Judicial Dissolution of
BRADY FARMS, INC.,

Index No. _____

MYRON O. BRADY and MYRON C. BRADY,

Respondents.

The Petition of Brandon M. Brady, pursuant to section 1104-a of the New York State Business Corporation Law, respectfully shows this Court as follows:

1. Brady Farms, Inc. (the “Company”) is a corporation duly formed and existing under section 402 of the Business Corporation Law of the State of New York, with the office of the corporation located at R.D. 1, Mount Morris, New York 14510, in Livingston County. The Company was created by a certificate of incorporation filed for recorded in the Office of the Secretary of the State of New York on February 16, 1984, which certificate remains filed for record with the Secretary of State. A copy of the New York State Department of State Division of Corporations Entity Information website reflecting the Company’s status is attached hereto as **Exhibit 1**.

2. The Company is not registered as an investment company under the Investment Company Act of 1940.

3. No shares of the Company are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association.

4. Petitioner Brandon M. Brady ("Brandon") is an individual residing in Mount Morris, New York, Livingston County, and is a holder of shares representing 48 percent of the votes of all outstanding shares of the Company entitled to vote in an election of its directors.

5. Upon information and belief, respondent Myron O. Brady ("Myron O") is an individual residing in Mount Morris, New York, in the County of Livingston, and is a is a holder of shares representing 52 percent of the votes of all outstanding shares of the Company entitled to vote in an election of its shareholders.

6. Upon information and belief, respondent Myron C. Brady ("Myron C") is an individual residing in Mount Morris, New York, in the County of Livingston, and purports to be a holder of shares representing 69 percent of the votes of all outstanding shares of the Company entitled to vote in an election of its shareholders.

7. Upon information and belief, the Company was formed by Myron O in 1984. The Company is authorized in its Certificate of Incorporation to issue 200 shares of common stock. A copy of the Certificate of Incorporation is attached hereto as **Exhibit 2**. Initially, the Company's shareholders were Myron O, Myron C, and Scott A. Brady ("Scott"), each of whom owned $66 \frac{2}{3}$ shares of the Company's stock. These three individuals were also the directors and officers of the Company. Documents reflecting this initial ownership percentage are attached hereto as **Exhibit 3**.

8. Brandon, Myron C, and Scott are all sons of Myron O.

9. The Company is, essentially, a farming operation that owns substantial amounts of real property, most of which is utilized for farming purposes. More specifically, the Company owns approximately 400 acres of tillable land, 200 of which are farmed by the Company itself (and, in particular, farmed by Brandon on the Company's behalf), and the other 200 of which are purportedly "leased" to Myron C.

10. In addition, the Company holds a mortgage on a convenience store located across the street from the Company's tillable property and operated by Letchworth Country Store, Inc., which makes regular mortgage payments to the Company. Myron O's home is also located on land owned by the Company, as are Brandon's offices and maintenance facility, the construction of which Brandon contributed personally to in an amount of approximately \$50,000.

11. In December 1995, Scott resigned as a director of the Company, and each of the initial shareholders transferred their respective shares back to the Company, whereupon the Company then issued 100 shares to Myron O and 100 shares to Myron C. These transactions are reflected in **Exhibit 4** hereto.

12. Beginning in around the mid-1990s, Brandon began assisting the Company, principally Myron O, with the Company's farming operations. In this regard, since approximately 1998, Brandon has assumed sole responsibility for farming the approximately 200 acres of tillable, unleased property owned by the Company. While Brandon has performed substantially all of the farming-related labor for the Company, he has had minimal responsibility for collecting sales, rent, or mortgage payment proceeds for the Company, or for distributing or otherwise managing those proceeds

once received. Those tasks have been performed exclusively by Myron O. Myron O also has responsibility for keeping and maintaining the Company's books and records.

13. In April 2003, Myron C resigned as an officer and director of the Company and transferred all of his stock to Myron O. This is reflected in **Exhibit 5** hereto. Thereafter, in recognition of the fact that Brandon had assumed sole responsibility for farming the Company's unleased, tillable acreage, and with an understanding between Myron O and Brandon that Brandon would ultimately obtain a full, 100% ownership interest in the Company, Myron O began to transfer shares to Brandon.

14. In keeping with this arrangement, Myron O made multiple transfers of shares to Brandon, on multiple occasions, beginning in 2006, ultimately resulting in Brandon acquiring a 48% interest in the Company – or 96 shares – as of December 31, 2017. Copies of various share transfers from Myron O to Brandon are attached hereto as **Exhibit 6**.

15. Brandon's 48% interest in the Company is also reflected in tax returns signed and verified by Myron O and filed by the Company. Copies of portions of the Company's 2017 tax return (redacted to remove confidential information) showing Brandon's 48% ownership interest are attached hereto as **Exhibit 7**.

16. Brandon's 48% interest is also reflected in loan documents prepared on the Company's behalf, signed by Myron O, and submitted to Five Star Bank, the Company's banking establishment. Representatives at Five Star Bank have confirmed to Brandon that their records show Brandon as a 48% owners in the Company, although Brandon does not have the loan documents in his possession.

17. Thus, as of December 31, 2017, Brandon owned a 48% shareholding interest in the Company.

18. In addition, as of October 27, 2010, Brandon and Myron O were the sole officers and directors of the Company. Records reflecting this are attached hereto as **Exhibit 8.**

19. Because the Company is a subchapter S Corporation, both Brandon and Myron bore responsibility for paying income taxes on the Company's profits, based on their pro rata shares of Company stock, as reflected in Company income tax returns. They also shared in paying the employees of the Company.

20. Throughout this period, however, as described above, Myron O retained personal responsibility for collecting the proceeds from farming operations and lease payments each year on behalf of the Company.

21. As of early 2018, Myron O had never disclosed to Brandon either the receipt or amount of proceeds received by the Company related to any rent received from Myron C in connection with his lease of Company property, nor had Myron O otherwise provided Brandon with any distributions arising out of payments of rent received by Myron C. Indeed, upon Brandon's information and belief, Myron O was not collecting any rent from Myron C for his lease of approximately half of the Company's tillable acreage.

22. In addition, despite that Brandon performed all of the Company's farming work, Myron O did not disclose to Brandon the amount of revenue or proceeds generated from the Company's farming operations, which, again, Myron O collected on the Company's behalf, nor did Myron O provide Brandon with any accounting of how

these proceeds were disbursed, where they were deposited, or any other uses to which Myron O put these funds.

23. Further, Myron O did not provide Brandon with any distributions of corporate profits, including with respect to the farming operations for which Myron O collected proceeds, the rents collected by the Company from Myron C, and the payments made to the Company for the mortgage held on the Letchworth County Store property. With respect to the Letchworth County Store property, although the checks were made out to the Company (see Exhibit 9), Myron O has deposited them in his own personal account.

24. Further still, Myron O has never provided Brandon with any accounting of Company finances, transactions, revenues, disbursements, nor any other information with respect to the Company, instead refusing to account to Brandon (or the Company) for his actions or to provide Brandon with any information whatsoever relating to the Company or his management or operation thereof.

25. In early 2018, a dispute arose between Brandon and Myron O regarding a proposed renewal of the Company's lease with Myron C, which was either about to expire or already had expired. Specifically, because Myron O: (1) had never disclosed to Brandon the proceeds related to rent received by the Company from Myron C; (2) had not otherwise provided Brandon with any distributions arising out of payments of rent received by Myron C; and (3) on information and belief, had never even collected any rent from Myron C in connection with the lease, Brandon believed it was in the Company's best interest to simply allow the lease to expire and begin to farm those 200 acres for the Company's own benefit.

26. At the same time, Brandon began to question Myron O's actions with respect to funds collected by Myron O on the Company's behalf and the use to which Myron O was putting those funds, including but not limited to the extent to which Myron O was diverting Company revenues and profits for his personal gain.

27. In response to Brandon's assertion of rights as a shareholder, and his questioning of the manner in which Myron O was handling Company finances and otherwise managing the Company's affairs – including affairs relating to the Company's lease of property to Myron C and apparent failure to collect any rents with respect thereto – Myron O and Myron C embarked on a scheme to strip Brandon of his rights as a shareholder and owner of the Company, to divert all corporate profits to themselves, and to otherwise freeze Brandon out from the Company, its operation, and its profits.

28. Specifically, although Myron O and Brandon were the only directors of the Company as of May 23, 2018, on that date Myron O and Myron C – purporting to be the directors of the Company – acted by their own unanimous written consent to remove a provision in the Company's Certificate of Incorporation that restricted the alienation of shares by requiring that a shareholder first offer those shares for sale to other stockholders. (See Exhibit 10).

29. On or about that same date, Myron O called a meeting of shareholders for the purpose of amending the Certificate of Incorporation to remove this restriction on alienation, at which meeting Myron O took the position, in contravention of the tax returns signed and verified by Myron O, that Brandon owned only 62 shares, or 31% of the corporate stock, of the Company.

30. Brandon objected, but Myron O nevertheless proceeded to vote in favor of removing the restriction on alienation from the Certificate of Incorporation, and also voted to elect himself and Myron C as directors of the Company while also removing Brandon as a director. A copy of the purported "meeting minutes" is attached hereto as **Exhibit 11**.

31. Thereafter, on May 25, 2018, Myron O and Myron C caused to be filed an amendment to the Company's Certificate of Incorporation purporting to remove the restriction on alienation. A copy of this document is attached hereto as **Exhibit 12**.

32. Then, on June 12, 2018, Myron O and Myron C entered into a purported "Share Purchase Agreement" pursuant to which Myron O agreed to sell to Myron C 138 shares – or 69% – of the Company stock, despite having previously acknowledged that he held only a 52% interest in the Company. A copy of this purported agreement is attached hereto as **Exhibit 13**. In other words, Myron O agreed to sell to Myron C shares of the Company that he did not own.

33. Myron O did not first give Brandon the option to purchase his shares of the Company stock. In addition, upon information and belief, Myron O's transfer of stock to Myron C violated a Court Order in his divorce proceeding, pending before the Hon. James J. Piampiano, precluding Myron O from, among other things, disposing of his stock in the Company without further order of the Court or the consent of the other party.

34. Nevertheless, having improperly purported to transfer his (and Brandon's) shares of the Company, after improperly purporting to amend the Company's Certificate

of Incorporation, Myron O continued with his and Myron C's scheme to freeze Brandon out of the Company and effectively render Brandon's ownership thereof worthless.

35. Most fundamentally, despite Brandon being entitled under the Business Corporation Law and common law to review the Company's books and records, Myron O and Myron C refused to provide Brandon with duly requested access to any such books and records other than the "Corporate Kit," from which Brandon obtained many of the documents attached as exhibits hereto, but which did not include any information such as: (1) an annual balance sheet and profit and loss statement for the preceding fiscal year, as well as the most recent interim balance sheet or profit and loss statement that has been prepared by the Company; or (2) any other Company books and records maintained during the previous five years, including all records showing sales, revenue, expenditures (capital and otherwise), salaries, purchases, employment records, subcontracts, expense reimbursements, and any other records involving financial transactions of the Company.

36. On November 6, 2018, Brandon initiated a plenary action captioned Brandon M. Brady individually and derivatively as a shareholder of Brady Farms, Inc., v. Myron O. Brady and Myron C. Brady, Index No. 000953-2018, pending in the New York State Supreme Court, County of Livingston (the "Plenary Action"). A copy of the Complaint in the Plenary Action is attached hereto as **Exhibit 14**.

37. The Plenary Action asserts multiple causes of action, both individually and on behalf of the Company, against Myron O and Myron C. Among other things, the Plenary Action seeks relief relating to Myron O's and Myron C's refusal to allow Brandon access to Company books and records, improper transfer of shares by Myron

O to Myron C, improper refusal to recognize Brandon's 48% ownership interest in the Company, failure to account to Brandon with respect to Company finances, diversion and conversion of Corporate assets, and various other breaches of fiduciary and other duties.

38. In addition to all of the above, since the Complaint was filed in the Plenary Action, Brandon has learned that Myron O and/or Myron C have removed all funds from the Company's existing bank accounts and caused them to be closed. In this regard, Myron O advised Brandon that he had closed all accounts for the Company and that the Company was "no longer doing business." Brandon also spoke with a Five Star Bank representative who confirmed that all funds had been removed from the Company accounts and that the accounts were closed.

39. Neither Myron O nor Myron C has accounted to Brandon for the funds removed from these accounts.

40. Myron O and Myron C have, moreover, purchased fuel on Company credit for personal use but have refused to pay the bill for such fuel. Specifically, Myron O has permitted Myron C and Scott to utilize approximately \$16,000 of fuel for personal farming use that was ordered by Brandon for purposes of being used by the Company. Brandon has incurred the costs for this fuel due to his relationship with the vendor, but Myron O and Myron C have refused to repay Brandon for this expense.

41. Brandon also has incurred costs of approximately \$10,000 per year for stone to place on Company driveways and has paid for general commercial liability and auto insurance for the Company, which amounts have also not been reimbursed or repaid by the Company.

42. Further, despite Brandon having had access over Company land for over 20 years in order to access landlocked property that is owned by Brandon (and to which there is no other means of ingress or egress other than via Company land), Myron O and Myron C have suddenly and improperly refused to grant Brandon continued access across Company property to reach his land. A copy of a letter to this effect is attached hereto as **Exhibit 15**.

43. Myron O and Myron C have also continued to refuse to make any distributions to Brandon of Company profits, or to otherwise account to Brandon for how revenue, including revenue from leases and the Company's farming of its property, has been used or diverted.

44. Recently, Brandon was advised by Five Star Bank that Myron O has caused the Company to guaranty a personal operating loan and other personal loans, which he has now defaulted on, leaving the Company liable for Myron O's personal debts.

45. As a result, Brandon has been forced to incur costs, personally, to keep the Company from defaulting on its obligations, despite Myron O and Myron C having frozen him out from all affairs relating to the Company. Brandon also has had to assume personal responsibility – and incurred personal expense – for making certain purchases and improvements necessary for the continued operation of the Company's farming business (such as concrete and electrical work installed in a Company building). None of these expenses incurred personally by Brandon have been paid or re-paid by the Company.

46. Finally, Myron O and Myron C have caused the Company to fail to pay property taxes for its property, and, upon information and belief, those taxes remain delinquent as of the date of this Petition.

47. Myron O's and Myron C's brazen wrongdoing is augmented by their refusal, despite due request by Brandon, to provide Brandon with access to the Company's books and records, or any other financial information, thereby preventing Brandon from learning with any precision the magnitude of costs and damages – both to the Company and to Brandon, individually – resulting from their misconduct. Thus, the facts set forth herein reflect only those actions of which Brandon has knowledge or information, and are likely not exhaustive of the malfeasance engaged in by Myron O and Myron C.

48. As a result of the wrongful misconduct of Myron O and Myron C, Brandon was forced to initiate the Plenary Action against Myron O and Myron C both individually and in his capacity as a shareholder of the Company. Further, despite his desire not to do so, Brandon has now also been forced to initiate this proceeding pursuant to BCL §1104-a, due to the oppressive and wasteful conduct of Myron O and Myron C, as described above.

49. As set forth above, Myron O and Myron C have frozen Brandon out from any and all management of the Company, information relating to the management of the Company, and access to the Company's accounts, books and records, and all other related documentation and information relating thereto.

50. Additionally, Myron O and Myron C have also engaged in additional actions outside the normal course of the Company's business relating to movement,

misappropriation, and or waste of Company assets, which misconduct has been shielded by their refusal to provide Brandon with any accounting of Company transactions.

51. At the same time, Myron O and Myron C have continued to pull funds out of the Company without accounting to Brandon or the Company or providing any justification for the same.

52. By reason of the foregoing, Myron O and Myron C have engaged in illegal, fraudulent, or oppressive conduct toward Brandon, and have looted, wasted, or diverted corporate assets for personal and non-corporate purposes.

53. Accordingly, pursuant to New York Business Corporation Law §1104-a, the Court should find that Brandon has established a basis for dissolution of the Company on the ground that Myron O and Myron C been guilty of oppressive actions toward Brandon and/or have wasted, looted, or diverted Company assets for personal, rather than Company, purposes.

54. In addition, by reason of Myron O's and Myron C's willful and or reckless conduct, including but not limited to the improper withdrawal of funds from the Company, improper use of Company assets and property, and dissipation, waste, or transfer of assets or Company property without just or adequate compensation therefor, the Court should impose a surcharge upon Myron O and/or Myron C in an amount to be determined.

55. No prior application has been made for the relief sought herein.

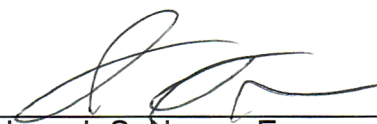
WHEREFORE, Brandon respectfully requests an order and judgment:

1. Granting Brandon's application, pursuant to Section 1104-a of the New York Business Corporation Law;
2. Permitting discovery, pursuant to CPLR 408, of Myron O's and Myron C's conduct with respect to the Company and imposing a surcharge upon Myron O and/or Myron C in an amount to be determined by the Court;
3. Appointing a temporary receiver pursuant to BCL §1113 to manage the affairs of the Company while this dissolution proceeding is pending;
4. Enjoining Respondents, pursuant to BCL §1115, from: (1) using corporate funds to pay counsel fees in defending this dissolution proceeding or the plenary action captioned Brandon M. Brady individually and derivatively as a shareholder of Brady Farms, Inc. v. Myron O. Brady and Myron C. Brady, Index No. 000953-2018, pending in the New York State Supreme Court, County of Livingston; (2) transferring any monies received by the Company, including but not limited to monies with respect to any income or accounts receivable of the Company, to any persons except in the ordinary course of business; and (3) otherwise engaging in any conduct outside the course of ordinary business; and
5. Awarding Brandon such other and further relief as the Court deems appropriate, including but not limited to the costs and disbursements of this proceeding as well as attorneys' fees and applicable interest.

Dated: March 7, 2019

Respectfully submitted,

BOND, SCHOENECK & KING, PLLC

By: 
Joseph S. Nacca, Esq.
Brian Laudadio, Esq.
Attorneys for Petitioner
350 Linden Oaks, Third Floor
Rochester, New York 14625
Telephone: (585) 362-4700

VERIFICATION

STATE OF FLORIDA)
COUNTY OF BROWARD) ss.:

Brandon M. Brady, being duly sworn, deposes and states that:

I am the Petitioner in this matter. I have read the foregoing Petition, know the contents thereof, and state that the same is true to my knowledge, except as to such matters which are stated to be alleged on information and belief, and as to those matters I believe it to be true.

Brandon M. Brady
Brandon M. Brady

Sworn to before me this
3/6 day of March, 2019.

[Signature]
Notary Public
PRODUCED DC

ROBERT EDWARD FUERST
MY COMMISSION # FF232176
EXPIRES May 18, 2019
FloridaNotaryService.com
EXPIRES 5/18/19

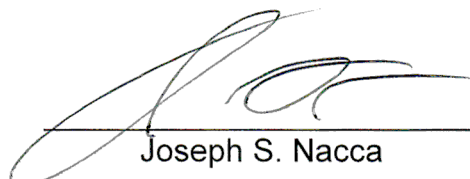
ROBERT EDWARD FUERST
MY COMMISSION # FF232176
EXPIRES May 18, 2019
FloridaNotaryService.com
(407) 398-6153

CERTIFICATE OF CONFORMITY

STATE OF NEW YORK)
)
COUNTY OF MONROE) ss.:

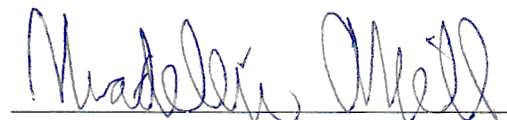
Joseph S. Nacca does hereby certify that he is an attorney at law duly admitted to practice in the State of New York and is a resident of the State of New York, that the acknowledgment executed by Robert Edward Fuerst, a notary public in the State of Florida, on March 6, 2019, to the foregoing Verification of Brandon M. Brady, was taken in the manner prescribed by and in conformity with the laws of the State of New York.

Dated: March 7, 2019



Joseph S. Nacca

Sworn to and subscribed before me
this 7th day of March, 2019.



Notary Public

MADELEINE O'NEILL
Notary Public, State of New York
Qualified in Monroe County No. 010 6386846
My Commission Expires February 4, 2022