

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

MARTIN D. YUDELL & DONALD M. SPANTON, as  
Trustees of the JULIUS YUDELL TRUST, individually,  
and in the right of BALDWIN HARBOR ASSOCIATES,  
and MARTIN D. YUDELL, Individually,

*Plaintiffs,*

-against-

JERROLD GILBERT, individually, SUSAN W. FINLEY,  
WENDY W. CHAYET and STANLEY WEISER, as  
Trustees of the WEISER FAMILY TRUST, JERROLD  
GILBERT & JERROLD MORGULAS, as Trustees of the  
IRENE PSATY TRUST, and BALDWIN HARBOR  
ASSOCIATES,

*Defendants.*

Index No.

Date Purchased: 2/11/2008

Plaintiff designates  
New York County  
as the place of trial.

**SUMMONS**

The basis of the venue is the  
defendant's home address.


08600404

To the above named Defendants:

***YOU ARE HEREBY SUMMONED*** to answer the complaint in this  
action and to serve a copy of your answer, or, if the complaint is not served with this summons,  
to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of  
this Summons, exclusive of the day of service (or within 30 days after the service is complete if  
this Summons is not personally delivered to you within the State of New York); and in case of  
your failure to appear or answer, judgment will be taken against you by default for the relief  
demanded in the complaint.

Dated: New York, New York  
February 11, 2008

**FILED**  
FEB 11 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

  
William J. Davis  
Scheichet & Davis, P.C.  
Attorneys for Plaintiff  
800 Third Avenue  
New York, NY 10022  
(212) 688-3200

Defendants' Addresses:

Jerrold Gilbert  
80 East End Avenue  
New York, NY 10028

Jerrold Morgulas  
310 Madison Avenue  
New York, NY 10017

Susan Finley  
36 West 20th Street, 20th Floor  
New York, NY 10011

Wendy Chayet  
3171 Inverness  
Weston, FL 33332

Stanley Weiser  
534 25th Street  
Santa Monica, CA 90402

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

-----X  
MARTIN D. YUDELL & DONALD M. SPANTON, as  
Trustees of the JULIUS YUDELL TRUST, individually,  
and in the right of BALDWIN HARBOR ASSOCIATES,  
and MARTIN D. YUDELL, Individually,

*Plaintiffs,*

Index No.

**VERIFIED COMPLAINT**

-against-

JERROLD GILBERT, individually, SUSAN W. FINLEY,  
WENDY W. CHAYET and STANLEY WEISER, as  
Trustees of the WEISER FAMILY TRUST, JERROLD  
GILBERT & JERROLD MORGULAS, as Trustees of the  
IRENE PSATY TRUST, and BALDWIN HARBOR  
ASSOCIATES,

*Defendants.*

08600404

-----X  
Plaintiffs Martin D. Yudell ("Marty Yudell"), individually, and together with and Donald  
M. Spanton ("Don Spanton"), as Trustees of the Julius Yudell Trust ("Plaintiff" or the "Yudell  
Trust"), and Martin D. Yudell, individually, by their attorneys, Scheichet & Davis, P.C., as and  
for their Verified Complaint herein allege as follows:

**INTRODUCTION**

1. Baldwin Harbor Associates ("BHA") is a New York joint venture general  
partnership formed in 1965 for the purpose of acquiring real property located at Atlantic Avenue  
and Church Street in Baldwin, Nassau County, New York, and constructing and managing a  
shopping center there known as the Baldwin Harbor Shopping Center (the "Shopping Center").  
In November 1990, the Joint Venture Agreement was amended to provide that the goal of the  
business is the ultimate sale of the Shopping Center (see pgh. 11(c) of the Verified Complaint).

2. The original venture partners consisted of Julius Yudell and his son, Marty  
Yudell, each owning a one-sixth (1/6) equity interest in BHA, Joseph J. Weiser ("Weiser"), and

I. Roy Psaty ("Psaty"), each owning a one-third (1/3) equity interest in BHA. The successor venture partners are now the I. Roy Psaty Trust (the "Psaty Trust"), the Joseph Weiser Trust (the "Weiser Trust") and the Julius Yudell Trust (the "Yudell Trust"), each owning a one-third (1/3) share of the joint venture general partnership.

3. This action arises as a result of:

(a) the incompetence, neglect, waste, mismanagement, breaches of fiduciary duty, breaches of the Joint Venture Agreement, conflicts of interest and legal malpractice of Defendant Jerrold Gilbert ("Gilbert"), a trustee of the Psaty Trust, the manager of the Shopping Center and the attorney for BHA, who was appointed in 1991 manager of the Shopping Center by the majority vote of the Weiser Trust and Yudell Trust joint venture interests; and

(b) the breaches of the fiduciary obligations owed to the Yudell Trust by Defendants Gilbert and Jerrold Morgulas ("Morgulas") as trustees of the Psaty Trust, and Susan W. Finley ("Finley"), Wendy W. Chayet ("Chayet") and Stanley Weiser ("Weiser") as Trustees of the Weiser Trust, arising out of their de facto alliance with Gilbert in support of his exclusive management and control of virtually every BHA transaction during the past 17 years, and his opposition to the exercise of the partnership rights of the Yudell Trust.

#### THE PARTIES

4. Marty Yudell, a developer and manager of shopping centers in the Northeast, Southeast and Middle West regions of the U.S, and Don Spanton, an attorney, are the Trustees of the Yudell Trust under a trust agreement dated August 1, 1974, made by Julius Yudell, as the "Grantor." Plaintiff Yudell Trust is bringing this action in both its individual capacity, and as a derivative action on behalf of BHA. In view of the acts, practices and courses of conduct on the

part of the defendants as alleged herein, a demand upon the joint venture partners of BHA to take action against the individual defendants would be futile.

5. Gilbert is an attorney admitted to practice in the State of New York, residing in the City, County and State of New York.

6. Upon information and belief, defendants Finley, Chayet and Weiser are the children of Joseph J. Weiser, are the trustees of the Weiser Trust. Susan Finley resides at 36 W. 20th Street, 2nd Floor, New York, NY 10011. Wendy Chayet resides at 3171 Inverness, Weston, FL 33332, and Stanley Weiser resides at 534 25th Street, Santa Monica, CA 90402).

7. Upon information and belief, Defendants Gilbert and Morgulas ("Morgulas"), are the trustees of the Psaty Trust, and reside in New York (Jerrold Gilbert, 80 East End Avenue, Apt. 7-A, New York, NY 10028; Jerrold Morgulas, 310 Madison Avenue, Manhattan, NY 10017).

## FACTS

### A. The Joint Venture

8. On or about June 30, 1965, Julius Yudell, Marty Yudell, Weiser and Psaty formed a joint venture partnership to acquire title to certain parcels of real property located at Atlantic Avenue and Church Street in Baldwin, Nassau County, New York, and to construct and manage the Shopping Center there, which was completed and opened in 1967.

9. The initial June 30, 1965 joint venture agreement of BHA (Exhibit 1) was subsequently modified by agreements dated September 25, 1972 (Exhibit 2), and November 5, 1990 (Exhibit 3 and ,collectively, referred to as the "Joint Venture Agreement").

10. On or about October 29, 1965, BHA filed a business certificate for the joint venture with the Nassau County Clerk, certifying that the joint venture partnership would

transact business under the name of "Baldwin Harbor Associates" (Exhibit 4). Since June 30, 1965, BHA was and still is the owner of the Shopping Center.

**B. The Joint Venture Agreement.**

11. The Joint Venture Agreement requires, among other provisions, that:

(a) "...the Shopping Center title shall be held by (the Venture Partners) as tenants in common, each party shall have an undivided one-third (1/3) interest;" (see pgh. 4 of the June 30, 1965 Joint Venture Agreement, Exhibit 1);

(b) any contract or agreement with respect to any lease, mortgage, capital improvement to the Shopping Center, or engagement of third party real estate brokers must have the unanimous approval of the joint venture partners (see pghs. 10 and 16 of the Joint Venture Agreement, as amended in pghs. 7 (at pg.7) and 10 (at pg.9) of the November 5, 1990 agreement, Exhibit 3);

(c) the Joint Venture "...has been organized for a particular undertaking, that is the ultimate sale of the Shopping Center and the land on which it was constructed," (pgh. 20 of the Joint Venture Agreement, as amended in pgh. 9 of the November 5, 1990 agreement, Exhibit 3); and

(d) J. Yudell Realty is "...entitled to a three percent (3%) commission upon renewal of the current leases for space in the Shopping Center of (A) Waldbaum's extension space as set forth in the Amendment to the Waldbaum's lease dated April 1, 1971, and (B) American Savings Bank." (pgh. pgh. 12 of the November 5, 1990 agreement, Exhibit 3)

**C. Management**

12. In or about 1991, and shortly after Marty Yudell suffered a stroke, the joint venture interests appointed Gilbert as the manager of the Shopping Center (the "Management

Agreement”), and Gilbert also assumed responsibility as the attorney for BHA. The Defendants have since refused Plaintiffs repeated requests to remove Gilbert as Manager and attorney for BHA by reason of his acts, practices and course of conduct as set forth in this Verified Complaint, and replace him with independent professional management and an independent attorney.

13. Pursuant to the Management Agreement, Gilbert is to be in charge of the management of the Shopping Center, and he must, amongst other things:

(a) bill and collect the monthly rents due under the leases of the Shopping Center, together with the additional rents and charges, such as real estate taxes and maintenance charges pursuant to the various leases of the Shopping Center as those charges become due and payable, and maintain accurate and current records with respect thereto;

(b) maintain and repair the physical plant of the Shopping Center; and

(c) distribute payments of cash flow and monthly operating statements of the Shopping Center to each of the other joint venture partners of BHA on or before the fifteenth day of the next succeeding month, account to the joint venture partners with respect to the management and operation of the Shopping Center, and send the annual partnership tax returns to the venture partners in time for their including the reported results in their respective tax returns; and

(d) observe, execute and enforce the terms, conditions, provisions and mandates of the Joint Venture Agreement, as well as make timely payment of BHA obligations.

**D. Failure to Perform and/or Account, and Breach of the Joint Venture Agreement**

14. Upon information and belief, Gilbert has failed to timely, and in a regular manner, bill for and collect appropriate additional rents and charges at the Shopping Center, including but

not limited to real estate tax escalation reimbursement (the "Tax Obligations"), and common area maintenance ("CAM") charges, all required by the terms of the leases, as follows:

(a) upon information and belief, Waldbaum's, Inc. ("Waldbaum's," which is now owned by The Great Atlantic & Pacific Tea Company, Inc.) accrued a total of approximately \$1,200,000 in unpaid Tax Obligations owed to BHA during the period of 1991 through 2007 and has also accrued a total of approximately \$375,000 in unpaid CAM charges owed to BHA during the period of 1991 through 2007;

(b) upon information and belief, CVS/Caremark Corporation ("CVS") has accrued a total of approximately \$340,000 in unpaid Tax Obligations owed to BHA during the period of 2001 through 2007;

(c) with the approval of Morgulas, and Finley, Chayet and Weiser, and over the objection of the Plaintiff, Gilbert has unilaterally granted informal and purportedly "temporary" rent concessions to various tenants, permitting them to violate their leases, which have continued for years and have significantly reduced the revenues of the Shopping Center;

(d) during the past 17 years, Gilbert, in his multiple capacities as a venture partner (he is a trustee of the Psaty Trust General Partner), manager of the Shopping Center and attorney for BHA, utterly failed to preserve the legal claims of BHA against Waldbaum's and CVS and other tenants for unpaid Tax Obligations, CAM and rent more than six (6) years old by having neither commenced legal action to collect those payments owed to BHA, nor obtaining written waivers of the applicable statute of limitations from each of Waldbaum's, CVS and other tenants;

(e) Gilbert has similarly failed to pay a three percent (3%) commission due to Marty Yudell (successor to J. Yudell Realty, Inc.) by reason of the 1991 and 2007 renewals of

the Waldbaum's extension space as set forth in leases in effect in November 1990, as required in the Joint Venture Agreement (see Exhibit 3, pg. 9, pgh. 12); and

(f) Upon information and belief, Gilbert has hired third party real estate brokers to obtain tenants for the Shopping Center for compensation without having entered into written agreements with such brokers, and without having obtained the required unanimous consent of the Venture Partners.

15. Upon information and belief, Gilbert's failure to collect the Tax Obligations and CAM from Waldbaum's and CVS, and preserve the BHA legal claims against Waldbaum's and CVS had the effect of not only depriving BHA of the use of those moneys for upkeep, maintenance and rehabilitation of the Shopping Center, but also vesting Waldbaum's with superior bargaining power in the long-term negotiation of a Waldbaum's agreement in November 2007 for a 20 year a lease extension and expansion of its space in the Shopping Center into land parcels purchased by Waldbaum's (the "Waldbaum's Lease") which were transferred to BHA. This superior bargaining power proximately resulted in Waldbaum's obtaining an under-market rent from BHA for the next 20-years of the Waldbaum's Lease, while it extracted cash payments from BHA and a credit for all of its unpaid Tax obligations and CAM as payment for the transferred land parcels (without any accrued interest factor). Perhaps not surprisingly, Waldbaum's has yet to pay its rent for May, June and July of 2007.

16. Upon information and belief, Gilbert's failure to collect more than \$1,500,000 of back tax obligations, CAM, unpaid rent, and accrued but unpaid interest on these obligations for more than 17 years compounded his failure to properly repair, upgrade and maintain the Shopping Center facilities during those years, which led to the Shopping Center's deterioration into a tired, run down, and unattractive retail market, without a comprehensive long term



development plan. The deterioration of the Shopping Center has resulted in BHA's inability to obtain rents anywhere near the average market level for such a shopping center in its territory.

17. Moreover, Gilbert's *failure to preserve BHA's rights* to collect the unpaid tax obligations, CAM and rent placed Waldbaum's in a position to extract under-market rent and other favorable provisions by implicitly exposing Gilbert to a significant risk that it would continue to withhold the payment of, or credit for, its overdue obligations to BHA, which likely result in the institution of serious malpractice, mismanagement and negligence claims against him by the other venture partners for having squandered BHA's assets. Gilbert put himself in no position to resist Waldbaum's demands for the terms and conditions they demanded for the new extension agreement.

18. Since in or about April 2002, Gilbert, in his capacities as Shopping Center manager, attorney for BHA, and a venture partner of BHA, has continually failed to send to the Plaintiffs, on a regular basis and in a timely manner, the monthly operating statements with respect to the Shopping Center, and other material documents.

19. While monthly statements were eventually and belatedly sent to the Plaintiffs by Gilbert from time to time, Gilbert has failed and/or refused to provide the Plaintiffs and, upon information and belief, the other joint venture partners, with the revised year-end compilations for 2005 and 2006, the bank lease extension documentation, and monthly statements for August, September and December 2006, and October 2007, despite repeated oral and written demands for such statements and other requested information.

20. As a result of Gilbert's failure to properly account to the joint venture partners, Plaintiffs have limited information regarding the amounts collected by Gilbert, or abandoned by

him, with respect to the Shopping Center, nor of any funds which Gilbert may have disbursed, wasted, or squandered.

**E. The Plaintiffs' Demands**

21. By email letter dated September 18, 2006, the attorney for the Plaintiffs ("Mr. Sklerov") demanded that Gilbert cease his mismanagement of the Shopping Center, his failure to assure proper maintenance, repair and replacement of the Shopping Center facilities, his conflicts of interest arising out of his having singled out the Plaintiffs for exclusion from active participation in lease negotiations, and his refusal to consider independent management (Exhibit 5).

22. Mr. Sklerov sent another email letter to Gilbert dated October 12, 2006 (Exhibit 6) expressing similar concern regarding a conflict of interest arising out of Gilbert's assertion of his apparent representation of the other two venture partners.

23. On November 1, 2006, Mr. Sklerov, having received no information from Gilbert since an October 24, 2006 conference call, sent an email letter to Gilbert (Exhibit 7) demanding that:

(a) he include Marty Yudell in conversations and meetings with lease and tenant prospects;

(b) he provide the Plaintiffs with the requested leasing information, and the missing August and September 2006 monthly reports; and

(c) he confirm whether or not there was "...a mechanism by which you have preserved the venture's right to claim those arrears that had been accumulating," principally those of Waldbaum's and CVS.

24. Mr. Gilbert replied the following day with a refusal, saying that since Mr. Sklerov had not answered questions posed by Mr. Gilbert in a lengthy October 23, 2006 email message (Exhibit 8), Gilbert was "...unable to engage in a dialog" with Mr. Sklerov. Mr. Sklerov responded to Gilbert's questions in a November 7, 2006 email (Exhibit 9).

25. On November 20, 2006, Mr. Sklerov sent a letter to Gilbert (Exhibit 10) summarizing the unanswered questions he had posed, together with a plea for a response. Gilbert replied in a December 2, 2006 letter, but did not answer any of the questions. Gilbert provided neither the information requested by the Plaintiffs, nor access to participation in the Waldbaum's negotiations, until he received a demand letter from Plaintiffs' counsel in this action dated March 13, 2007 (Exhibit 11), and thereafter retained counsel.

26. On or about November 14, 2007, Mr. Sklerov advised Gilbert, Finley, Chayet and Weiser of the BHA obligation, as set forth in the Joint Venture Agreement, to pay a three percent (3%) commission with respect to the commissionable portion of the Waldbaum's lease extension agreements.

27. Gilbert, with the support of Finley, Chayet and Weiser, has repeatedly assured Marty Yudell during the past 17 years that he would attend to the satisfaction of the BHA obligation to pay the commission due from a 1991 lease renewal agreement with Waldbaum's, but has in fact ignored the commission due to Marty Yudell, and has failed to pay any such commission.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST GILBERT**  
(partnership waste and mismanagement)

28. As described above, Gilbert has failed to perform his duties and has negligently squandered, mismanaged and wasted joint venture partnership funds and property, causing the

joint venture partnership to suffer great loss and reduction in the value of the joint venture partnership interests of the parties.

29. Gilbert has deliberately concealed from the joint venture partners the above-mentioned wrongful acts.

30. As a result of the acts, practices and courses conduct alleged above, Gilbert has failed properly to account to the joint venture partners, including Plaintiff, for the management and operation of the Shopping Center and the monies collected and/or expanded with respect thereto.

31. Plaintiffs, in reliance upon the Management Agreement and their fiduciary relationship with Gilbert, accepted the representations of Gilbert that The Shopping Center would be managed and maintained in accordance with the terms of the Management Agreement.

32. As a result of the failure on Gilbert's part to bill tenants at the Shopping Center, on a timely or regular basis, and collect additional rents and charges due under said tenants' respective leases, the joint venture partners, including Plaintiff, have been and are still being deprived of the additional revenues of market-rate rents, and are unaware as to how much additional tenant rents and charges remain unbilled and outstanding.

33. The Plaintiff has no adequate remedy at law.

34. This court should therefore order that an independent accounting be had with respect to the operations and practices of Gilbert as the Manager of the BHA Shopping Center since 1991, so as to account to the Plaintiff and other venture partners for all money received and disbursed, and/or assigned by or on behalf of, Gilbert, and all of Gilbert's acts, practices and courses of conduct in connection with the management of the Shopping Center to date.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST GILBERT**

(breach of management agreement)

35. By reason inter alia of the facts, acts and conduct alleged above, Gilbert has breached the Management Agreement.

36. Plaintiffs have duly performed their respective obligations under the Management Agreement.

37. The Plaintiff has no adequate remedy at law.

38. This court should therefore order that an independent accounting be had with respect to the operations and practices of Gilbert as the Manager of the BHA Shopping Center since 1991, so as to account to the Plaintiff and other venture partners for all money received and disbursed, and/or assigned by or on behalf of, Gilbert, and all of Gilbert's acts, practices and courses of conduct in connection with the management of the Shopping Center to date.

**AS AND FOR A THIRD CAUSE OF ACTION**

**AGAINST GILBERT, MORGULAS, FINLEY, CHAYET AND WEISER**

(breach of fiduciary duty)

39. Defendant Gilbert holds a position of trust and confidence of BHA in his position as a trustee of a venture partner, Shopping Center Manager and attorney for BHA. Furthermore, those positions of trust and the confidence which resided therein was enhanced and reflected by Gilbert's exclusive management and control of virtually every BHA transaction over a period of more than 17 years. As a result of the facts alleged above, Gilbert owed a fiduciary duty to BHA and each of the venture partners, including but not limited to the Plaintiff, requiring undivided and undiluted loyalty to those persons whose interests he is bound to protect

40. Defendants Morgulas, Finley, Chayet and Weiser each hold a position of trust and confidence of BHA in their position as the trustees of a venture partner (the Psaty Trust and the Weiser Trust, respectively). Their unstinting support of the acts, practices and courses of conduct

of Gilbert's exclusive management and control of virtually every BHA transaction over a period of more than 17 years has resulted in Gilbert's exercise of his exclusive management and control of virtually every BHA transaction. As a result of the facts alleged above, Morgulas, Finley, Chayet and Weiser owed a fiduciary duty to BHA and each of the venture partners, including but not limited to the Plaintiffs, requiring undivided and undiluted loyalty to those persons whose interests they are bound to protect.

41. The acts, practices and courses of conduct of Defendants Gilbert, Morgulas, Finley, Chayet and Weiser have oppressed the Plaintiff holder of minority equity rights and seriously damaged their value.

42. Defendants Gilbert, Morgulas, Finley, Chayet and Weiser breached their fiduciary duty to the Plaintiff as set forth above.

43. Plaintiff has no adequate remedy at law.

44. Defendants breach of their fiduciary duty proximately caused injury and damages to the Plaintiffs, including all additional, incidental and consequential amounts as shall be determined prior to trial and communicated to this court at time of trial or at such other time as the court may direct. Plaintiffs respectfully reserve the right to amend this complaint prior to trial to seek recovery for additional injuries it may suffer or to assert additional theories of recovery.

45. This court should therefore order that an independent accounting of the injury and damages to the Plaintiff be had so as to account to the Plaintiff for such damages.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST GILBERT**  
(negligence)

46. Gilbert's appointment as the Manager of the Shopping Center required him to responsibly manage the Shopping Center with reasonable care and/or skill and/or diligence in a

manner commensurate with the operation of a commercial shopping center in Nassau County similar to the Shopping Center.

47. Despite his undertaking, and as discussed above, Gilbert did not perform his management duties and obligations with reasonable care and/or skill and/or diligence, but did so carelessly, negligently and with a lack of diligence in reckless disregard of the terms, provisions and requirements of the Joint Venture Agreement.

48. Gilbert's negligence and lack of diligence consisted of, among other things, failing to adequately repair and maintain the Shopping Center, failing to timely and in a regular manner bill for and collect appropriate additional rents and charges under various leases of tenants at Shopping Center, including but not limited to Tax Obligations and CAM charges, failing to protect the BHA claims for uncollected rent, Tax Obligations and CAM , and failing to provide monthly operating statements and partnership tax returns to the Joint Venture Partners on a regular and timely basis, and/or otherwise account to the joint venture partners, including Plaintiffs.

49. By reason of the foregoing, Plaintiffs have sustained damage in a sum to be determined at trial, but in no event less than \$2,000,000.00 dollars.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST GILBERT**  
(professional malpractice)

50. Gilbert has acted in the position of the attorney for BHA during the past 17 years.

51. Upon information and belief, Gilbert's position as attorney for BHA required Gilbert to perform all of the general legal services required for the operations and protection of the business, assets and property of BHA in compliance with applicable law and New York's Code of Professional Responsibility.

52. Gilbert assumed a position of trust and confidence as the attorney for BHA who would professionally and loyally perform legal services on behalf of BHA, and represent BHA's interests in a professional and competent manner without conflict of interest.

53. As discussed above, Gilbert failed to perform his duties with the requisite degree of reasonable care by neglecting to either obtain written waivers of the statute of limitations, or commenced legal action to collect payments owed to BHA with respect to the unpaid Tax Obligations, CAM and rent more than six (6) years old, which were due to BHA from tenants at the Shopping Center, in particular Waldbaum's and CVS.

54. Upon information and belief, those acts of malpractice damaged the Plaintiffs in an amount to be determined, but no less than \$2,000,000.

55. If Gilbert had performed his duties as attorney for BHA with the requisite degree of reasonable skill and care, the resulting damages and losses proximately caused thereby would have been eliminated in whole or in material part.

56. Plaintiffs are entitled to recover their damages resulting from Gilbert's acts of professional malpractice. Plaintiffs seek an accounting of these damages from this court.

**AS AND FOR A SIXTH CAUSE OF ACTION**  
**AGAINST GILBERT**  
(Breach of Contract)

57. By reason, inter alia, of the facts, acts and conduct alleged above, Gilbert has breached the Joint Venture Agreement by having hired third party real estate brokers without the unanimous consent of the Venture Partners.

58. Gilbert's unauthorized hiring of third party real estate brokers in violation of the Joint Venture Agreement, and without written agreements, has placed BHA in risk of being



subject to claims from the third party real estate brokers for excessive commissions and expenses which are not limited by written agreements.

59. Plaintiffs have no adequate remedy at law.

60. This court should therefore enter an order for injunctive relief barring the engagement of or payment to any third party real estate broker who has not been engaged by BHA with the unanimous consent of the Venture Partners.

**AS AND FOR A SEVENTH CAUSE OF ACTION**  
**BY MARTY YUDELL AGAINST BHA**  
(Breach of Contract)

61. By reason, inter alia, of the facts, acts and conduct alleged above, BHA has failed and refused to pay the 3% commission due upon a renewal of the leases for space in the Shopping Center of the Waldbaum's extension space as set forth in the Joint Venture Agreement.

62. BHA's failure to pay the commission is a breach of the terms and conditions of the Joint Venture Agreement.

63. By reason of the foregoing, Plaintiff Marty Yudell has sustained damage in a sum to be determined at trial, but in no event less than \$150,000.00 dollars, together with interest at the legal rate from the date of the breach of the Joint Venture Agreement by BHA.

**WHEREFORE**, Plaintiffs demand judgment a as follows:

A. that the Plaintiffs have judgment against Defendant Gilbert on the Plaintiffs' First Cause of Action for partnership waste and mismanagement in the amount determined by an independent accounting, which damages are believed to be no less than \$2,000,000;

B. that the Plaintiffs have judgment against Defendant Gilbert on the Plaintiffs' Second Cause of Action for breach of contract in the amount determined by an independent accounting, which damages are believed to be no less than \$2,000,000;

C. that the Plaintiffs have judgment against Defendant Gilbert, Morgulas, Finley, Chayet and Weiser on the Plaintiffs' Third Cause of Action for breach of fiduciary duty in an amount determined by the court, which damages are believed to be no less than \$2,000,000;

D. that the Plaintiffs have judgment against Defendant Gilbert on the Plaintiffs' Fourth Cause of Action for negligence in the amount determined by an independent accounting, which damages are believed to be no less than \$2,000,000;

E. that the Plaintiffs have judgment against Defendant Gilbert on the Plaintiffs' Fifth Cause of Action for professional malpractice in the amount determined by an independent accounting, which damages are believed to be no less than \$2,000,000;

F. that this court enter an order for injunctive relief on the Plaintiffs' Sixth Cause of Action barring the engagement of or payment to any third party real estate broker who has not been engaged by BHA with the unanimous consent of the Venture Partners.


G. that Plaintiff Marty Yudell have judgment against Defendant BHA on the Seventh Cause of Action for breach of contract in the amount determined by an independent accounting, which damages are believed to be no less than \$150,000.00, together with interest at the legal rate from the date of the breach;

H. together with an award of the Plaintiffs' costs and disbursements, reasonable attorneys fees, and such other and further relief as this court may deem to be just, proper and equitable under the circumstances.

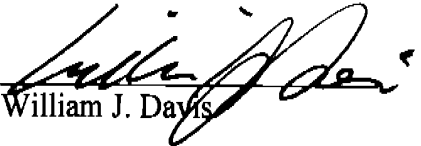
Dated: New York, New York  
January 29, 2008

Yours, etc.

SCHEICHET & DAVIS, P.C.  
Attorneys for Plaintiffs

By:   
William J. Davis, Esq.  
767 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10017  
Tel. (212) 688-3200  
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I hereby certify, pursuant to Rule 130-1.1(a) and (b), that to the best of my knowledge, information and belief, formed after a reasonable inquiry under the circumstances, this application for relief is not frivolous as defined in subsection (c) of Rule 130-1.1(a) and (b).

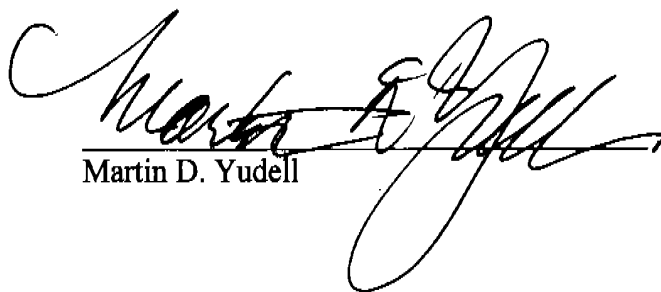
  
William J. Davis

**VERIFICATION**

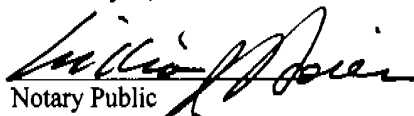
STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF NEW YORK )

Plaintiff Martin D. Yudell, as a Trustees of the Julius Yudell Trust, individually and in the right of Baldwin Harbor Associates, a general partnership, being duly sworn, deposes and says, that he has read the foregoing Verified Complaint and knows the contents thereof and that the same are true upon information and belief and that he believes the allegations to be true.

Dated: New York, New York  
February 6, 2008

  
Martin D. Yudell

Sworn to before me on  
February 6, 2008

  
Notary Public

**WILLIAM J. DAVIS**  
**NOTARY PUBLIC - STATE OF NEW YORK**  
**NO. 02DA6161638**  
**QUALIFIED IN NEW YORK COUNTY**  
**MY COMMISSION EXPIRES FEB. 26, 2011**

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

MARTIN D. YUDELL & DONALD M. SPANTON, as  
Trustees of the JULIUS YUDELL TRUST, individually,  
and in the right of BALDWIN HARBOR ASSOCIATES,  
and MARTIN D. YUDELL, Individually,

Index No.

Plaintiff/Petitioner,

- against -

JERROLD GILBERT, individually, SUSAN W. FINLEY,  
WENDY W. CHAYET and STANLEY WEISER, as  
Trustees of the WEISER FAMILY TRUST, JERROLD  
GILBERT & JERROLD MORGULAS, as Trustees of the  
IRENE PSATY TRUST, and BALDWIN HARBOR  
ASSOCIATES,

Defendant/Respondent.

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**VERIFIED COMPLAINT**

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**SCHEICHET & DAVIS, P.C.**

*Defendants*

*Attorney(s) for*

**767 Third Avenue  
NEW YORK, NY 10017  
(212) 688-3200**

To

Service of a copy of the within is hereby admitted.

Dated: .....