

CAUSE NO. 2022-78649

SOUTHERN EMERGENCY PHYSICIANS §
LTD LLP on its own behalf §
and derivatively on behalf §
of EMERGENCY HEALTHCARE §
PARTNERS, L.P. d/b/a §
MEMORIAL HEIGHTS EMERGENCY §
CENTER, §
Plaintiffs, §

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

234th JUDICIAL DISTRICT

v. §

AKASH BHAGAT, DO, §
INDIVIDUALLY, BHAGAT §
INVESTMENTS, INC., and, EMERGENCY §
HEALTHCARE MANAGEMENT §
UPTOWN, LLC §
Defendants. §

PLAINTIFFS' ORIGINAL PETITION AND ABANDONMENT OF RULE 202
PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs, Southern Emergency Physicians LTD LLP (“Southern”) on its own behalf and derivatively on behalf of Emergency Healthcare Partners, L.P. d/b/a Memorial Heights Emergency Center (“Heights ER”), and files this Original Petition (Plaintiff hereby abandons the Rule 202 Petition filed in this matter) and shows the Court as follows:

INTRODUCTION

In 2008, Dr. Elizabeth Fair (“Dr. Fair”) entered into a partnership agreement with Akash Bhagat, D.O. (“Bhagat”). Dr. Fair eventually transferred her Partnership interest into Southern. Bhagat has since transferred his partnership shares into Bhagat Investments, Inc. (“Bhagat

Investments”). The purpose of the Partnership was to operate an emergency medical facility known as “Heights ER.” In 2019, after resolution of a suit by a former partner, Dr. Phelan, Bhagat, individually, usurped an opportunity of the limited partners and Heights ER to benefit himself to the exclusion and detriment of Southern and, thereby, giving himself complete control. Bhagat, as controlling manager of Emergency Healthcare Management Uptown, LLC (“EHMU”) has failed to follow fiduciary and contractual obligations in carrying out his duties. To add insult to injury, Bhagat recently called and held a “partnership meeting” with partnership counsel present and another limited partner, Ruben Veloz, MD (“Veloz”), present as well. Contrary to his duty as the manager of the GP, Bhagat did not invite to nor even notify Dr. Fair, on behalf of Southern, of this meeting. Plaintiffs’ claims arise out of Defendants’ ongoing breach of fiduciary duties, aiding and abetting said breaches and breaches of contract. As a result, Plaintiffs have no choice but to seek the damages and equitable relief discussed herein.

DISCOVERY CONTROL PLAN

1. Discovery in this case should be conducted in accordance with the Level 3 Discovery, as provided by Rule 190.4 of the TEXAS RULES OF CIVIL PROCEDURE.

RULE 47 STATEMENT

2. Plaintiffs seek monetary relief of more than \$1,000,000.00, and non-monetary relief (as requested herein), along with a demand for judgment for all other relief to which Plaintiffs are justly entitled. *See* TEX. R. CIV. P. 47.

PARTIES

3. Derivative Plaintiff, **EMERGENCY HEALTHCARE PARTNERS, L.P. (the “Partnership”)**, is a Texas limited partnership.

4. Plaintiff, **SOUTHERN EMERGENCY PHYSICIANS LTD LLP**, is a Texas Partnership and whose principal place of business is Harris County, Texas.

5. Defendant **EMERGENCY HEALTHCARE MANAGEMENT-UPTOWN, LLC (“EHMU”)** is a Texas limited liability company and can be served through Jared C. Johnson, 3200 Southwest Freeway, #2200, Houston, Texas 77027.

6. Defendant **AKASH BHAGAT, DO (“Bhagat”)** is an individual and resident of the State of Texas, who may be served at 11660 Arrowwood Circle, Houston, Texas 77063.

7. **BHAGAT INVESTMENTS, INC.** is a Texas corporation that may be served through its agent for service of process, Akash Bhagat, 11660 Arrowwood Circle, Houston, Texas 77063.

JURISDICTION AND VENUE

8. The Court has jurisdiction over this case and the parties hereto because the damages sought are within the jurisdictional limits of the Court. Pursuant to TEX. CIV. PRAC. & REM. CODE §§ 15.002(a)(1) and (a)(3), 15.003(a), venue is proper in Harris County because a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in Harris County, and the Defendants reside in and/or have their principal offices in Harris County.

LIMITED PARTNERS’ RIGHT TO BRING DERIVATIVE CLAIMS

9. Southern has standing, as limited partner of the Partnership at the time of the actions complained of herein, to bring claims derivatively on the Partnership’s behalf. Any effort to cause EHMU, as the general partner of the Partnership to file suit, is not likely to succeed because EHMU is named as a Defendant to this Lawsuit. *See* TEX. BUS. ORGS. CODE § 153.401.

10. Southern further submits that they did not make any efforts to secure initiation of the action by EHMU, as the general partner of the Partnership, because EHMU is named as a

Defendant to this Lawsuit and has committed or conspired or aided and abetted in the tortious actions and breaches of contract complained of herein. *See* TEX. BUS. ORGS. CODE § 153.403.

FACTUAL BACKGROUND

A. Introduction and formation of the Partnership.

11. On or about March 16, 2009, the original Partnership was formed as a Texas limited partnership with EHMU as the general partner. The owners and limited partners of the Partnership were Dr. Bhagat (52%), Dr. Phelan (22%), Bart Stonestreet (5%), Elizabeth Fair, MD (10%), Ruben Veloz, MD (10%), and EHMU (1%). Dr. Phelan/Highland Park Emergency Center, LLC (“HPEC”), subsequently purchased Bart Stonestreet’s 5% in 2018.

12. The owners and members of EHMU, the general partner, were Dr. Bhagat (90%) and HPEC (10%), which purchased its interest in 2018.

13. As a result of his original 90% member interest of EHMU and 52% limited partner interest in the Partnership, Dr. Bhagat at all times has owned and continues to own the majority interest of the Partnership.

14. Since 2009, the Partnership has operated a free-standing emergency room (“FSER”) that provides high-level emergency care to patients in Harris County, Texas. The Texas Freestanding Emergency Medical Care Facility Licensing Act was first enacted in 2009 by the 81st Texas Legislature, enabling FSERs to operate in the State of Texas. Subsequently, the Texas Department of State Health Services developed rules that established minimum standards for licensing procedures; for granting, denying, suspending, and revoking a license; for licensing fees; for operation; and for requirements concerning design and construction.

15. As of September 1, 2012, the State required all FSERs to be open 24-hours-a-day, 7-days-a-week. FSERs must be equipped and staffed to perform laboratory testing, ultrasound and radiology services, and must keep a long list of age-appropriate medical equipment and supplies

needed for emergency treatment on hand, ready for use at all times. As a result, FSERs (like the one owned and operated by the Partnership) consider these resources to be proprietary in nature and their availability is vital to the viability of the FSER.

B. The Partnership Agreement and prohibited acts of the general partner.

16. On or about July 3, 2009, the partners of the Partnership executed the Limited Partnership Agreement of Emergency Healthcare Partners, L.P. See Limited Partnership Agreement of Emergency Healthcare Partners, L.P., a true and correct copy of which is attached hereto as Exhibit “A” and incorporated herein by reference. By signing and executing the Partnership Agreement, the partners agreed to be bound by its terms. In accordance with well-established Texas law, EHMU, as the general partner, owes fiduciary duties to the Partnership and its limited partners and is obligated to contractual duties as well.

17. The Partnership Agreement further delegated certain rights and obligations upon EHMU as the general partner. For instance, Section 8.1 of the Partnership Agreement grants the EHMU, as the general partner, sole and exclusive control of the Partnership. Section 7.3 of the Partnership Agreement requires EHMU, as the general partner, to receive all monies of the Partnership and deposit said monies into the Partnership banking accounts. Section 7.2 of the Partnership Agreement specifically requires EHMU, as the general partner, to keep at the principal place of business, and make available to all partners at any time during normal business hours, just and true books of account and all other Partnership records. Similarly, the Partnership Agreement specifically prohibited EHMU, as the general partner, from engaging in certain conduct and restricted transfers as follows:

10.1 During the time of organization or existence of this Limited Partnership, neither the General nor the Limited Partners shall do any one of the following:

...

c. Do any other act or deed with the intention of harming the business operations of the Partnership;

d. Do any act contrary to the Limited Partnership agreement, except with the prior expressed approval of all Partners;

...

g. Abandon or wrongfully transfer or dispose of Partnership property, real or personal;

...

10.2 The General Partner shall not use, directly or indirectly, the assets of this Partnership for any purpose other than for carrying on the business of the Partnership, for the full and exclusive benefit of all its Partners.

11 RESTRICTIONS ON TRANSFERS

11.1 Except as set forth below, no Limited Partner shall sell, assign, transfer, encumber, or otherwise dispose of any interest in the Partnership without the written consent of the General Partner.

11.2 In the event a Limited Partner receives a bona fide offer for the purchase of all or a part of his or her interest in the Partnership, the Limited Partner shall either refuse the offer or give the General Partner written notice setting out full details of the offer, which notice shall, among other things, specify the name of the offeror, the percentage of interest in the Partnership covered by the offer, the terms of payment, including whether the offer is for cash or credit, and, if on credit, the time and interest rate, as well as any and all other consideration being received or paid in connection with the proposed transaction, as well as any and all other terms, conditions, and details of the offer.

a. Upon receipt of the notice with respect to the offer, the General Partner shall have the exclusive right and option, exercisable at any time during the period of 60 days from the date of the notice, to purchase the interest in the Partnership covered by the offer at the same price and on the same terms and conditions of the offer as set out in the notice.

b. If the General Partner decides to exercise the option, the General Partner shall give written notification of this decision to the Limited Partner desiring to sell, and the sale and purchase shall be closed within 60 days thereafter.

c. If the General Partner does not elect to exercise the option, the General Partner shall notify in writing the other members of the Limited Partnership regarding

the terms of the offer. Should any individual Limited Partner or group of Limited Partners decide to exercise the option to purchase, notification of this decision shall be given in writing to the General Partner to be transmitted in writing to the selling Limited Partner within the same period provided above for notification of a General Partner's exercise of the option, and the sale and purchase shall be closed within 60 days thereafter.

...

See Partnership Agreement, Sections 7.2, 7.3, 8.1, 10.1, 10.2, 11.1, 11.2 a, b, c (Exhibit "A," attached hereto). o

C. The 2019 lawsuit.

18. Anticipating a lawsuit by Phelan/HPEC, a former partner, on May 30, 2019, Bhagat and his legal team filed the 2019 lawsuit against Phelan/HPEC. Phelan/HPEC filed a counter claim against Bhagat, EHMU and the Partnership.

19. In July of 2019, a mediation of the 2019 lawsuit was held. A mediated settlement agreement was reached requiring a sale/buyout of Phelan/HPEC's 27% combined interest in the Partnership. Importantly, Bhagat, Fair and Veloz agreed during and after mediation via email that the buyout opportunity would be shared among the existing limited partners.

20. In September 2019, Bhagat, in his capacity as a limited partner, while still acting as the General Partner, purchased all 27% interest from Phelan in violation of the Company Agreement. The buyout allegedly resulted in the following ownership: Bhagat 79.5% LP interest; .5% Uptown GP interest (controlled solely by Bhagat); Fair Entities 10% LP interest; and, Veloz 10% LP interest. Major decisions effecting the Partnership require a 75% vote of the limited partnership interest. Obviously, by wrongfully obtaining the Phelan shares, in addition to wrongful financial gain, Bhagat has secured complete power for himself to control the Partnership. Bhagat accomplished all of this while wearing the hat of the General Partner – a hat that is designed to be worn by the person looking out for the limited partners best interest – not their own self interest.

21. Since 2019, on numerous occasions, Dr. Fair, on behalf of Southern, has discussed the wrongful buyout of the 27% with Bhagat and offered to purchase shares. Initially, Bhagat led Dr. Fair to believe that, as part of the restructuring of management and reorganizing of the Partnership, that Southern would get its share of the 27% Partnership shares available from Phelan/HPEC. Unfortunately, Bhagat has not done what he indicated he would – instead, in violation of his fiduciary duty, he has told her that he would not sell her the interest pursuant to the Transfer provisions and that she would have to sue him to get any of the interest or pay double the price that was paid to purchase the shares.

CAUSES OF ACTION

1) COUNT ONE: Breaches of Fiduciary Duty (against Defendant Emergency Healthcare Management-Uptown, LLC; Bhagat Investments, Inc.; Defendant Akash Bhagat DO; directly and derivatively on behalf of the Partnership).

22. Plaintiffs hereby incorporate and re-allege the allegations set forth above.

23. As the sole general partner of the Partnership, EHMU owed fiduciary duties to the Partnership and partners, like Southern Emergency Physicians, to act in the utmost good faith, fairness, honesty, and in the best interests of the Partnership, and foregoing any improper benefits to itself as the general partner of the Partnership, to act with loyalty to the joint concern of the Partnership, to account for all partnership profits and property, and refrain from competition with the Partnership.

24. As the sole controlling member of EHMU, Dr. Bhagat owed fiduciary duties to the Partnership and partners, like Southern Emergency Physicians, to act in the utmost good faith, fairness, honesty, and in the best interests of the Partnership, and foregoing any improper benefits to itself as the general partner of the Partnership or to Bhagat as a limited partner, to act with loyalty to the joint concern of the Partnership, to account for all partnership profits and property, and refrain from competition with the Partnership.

25. EHMU and Dr. Bhagat breached these fiduciary duties to the Partnership and its partners by, *inter alia*, self-dealing in the transaction to “buy” all 27 limited partnership shares, to the personal benefit of its controlling member, Akash Bhagat, DO.

26. As a result, Defendants’ actions have caused injury to Plaintiffs thereby resulting in economic, non-economic, special, general, consequential, reliance, and incidental damages to Plaintiffs in an amount within the jurisdictional limits of this Court, and further require restitution and recoupment of property wrongfully obtained.

27. Plaintiffs further seek an accounting, at the expense of Defendants, of the Partnership’s funds and those funds or improper benefits taken by Defendants and their co-conspirators regarding any transfers of funds from the Partnership.

28. Plaintiffs further seek a constructive trust over and disgorgement of any profits or improper benefits obtained by Defendants through their wrongful conduct complained of herein.

2) **COUNT TWO: Aiding and abetting breach of fiduciary duties (against all Defendants; directly and derivatively on behalf of the Partnership).**

29. Plaintiffs hereby incorporate and re-allege the allegations set forth above.

30. On information and belief, Defendants have acted and participated as a collective majority over the Partnership and its funds and assets, and have exercised exclusive control over the business operations, funds, and assets of the Partnership. Using insider and concealed knowledge of the operations of the Partnership, the Defendants have conspired, aided, and abetted one another, and participated in the secret acts of EHMU and Dr. Bhagat.

31. Defendants have collectively and knowingly induced, or otherwise aided and abetted, EHMU and Dr. Bhagat to breach their fiduciary duties as the sole general partner of the Partnership and its sole controlling member, and/or have participated and encouraged in the various breaches of fiduciary duties by EHMU and Dr. Bhagat.

32. Plaintiffs, therefore, request that Defendants be held liable as joint tortfeasors for their wrongful actions against Plaintiffs and the Partnership as complained of herein.

33. As a result, Defendants' actions have caused injury to Plaintiffs thereby resulting in economic, non-economic, special, general, consequential, reliance, restitution, recoupment of property wrongfully obtained, and incidental damages in an amount within the jurisdictional limits of this Court.

3) COUNT THREE: Breaches of the Partnership Agreement (against Defendants Emergency Healthcare Management-Uptown, LLC, Akash Bhagat, DO and, Bhagat Investments, Inc.; directly and derivatively on behalf of the Partnership).

34. Plaintiffs hereby incorporate and re-allege the allegations set forth above.

35. Plaintiffs, along with EHMU and the Partnership, are bound by the terms of the Partnership Agreement of Emergency Healthcare Partners, LP (the "Partnership Agreement").

36. At all times since its execution, Plaintiffs have strictly complied with the terms of the Partnership Agreement.

37. By and through his actions complained of herein, as stated above, Bhagat, Bhagat Investments, Inc. and EHMU have breached the Partnership Agreement, as follows:

- Performing acts or deeds with the intention of harming the business operations of the Partnership;
- Performing acts contrary to the Partnership agreement and without the prior expressed approval of all Partners; and,
- Abandoning or wrongfully transferring or disposing of Partnership property.
- Directly or indirectly using the assets of this Partnership for any purpose other than for carrying on the business of the Partnership or for the full and exclusive benefit of all its Partners.

38. EHMU's and Dr. Bhagat's breaches of the Partnership Agreement have caused injuries to Plaintiffs and the Partnership, thereby resulting in economic, non-economic, special,

general, consequential, reliance, restitution, recoupment of property wrongfully obtained, and incidental damages in an amount within the jurisdictional limits of this Court.

39. Plaintiffs further seek an award of costs and reasonable and necessary attorneys' fees under TEX. CIV. PRAC. & REM. CODE §§ 38.001, *et seq.*

4) COUNT FOUR: Unjust Enrichment, Money Had and Received/Assumpsit and imposition of a constructive trust (against all Defendants; directly and derivatively on behalf of the Partnership).

40. Plaintiffs hereby incorporate and re-allege the allegations set forth above.

41. Defendants have now been unjustly enriched at the expense of and to the detriment of Plaintiffs and the Partnership. The Defendants hold money that belongs to Plaintiffs and the Partnership, which has unjustly enriched the Defendants at Plaintiffs' and the Partnership's expense. Said money belongs to Plaintiffs and the Partnership in equity and good conscience.

42. As a result, the Defendants' actions have caused injuries to Plaintiffs and the Partnership, thereby resulting in economic, non-economic, special, general, consequential, reliance, restitution, and incidental damages in an amount within the jurisdictional limits of this Court.

43. Following an accounting as requested below, Plaintiffs seek to impose a constructive trust over the monies wrongfully held by Defendants pending a final determination of amounts held and owed.

5) COUNT FIVE: Demand for an accounting pursuant to TEX. BUS. ORGS. CODE §§ 153.552 and 153.5521 and Section 7.2 of the Partnership Agreement (Defendant Emergency Healthcare Management-Uptown, LLC; directly and derivatively on behalf of the Partnership).

44. Plaintiffs hereby incorporate and re-allege the allegations set forth above.

45. Sections §§ 153.552 and 153.5521 of the TEX. BUS. ORGS. CODE and Section 7.2 of the Partnership Agreement lawfully permit Plaintiffs, as limited partners of the Partnership, to demand to examine and copy the Partnership's books and records.

46. Plaintiffs now bring this claim against EHMU to compel their rights, as limited partners of the Partnership, to examine and copy the books and records of the Partnership.

6) COUNT SIX: Conspiracy and principal-agent liability (against all Defendants; directly and derivatively on behalf of the Partnership).

47. Plaintiffs hereby incorporate and re-allege the allegations set forth above.

48. As complained of herein, Defendants were members of a combination of two or more persons and agents of one another.

49. The object of this combination amongst the Defendants was to accomplish an unlawful purpose, or a lawful purpose by unlawful means.

50. Defendants collectively held a meeting of the minds about the objects and purpose of their conspiratorial actions.

51. At least one of the Defendants committed these unlawful, overt acts in order to further the objects or courses of action for the Defendants' conspiracies.

52. Such actions taken by the Defendants have proximately caused injury and damages incurred and to be incurred by Plaintiff as a result. Plaintiff now seeks economic, non-economic, special, general, consequential, reliance, restitution, and incidental damages in an amount within the jurisdictional limits of this Court.

ATTORNEYS' FEES AND COSTS

53. Plaintiff hereby incorporates and re-alleges the allegations set forth above, and hereby seeks to recover reasonable and necessary attorneys' fees and costs incurred to prosecute this lawsuit, including, but not limited to, recovery of attorneys' fees under TEX. CIV. PRAC. & REM. CODE §§ 37.009, 38.001(8) and TEX. BUS. ORGS CODE § 153.405, and TEX. BUS. & COM. CODE § 24.013.

CONDITIONS PRECEDENT

54. Pursuant to TEXAS RULE OF CIVIL PROCEDURE 54, all conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

REQUESTS FOR DISCLOSURE

55. Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff hereby requests that the Defendants disclose the information or material described in Rule 194.2 (a); (b); (c); (d); (e); (f); (g); (h); (i); and (l), within the time allotted by the TEXAS RULES OF CIVIL PROCEDURE. Said information or material shall be produced at the law offices of Dwayne R. Day, P.C., 3401 Allen Parkway, Suite 101, Houston, Texas 77019.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that Defendants be cited to appear and answer herein and that, upon final hearing, the Court enter judgment in favor of Plaintiff and against Defendants as requested above, including, but not limited to the following:

- (a) Actual, consequential, incidental, economic, non-economic, special, general, consequential, reliance, restitution, recoupment of property wrongfully obtained, incidental damages, and exemplary damages in an amount within the jurisdictional limits of this Court;
- (b) Disgorgement of profits and benefits wrongfully obtained by Defendants;

- (c) An accounting and imposition of a constructive trust upon the monies and assets acquired as a result of such acts;
- (d) The non-monetary and declaratory relief sought herein above;
- (e) Costs and expenses of this lawsuit, including reasonable attorneys' fees incurred by Plaintiff in prosecuting this action;
- (f) Pre-judgment and post-judgment interest on all monetary relief sought herein at the highest rates allowed by law; and,
- (g) Such other and further relief, both at law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

Dwayne R. Day, P.C.

By: /s/ Dwayne R. Day

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Dwayne Day on behalf of Dwayne Day
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Filing Description: Original Petition
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