

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – COMMERCIAL DIVISION

JEFFREY SIMPSON, individually and derivatively,
as managing member of JJ ARCH LLC, suing
derivatively as managing member of ARCH REAL
ESTATE HOLDINGS LLC, and JJ ARCH LLC

Index No. 158055/2023

Mot. Seq. No. 004

Plaintiffs,

-against-

JARED CHASSEN and FIRST REPUBLIC BANK,

Defendants.

**AFFIRMATION OF KEVIN WIENER IN SUPPORT OF 608941 NJ INC.'S
ORDER TO SHOW CAUSE REGARDING APPOINTMENT OF TEMPORARY
RECEIVER OF JJ ARCH LLC**

1. I am a director and the corporate secretary of 35 Oak Holdings Ltd (“35 Oak”), the parent company of 608941 NJ INC. (“Investor Member”). Recently, I have also been acting as its in-house counsel to 35 Oak and Investor Member.

2. While my brother, Michael, has historically been more actively involved in the family business, I have been on its board of directors and chaired its investment committee. On a day-to-day basis, though, I have pursued an independent legal career.

3. After graduating on the Dean’s Honours List from the Queen’s University Faculty of Law in 2015 and completing the law licensing process, I worked as a judicial law clerk for the Honourable Justice E. Susan Elliott of Canada’s Federal Court, working primarily on administrative law appeals.

4. My time at the Federal Court helped me develop a passion for administrative law, and after finishing my clerkship, I set up my own private practice in Toronto, where I practiced mostly refugee law, primarily for clients on legal aid. Over the course of my practice, not a single one of my clients was successfully deported when I was retained to seek a deferral or stay of removal.

5. In May 2020, I was appointed as an adjudicator at Canada’s Immigration and Refugee Board, which is the Canadian equivalent to being a US immigration judge. From May 2020 until September 2021, I worked in the Refugee Protection Division, where I was responsible for questioning and making decisions on asylum claims. My job required me to review and synthesize thousands of pages of personal and country condition evidence, sensitively question traumatized refugee claimants, evaluate credibility, and render cogent and timely decisions on claims, frequently orally at the end of the hearing. From September 2021 to April 2022, I worked in the Immigration Division, where I conducted immigration bail hearings for non-citizens

detained by the Canada Border Services Agency. In my time at the Immigration and Refugee Board, none of my decisions were ever found unreasonable or unfair by the Federal Court.

6. I left the Immigration and Refugee Board in the spring of 2022 to take a position at Strosberg Sasso Sutts LLP, one of Canada's top class action plaintiff boutique litigation firms, where I had completed my articles during my law licensing process. Over both my periods of time at Strosberg, I have worked on several multi-billion dollar class actions, ranging from securities to antitrust to environmental protection. One case I worked on—a class action against Volkswagen for emissions violations in their diesel vehicles—led to the largest class action settlement in Canadian history against a non-government defendant.

7. I recently left my job at Strosberg Sasso Sutts LLP to work full time at 35 Oak and Investor Member as the situation has deteriorated at Arch and as Jeffrey Simpson's unstable and destructive behaviour has forced us and other investors into an untenable situation, requiring both my brother and I to spend virtually all of our time trying to manage the quagmire Simpson has created.

Beginnings of my Involvement with Arch

8. I began to get involved with the situation at Arch in July 2023 after my brother, Michael, informed me that many of the properties we invested in were underperforming, the development properties had serious and complex issues that needed to be resolved, and that he was dealing with a partner at Arch who was arrogant and inflexible, who felt entitled to unlimited cash infusion with no oversight, and who appeared to be demonstrating genuine mental instability. On the latter point I thought my brother must have been exaggerating based on a normal personality conflict, but I would come to learn that he was in fact understating just how uniquely appalling Simpson's conduct has been. I would also learn that all the problems my brother was aware of just

scratched the surface of the harm Simpson had caused through his mismanagement and compulsive dishonesty.

9. Late at night on July 11, 2023, Simpson had precipitated a crisis by instructing Morrison Cohen, Arch's counsel working on numerous litigation and transactional matters across the portfolio, to put pens down on all work. This sudden move was particularly distressing because one of the files the firm had been working on for weeks, a forbearance agreement in the Myrtle Point development that would stop \$2 million a month of default interest from accruing and create the breathing room to get the property finished, was now in jeopardy. *See Exhibit A* (email from D. Scharf to M. Wiener and F. van Biesen – July 12 at 6:20 AM).

10. Simpson said that he would not allow Morrison Cohen to continue work on any file until Investor Member committed to pay all legal bills (without any specificity or limitation). Not only did this exceed any obligation Investor Member had, this was also confusing to us, as we had just made a deal with Morrison Cohen to pay half of their outstanding bills and defer the remainder for a few months in the hopes that we could get the properties to a state to start infusing cash back into the business and covering overhead. Morrison Cohen was entirely satisfied with this arrangement; it was Simpson who was suddenly making new demands on Investor Member without any necessity or basis.

11. Simpson then went further, demanding notwithstanding the fact that Investor Member's lawyer was on vacation, that unless we made some nebulous funding commitment above and beyond what was in the operating agreements, he would "send [us] notices of non-compliance of funding on a corporate level and at the properties level" and start terminating staff at Arch and at the properties. He advised that he would be terminating staff two days later and that the remaining staff would be insufficient to cover work on the properties that we had guarantees

on. *See Exhibit B* (email from Simpson to M. Wiener and F. van Biesen – July 12 at 9:31 AM). The threat was clear: in the absence of carte blanche to cover whatever spending Simpson wanted without any oversight or adequate explanation, he would allow the properties to go into foreclosure and subject Investor Member and 35 Oak to significant default interest on our carry guarantees. I would learn that this was Simpson’s typical approach: to use his power as managing member to threaten us with guarantee liability unless we immediately did what he wanted.

12. By that Friday, Simpson was continuing to threaten and insult my brother and accusing us of not living up to our funding commitments (when in fact the relevant property-level operating agreements explicitly only required additional funding from Investor Member if the relevant JJ-controlled entity put in its share of the capital call, which it never did). He had also demanded that we agree to his proposal to immediately take over the business on his terms or he would unilaterally dissolve the business. *See Exhibit A* (email from Simpson to M. Wiener and F. van Biesen – July 13 at 11:37 PM).

13. At this point, I began dealing with Simpson directly, hoping that a new face would help move things forward since there appeared to be a level of resentment and hostility towards my brother. I proposed that we quickly agree on an interim budget for Arch Real Estate Holdings, LLC (“AREH”) and the properties for the next couple of months, and that would create the breathing room to have a larger negotiation about a separation between Simpson and the 35 Oak entities rather than agreeing to anything under such extraordinary duress. *See Exhibit A* (email from K. Wiener to Simpson – July 14 at 4:50 PM). Simpson’s only response was a condescending email to “read the operating agreement,” as “that will be a fruitful thought provoking process” for me. I have, of course, read the relevant operating agreements that were signed on paper, which in no way mirror Simpson’s imagined agreements.

14. The next week, Simpson's threats and erratic behaviour continued. After Investor Member's counsel reached out to Morrison Cohen to confirm they had no issues with the funding deal we had already reached, Simpson was now aggrieved that we had spoken directly to David Scharf (who in addition to representing AREH and the properties, also represented Investor Member and 35 Oak directly as guarantor). Rather than just committing in principle to contribute such capital as would be required to cover the legal bills, Simpson was now demanding that Morrison Cohen incur additional legal bills to "memorialize in writing" some sort of funding commitment from Investor Member to Arch. Simpson also stated that he had retained counsel for JJ Arch LLC ("JJ Arch"), and that he would be diverting needed funds from AREH to pay his own lawyer "as damages for interference of the business," despite the fact that there was no provision to use AREH funds to pay JJ Arch's lawyer. *See Exhibit C* (email from Simpson to K. Wiener – July 17 at 10:17 AM). Demanding or using our money to pay for his own lawyer would become a recurring theme with Simpson.

15. After a further exchange and further threats from Simpson, I made clear that Investor Member would continue to abide by its legal obligations to meet capital calls when made, but that we would not be bullied. *See Exhibit A* (email from K. Wiener to Simpson – July 17 at 5:56 PM). I had not yet realized at that time, that across the portfolio (with a couple of exceptions), Simpson had never even attempted to capital call other investors to cover expenses, presumably because he wanted to hide from them the financial needs of those properties. Nor, in most instances, had he capital called Investor Member. He also never made any contribution on behalf of JJ Arch or offered to decrease his sizeable management distribution, despite JJ Arch's own capital call obligations.

16. Simpson's response was that JJ Arch had no funding obligations (which it plainly does), told us that our "only role in the business" is to "write checks and provide guarantees" and that he would no longer make any effort to keep cash needs down, instead issuing weekly capital calls, apparently to us and only to us. *See* Exhibit A (email from Simpson to K. Wiener – July 17 at 6:13 PM). He then sent a follow-up email threatening to shut us out of communications from our joint lawyer. *See* Exhibit C (email from Simpson to K. Wiener – July 17 at 6:57 PM).

17. Given the way things had deteriorated, and given Simpson had already proposed to step away from the business, we began working on a counter-proposal. At this time, we were hearing from Jared Chassen ("Chassen") that Simpson continued to be unstable and abusive at the office, that he was on the verge of driving away key staff, and that something needed to change quickly and not in a few months. We made a proposal that Simpson step away immediately, that Chassen would become managing member of JJ Arch, and that Investor Member would fund during an interim period during which either an alternative manager could be brought in to manage the assets or Investor Member would have the ability to take control of AREH.

18. Notwithstanding Simpson's offer, just days earlier, to step away from the business, his counsel now advised ours that he was no longer considering leaving in any capacity.

19. On July 24, 2023, we received an email from Tristan Last, an AREH employee, in response to some due diligence requests where we discovered, for the first time, that all the capital we had been putting in had not been properly called at the LP level, jeopardizing our priority with the LP investors. *See* **Exhibit D** (email from T. Last to K. Wiener – July 24 at 4:56 PM).

20. That week, we were scheduled to have a call with David Scharf at Morrison Cohen to walk us through the bankruptcy plan for the Nostrand property, one of the properties in the AREH portfolio. The call seemed to start well, but before we could get any information from

Scharf, Simpson began monopolizing the call, not letting anyone else get in a word edgewise. Finally, Charles Dreezer, an employee of 35 Oak, interrupted to try asking a question. This set Simpson off, and he told Dreezer, in a voice on the verge of yelling, not to interrupt him. At this point, my brother told Simpson that it was inappropriate for him to talk to a member of our team that way. Simpson began screaming “I AM THE F**KING MANAGING MEMBER” at the top of his lungs, yelled that the call was over, and hung up. He then physically went around to the phones the other AREH employees were on and made them hang up too, before attempting to contact David Scharf to demand that he too get off the call. I have genuinely in my life never seen anyone blow up like that in a professional environment and I was immediately shocked and appalled at the temperament of the man we were stuck in this business relationship with.

21. Simpson then refused to answer phone calls to try to get the call put back on the line, even when I offered to have Dreezer apologize. In follow up emails he continued to be extraordinarily combative, calling us illiquid and insolvent and blaming us for AREH’s business woes because we were hesitant to continue to put tens of millions more dollars into properties that had failed due to Simpson’s mismanagement and undercapitalization. *See Exhibit E* (email from Simpson to K. Wiener – August 1 at 11:13 PM).

Discussions with Chassen and Simpson’s Removal

22. While things had been continuing to deteriorate with Simpson, we maintained an open line of communication with Chassen. Unlike Simpson, who is pathologically incapable of admitting wrongdoing, Chassen felt bad for the difficult state of the properties (Chassen had put significant amounts of cash from both him and his family into various investments, unlike Simpson, the vast majority of whose equity merely came from acquisition fees) and recognized

the extraordinary strain their ongoing cash needs had placed on our family's liquidity. Chassen had spent months trying to play a mediative role between Simpson and our family.

23. However, by the end of July, Simpson turned even on his long-term protégé. On August 5, 2023, Simpson purported to terminate Chassen as a member of JJ Arch and to remove him from AREH's operations entirely. This development was extraordinarily alarming to us, as Simpson was getting rid of the one person who had appeared to have any level of success in tethering him to reality and who (at least on paper) had some level of control over AREH. Moreover, as he later admitted, he did not even have cause to remove Chassen, believing based on the operating agreement that existed only in his mind that he did not need any cause to remove Chassen and that he could fire him as if he were an employee. *See Exhibit F* (email from Simpson to K. Wiener – August 6 at 5:30 PM).

24. It was clear to us that Simpson, not Chassen, had committed cause events under both the AREH and JJ Arch operating agreements. So, on August 6, 2023, counsel for Investor Member sent Simpson a cause event notice advising that we believed cause existed for the removal of JJ Arch as managing member of AREH. Subsequently, Chassen sent Simpson a notice that in part for the reasons listed in Investor Member's cause event notice, Simpson had committed cause events under the JJ Arch operating agreement and was deemed to have immediately resigned as a member of JJ Arch.

25. Over the next two weeks, Investor Member worked with Chassen to try to make progress on the properties. Other than one employee, everyone else at AREH recognized the legitimacy of Chassen's removal of Simpson and business proceeded apace. During this time, AREH and Investor Member enjoyed a productive relationship. Instead of trying to hide information from Investor Member the way Simpson did, Chassen ensured that AREH was

transparent with its other member and seemed willing to fully discuss his proposed plans of action with respect to the properties. This was a welcome change from Simpson's approach of telling us only what he felt we needed to know, demanding that he make decisions himself without consultation or input, and then threatening to dissolve the business or leave us liable on our guarantees unless we funded whatever plan Simpson decided on, regardless of whether the operating agreements required us to provide that funding or not.

26. We also started to learn information kept from us about how many of the difficulties on various properties were attributable entirely to Simpson's erratic and bombastic behaviour. In one instance, we learned that a piece of litigation related to one of the properties had only commenced because of a nasty email Simpson had sent to all the opposing parties and that Simpson's behaviour in an attempted mediation—screaming at the other side—had been a serious impediment to resolving the dispute. This was not the only dispute mismanaged by Simpson, leading to losses AREH would not have otherwise suffered.

27. Meanwhile, after Simpson was removed, he continued to do everything possible to run the business into the ground. He had his counsel threaten key AREH employees with litigation if they did not cooperate with him (*see* NYSCEF Doc. No. 191 (LinkedIn message from Adam Leitman Bailey to Michelle Miller expressing "I do not want to sue you or have involved in the lawsuit")), took action to freeze all bank accounts, refused to agree to any sort of interim measure that could keep the accounts open while the parties negotiated unless Chassen was removed from every account (an outcome that I understand the court has denied him). His lawyer also advised Investor Member's counsel that he would be seeking both criminal charges and bringing civil litigation against us and our lawyers because of Simpson's removal.

Simpson Restored to Management

28. When this Court temporarily restored Simpson to management of JJ Arch, subject to Chassen's major decision rights, Simpson reached out and seemed willing to discuss potential solutions. While we were initially quite hopeful, Simpson's conciliatory mood did not last.

29. Simpson kept demanding that we "take responsibility" for his removal, namely by paying him approximately \$100,000 to cover the legal fees he had incurred. This was not the only time that Simpson demanded that Investor Member pay all his legal fees. When we drew a line in the sand that we would not fund his legal fees in ongoing and outstanding litigation against Chassen (but would consider it as part of a global settlement that led to a separation), Simpson would become enraged. Later on, instead of just funding his legals, Simpson began demanding over and over again that we send him documentation from the two-week period that Chassen was running the business so that he could use those documents in this litigation.

Simpson Holds Biscayne Hostage

30. In another area where Simpson initially seemed cooperative but then reversed course, we asked for him to consent to a purchase and sale agreement for the property at 2501 Biscayne Avenue. This property was originally purchased by my father in 2016; in 2021, Simpson convinced us to sell half of the property to Infinity Collective, another real estate development firm, so that they could assist in a joint venture to redevelop the property. At Simpson's urging, rather than maintain a direct stake in the property, we instead rolled our ownership interest into a new LLC called 2501 Arch LLC, which in turn held the equity in the joint venture. Simpson maintained that this structure would allow us to leverage AREH's reputation for the redevelopment. Investor Member's subsidiary, however, maintained 100% of the equity in 2501

Arch LLC, and while AREH was the managing member of the LLC, it was limited in its compensation to fees previously agreed to and incorporated into the operating agreement.

31. In our first conversation after Simpson was restored to management, we discussed whether he would be willing to consent to the sale of the property (in which Simpson held no equity stake whatsoever). There was a strong offer on the property, and particularly given the ongoing cash needs of the AREH portfolio, we badly needed to know that some liquidity was coming into the pipeline.

32. While Simpson promised to move quickly on the consent so that the purchase and sale agreement could be signed before the buyer walked, he repeatedly delayed approval, repeatedly demanding money for his signature. During this time, he demanded that the JV capital call from us and Infinity to cover all allegedly outstanding fees rather than simply paying the fees out of the proceeds of the sale, as would be typical.

33. After Simpson finally signed the consent (having delayed for many days, nearly jeopardizing the sale), I raised an issue I had just identified in the relevant 2501 Arch LLC operating agreement as well as that of the JV that owned the property, whereby it appeared that there may have been an overpayment of fees to AREH rather than \$60,000 in additional fees being payable. When I raised my concerns, Simpson flew off the handle, accusing us of acting in bad faith by raising this after he had signed the consent (I didn't think this should matter to the consent, since the sale of the property would obviously maximize value and cash for both investors, and any negotiations over the fees could simply be resolved by holding back the \$60,000 in fees that Simpson believed he was entitled to from the sale proceeds). .

34. That afternoon, after discussing the matter our business partner in the JV, we determined that however bad faith Simpson was acting, given the relatively small sums in dispute

as compared to the sale proceeds, we would simply offer to concede the fee dispute, consent to the \$60,000 and waive any claims of overpayment with the understanding that Simpson would not try to interfere with the sale he had consented to or the distribution of its proceeds. Simpson refused to make this deal. While he was comfortable with the sale proceeding based on his prior consent, he now raised for the first time the idea that there needed to be a hold-back of the entire sale proceeds while any litigation is resolved relating to Investor Member's involvement in Simpson's removal from JJ Arch.

35. In discussions with other investors that have been reported back to us, Simpson has reaffirmed that he intends to hold any sale proceeds from Biscayne hostage in 2501 Arch LLC, notwithstanding that the operating agreement explicitly requires distribution of funds within 45 days of a capital event. Nor is there any basis to allow AREH, which holds 0% of the equity in 2501 Biscayne LLC, to refuse to distribute the proceeds of the sale, especially because the equity in 2501 Arch LLC is not held by Investor Member at all, but by 35 Oak US 4, Inc., a wholly separate corporation with no role in the Simpson/Chassen dispute.

36. But that is par for the course with Simpson: what matters is not what an operating agreement actually says or what the law allows, but what will give him maximum leverage in a particular situation.

37. Over the ensuing weeks, Simpson has refused every proposal we have made to pay \$60,000 into the AREH coffers in exchange for giving us control of the Biscayne sale proceeds, instead making more and more demands (again, including demands for his legal fees). It is clear that just like our guarantee liability, Simpson intends to use his control of the Biscayne property for extortion, all while claiming that he is the only person in our relationship who cares about investors.

38. It is hard to overstate just how corrosive Simpsons behaviour on this property has been to any remaining shred of trust we have in this partnership. While constantly exhorting everyone else to abide by the operating agreements, Simpson has demonstrated again and again that he is entirely willing to disregard those agreements if he feels sufficiently aggrieved or can gain some sort of advantage.

39. This has put us in a bind when it comes to investing further capital into the AREH properties. The entire point of continuing to invest, rather than demanding that properties be sold or tendered (where we are the only investors willing to continue to contribute capital) is the hope that this additional money will someday lead to us recouping some or all of our initial investment. But at this point, we have no confidence that any of our money will ever be returned to us even if the properties ultimately turn around. This is especially true where Simpson will not even provide any books, records or accounting to show us where the previously-invested money has gone, where the newly-demanded money will go, or otherwise allow any visibility at all into what is happening. And if Simpson is willing to hold hostage an entity he controls where we are 100% of the equity, how can we trust him to look after our interests where we aren't?

Simpson's Conduct Continues to Degenerate

40. Notwithstanding the hostage situation with Biscayne, Simpson otherwise continued to go back and forth between cooperative and belligerent. Even when he was not being openly hostile, he would still engage in the same extortionate conduct against us, sometimes in a manner that made little sense.

41. Earlier last the year Simpson had pursued an ultimately failed acquisition in Pittsburgh, asking us for initially \$500,000 and then ultimately \$1,000,000 to cover the deposit. We had made clear to Simpson that we were not in a position to cover the entire closing, and that

the deal absolutely needed other investors or we would not be in a position to close. Simpson assured us that he would find other investors and the deal would close with minimal investment ultimately needed by Investor Member.

42. Simpson did not find other investors. The deal did not close.

43. Normally when buying property, the purchase agreement would initially be executed by AREH, and then on closing assigned to the LP formed with the other investors. In this case, there was no closing, so AREH itself was involved in the ensuing litigation to try and reclaim the deposit. In addition, by the summer of 2023 there were about \$250,000 in closing costs and ongoing litigation fees that needed to be paid, and for which Simpson issued a capital call to us under the AREH operating agreement.

44. At the end of August, AREH finally entered into a settlement agreement with the sellers on Pittsburgh that would return enough funds to cover the other deal-related expenses. When we were advised that our consent would be required for the settlement, our counsel sent a basic, clean consent, as requested. But Simpson balked, demanding a consent that included a full release of any claims against him related to this deal in exchange for this consent to the settlement. This made no sense to us: the settlement was beneficial to AREH.

45. After a frustrated back and forth, I finally worked directly with one of Simpson's many lawyers, who ultimately convinced Simpson to simply agree to the settlement on Pittsburgh.

46. We continued to try working with Simpson's lawyer (Tom Furst) to reach some sort of partial resolution on certain of the properties that would have, among other things, ensured additional capital at the AREH level but, by September 12, Simpson had made clear that he had no interest in the partial settlement that had been productively discussed with Furst. After that date, I never heard from Furst again.

47. It was at this time that things began to further deteriorate.

48. On several occasions, Simpson had demanded that we make overhead payments to AREH, supposedly to cover payroll, although Simpson remained steadfast in his refusal to provide underlying information—saying that if we didn't, all the employees would walk. Initially we were quite willing to provide funding, notwithstanding that we had not received a budget for AREH since 2021 and had little transparency on books and records. We did have serious concerns, given Simpson's constant demands to be indemnified for his legal fees, that those fees had already been taken from AREH and would continue to be taken from AREH so that Simpson would have a war chest for his litigation against Chassen. We also had concerns about the reports we had gotten through Chassen that Simpson had been using AREH employees and resources for personal and JJ Arch work. At one point, Simpson admitted to us that AREH's staff accountant had been doing personal work for him that would, at some point, have to be reconciled and repaid to AREH. Setting aside that this was highly inappropriate in the first place, as far as we can tell, there has been no such repayment. It is unclear to us what other Arch overhead and infrastructure Simpson has used for his personal benefit, but we believe it to be significant.

49. The other major concern we had was that our ongoing contributions to both AREH and the properties had been done without any capital calls or any sort of appropriate documentation so that we could keep track of the capital stack at the properties and our outstanding capital at AREH. While Simpson had previously represented to us that these cash infusions were being booked as equity at the AREH level to cover payroll that would eventually be reimbursed by corresponding fees to the properties (where such costs could often be paid from credit available on a loan or by multiple investors still funding), Simpson reneged, now arguing that they were equity injections directly to those properties that would never be repaid.

50. We have asked on multiple occasions to get a reconciliation of the capital contributed to AREH—or even just a breakdown of the new money being sought and how it would be treated— but it has never been provided. Indeed, Simpson has maintained that it was unreasonable to ask for one given the urgency of the cash needs. In reality, he seems to wish to retain the ability to retroactively reclassify which entities money has been funded to and how that money is to be treated.

51. In response to our refusal to inject capital without a breakdown of funds, Simpson began raiding the property accounts and redirecting funds to AREH. This had begun shortly after he was put back in charge: on August 24, 2023, Simpson advised that to meet urgent cash needs, he was proposing to “borrow” from other accounts “temporarily,” including \$80,000 from an “Arch account that is used for investor funds” that Simpson believed belonged to Investor Member. When I followed up and advised that we had certain needs that had to be met before we could put more money in, whether that money came from a new wire transfer or funds in an investor account, Simpson clarified that in fact those funds had already been taken. *See Exhibit G* (email from Simpson to K. Wiener – August 25 at 6:22 PM).

52. Simpson has continued to cover overhead by redirecting money from the property accounts, although he has since claimed that rather than “borrowing” the funds, he is simply having those properties pay AREH money it is owed. I have no idea whether or not that is true, given Simpson’s continued refusal to give access to books and records.

53. Later that week, our ask became simpler: even without a breakdown or capital calls, I wanted to know exactly what we were paying for so that I knew that the money wouldn’t be used to pay for Simpson’s lawyer or an employee at his car dealership. I therefore asked Simpson to provide the payroll report and invoices of everything that was about to be due so that we would

have backup for everything we would be funding. Simpson initially seemed willing, but then decided that we were not entitled to these documents and that he would not provide them.

54. When I advised Simpson that Investor Member had reached its contractual funding cap and therefore had no funding obligations—but that we were willing to contribute upon receipt of the invoices, Simpson once more grew enraged, calling my family terrorists, implying that we would be subject to criminal penalties under federal law, and advising me not to contact him, but instead to reach out to his lawyer who I would be paying for.

55. As we moved into September, Simpson prioritized working on the litigation above all else, at one point stopping senior AREH employees from apparently doing any work but assisting him with evidence for court.

56. At this point, I had become very uncomfortable with Simpson's constant litigation-related threats and demands over email and advised Simpson that I was no longer willing to have direct discussions about ongoing litigation. Such discussions would need to be through counsel. I also advised that I was still willing to discuss the business of AREH and asked for an update about one of the properties. Simpson responded that he would not provide such an update, that I could not pick and choose which discussions went through counsel, and that all discussions would go through counsel that Investor Member would be liable to pay for. He also demanded that we not talk to any employees at AREH. *See Exhibit H* (email from Simpson to K. Wiener – September 12 at 9:20 PM).

57. We then did not hear from Simpson again for another week, when he involved yet another new lawyer. This lawyer, like Furst, appeared interested in settlement and we had some level of hope that there would be someone talking reason to Simpson. Simpson now promised that he could get us off all the guarantees immediately and wanted to set up a settlement meeting. After

initially threatening to call off the meeting unless my brother and I flew down to New York on virtually no notice, he ended up walking out of the meeting shortly after it began and it ended up being a waste of everyone's time.

58. As expected, it became clear that Simpson's promises of getting us off the guarantees were nothing more than wishful thinking or dishonesty.

59. We then demanded an inspection of books and records, certain reports that should have been provided pursuant to the AREH LLC Agreement, and an equitable accounting so that we could see to what extent Simpson had been misusing AREH resources for his personal affairs and what the real financial state was of each property. While promising that he had nothing to hide, Simpson continued to delay and defer providing books and records, finally stating that he was willing only to have our CFO be walked through them on a screen-share provided that no copies of the records could be made, that nothing could be shared with anyone else, and that no evidence of misconduct we found could be used in court. He has even gone so far as to file a frivolous federal court removal in our state court proceeding seeking books and records merely to prevent us from having a hearing that could provide us those records.

60. We also learned, on the last week of September, about the IRC Section 1031 failure. We could not believe that Simpson and his top employees at AREH, despite knowing that investors faced severe tax liabilities, kept the failure from investors (including us) for months. Again and again, Simpson had maintained that he could not step away from managing AREH because only he cared about the other investors while we cared only about ourselves. We also looked back at our records to see how Simpson had misled investors to induce them to invest into the 1031 vehicle in the first place, with AREH saying that there would be alignment between investors and AREH because AREH was participating in the 1031, when in fact Simpson, the sole directing mind of

AREH, participated minimally or not at all. *See Exhibit I* (email from Investor Relations to F. van Biesen – September 24, 2021 at 8:53 PM). We are still trying to determine exactly how the 1031 failure happened and whether the AREH team proceeded with asset purchases, knowing that the 1031 deferral would not take place and investor funds would be locked into illiquid assets, just to increase fees and avoid failed closings. Given Investor Member has major decision rights over the acquisition of property by any entity controlled by AREH, we would not have consented to these purchases if we were informed that they would not successfully lead to a tax deferral.

61. At the same time, Simpson was beginning to reach out to investors about the properties that were all entering default and (in some cases) foreclosure. Receiving these investor communications, it became clear that while Simpson had always demanded property-level funding from us both on the basis that other investors could not contribute more and that we would receive economics on our member loans, in fact in most cases AREH had never informed investors about the capital needs, with these investor communications in some cases advising that investors would be receiving capital calls for millions of dollars to cover the equity we had already contributed. *See Exhibit J* (email from Investor Relations to F. van Biesen entitled “Bushwick Update and Capital Needs” – October 2, 2023 at 3:49 PM). Simpson played a two-faced game, telling us that he was capital-calling the other investors who could not contribute when in fact he had never asked to avoid them knowing the truth about how badly the assets were performing.

62. Most recently, we have learned that Simpson has been holding small group investor calls, ensuring that investors cannot meaningfully talk to each other and that Investor Member (frequently the biggest investor in each deal) cannot talk to the other investors. On these calls, Simpson denies any responsibility for the state of the portfolio, blaming it solely on the interest rate environment and Investor Member’s failure to cover the negative carry, having apparently

induced these initial investments by promising other investors, without our knowledge, that Investor Member would be on the hook for any additional capital. *See Exhibit K* (email from Simpson to K. Wiener – July 26 at 6:45 PM).

63. At the same time, Simpson has made more and more unreasonable demands of us. His most recent tactic is to demand that Investor Member is not allowed to talk to any AREH employees, investors, lenders, lawyers, or apparently anyone else with any form of relationship with AREH, without Simpson's consent. *See Exhibit L* (email from Simpson to K. Wiener – September 30 at 10:28 PM). Simpson, who has already demonstrated himself to be a compulsive liar, appears to require that all information flow through him so he can decide who will have access to the truth and who will have access to Simpson's version of the truth.

64. At this point, it has become impossible to see how this business can continue with Simpson in charge. We have lost all confidence that Simpson can act in our best interest or the best interest of any other investor, or that we can trust him with any amount of our money. We are bombarded constantly with unreasonable and ridiculous demands by Simpson, who grows more paranoid by the day, and who constantly reinterprets operating agreements and history to his own advantage. Simpson refuses to leave, even though he is the sole impediment to the recovery of the AREH portfolio. We cannot even get the transparency about AREH's finances to try to come to deals on a property-by-property basis, and to the extent we try to talk to a lender directly this only deepens Simpson's intransigence. It has reached the point where Simpson has threatened legal action against us for talking to lenders with whom we have a direct guarantor relationships. *See Exhibit M* (email from Simpson to K. Wiener – October 5, 2023 at 9:36 PM). On some of these properties, the only deals that seem workable involve us funding expenses through providing collateral to the lender rather than equity to Simpson, merely so we have some reassurance of

getting that money back if the property is successful. Even in these situations, Simpson has gone out of his way to ensure such a structure cannot be consummated, apparently preferring the assets go into foreclosure than that Investor Member contribute capital in a manner that is not controlled by Simpson.

65. Simpson's most recent actions have made clear that there is nothing he will not do to try to hold the portfolio, and our guarantees, hostage. After having his counsel spend weeks ducking the question of whether he believes he can put AREH or its subsidiaries into bankruptcy without Investor Member's consent, as the AREH operating agreement requires, Simpson forced investor member to bring a proceeding to seek a TRO preventing him from violating Investor Member's major decision rights. Simpson's response has been to use his newly-retained bankruptcy counsel, who is apparently being paid from scarce AREH funds, to remove the case to federal court so that Simpson can affirmatively argue that he can put any entity in the AREH portfolio into bankruptcy without the consent of Investor Member of any other investor, no matter what the relevant operating agreements say.

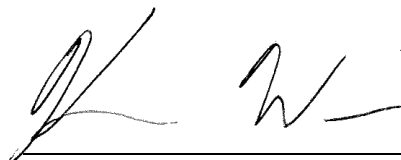
66. Not only does this further expose Simpson's hypocrisy—having said time and time again that Investor Member needs to abide by the operating agreements, he is now seeking to disregard their clear language—but it also shows that he has no plan to salvage the portfolio. Instead, his only plan appears to be a kamikaze mission to put everything into bankruptcy in the hopes of triggering full recourse liability for 35 Oak and the other investors Simpson has induced to sign guarantees.

67. We have been loath to take any action that would put the AREH portfolio under the ultimate oversight of a JJ Arch receiver. In our minds, it would take a truly awful manager to justify putting a receiver in charge of what was once a billion-dollar real estate portfolio. And yet

we are stuck with such a manager in Simpson, and there does not appear to be any other alternative to remove him and start to clean up the damage he has caused. In the absence of a receiver over JJ Arch, we will simply have no recourse to save AREH and all the money invested by both Investor Member and the other investors.

WHEREFORE, for the foregoing reasons and those stated in the memorandum of law accompanying this Affirmation and the October 17, 2023 Affirmation of Michael Wiener, Investor Member respectfully requests that the Court appoint a temporary receiver of JJ Arch to act as the Managing Member of AREH, pending the resolution of the JJ Arch Proceeding and other related cases.

I affirm this 17th day of October, 2023, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

A handwritten signature in black ink, appearing to read 'Kevin Wiener', is written over a horizontal line.

Kevin Wiener