

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GREAT AMERICAN INSURANCE COMPANY,

Plaintiff,

- against -

ARCH REAL ESTATE HOLDINGS, LLC,
JEFFREY SIMPSON, JARED CHASEN,
WIGGIN & DANA LLP, GRIFFIN LLP,
JJ ARCH LLC, and OFFIT KURMAN P.A.,

Defendants.

Index #1:25-cv-02375

NY S.Ct. Index #653208/2024

OPPOSITION TO REMAND

The instant remand motion by interpleading Plaintiff Great American Insurance Company (“Great American”) never mentions the words “costs of defense,” although advancement of legal costs is a predominant and essential line of coverage detailed on the declarations page and spelled out in its own policy section. Costs of defense coverage were central to Mr. Simpson’s decision to seek the protections of Chapter 11 of the bankruptcy code. Great American expressly assured and reaffirmed this coverage through multiple opinion letters direct to Mr. Simpson. For three months beginning in March 2024, with Mr. Simpson’s personal funds exhausted, Great American began paying for his costs of defense coverage, only to withdraw these assurances partway through the Bankruptcy action, by interpleading in State Court in June 2024.

This matter is an outgrowth of gamesmanship by the undersigned parties’ adversaries in the other two State Court actions which Mr. Simpson has sought to restore back to federal jurisdiction, namely 35 Oak Holdings Ltd. (“Oak”), a Canadian company captioned through its U.S. subsidiary, 608941 NJ Inc., as well as Arch Real Estate Holdings, LLC (“AREH”), and Mr. Chassen. They have engaged in a burdensome motion practice designed to silence and defame

Mr. Simpson. Mr. Chassen has proffered inconsistent testimony in the State Court action and the Bankruptcy Court. The piecemeal posture of this litigation results from strategic litigation against Mr. Simpson designed to rewrite history.

Mr. Simpson alleges that he was ousted from his company by defamation, solicitation, fraud, and theft, Mr. Simpson received favorable rulings before the Commercial Division with legal counsel, however this interpleader action left him stripped of coverage that was the basis for his commencement of the bankruptcy remand decision on appeal. Appellate review of the bankruptcy remand turns on whether the issue of Mr. Simpson's lawful authority to bring the JJ Arch bankruptcy, under its operating agreements, is within the Bankruptcy Court's jurisdiction.

It is noteworthy that Mr. Simpson was deprived of bankruptcy counsel effective in June 2024, exposing him to gamesmanship in opposing a motion for remand that his adversaries first demanded in the Bankruptcy action and the action's dismissal in October 2024. Mr. Simpson alleges that Oak, AREH, and Mr. Chassen conspired to oust him, backdating legal documents in an attempt to grant retroactive legal authority for Mr. Simpson to be "removed" from AREH. Notwithstanding, Oak, through AREH, and Mr. Chassen conspired together to pressure Great American into discontinuing pre-obligated payments for Mr. Simpson's defense against them. At around the same time that Mr. Chassen first tendered his claim for coverage, AREH, an entity under Oak's control, sued Great American in another State Court action,

Mr. Simpson's AREH-related adversaries in each of these State Court actions have failed to account for hundreds of properties within the AREH portfolio since seizing control. No one except for Mr. Simpson speaks for any of the investors, a number of whom are his personal and professional friends, in addition to members of his own family, and of his synagogue. There has been no disclosure of what they stand to gain or lose. Material witnesses have not testified or

been disclosed, and documents have been withheld, including a joint defense agreement which, based on physical evidence, exists among Oak, AREH, and Mr. Chassen. The unhedged nature of Oak's ongoing risk as guarantor conflicted with its responsibilities to investors since it forcefully and maliciously took over AREH with Mr. Chassen's assistance in August 2023.

Consolidation of these four actions would remedy contemporaneous interlocutory orders and overlapping misuse of legal process designed to frustrate rule of law. These matters lack uniformity and have produced inconsistent results in interrelated actions, including the receivership being enforced at the State level and appeal of a jurisdictional issue affecting the bankruptcy, which now is before the Southern District. A consolidated exercise of federal jurisdiction would directly and remedially address the prevailing and significant matters of the public interest involving federal question jurisdiction, including allegations of perjury,

The record before the State Court includes evidence of predicate acts under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 et seq., for which Mr. Simpson and JJ Arch intend to present through introduction of an amended omnibus complaint and solitary case scheduling order. This action, and the other two removal actions pending final disposition, give rise to Mr. Simpson's and JJ Arch's pending request for leave to add exclusive federal causes of action designed to protect both creditors and investors. This is not to mention diversity jurisdiction, which Great American acknowledges. Existing claims include promissory estoppel in support of costs of defense coverage, which is directly "related to" the Bankruptcy action and warrants extension of federal jurisdiction by consolidation of interrelated actions with the same parties on the same evidentiary record of fact established at State and Federal levels.

Still now, more than two years since seeking Constitutional and statutory bankruptcy protections, has never been called before the Courts or a regulatory body compelling an audit of

the AREH portfolio, in the U.S. or in Canada, nor for inspection of how Oak is now managing the once \$1 billion real estate portfolio built under the vision of Mr. Simpson, in his capacity of Managing Member of JJ Arch under the controlling operating agreements.

Mr. Simpson has exhibited in the action before Justice Joel M. Cohen of the New York Supreme Court, Commercial Division, including an email between Mr. Chassen and Oak's Chief Financial Officer, Frank Van Biesen, and multiple emails including Mr. Van Biesen and Michael Wiener of Oak. In these emails, Mr. Van Biesen admits that Oak lacks the funds necessary to guarantee the AREH assets which JJ Arch was currently managing. Despite a lack of witness testimony over the past two years, the emails serve as authenticated documentary proof that Oak was facing capital calls projected to exceed its investment risk. In exchange for high-yield returns under Mr. Simpson's management, which JJ Arch delivered consecutively for more than four consecutive years of operation, Oak served as a passive partner with relatively limited consent rights. In this capacity, Oak was the legally responsible guarantor for the AREH portfolio. Oak, AREH, and Mr. Chassen are co-parties to an undisclosed joint defense agreement, which is material to Great American's coverage determination with respect to Mr. Chassen.

In losing coverage for essential legal representation in the Bankruptcy and State Court actions already underway, Mr. Simpson was stripped of legal direction and guidance, and left to defend himself against personal attacks on his managerial style as Member Manager of JJ Arch. Mr. Simpson is a professional real estate investor, developer, manager, and financing restructurer, as well as a State-licensed general contractor, in the New York City-based commercial real estate market. Divested of legal counsel, he was left to defend himself pro se against an onslaught of attacks and burdensome motion practice and countersuits by two former partners, acting in concert with AREH since seizing control in November 2023. Investment losses in the AREH

portfolio were a direct result of Oak holding back funding necessary to protect AREH's assets. The AREH operating agreement demanded Oak's funding obligations. Oak's management of its own risk relative to others in the AREH portfolio has evaded discovery since its takeover in November 2023. At the same time, Mr. Simpson's personal assets are under attack through an active receivership enforcement action in the State Court case on the remand of the dismissal of the removal in Simpson et al. v. Chassen et al., 1:25-cv-02372 (LTS). The receivership show-cause hearing impels Mr. Simpson's defense, despite the pendency of late-payment appeal.

The record shows that as early as November 2022, Mr. Simpon provided Oak's principals with projections indicating that AREH would need an infusion of \$15-20 million over the next twelve months, resulting from the interest rate crisis. Mr. Simpson states that Oak took no definitive action until March 2023, at which it flatly refused to make capital call obligations. At approximately the same time, JJ Arch was receiving notices from lenders that their loans were out of balance in certain properties, triggering Oak's unmet funding duties under guaranty. Around the same time through the summer, many of the properties under the AREH portfolio had unmet carrying costs and a number fell into disrepair.

In one instance, a property manager reported being threatened with a gun. Work orders were increasing and rental income was diminishing. As late as March 2025, multiple contacts at Arbor Realty Trust, Inc. ("Arbor") requested that Mr. Simpson listen in on a conference call, about the decline of a residential community under AREH's portfolio, however Mr. Simpson was invited in his capacity as a key principal. The property is financed through Fannie Mae. During the call, Mr. Simpson learned that Fannie Mae had rated community properties – many of which had been best-performing assets within AREH portfolio – at its lowest level of performance. The

rating was based on metrics including cleanliness, leasing activity and occupancy, maintenance, and safety. They remain at risk of foreclosure without an influx of capital for corrective action.

By July 2023, an outside corporate lawyer advised JJ Arch and Mr. Simpson specifically that without Oak meeting capital calls, the situation would continue to deteriorate, leaving JJ Arch with three options: 1) corporate dissolution and winding down the real estate; 2) finding a replacement guarantor or new equity party amidst economic downturn; or 3) that JJ Arch, as Managing Member of AREH, seek the protection of Chapter 11 of the bankruptcy code.

The emails provided through the motion practice in the Commercial Division show that Mr. Simpson's desire to file for bankruptcy on behalf of AREH catalyzed a battle for corporate control over AREH itself, which ensues to this day. It was Oak itself that first sought relief in the Federal Court, in a lawsuit against Mr. Simpson in 608941 NJ Inc. v. Simpson, 1:23-cv-07089 (MMG), filed on August 10, 2023 and voluntarily dismissed in February 2024 while facing virtually identical claims in Simpson et al. v. Chassen et al., 1:25-cv-02372 (LTS).

In August 2023, Mr. Simpson commenced the State Court action presented for removal in Simpson et al. v. Chassen et al., 1:25-cv-02372 (LTS). He self-funded legal counsel until November 2023. At same time, despite earlier wins, Mr. Simpson lost control of AREH in the State Court action. Between November 2023 and January 2024, he proceeded pro se, lacking the financial reserves or ongoing liquidity necessary to mount an effective defense in either the Bankruptcy action or the State Court action. At this time, Attorney Robert Lorenc, Esq. appeared on a limited scope of representation, and Great American advanced funding in March 2024.

Despite providing express assurances of coverage, on which Mr. Simpson detrimentally relied in filing for JJ Arch's restructuring only three months beforehand, in March 2024, Great

American disclaimed its duty to provide uninterrupted costs of defense coverage in a letter opinion dated May 2024 and interpled the parties the following month. The record also suggests that Great American imposed improper conditions on future coverage payments, including that Mr. Simpson provide express written consent to a Great American-proposed distribution plan with Mr. Chassen for the balance of the remaining insurance funds. The two associated State Court matters which Mr. Simpson presents for removal give rise to subject matter jurisdiction related to the bankruptcy pending appeal, and they collectively rely on a common set of facts that invoke essential federal protections for Mr. Simpson, JJ Arch and its creditors, and AREH investors who lost, or are actively losing, money as a result of Oak's hostile takeover.

Through this briefing, and as parallel remand motion in Chassen et al. v. Simpson, 1:25-cv-02373 (JHR) (HJR), Mr. Simpson and JJ Arch propose a consolidated removal action with omnibus briefing that unifies jurisdiction under a common set of facts and involving common stakeholders, with uniformity and in an outcome-determinative matter. Federal jurisdiction and particularly in the Southern District is particularly appropriate to address complicated financial transactions between U.S. and Canadian companies, which lack similar claims or remedies at the State level, including a federal civil RICO claim against the three co-parties to the joint defense agreement. It cannot be denied that Mr. Simpson committed avoidable errors pro se in both the Bankruptcy action and before the State court, yet he lacked effective assistance of counsel. Great American's withholding of coverage has caused direct and far-reaching prejudice by denying Mr. Simpson of experienced counsel to prepare him for Court and defend him from a calculated pattern of attacks continued by Oak, AREH, and Mr. Chassen.

There is no dispute that Mr. Simpson is entitled to coverage of an indeterminate amount of remaining funds, of which Mr. Simpson and JJ Arch have been deprived in all actions before


the State and Federal Courts. The Decision and Order of Honorable John P. Mastando, III raises novel legal issues of corporate governance and what presents a “core issue” for the exclusive exercise of federal jurisdiction. It is at the same time indisputable that Mr. Simpson lacked the benefit of legal counsel in the same time period for addressing a hotly disputed legal question, however outgoing counsel kept the issue for consideration before the Southern District.

All cases rest on a common nexus of operative facts with interrelated legal issues and common parties, stakeholders, and witnesses, in sophisticated cross-border investments that are generally exempted from reporting obligations under federal securities laws. At the same time, they directly affect real estate in the U.S. market nationwide, investors in the AREH portfolio, its creditors, and the communities AREH serves. As a result, undersigned interpled Defendants on the granting of leave would amend an omnibus complaint presenting federal claims based on a body of evidence that has emerged in the State Court record. At the same time, subject matter jurisdiction is related to the disposition of the bankruptcy appeal, and practically would manage the course of proceedings, compel meaningful cooperation and discovery necessary to a final disposition of issues that would only serve to be sharpened by consolidation in this Court.

Dated: May 2, 2025
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By: 
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