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February 1, 2024

BY NYSCEF

Hon. Joel M. Cohen

Supreme Court of the State of New York

County of New York

Commercial Division - Part 3

60 Centre Street, Courtroom 208

New York, New York 10007

Re: Jeffrey Simpson, etc. v. Jared Chassen, et al., Index No. 158055/23

Dear Justice Cohen:

I represent plaintiffs Jeffrey Simpson and JJ Arch LLC in this action. I write, pursuant to the directions given in the January 29, 2024 email to counsel from the Court's Commercial Division Law Clerk Eric Szkarlat, to address two paragraphs in the proposed Order to Show Cause (the "OSC") Defendant Jared Chassen filed this past Sunday night, January 28, 2024 (NYSCEF Doc. No. 485) that seek a temporary restraining order (the "Proposed TRO").

As explained and for the reasons stated below, the relief sought by Mr. Chassen in paragraphs (2) and (3) of the Proposed TRO should be in all respects denied.

I. TRO PARAGRAPH (2) OF THE CHASSEN OSC SHOULD BE STRICKEN

1. JJ Arch's Operating Agreement Explicitly Authorizes Mr. Simpson To Manage All Of JJ Arch's Business, Affairs and Management

Paragraph 2 of Mr. Chassen's Proposed TRO seeks to prohibit Mr. Simpson from engaging in conduct that is specifically authorized by the JJ Arch LLC ("JJ Arch") Operating Agreement.

JJ Arch is a New York limited liability company. It has at all times had two members, Messrs. Simpson and Chassen. The rights and obligations as between them concerning JJ Arch are governed by the JJ Arch Operating Agreement. That agreement is composed of the written agreement dated and made as of December 11, 2017, entitled Limited

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Liability Company Operating Agreement of JJ Arch LLC (Exh. A), and Amendment No. 1 to Limited Liability Company Agreement of JJ Arch LLC dated May 22, 2021(Exh. B)

Mr. Simpson is and has always been the Managing Member of JJ Arch. (Notwithstanding the brief period in August 2023, when Mr. Chassen falsely asserted that he was the Managing Member before that and other wrongful acts by Mr. Chassen were resolved by the Court at and following the hearing on September 29, 2023.) Pursuant to and in accordance with the JJ Arch Operating Agreement, at all times Mr. Simpson had complete autonomy over all of the company's business affairs and activities.

As the Court previously observed in the August 21, 2023 Order Regarding Interim Procedures, concerning the parties' respective roles in and at JJ Arch, the Operating Agreement provides plainly and clearly as follows:

Specifically, the business, affairs, and assets of JJ Arch shall be managed by Simpson, subject to the limitations set forth in Section 3.2 of the JJ Arch Operating Agreement, which provides among other things that any Company Major Decision, as defined in the JJ Arch Operating Agreement, shall be undertaken only with the prior written consent of Chassen. Simpson and Chassen shall cooperate with each other in good faith to facilitate the effective exercise of their respective roles and responsibilities under the JJ Arch Operating Agreement and related agreements

(NYSCEF Doc. No. 36: Order p. 2, ¶ 3) (emphasis added) Pursuant to the Decision + Order on Motion dated September 29, 2023 (NYSCEF Doc. No. 159), the Court's August 21, 2023 Interim Order remains in full force and effect.

As the Court expressly noted on the record during the proceedings on September 29, 2023:

THE COURT: **Well, look unless and until this partnership [JJ Arch] is broken up, Mr. Chassen is a 49 percent member without managerial control. * * * But I think the way the contract works, you know substantive decisions are up to Mr. Simpson.**

(NYSCEF Doc. No. 224: Transcript of Proceedings - 9/29/23 Tr. 54, lines 6-17) (emphasis added)

The Court further specifically held that day, **"the [JJ Arch] Operating Agreement does put Mr. Simpson in charge of the business. So, Mr. Chassen does not have independent authority to spend corporate funds on anything without Mr. Simpson's approval."** (Id.: Tr. 52, lines 3-7) (emphasis added)

Paragraph 2(c) of Mr. Chassen's Proposed TRO, which seeks to prohibit Mr. Simpson from "taking any distributions from JJ Arch or the JJ Arch Controlled Entities Assets," and Paragraph 2(e) of the Proposed TRO, which seeks to prohibit Mr. Simpson "from paying counsel in this action with JJ Arch funds without posting an undertaking" is simply not authorized by and directly contrary to the clear terms of the JJ Arch Operating Agreement. Accordingly, Paragraphs (2)(c) and (2)(e) of the Proposed TRO should be stricken.

**2. Mr. Chassen's No Longer Has Any Interest in
JJ Arch Because He Defaulted on His Member Loan**

Paragraph 2(a) of Mr. Chassen's Proposed TRO, which seeks to prohibit Mr. Simpson from "transferring, encumbering, selling or otherwise disposing of any JJ Arch or JJ Arch Controlled Entities assets," should also be stricken from the Proposed TRO because it too is barred by the clear terms of the JJ Arch Operating Agreement.

Article IV, Section 4.2 of the JJ Arch Operating Agreement governs Capital Contributions concerning the Capital Accounts as between Mr. Simpson and Mr. Chassen in JJ Arch. As to Capital Contributions, Section 4.2(b) specifically provides that:

(b) If, at any time or from time to time, (i) Simpson determines that additional funds are required by the Company to meet its general and administrative expenses or (ii) the Company is required to make a capital contribution to an Investment Entity, Simpson shall deliver a written notice to Chassen (a "Capital Call Notice") setting forth the total amount of capital required (the "Capital Call Amount") and the purpose of such Capital Call.

(Exh. A: JJ Arch Operating Agreement §4.2(b), p.10)

Section 4.2(b) of the JJ Arch Operating Agreement further provides that "[e]ach of Simpson and Chassen shall be obligated to make an additional Capital Contribution to the Company in immediately available funds within five (5) Business Days of receipt of the Capital Call Notice." (Id.)

Pursuant to Section 4.2(c) of the JJ Arch Operating Agreement, if a Capital Call is made and not met for any reason for two business days following written notice of default, the non-defaulting party has the right to deem the non-paying party's Capital Contribution as a "Default Loan:"

(c) If a Member (a "Non-Contributing Member") shall fail to make a required Capital Contribution, as and when due, for any reason, and such failure continues for two (2) Business Days following written notice of such default, then the Member who made its required Capital Contribution (the "Contributing Member") shall have the right to contribute the amount of the Non-Contributing Member's capital contribution requested by the

applicable Capital Call Notice, which contribution shall not be deemed a capital contribution but rather a loan (a “Default Loan”) to the Non-Contributing Member in an amount equal to the unfunded capital Contribution.

(Exh. A: JJ Arch Operating Agreement §4.2(c), pp. 10-11)

Under and pursuant to Section 4.2(d) of the JJ Arch Operating Agreement, a “Default Loan” is secured by the all of the non-paying members Membership Interests in the company:

A Default Loan shall be prepayable, in whole or in part, at any time or from time to time without penalty. Any such Default Loans shall be with full recourse to the Non-Contributing Member and shall be secured by the Non-Contributing Member’s Company Interest including, without limitation, the Non-Contributing Member’s right to distributions hereunder. In furtherance thereof, upon the making of such Default Loan, the Non-Contributing Member hereby pledges, assigns and grants a security interest in its Company Interest to the Contributing Member and agrees to execute such documents and statements as are reasonably requested by the Contributing Member to further evidence and secure such security interest interest; provided, however, that such security interest may be foreclosed upon only in the event that during the period in which a Default Loan is outstanding, distributions are paid to the Non-Contributing Member prior to payment in full of all amounts (including interest) owed under the Default Loan.

(Exh. A: JJ Arch Operating Agreement §4.2(d), p. 11)

Mr. Chassen cannot deny that all of these conditions exist and were met.

As of August 1, 2023, Mr. Chassen confirmed that there was an imbalance of \$670,730.93 in the JJ Arch Capital Accounts in favor of Mr. Simpson, and that his (Mr. Chassen’s) account needed to be replenished. (NYSCEF Doc. No. 460: Chassen Schedule of JJ Arch Capital Accounts) That imbalance was created by business transacted in JJ Arch companies that own the real properties at 225 Head of Pond Road in Water Mill, 550 Metropolitan Avenue in Brooklyn, 1640 Montauk Highway in Southampton, and 146 E. 89th Street in Manhattan, and was later increased to \$1.2 million when Mr. Chassen was unable to repay his portion of a \$1 million credit line.¹

¹ Efforts were made to replace that line, but ***Mr. Chassen admitted at the time in writing he did not meet the liquidity requirements required by the lender*** and Mr. Simpson specifically told him that he was not willing to be in any way complicit with bank fraud it appears Mr. Chassen was prepared to commit. (See Point 5, below)

On August 31, 2023, Mr. Simpson made a Capital Call to Mr. Chassen pursuant to Section 4.2(b) of the JJ Arch Operating Agreement (NYSCEF Doc. No. 461: 8/31/23 JJ Arch LLC - Capital Call for Ongoing Operations and Demand Letter)² Mr. Chassen failed to meet that Capital Call at all, let alone within the time periods proscribed. By operation of Section 4.2(c) of the JJ Arch Operating Agreement, the unpaid Capital Call was deemed to be a Member Default Loan, and Mr. Chassen defaulted on that loan by making distributions to himself while the Default Loan was outstanding.

As Mr. Simpson specifically stated in his August 31, 2023 Capital Call and Demand Letter, Mr. Chassen made the following unauthorized distributions to himself from JJ Arch owned and controlled accounts at First Republic Bank:

8/1/23 - \$70,500
8/4/23 - \$9,400
8/9/23 - \$25,000

(NYSCEF Doc. No. 461: JJ Arch 8/31/23 Capital Call and Demand Letter)

These distributions were undeniable breaches by Mr. Chassen of the JJ Arch Operating Agreement. As noted and the Court specifically stated on the record on September 29, 2023: “Mr. Chassen does not have independent authority to spend corporate funds on anything without Mr. Simpson’s approval.” (NYSCEF Doc. No. 224: 9/29/23 Transcript p. 52, lines 3-7) (emphasis added)

Since then, Mr. Chassen has continued to make unauthorized distributions to himself, including but not limited to using JJ Arch funds to pay his personal cell phone bills and car insurance. (See NYSECF Doc. Nos. 462 and 463: excerpts of JJ Arch bank records for the periods August 1, 2023 to September, 24, 2023 and September 29, 2023 to December 23, 2023)

These indisputable facts are the basis of Mr. Simpson’s exercise of his rights, under the clear terms of Section 4.2(d) of the JJ Arch Operating Agreement, to foreclose on Mr. Chassen’s Membership Interests in JJ Arch, which he has sought and is continuing to seek in Motion Seq. 8 in this action.

Mr. Chassen simply has no grounds to oppose Mr. Simpson’s sale of any or all of the JJ Arch assets, including but not limited to the 1983 Porsche about which Mr. Chassen falsely claims he owns (see also POINT I (5) below), and the house at 225 Head of Pond Road in Water Mill that Mr. Chassen has locked Mr. Simpson out of and pilfered the revenues from AirBnB rentals which Mr. Simpson did not authorize (see POINT I (6) below).

² Mr. Chassen’s contention that the Capital Calls were improper is specious. Under Section 4.2(b) of the JJ Arch Operating Agreement, Mr. Simpson is the only person who may make Capital Calls and his right to do so is unfettered. (Exh. A: JJ Arch Operating Agreement § 4.2(b), p.10)

Having defaulted on his Member Loan and breached the JJ Arch Operating Agreement, Mr. Chassen no longer has any interest in JJ Arch. Paragraph 2(a) of the Proposed TRO should accordingly be stricken.

Mr. Chassen's views concerning the JJ Arch Operating Agreement are actually astounding. He has the audacity to claim that he continues to have consent rights to the sale of assets under Section 3.2(iii) of the Agreement, despite – in addition to defaulting on his Member Loan and committing acts that are clear grounds compelling his Resignation – his blatant breach of the “Permitted Transfers” provision in Section 1.1 of the Agreement. He breached that provision of the JJ Arch Operating Agreement by giving up rights in JJ Arch to or for the benefit of Oak and its principals the Wieners in exchange for his assistance and cooperation and being paid by them to work against Mr. Simpson. Mr. Chassen has admitted that fact to Mr. Simpson.

On August 13, 2023, in an in person meeting on the front porch of a Chabad rabbi down the street from Mr. Chassen's home in Water Mill, Mr. Chassen told Mr. Simpson that he (Mr. Chassen) had given his “promote shares” in JJ Arch to Oak in a “trade” for a \$200,000 a year salary. Such an assignment is a blatant violation of Section 7.1 of the JJ Arch Operating Agreement. In that conversation, Mr. Chassen also told Mr. Simpson that they (he and Oak) had a team of 20 lawyers working for them and that Oak was paying for his lawyers. Mr. Chassen in fact threatened Mr. Simpson during that meeting. He (Mr. Chassen) told Mr. Simpson that Oak had already prepared papers against him and that they were prepared to file them in Federal Court if the meeting did not go well.³ In Mr. Simpson's presence, Mr. Chassen called Kevin Wiener and asked him about the status of the Federal Action, and Mr. Wiener reported that the action had been filed and he was not sure whether it could be “pulled back.”

Mr. Chassen subsequently admitted he entered into a Joint Defense Agreement with Oak. Thus far, however, Mr. Chassen and Oak's counsel have stonewalled counsel's efforts to secure details of Mr. Chassen's agreement(s) with Oak.

3. Mr. Chassen Has No Right to Manage JJ Arch Because Indisputable Cause Events Justify His Forced Resignation from JJ Arch

Still further grounds to deny all of the relief sought in Paragraph 2 of the Proposed TRO are the indisputable facts, which provide just cause for compelling Mr. Chassen's immediate Resignation from JJ Arch.

“Cause Event[s]” as that term is defined in Section 1.1 of the JJ Arch Operating Agreement also exist that entitle Mr. Simpson to cause Mr. Chassen's forced “Resignation” under Section 7.5 of that agreement.

³ The purpose of the meeting appeared to persuade Mr. Simpson to enter into a settlement dialogue with Oak. Mr. Simpson was not prepared to engage with Oak though until and unless Mr. Chassen reversed him (Mr. Simpson) to the Arch bank, email and dropbox accounts. Mr. Chassen refused to do so, which precipitated Mr. Simpson's filing of the Complaint in this action.

A “Cause Event” is defined in Section 1.1 as:

Cause Event: With respect to a Member, the occurrence of a Cause Event (as defined in the AREH Operating Agreement) with respect to such Member.

(Exh. A: JJ Arch Operating Agreement §1.1, p. 3) The AREH Operating Agreement defines a “Cause Event” as follows:

“Cause Event” means with respect to Managing Member (unless otherwise indicated) (i) willful misconduct in relation to the business or affairs of the Company or a Subsidiary, (ii) breach of fiduciary duty in relation to the business or affairs of the Company or a Subsidiary, (iii) gross negligence in relation to the business or affairs of the Company or a Subsidiary which results in a material loss to the Company or a Subsidiary or its Members as such, (iv) a final non-appealable finding of fraud by a court of competent jurisdiction in any relation to any business of its affairs, (v) misappropriation of Company or Subsidiary funds or property, (vi) conviction, or a plea of nolo contendere, of Jeffrey Simpson any felony, (vii) any wrongful act or omission which results in an acceleration of any loan encumbering the Property, or (viii) any breach of a material provision of this Agreement which is not cured within 30 days of notice of such breach.

(NYSCEF Doc. No. 464: AREH Operating Agreement §1.1, pp. 4-5)

Mr. Chassen’s collusion with Oak in an effort to take over AREH, failure to meet Capital Calls duly delivered to him, and making distributions to himself while failing to pay his Member Default Loan clearly constitute:

- (a) breach of Section 3.2 of the JJ Arch Operating Agreement by failing to devote substantially all of his business time and effort to the business;
- (b) “willful misconduct in relation to the business or affairs of” JJ Arch under item (i) of the definition of “Cause Event” in the AREH Operating Agreement;
- (c) “breach of fiduciary duty in relation to the business or affairs” of JJ Arch under item (ii) of the definition of “Cause Event” in the AREH Operating Agreement; and
- (d) “misappropriation of [JJ Arch] funds or property” under item (v) of the definition of “Cause Event” in the AREH Operating Agreement.

These are each additional, separate and independent reasons to deny all of the relief sought by Mr. Chassen in Paragraph 2 of the Proposed TRO.

**4. Chassen's False and Misleading Claims
Concerning the 89th Street Property**

Matters pertaining to the 89th Street Property surely do not support entry of any of the relief sought by Mr. Chassen in Paragraph 2 of the Proposed TRO.

The indisputable record is that Mr. Chassen is interfering with the operation and potential refinancing of the property located at 146 E. 89th Street in Manhattan (the "89th Street Property"). Mr. Chassen's continuing conduct, including but not limited to his request for a receiver to operate the property (and JJ Arch's other assets), is without question to the detriment of (i) all creditors, and (ii) Adam and Jonathan Peldman, who are the single largest equity holders in the 89th Street Property having invested more than \$1.8 million in cash in it.

The Peldmans invested in the 89th Street Property based on economics and their then long-standing relationship with Mr. Simpson. They made the investment knowing that Mr. Simpson would be the Managing Member of the entity that would control the project and thereby be in a position to protect their financial interests. They trusted him and still do.

The 89th Street Property was purchased on June 28, 2022 for \$5.75 million with the intention of converting it into a single family townhouse. Projected construction costs were \$2.1 million. In its "As Is" condition the Property was appraised as of June 8, 2023 at \$8.45 million and an "As Complete" value as of December 8, 2023 of \$10 million. (Exh. C: June 27, 2023 Appraisal from Leitner Berman) ConnectOneBank provided a \$3.8 million loan on the 89th Street Property for its acquisition (the "Loan"). As stated, the Peldmans provided the bulk of the capital. By contrast, Mr. Chassen invested approximately \$175,000 in total in the 89th Street Property.

In the Fall of 2023, money was needed to complete the conversion and JJ Arch did not have funds to stay current on the ConnectOneBank Loan. On October 31, 2023, a Notice of Default and Reservation of Rights was received from counsel for the lender. (Exh. D) At or about that time, ConnectOneBank sold the Loan to Hirshmark Capital (see Exh. E: November 11, 2023 Goodbye Letter from ConnectOneBank), who almost immediately declared the loan in default and began to charge default rate interest.

Efforts were made to replace the Loan. But Mr. Chassen's attack on Mr. Simpson in this action blocked it. (See, e.g., Exh. F: December 13, 2023 email from Justin Cooper at Layla Capital to Mr. Simpson and Adam Peldman) In addition, on information and belief, Mr. Chassen told Mr. Peldman that he would not consent to any transaction unless (i) Mr. Simpson agreed to his settlement terms, and (ii) his (Mr. Chassen's) wife would be the listing broker in any sale of the Property.⁴

⁴ Not related to this motion but on the subject of the retention of Mrs. Chassen as a broker, Mr. Simpson learned yesterday that Oak has listed the AREH Van Dam Street Property for sale. Oak did not seek Mr. Simpson's consent to that action, which is clearly a "Major Decision" under the AREH Operating Agreement, or to the hiring of Mrs. Chassen.

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Seeking to preserve his family's investment in the 89th Street Property, Adam Peldman became personally involved with Mr. Simpson in seeking to refinance the Loan with Hirshmark. By email dated December 20, 2023 (Exh. G), Mr. Peldman forwarded to Mr. Chassen (and Mr. Simpson and Michelle Miller, a colleague of theirs, who is also an investor in the project) and his brother Jonathan the terms of the deal the lender, Hirshmark Capital was willing to do.

By email dated December 27, 2023 (Exh. H), Mr. Peldman told both Mr. Simpson and Mr. Chassen that it was his desire to go forward with the loan modification and then seek to sell the Property, and that the matter was urgent:

I spoke with Hirshmark yesterday and we are going to proceed with the modification. It is in the best interest of the property as a whole. In addition to the fees due Hirshmark for the modification they are also requiring the insurance be paid (which is due today). Once the loan is modified we should sell the property and true up the capital accounts. I am sure there is an imbalance in the capital accounts at this time but I do not think it makes sense to address this now. Time is of the essence to bring this loan out if it's 24% default rate.

(Exh. H)

Mr. Peldman received no response from Mr. Chassen, so he wrote him again on January 2, 2024 as follows emphasizing very clearly and specifically the urgency:

From: Adam Peldman <apeldman@gothamabstract.com>

Date: January 2, 2024 at 10:54:04 AM EST

To: Jeffrey Simpson <jsimpson001@icloud.com>, Jared Chassen
<jaredchassen@gmail.com>

Cc: Michelle Miller <michellecmiller6@gmail.com>, Jonathan Peldman
<Jpeldman@gmail.com>

Subject: RE: 146 E 89 - Owners Thread

I am following up again as we need to make a decision here.

Jared I have reached out to you numerous times via email phone and text. WE need to make a decision here:

1. We have a limited timeframe to accept Hirshmarks offer and reduce the interest rate from 24% to 12%
 - a. Jeff and Jared will need to sign the attached engagement letter and we will need to give the attorney \$2500 towards the \$5000 legal fee
 - b. Will need to make sure we have the money to pay the Hirshmark fees (2% of outstanding balance and lender legal)

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2. We currently have NO insurance on the property (please see attached email). The Lender is going to place forced place insurance at a higher premium than what we currently pay.

3. If the plan is to sell the property (which is what we discussed). We need to iron out the pricing etc... when selecting a broker

Continuing to delay this process is **not** in the best interest of the project nor its investors.

Thank You,

Adam

(Exh. I) (emphasis in original)

Mr. Peldman then followed up with Mr. Chassen by email dated January 3, 2024 (Exh. J), again giving his views concerning the workout that was being negotiated by he and Mr. Simpson with Hirshmark. Mr. Chassen did finally respond, but he declined to substantively address the matter. Mr. Chassen also, as Mr. Peldman noted in that email, inexplicably removed Mr. Simpson from the email distribution concerning the 89th Street Property. Mr. Peldman re-added Mr. Simpson because, of course, his involvement was essential. (Id.)

On January 9, 2024, Mr. Peldman sent Mr. Chassen a copy of the Loan Modification Agreement being proposed by Hirshmark. (Exhs. K and L: January 9, 2024 email Peldman to Simpson and Chassen and draft Loan Modification Agreement)

To this day, however, Mr. Chassen has refused to consent to that proposed transaction and is blocking any possible refinancing of the Loan on the 89th Street Property.

Mr. Chassen's actions and failures to act have placed the Peldman's \$1.8 million investment in the 89th Street Property at serious risk. Turning the Property over to a Receiver would be expensive and disastrous. No one knows the Property and its finances better than Mr. Simpson. He is by a long shot in the best position to maximize the value of the 89th Street Property, and protect the Peldman's investment and the interests of the Property's numerous creditors.

This is further grounds supporting denial of the relief sought in Paragraph (2) of the Proposed TRO to the extent that it seeks to prohibit Mr. Simpson from directing and managing all matters pertaining to the 89th Street Property. Mr. Simpson should continue to be empowered to negotiate with Hirshmark, seek alternate financing and/or sell the Property if in his judgment it is the best course of action to preserve and/or maximize the Peldman's investment and pay creditors.

It is also noteworthy that Mr. Chassen has sought to extort Mr. Simpson by demanding that Mr. Chassen's wife be paid a brokerage fee in connection with any sale of the 89th Street Property, regardless of whether or not she participates in its sale; and he has allowed Arch employees to reside at the Property rent free. These actions were taken by Mr. Chassen without Mr. Simpson's consent or approval. Each is an independent violation of the JJ Arch

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Operating Agreement and the Court's August 21, 2023 and September 29, 2023 Orders, and a "Cause Event" under the JJ Arch Operating Agreement that provide additional bases for Mr. Chassen's Resignation from JJ Arch, and to deny any request for relief relating to the 89th Street Property in the Proposed TRO.

It is against this backdrop that Mr. Chassen's allegations concerning the 89th Street Property ought be considered. While Mr. Chassen vaguely alleges mismanagement of the "development and budgeting" of the Property, he fails to identify even one specific action taken by Mr. Simpson that was improper and not a common event in virtually all Manhattan construction (which the cited partial stop work order most certainly is). Surely, Mr. Chassen has no grounds to complain about AREH and Construction Services and Solutions LLC resources being used in connection with work on or at the Property. He knew that was the case and never objected to it. The liens filed on the Property were signed by Kevin Wiener of Oak, undoubtedly in collusion with Mr. Chassen.

Finally, the foreclosure action brought against the 89th Street Property is not the fault of any improper conduct by Mr. Chassen. The fact of the matter is had Mr. Chassen cooperated with Mr. Simpson and Mr. Peldman the action might likely never have been brought.

**5. Rever Motors - Mr. Chassen's Has No Interest
In The 1983 Porsche Or To Co-Manage HPR LLC**

Nor does the so-called August 1 Contract provide Mr. Chassen with grounds for any of the relief sought in Paragraphs 2(b) and 2(d) of the Proposed TRO.

No assets were ever "conveyed to Chassen under the August 1, 2023 contract between Simpson and YJ Simco and Chassen" (the so-called "August 1 Contract") (NYSCEF Doc. No. 509). That Contract was never consummated and for good reason.

Section 2(a) of the August 1 Contract expressly states that the "initial payment of \$500,000 shall be made ... simultaneously with the closing by Simpson of that certain loan from Connect One Bank in the principal amount of \$995,000 (the "Loan")." (Id.) The Loan – a Letter of Credit that was to be secured from ConnectOneBank, replacing a \$1 million Line that Mr. Simpson himself repaid in full – never closed.

The new Line of Credit did not close because an express loan covenant was that the borrowers had at the time, the Summer 2023, \$1 million in liquid assets, which Mr. Chassen admitted he did not have. By email dated July 19, 2023, Mr. Chassen stated his net worth was zero or, at most, \$25,000:

From: Jared Chassen <jchassen@archcre.com>
Sent: Wednesday, July 19, 2023 12:09 PM
To: Jeffrey Simpson <jsimpson@archcre.com>
Subject: RE: Line of Credit

I don't really have anything.

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I have been paying for Vandam stuff on my CC to expedite finishing, so in personal I can show \$275,000 since Vandam keeps reimbursing me, but I haven't paid Credit cards which are due of \$175,000 and I just pulled a line off credit from credit card line for 75k.

So if they just want to see "cash" and not associated liabilities, I can show \$275k, and more if I do my moms but same story, she is super slow and doesn't do online banking.

JARED CHASSEN
Partner

(Exh. M: July 2023 email trail concerning the Loan)

Mr. Simpson succinctly summarized the reason the August 1 Contract did not close in his November 13, 2023 email to Mr. Chassen:

The bank asked for \$1M liquidity, I said below that I had \$450k (net of the \$1M I used to pay off the line that was for you and me). You say below you had net zero. The bank needed liquidity for both of us to be \$1M. You couldn't make the cut and that is a fact so no, I was not committing bank fraud for you via misrepresentations of my knowledge of your bad illiquid situation.

(Id.: November 13, 2023 email from Mr. Simpson to Mr. Chassen)

Mr. Chassen's claims of alleged wrongdoing with respect to the New York State taxes for Rever Motors are spurious. It is February 1, 2024, so 2023 NYS tax returns are not yet due. In any event, Mr. Chassen specifically told Mr. Simpson in writing that he was handling all of the tax matters. (See Exh. N: 10-17-23 email from Chassen to Simpson re tax matters)

Mr. Simpson has not "looted" anything from Rever Motors. He owns and controls the company and is personally liable on its debt. Mr. Simpson's sale of the (not particularly valuable) Porsche about which Mr. Chassen complains was and is specifically authorized by the clear terms of the JJ Arch Operating Agreement. That vehicle does not belong to Mr. Chassen. It is an asset of JJ Arch. Its title is in the name of JJ Arch. As the Managing Member of JJ Arch, Mr. Simpson made the determination to market the asset for potential sale, which he was unconditionally entitled to do under pursuant to the corporate documents. Mr. Chassen's consent is not under any theory required for the sale of that automobile. The business of JJ Arch is to own real estate. The companies that own the real estate on which Rever Motors is operated (1640 Montauk) and operate the car business (1640 Motors) are single member LLCs and Mr. Simpson is that single member.

Mr. Chassen also clearly has no right to "co-manage" HPR LLC under the JJ Arch Operating Agreement. He has not identified any provision in the JJ Arch Operating Agreement that affords him that right. Because there is none.

Accordingly, Paragraphs 2(b) and 2(d) of the Proposed TRO should be stricken.

6. Mr. Chassen's Wrongful Conduct Concerning the 225 Head Of Pond Property is Further Grounds to Deny the Relief He Seeks in Paragraph (2) of the Proposed TRO

As noted previously and the Court specifically held in its August 21, 2023 Order Regarding Interim Procedures, under the JJ Arch Operating Agreement the business, affairs, and assets of JJ Arch are to be managed by Mr. Simpson. (NYSCEF Doc. No. 36: 8/21/23 Order) Despite that very clear ruling by the Court and its admonition on the record on September 29, 2023 that the JJ Arch Operating Agreement puts Mr. Simpson in charge of JJ Arch's business and Mr. Chassen does not have independent authority to spend corporate funds on anything without Mr. Simpson's approval (NYSCEF Doc. No. 224: 9/29/23 Transcript, p. 54), Mr. Chassen has, among other violative acts:

- Barred Mr. Simpson from entering the house at 225 Head of Pond Road, changing the locks and refusing to allow Mr. Simpson to gain access to the house;
- Threatened to call the police when Mr. Simpson visited and sought to enter 225 Head of Pond Road;
- Rented 225 Head of Pond on AirBNB and otherwise with the help of third-party property manager;
- Pocketed for himself the monies received from his rental of 225 Head of Pond Road;
- Refused to allow 225 Head of Pond Road to be marketed for prospective Sale;

All of these actions were taken by Mr. Chassen without Mr. Simpson's consent or approval. Each is an independent violation of the JJ Arch Operating Agreement and the Court's August 21, 2023 and September 29, 2023 Orders, and a "Cause Event" under the JJ Arch Operating Agreement that provide additional bases for Mr. Chassen's Resignation from JJ Arch.

Mr. Chassen's claim that his consent is required to hire or fire a property manager is false. As noted, the JJ Arch Operating Agreement does not give him that right, nor the right to rent the Property and/or hijack the revenues received, which he has admitted doing. Mr. Chassen should be ordered to immediately pay over to JJ Arch the \$40,685 he admits that he effectively stole from the 225 head of Pond Property.

That Mr. Chassen has been acting in contravention of the JJ Arch Operating Agreement concerning the 225 Head of Pond Property is indisputable. Since August 2023, he has flouted Mr. Simpson's decision to remove the property from Airbnb and terminate the agreement with the property manager. In an October 11, 2023 email, Mr. Chassen plainly stated that the property manager would "continue to operate the property" over Mr. Simpson's clearly

stated objection. Mr. Simpson does want to market the 225 Head of Pond Property to address urgent cash flow needs and to alleviate a \$1.2 million member loan that Chassen owes him. (NYSCEF Doc. No. 522: Jan. 29, 2024 Simpson Aff. ¶ 30) The sale of the property constitutes a Major Decision under Section 3.2 of Amended JJ Arch Operating Agreement, which requires Chassen's consent. That Chassen has not granted consent is telling and the reason obvious. He is unreasonable withholding his consent in an effort to starve Mr. Simpson of liquidity while Mr. Chassen whistles along being paid and supported by and receiving health insurance from Oak. (See POINT III below)⁵

**7. Mr. Chassen's Demand that Mr. Simpson
Post a Bond is Not Only Outrageous, It Is Telling**

As shown in Sections I (1)through (3) above, Mr. Chassen has no basis to object to Mr. Simpson's use of JJ Arch funds. Every single expenditure was authorized by the clear terms of the JJ Arch Operating Agreement. In any event, no JJ Arch monies are currently being used to pay Mr. Simpson's counsel. We could stop there in responding to Mr. Chassen's demand that Mr. Simpson post a bond to cover any monies he (Mr. Simpson) might use to pay his lawyers. Nothing more need be said to defeat Mr. Chassen's claim on this issue. But there is more.

Mr. Chassen has intentionally sought to thwart Mr. Simpson's efforts to monetize any of JJ Arch's in an effort to cut off or impair Mr. Simpson's ability to secure and retain counsel. He is doing it again in his current motion seeking, among other relief we believe to be frivolous, my disqualification. He can do that, not because he has money or assets; he does not. But because Oak is paying his lawyers. (See NYSCEF Doc. No. 454: August 13, 2023 email from Mr. Chassen to Frank van Biesen of Oak, on which the Michael and Frank Wieners were copied, in which Mr. Chassen requested asked that Oak pay \$250,000 in legal fees to his (Mr. Chassen's) lawyers at the Fried Frank law firm) How the lawyers from Fried Frank were able to justify their appearances is mystifying given the firm's apparent conflicts of interest. Fried Frank was astonishingly – contemporaneously with its representation of Mr. Chassen – seeking to foreclose on one of the Arch Real Estate Holdings LLC's properties on behalf of another one of its clients.

⁵ Only a short response is required concerning the Property at 555 Metropolitan Avenue in Brooklyn. No basis has been stated that would authorize Mr. Chassen to manage the Property (or support the appointment of a receiver for it). And, as shown in Section II below, Mr. Simpson has not denied Mr. Chassen access to any bank account relating to that Property or any other.

**II. TRO PARAGRAPH (3) OF THE CHASSEN OSC SHOULD BE STRICKEN:
Mr. Chassen Has Not been Denied Access to
JJ Arch Bank Accounts or and Books and Records**

Paragraph (3) in Mr. Chassen's proposed OSC may be disposed of easily. On that aspect of his request for TRO, Mr. Chassen seeks (i) viewing access to the bank accounts of JJ Arch LLC ("JJ Arch") and the JJ Arch controlled entities, and (ii) copies of books and records concerning those entities.

Mr. Chassen has and at all relevant times had viewing access to the JJ Arch bank accounts and books and records. The only exception to that is a very short period when this action was commenced in the late Summer of 2023 and Mr. Chassen instructed First Republic Bank to remove Mr. Simpson as an authorized signer on all accounts he (Mr. Simpson) maintained in either his corporate or individual capacity at FNB, and Mr. Chassen locked Mr. Simpson out of his Arch company email account, all other Arch IT systems and Arch's offices. (See NYSCEF Doc. No. 1: Complaint ¶ 49, 58, 63)

Since the Court's August 21, 2023 Order Regarding Interim Operating Procedures (NYSCEF Doc. No. 36) was entered and Mr. Chassen's efforts to freeze Mr. Simpson out of JJ Arch accounts were thwarted, Mr. Simpson has at all times complied with decretal paragraph 1 of the Interim Procedures Order and the entry of the Court's October 13, 2023 Emergency Order to Show Cause (NYSCEF Doc. Nos. 86 and 87), in that Mr. Chassen has had view access to all of the JJ Arch accounts.

The Court's November 22, 2023 Decision + Order on Motion (NYSCEF Doc. No. 419) does require that Mr. Simpson "not deny Mr. Chassen online viewing of any Arch Accounts." Mr. Simpson has unconditionally complied with that Order. The November 22, 2023 Order also specifically directed Mr. Simpson and Mr. Chassen to "cooperate in good faith to ensure that each of them have authorization from applicable bank accounts." (Id.: ¶ (2)d) Mr. Simpson has done so.

By email dated November 14, 2023 (Exh. __), Mr. Simpson specifically instructed Citizens Bank to provide Mr. Chassen with view access to all of the JJ Arch accounts at that bank.

Not once since the November 22 Order was entered did Mr. Chassen or his counsel request access to bank accounts or seek any JJ Arch records that did not have. The claim made now by Mr. Chassen to the contrary is simply false.

**III. MR. CHASSEN’S TRO REQUEST IS A SUBTERFUGE;
WHAT HE WANTS IS CONTROL OF JJ ARCH SO HE CAN
PERMIT OAK TO DO WHATEVER IT WANTS WITH AREH**

We urge the Court not to be hoodwinked, again. Mr. Chassen’s request for a TRO is not for his own benefit. He has at all relevant times been a tool for Oak. The evidence of Oak directing Mr. Chassen’s steps is unequivocal.

In an email to Mr. Chassen on August 9, 2023, Michael Wiener brazenly instructed Mr. Chassen that “**directions from Jeff [Simpson] should be ignored, as he lacks any and all authority to act on behalf of JJ Arch and the Arch companies.**” (NYSCEF Doc. No. 449: August 9, 2023 email) (emphasis added) Mr. Weiner of course had absolutely no right to give such a direction to Mr. Chassen.

The Wieners and Oak do not and have never had any ownership or economic interest in JJ Arch. The JJ Arch Operating Agreement does not permit the transfer of JJ Arch Company Interests by its Members. (See Exh. A: JJ Arch Operating Agreement § 1.1, definition of “Members” “Permitted Transfers” and “Person”) We understand, however, that Mr. Chassen may likely have entered into an agreement in which he transferred all or a portion of his rights in JJ Arch and AREH to the Wieners and Oak.

In fact, **Mr. Chassen has admitted to Mr. Simpson that he conveyed all or part of his interest in JJ Arch to Oak.** As stated, Mr. Chassen did so in exchange for his cooperation with Oak in its efforts to oust Mr. Simpson from AREH. Any such transfer is a clear violation of Section 1.1 of the JJ Arch Operating Agreement. Both Mr. Simpson and counsel consequently have repeatedly sought copies of any such agreement(s) between Mr. Chassen and Oak. Most recently, by email dated January 18, 2024, co-counsel for Mr. Simpson and JJ Arch inquired of Mr. Chassen’s counsel as follows:

Hon. Joel M. Cohen
February 1, 2024

On Thu, Jan 18, 2024 at 2:48 PM Schechtman, Caryn G. <caryn.schechtman@us.dlapiper.com> wrote:

Hi Allen,

I am writing on behalf of my client JJ Arch LLC ("JJ Arch"). It has come to our attention that at some point between March 2023 and the present, your client, Jared Chassen transferred ownership of his equity interest in JJ Arch. It is possible that your client believes that this transfer was subsequently "unwound" but regardless of that, we are asking for a response to each of the following questions:

At any point since March 1, 2023, has Jarred Chassin entered into any agreement, verbal or written with anyone other than Jeffrey Simpson to (1) transfer all of his equity interest or his beneficial or economic interest in JJ Arch; (2) transfer part of his equity interest or his beneficial or economic interest in JJ Arch; (3) pledge or encumber his entire equity interest or his beneficial or economic interest in JJ Arch; OR (4) pledge or encumber part of his equity interest or his beneficial or economic interest in JJ Arch.

Also, please advise if Jarred Chassin has entered into any agreement, verbal or written with anyone other than Jeffrey Simpson that in any way affects his rights under the JJ Arch LLC Operating Agreement.

Please provide your response by the close of business on Monday January 22, 2024 as it will be relevant to emergency relief that we will be seeking from the Court on behalf of our client. In lieu of a response, you can provide a copy of any written agreement or a memorialization of any verbal agreement.

Kind regards,

Caryn

To date, however, Mr. Chassen (and Oak) have refused to produce them.

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In real estate terms, as to the matter of provisional relief sought in the OSC Mr. Chassen filed on January 28, 2024, the triple net is that Mr. Chassen's request for a Temporary Restraining Order should in all respect be denied.

Respectfully submitted,

Steven Altman

Steven Altman

cc: All Counsel of Record (**BY NYSCEF**)