

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 3

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,

Plaintiff,

-against-

Index No. 158055/23

(Justice Joel M. Cohen)

JARED CHASSEN and FIRST REPUBLIC BANK,

Defendants.

JARED CHASSEN, 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,

Counterclaim-Plaintiff,

-against-

JEFFREY SIMPSON and YJ SIMCO LLC,

Counterclaim-Defendants,

And

JJ ARCH LLC and ARCH REAL ESTATE HOLDINGS LLC,

Nominal Defendants.

608941 NJ INC.,

Plaintiff,

-against-

JEFFREY SIMPSON, JJ ARCH LLC and ARCH
REAL ESTATE HOLDINGS LLC,

Defendants,

and

ARCH REAL ESTATE HOLDINGS LLC,

Nominal Defendant.

**JJ ARCH LLC's
ANSWER AND
COUNTERCLAIM
AGAINST
608941 NJ INC.**

Derivative-Plaintiff/Nominal-Defendant JJ Arch LLC (“JJ Arch”), by its attorneys Altman & Company P.C., for its Answer and Counterclaim to the Complaint filed by Intervenor Plaintiff 608941 NJ Inc. (NYSCEF Doc. No. 318, the “Complaint”), alleges as follows:

NATURE OF THIS ACTION AND THE PROCEEDINGS TO DATE

1. Plaintiff/Intervenor-Defendant Jeffrey Simpson (“Plaintiff” or “Simpson”) formed Arch Real Estate Holdings LLC (“AREH”) in 2017. AREH owns and controls more than \$500 million in real estate in and around New York. Mr. Simpson was the progenitor of AREH. He structured the company and was responsible for all of its investments in and management of the real properties that comprise the AREH portfolio of companies.

2. Mr. Simpson owns and controls 80% of AREH through JJ Arch and is its managing member. Defendant Jared Chassen, a subordinate of Mr. Simpson at a predecessor firm who assisted in AREH’s formation, owns a minority interest in JJ Arch.

3. Intervenor-Plaintiff 608941 NJ Inc. (which is commonly referred to by all of the parties as “Oak”) owns 20% of AREH.

4. AREH’s Operating Agreement provides that Mr. Simpson (through JJ Arch) is the “Managing Member” of AREH and Oak is its “Investor Member.”

5. The genesis of the dispute between the parties is Oak’s blatant breach of the AREH Operating Agreement and failure to meet its financial obligations to AREH as its Investor Member.

6. Oak’s Complaint is part of an elaborate illegal effort to obscure its refusal to meet Capital Calls duly made to them by Mr. Simpson. Oak’s failures to pay monies requested by and due and owing AREH are clear breaches of Oak’s contractual obligations under the AREH Operating Agreement and contrary to numerous written and oral confirmations

and promises by Oak's principals that they would fund AREH's continuing operations. As detailed below, Oak's principals Kevin and Michael Wiener, have sought to and are carrying out their illicit plan by conspiring with Defendant Chassen to oust Mr. Simpson from AREH and JJ Arch, falsely claiming that AREH's financial difficulties are not based on the recent and significant downturn in real estate market conditions but were somehow solely attributable to alleged mismanagement of AREH about which Oak feigns to have been unaware.

7. The Wieners, with Defendant Chassen's substantial assistance, have gone to great lengths in this litigation to cast aspersions against Mr. Simpson concerning the manner in which he speaks to and about people, while the Wieners have attempted to portray themselves as gentlemanly. They are, however, far from genteel. In an email sent to Defendant Chassen and Michael Wiener on August 11, 2023, Kevin Wiener referred to predecessor counsel for Mr. Simpson, Adam Leitman Bailey, and his colleague Colin Kaufman in the following derogatory terms:

Lol what a fucking dick.

His decrepit former prosecutor law partner does not have the ability to magically summon criminal charges from the ether.

(8/11/23 email from K. Wiener to Mr. Chassen and M. Wiener)

8. The truth will ultimately be revealed as the evidence at trial will show that Oak failed and refused to fund AREH in breach of the the AREH Operating Agreement, and the fiduciary duties it owes to JJ Arch.

PARTIES

9. Derivative-Plaintiff/Nominal-Defendant JJ Arch is a New York limited liability company. Its principal place of business has at all times been in New York County,

New York. Plaintiff Simpson is and at all relevant times has been its managing member.

Simpson resides in New York County, New York.

10. Defendant 608941 NJ Inc. a/k/a Oak is, on information and belief, a New Jersey corporation. Its principal place of business is in Toronto, Canada.

JURISDICTION AND VENUE

11. Jurisdiction in this Court is proper on JJ Arch's counterclaims against Oak pursuant to CPLR § 3019(a) in that they involve causes of action by JJ Arch in response to claims alleged by Intervenor-Plaintiff Oak against JJ Arch and its managing member Simpson.

12. Venue is proper in this Court pursuant to CPLR §§ 503(a) and 507 because JJ Arch resides in the State of New York in this County, the subject matter of JJ Arch's counterclaims action involves real property located in this County, and a substantial part of the events or omissions giving rise to the claims in this action occurred in this County.

FACTS COMMON TO JJ ARCH'S ANSWER AND ITS COUNTERCLAIM AGAINST OAK

1. Mr. Simpson's Initial Complaint Against Mr. Chassen and the Court's Interim Resolution of the Wrongdoing By Him

13. This action began as a claim by Mr. Simpson against Defendant Chassen based on his (Mr. Chassen's) unauthorized, ultra vires instruction to First Republic Bank ("FRB") to remove Mr. Simpson as an authorized signer on all accounts he (Mr. Simpson) maintained in either his corporate or individual capacity at FRB, and Mr. Chassen locking Mr. Simpson out of his Arch company email account, all other Arch IT systems and Arch's offices. (NYSCEF Doc. No. 1: Complaint ¶¶ 49, 58, 63) Those matters were heard and resolved by the Court previously.

14. In accordance with the Order Regarding Interim Procedures dated August 21, 2023, Mr. Simpson's access to the FRB accounts, his AREH email and AREH's office were restored. As to the then continuing operations of AREH and JJ Arch, the Court's August 21, 2023 Order Regarding Interim Procedures 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.

15. 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.**

(Transcript of Proceedings - 9/29/23 Tr. 54, lines 6-17) (emphasis added)

16. The Court further specifically held on September 29 that **"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)

2. Oak's Failure to Fund Arch Was and Is a Blatant Breach of the AREH Operating Agreement

17. In December 2022, as the result of general economic and depressed real estate market conditions, AREH needed additional money to meet general and administrative expenses and fund its continuing operations. So Mr. Simpson asked Oak for additional capital contributions to meet those needs as was specifically contemplated by and authorized in Section 3.2 of the AREH Operating Agreement. That request was based on detailed forecasts Mr. Simpson prepared with respect to all of the Arch portfolio properties. Initially, Oak agreed to provide the additional funding and more.

18. On December 20, 2022, Frank van Beisen, Oak's CFO, specifically stated and represented to Mr. Simpson (and Mr. Chassen) as follows: "I expect we could have as much as \$15-\$20 million available over the coming year" to fund AREH continuing operations. (Exh. C: 12/20/22 email to Messrs. Simpson and Chassen on which Michael Weiner and Bill Weiner were copied. But sometime thereafter Oak's principals changed their minds, and Oak failed to make good on that promise by Mr. van Biesen.

19. Between December 2022 and June of 2023, Mr. van Biesen admitted to Mr. Simpson that Oak was out of money. Michael Wiener confirmed that he and his family/Oak had no money, specifically telling Mr. Simpson that Oak had to borrow money if it was going to put any more into AREH. By email dated May 1, 2023, Mr. van Biesen sent Mr. Simpson a projected "capital position and recovery forecast" for each of the AREH Portfolio properties, which showed a shortfall of more than \$24 million, and stating that he had not nor would he (then) discuss it with Oak's principals Michael and Kevin Wiener. Ten days later, on May 11, 2023, Mr. Simpson sent Mr. van Biesen a detailed workout plan for the Portfolio. Mr. van Biesen ignored that plan. Neither he nor the Wieners responded to it substantively because

unknownst to Mr. Simpson, Oak's plans had changed. By email dated June 15, 2023, Bill Wiener (Kevin and Michael's father) preferred secrecy and declined Mr. Simpson's suggestion that "[a]ll decisions with serious ramifications and risk [] be documented, and acknowledged by the parties."

20. Consequently, in accordance with the terms of Section 3.2 of the AREH Operating Agreement, numerous capital calls were made to Oak, and monies were specifically requested from Oak to fund payroll and otherwise pay bills in the ordinary course. While some modest amounts of money were provided, Oak has not made good on Mr. van Biesen's December 2022 promise (in breach of the AREH Operating Agreement), and the Wieners have made clear they do not intend to cause Oak to invest any more money in AREH.

21. The reason for Oak's change in position and refusal to invest further in AREH is that its principals, Kevin Wiener and Michael Wiener, know that under the AREH Operating Agreement it would be difficult if not impossible for them to recoup those monies given the current economic environment. The Wieners' preference was to do what they have done and are doing; that is, breach their agreements, improperly seize control of AREH, shut it down, attempt to sell off or walk away from AREH's assets, and take whatever steps may be necessary to reduce the individual exposure on personal guarantees they have provided on several of the AREH portfolio company projects to the detriment of Mr. Simpson and approximately 200 other investors. The Wieners have admitted to Mr. Simpson and others that is what they have done and these are their continuing intentions.

3. **Oak and its Principal, Kevin and Michael Wiener Have Grossly Misled the Court**

22. In the proceedings to date, Oak's principals – Kevin Wiener and Michael Wiener – have attempted to falsely portray themselves as unwitting dupes. Nothing could be farther from the truth. The Wieners have been for some time and continue to be the aggressors.

23. Beginning in July 2023 (and perhaps earlier), totally unbeknownst to Mr. Simpson, the Wieners were plotting and planning with Mr. Chassen to take over AREH and throw Mr. Simpson out. Secret meetings were held between Mr. Chassen and the Wieners at Mr. Chassen's cousin's business offices and Mr. Chassen instructed AREH employees not to tell Mr. Simpson about them.

24. By email dated July 19, 2023, counsel for Oak sent counsel for Mr. Chassen a proposal that required Mr. Simpson to “immediately step[] away from active day-to-day management of Arch and its subsidiaries and relinquish[] authority to act on behalf of Arch and its subsidiaries” and require an amendment of the JJ Arch Operating Agreement “such that Jared [Chassen] has sole control over JJ [Arch].” (7/19/23 email from Andrew Silverstein, Esq. at Haynes and Boone, LLP to Len Breslow, Esq. at Breslow & Walker, LLP) Mr. Chassen shared that proposal with his cousin David Berg, who is a principal at the Infinity Collective which is an investor in some of the Arch projects, and Mr. Berg commented on it. (7/20/23 email from David Berg to Mr. Chassen)

25. By early August 2023, a deal between Mr. Chassen and the Wieners was apparently struck and they were working together to dream up supposed justifications to remove Mr. Simpson. One example of this is the email dated August 7, 2023, Mr. Chassen wrote to the Wieners which stated:

Boys, need to speak in morning, need to work on cause event backup together.

(8/7/23 email from Mr. Chassen to Kevin Weiner and Michael Wiener)

26. On August 8, 2023, Mr. Chassen asked the Wieners for “some guidance” on how to deal with questions being raised by Mr. Simpson’s personal accountant “so it does not subject me with a damage claim that somehow I messed up those properties or businesses.”

(8/8/23 email from Mr. Chassen to Kevin and Michael Wiener)

27. 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.**” (August 9, 2023 email) (emphasis added) Mr. Weiner of course had absolutely no right to give such a direction to Mr. Chassen.

28. The Wieners and Oak do not and have never had any ownership or economic interest in JJ Arch. Section 1.1 of the JJ Arch Operating Agreement does not permit the transfer of JJ Arch Company Interests by its Members. On information and belief, Oak has in violation of the JJ Arch Operating Agreement entered into an agreement with Mr. Chassen pursuant to which Mr. Chassen has transferred all or a portion of his rights in JJ Arch and AREH to the Wieners and Oak.

29. With Oak’s assistance and imprimatur Mr. Chassen even enlisted AREH’s Director of Human Resources, Karolina Bortko, in his (and the Wieners’) disloyal plans asking her to “please provide all the emails you have implicating Jeff into the dropbox.” (8/9/23 email from Mr. Chassen to Ms. Bortko) Not surprisingly, Ms. Bortko asked Mr. Chassen and the Wieners for “formal assurance of protection” and an affirmation “that the Company will assume full responsibility for any liabilities” including any legal fees she may incur if she cooperated

with them, which Oak has provided. (8/9/23 email from Ms. Bortko to Mr. Chassen and Kevin and Michael Wiener)

30. Further evidence of Oak's conspiring with Mr. Chassen to wrongfully depose Mr. Simpson from AREH is an email dated August 10, 2023, in which Mr. Chassen asked Oak's lawyers, the Wieners and yet another AREH employee, Michelle Miller, for "a company line and what I am saying when backup questions arise." (8/10/23 email from Mr. Chassen to Jeffrey Dayon, Esq., Brad Lavender, Esq., the Wieners and Ms. Miller)

31. Perhaps the most damning evidence of the collusion between Mr. Chassen and Oak, however, is the email dated August 13, 2023, Mr. Chassen sent to van Biesen, on which the Wieners were copied, in which Mr. Chassen requested asked that Oak pay \$250,000 in legal fees to his (Mr. Chassen's) lawyers:

Hey, we need to fund retainers please

Jeff Dayon's firm requesting \$50,000
Fried Frank requesting \$200,000

If I'll send retainers and wire instructions under separate cover.

(8/13/23 email from Mr. Chassen to Mr. van Biesen and the Wieners)

32. How these law firms were able to accept the engagements is mystifying given their apparent conflicts of interest. Mr. Dayon previously represented AREH on multiple matters while Mr. Simpson was running the company, as did lawyers at Fried Frank on corporate matters. And, astonishingly, Fried Frank was – contemporaneously with its representation of Mr. Chassen – seeking to foreclose on one of the AREH properties on behalf of another client.

33. Mr. van Biesen nevertheless agreed to pay those legal fees for Mr. Chassen, but inquired "who is Fried Frank" to which Mr. Chassen responded: "Litigation firm for me. Brad [Lavender, Esq. of Haynes Boone]'s recommendation." (8/13/23 email from Mr.

Chassen to Mr. van Biesen) And it cannot be disputed that thereafter Mr. Chassen's lawyers at Fried Frank were conversing openly with the Wieners, without Mr. Simpson's knowledge at the time. (8/17/23 email from Emily Cooper, Esq. to Kevin Wiener)

34. Subsequently in this litigation, Oak, Mr. Chassen and their counsel both individually and collectively have repeatedly misstated and omitted from their submissions numerous and sundry material facts concerning their own wrongful self-interested conduct, AREH, JJ Arch, and AREH's assets, liabilities and the present and historic conditions of the real properties owned by AREH, and the controlling agreements between the parties.

35. For example, Oak contends that Mr. Simpson improperly "furlough[ed]" AREH employees suggesting that it was due to employee disloyalty to him. (See NYSCEF Doc. No. 319: Complaint ¶¶ 40-41) That is simply false. AREH employees were treated honestly and fairly. They were informed of Oak's failures and refusal to provide additional funding in breach of the clear terms of AREH's Operating Agreement and that no monies were available to pay them.

36. Similarly, Mr. Simpson did not engage in any improper conduct when, as AREH's Managing Member, he instructed outside corporate counsel to cease work. The Wieners repeatedly stated that they were going to meet their Capital Calls so those counsel fees could be paid; but Oak never did. So, Mr. Simpson did what honest business people do -- he told AREH's lawyers not to run up further receivables.

37. While Oak and Mr. Chassen were contriving together and creating a false narrative about AREH's business affairs, Mr. Simpson was selflessly not taking distributions to which he was and is unconditionally entitled. Believing Oak might actually live up to its

contractual obligations, Mr. Simpson personally contributed more than \$2 million in an effort to keep AREH afloat.

38. Derivative-Plaintiff/Nominal-Defendant JJ Arch denies all of the material allegations in Oak's Complaint (see pp. 16-29, below), and specifically asserts the following Counterclaims against Oak.

COUNTERCLAIMS

COUNT I (Breach of Contract)

39. Derivative-Plaintiff/Nominal-Defendant JJ Arch realleges and incorporate by reference the allegations stated in paragraphs 1 through 38 above as if stated here in full.

40. Under New York law, the elements of a breach of contract cause of action are (1) a valid contract, (2) a material breach, and (3) damages. All of those elements are present in this case.

41. The AREH Operating Agreement is a valid contract between Mr. Simpson in his capacity as the Managing Member of JJ Arch and Oak.

42. JJ Arch is the Managing Member of AREH pursuant to the Preamble and Section 1.1 of the AREH Operating Agreement.

43. Oak is the Investor Member of AREH pursuant to the Preamble and Section 1.1 of the AREH Operating Agreement.

44. Section 3.2.1 of the AREH Operating Agreement provides, in pertinent part, that:

3.2.1. If, at any time or from time to time, Managing Member determines that additional funds are required by the Company (x) to meet its general and administrative expenses in connection with the Approved Budget exclusive of those related to a Permitted Investment or (y) to satisfy the costs associated with

the Company's due diligence in connection with approved Eligible Assets, Managing Member shall deliver a written notice to Investor Member (a "Capital Call Notice") setting forth the total amount of capital required (the "Capital Call Amount") and the purpose of such Capital Call.

45. Simpson made numerous Capital Calls to Oak pursuant to Section 3.2.1 of the AREH Operating Agreement.

46. Oak was required, pursuant to Section 3.2.2 of the AREH Operating Agreement, to meet those Capital Calls "in immediately available funds within five (5) Business Days of receipt." When each of those Capital Calls were made, contrary to Oak's demonstrably false contentions, Oak's Unreturned Capital Contributions did not exceed its Member Maximum Capital Contributions as those terms are defined under the AREH Operating Agreement.

47. Oak has materially breached the AREH Operating Agreement by failing to make those Capital Calls in accordance with Sections 3.2.1 and 3.2.2, which failures have not been excused.

48. In addition, Mr. Simpson as the Managing Member of JJ Arch was specifically entitled to certain "Guaranteed Payment" pursuant to Section 7.3.1 of the AREH Operating Agreement:

7.3.1. Guaranteed Payment. As compensation for its various undertaking and capital commitments hereunder, Managing Member shall be entitled to a monthly guaranteed payment from the Company equal to the amount set forth in the Annual Budget as "Managing Member Guaranteed Payment" which shall be payable by the Company in advance.

49. Mr. Simpson is currently owed more than \$400,000 in that "Guaranteed Payment" from AREH. Oak has refused to cause AREH to pay those monies to Mr. Simpson despite Mr. Simpson's proper demand for them.

50. Oak has materially breached the AREH Operating Agreement by failing to cause the Guaranteed Payment to be made to Mr. Simpson in accordance with Section 7.3.1, which failure has not been excused. No provision in the AREH Operating Agreement allows Oak to withhold the Guaranteed Payment to Mr. Simpson or “offset” payment of it against any purported claims against him.

51. Oak is also liable to indemnify Mr. Simpson and JJ Arch under Section 13.1 of the AREH Operating Agreement for all legal fees Mr. Simpson and JJ Arch have paid and incurred to date as the result of Oak’s willful misconduct in seeking to oust him from the company for the sole benefit of its principals, Kevin and Michael Wiener personally, and to the detriment of Mr. Simpson and the approximately 200 investors in the companies that own the properties in the AREH portfolio.

52. Oak has further breached the AREH Operating Agreement and oral and other written promises by failing to pay AREH’s lawyers for corporate and transactional work performed prior to the commencement of this action.

53. Derivative-Plaintiff/Nominal-Defendant JJ Arch has suffered damages in excess of \$5,000,000 as the result of these breaches by Oak of the AREH Operating Agreement.

COUNT II
(Breach of Fiduciary Duty)

54. Derivative-Plaintiff/Nominal-Defendant JJ Arch realleges and incorporates by reference the allegations stated in paragraphs 1 through 53 above as if stated here in full.

55. Oak owed fiduciary duties to JJ Arch by virtue of its being the Investor Member in AREH.

56. Oak breached its fiduciary duties to JJ Arch by, among other untoward acts, (i) conspiring with defendant Chassen to oust Mr. Simpson from JJ Arch and AREH in order to mask its efforts to hide its refusal to fund AREH's continued operations; (ii) failing and refusing to make Capital Calls duly demanded of it under the terms of the AREH Operating Agreement; (iii) failing and refusing to pay Mr. Simpson and JJ Arch the Guaranteed Payment due under the terms of the AREH Operating Agreement; (iv) failing and refusing to pay bills for legal services rendered by AREH's outside counsel prior to the commencement of this action; and (v) causing Mr. Simpson to pay and incur substantial legal fees defending Oak's specious claims against him.

57. For JJ Arch to have made a demand on Oak with respect to the claims asserted in this Counterclaim would have been and are futile because, as the result of the fraud it occasioned on the Court, Oak is temporarily in control of AREH and is not expected to bring claims against itself and counsel purporting to represent AREH is not independent of and, on information and belief, controlled and being paid by Oak and the Kevin and Michael Wiener.

58. As the direct result of Oak's breaches of its fiduciary duties, Derivative-Plaintiff/Nominal-Defendant JJ Arch has suffered damages in excess of \$5,000,000.

59. Derivative-Plaintiff/Nominal-Defendant JJ Arch is also entitled to recover punitive damages against Oak, in an amount to be determined at trial, because breaches of the fiduciary duty it owes to JJ Arch and AREH were conscious acts that willfully and wantonly disregarded his rights and were intentional, deliberate, and outrageous. Evidence in support of JJ Arch's claims for punitive damages include the statement by Oak's principal Michael Wiener that Mr. Simpson "ruined his life" and that he (Michael Wiener) intends to continue to (falsely) pursue Mr. Simpson "until he declares bankruptcy and is broke."

SPECIFIC RESPONSES TO THE ALLEGATIONS IN OAK'S COMPLAINT**As to the alleged "NATURE OF THE PROCEEDINGS"**

1. Admits the allegations in paragraph 1 of the Complaint.
2. Denies the allegations in paragraph 2 of the Complaint, except admits that Oak is the "Investment Member" in AREH and that Oak has invested \$50 million in AREH, and avers that the parties' rights and obligations between them are governed by the AREH Operating Agreement and that the October 31, 2023 purported "Removal Notice" was a sham intended to benefit Oak to the detriment of JJ Arch and the approximately 200 other investors in AREH.
3. Denies the allegations in paragraph 3 of the Complaint, and avers that this action was brought initially to address Defendant Chassen's unauthorized removal of Mr. Simpson as an authorized signer on all of his personal and AREH's accounts at FNB bank, and Mr. Chassen locking Mr. Simpson out of AREH's email, IT systems and physical offices.
4. As to the allegations in paragraph 4 of the Complaint, admits that Oak "has sought a change in management at JJ Arch" and intervened in this action in an effort to secure that change, and otherwise refers to the transcript of the proceedings before the Court on October 19, 2023 for the meaning and full context of the comments by the Court.
5. As to the allegations in paragraph 5 of the Complaint, admits that Oak has asserted certain claims against Mr. Simpson in this action which he and JJ Arch deny in their entirety.
6. As to the allegations in paragraph 6 of the Complaint, admits that Oak has asserted certain claims against Mr. Simpson in this action which he and JJ Arch deny in their entirety.

As to the “PARTIES”

7. Admits, on information and belief, the allegations in paragraph 7 of the Complaint.

8. Admits the allegations in paragraph 8 of the Complaint, and avers that pursuant to the AREH Operating Agreement, JJ Arch is the Managing Member of AREH and Oak is its Investment Member, and Mr. Simpson is the Managing Member of JJ Arch.

9. Admits the allegations in paragraph 9 of the Complaint.

10. Admits the allegations in paragraph 10 of the Complaint, except avers on information and belief that Defendant Chassen is a resident of New Jersey.

As to “JURISDICTION, VENUE AND GOVERNING LAW”

11. Admits the allegations in paragraph 11 of the Complaint.

12. Admits the allegations in paragraph 12 of the Complaint.

As to the alleged “FACTUAL BACKGROUND: Oak’s History”

13. Admits, on information and belief, the allegations in paragraph 13 of the Complaint.

14. Admits, on information and belief, the allegations in paragraph 14 of the Complaint.

15. Denies knowledge and information sufficient to form a belief as to the allegations in paragraph 15 of the Complaint.

16. Denies knowledge and information sufficient to form a belief as to the allegations in paragraph 16 of the Complaint.

17. Denies knowledge and information sufficient to form a belief as to the allegations in paragraph 17 of the Complaint.

18. Denies knowledge and information sufficient to form a belief as to the allegations in paragraph 18 of the Complaint concerning Oak's formation and business plans, admits that Oak invested \$50 million in AREH, but otherwise denies the allegations in paragraph 18 of the Complaint.

19. Denies the allegations in paragraph 19 of the Complaint.

As to "The AREH LLC Agreement"

20. Admits the allegations in paragraph 20 of the Complaint, except denies that the value of the real property holdings was in excess of \$1 billion in 2022 and that "Oak has far and away the most funds of any party" as Oak owns only 20% of AREH pursuant to the AREH Operating Agreement.

21. Admits the allegations in paragraph 21 of the Complaint.

22. Denies the allegations in paragraph 22 of the Complaint, except admits that it properly quotes a portion of the Section 11.5.2 of the AREH Operating Agreement.

23. Denies the allegations in paragraph 23 of the Complaint.

24. Denies the allegations in paragraph 24 of the Complaint.

As to the alleged "General Mismanagement of AREH and Misconduct by Simpson and JJ Arch Leading to Unforeseen Tax Liabilities, Defaults, and Foreclosure"

25. Denies the allegations in paragraph 25 of the Complaint.

26. Denies the allegations in paragraph 26 of the Complaint.

27. Denies the allegations in paragraph 27 of the Complaint.

28. Denies the allegations in paragraph 28 of the Complaint, and avers that AREH's failure to make debt servicing payments was due to Oak's intentional failure and refusal to meet its contractual obligations to continue to fund AREH's business.

29. Denies the allegations in paragraph 29 of the Complaint.

30. Denies the allegations in paragraph 30 of the Complaint, except admits that Defendant Chassen filed a demonstrably false and misleading affidavit dated September 14, 2023 in this action.

31. Denies the allegations in paragraph 31 of the Complaint, and avers that the Wieners have told Mr. Simpson they would not consent to any bankruptcy filing because they (falsely) believed that any such filing might potentially trigger personal guarantees they signed in connection with several of the AREH portfolio properties, and that those guarantees had already become live as the result of Oak's seeking a receiver for JJ Arch in this action.

As to alleged "Major Misconduct Relating to Spending, Budgeting and Capital Calls"

32. Denies the allegations in paragraph 32 of the Complaint.

33. Denies the allegations in paragraph 33 of the Complaint.

34. Denies the allegations in paragraph 34 of the Complaint.

35. Denies the allegations in paragraph 35 of the Complaint, except admits that Mr. Simpson did make Capital Calls to Oak in accordance with AREH's Operating Agreement and that Oak met some of them and only in small amounts.

36. Denies the allegations in paragraph 36 of the Complaint, and avers that at all times Mr. Simpson complied with the terms of the AREH Operating Agreement despite Oak's failure to do so.

37. Denies the allegations in paragraph 37 of the Complaint, except admits that Mr. Simpson made a proper Capital Call to Oak on October 25, 2023 in accordance with the terms of the AREH Operating Agreement and avers that Oak failed and refused to meet that Capital Call based on a blatant contortion and misreading of the agreement.

38. As to the allegations in paragraph 38, refers to the full terms of the Court's Order (NYSCEF Doc. No. 292), and avers that Oak and its counsel made numerous false and misleading representations and omissions to the Court which resulted in that ruling.

39. Denies the allegations in paragraph 39 of the Complaint, except admits that Mr. Simpson communicated with AREH staff following Oak's refusal to honor his properly made Capital Call.

40. Denies the allegations in paragraph 40 of the Complaint.

41. Denies the allegations in paragraph 41 of the Complaint, and avers that any asserted "widespread panic" resulted solely from Oak's (and Defendant Chassen's) nefarious conduct.

42. Denies the allegations in paragraph 42 of the Complaint.

43. As to the allegations in paragraph 43 of the Complaint, admits that Defendant Chassen has misappropriated funds for personal use and falsely accused Mr. Simpson of wrongdoing, and specifically denies the purported claim that Mr. Simpson used AREH funds in any way improperly.

44. As to the allegations in paragraph 44 of the Complaint, admits that the Chassen Affidavit makes various false allegations concerning Mr. Simpson all of which Mr. Simpson and JJ Arch deny.

45. Denies the allegations in paragraph 45 of the Complaint.

46. Denies the allegations in paragraph 46 of the Complaint, except admits that AREH's accounting department was recently understaffed in the Spring and Summer of 2023, and avers that the circumstance was due to Oak's failure to fund AREH operations, and

that no billing practices at AREH in which Mr. Simpson were involved was in any way improper.

47. As to the allegations in paragraph 47 of the Complaint, admits that Mr. Paul sent Mr. Simpson an email on August 9, 2023, avers that the email was wrongfully solicited by Defendant Chassen and denies that Mr. Simpson acted at any time in violation of his fiduciary duties to JJ Arch and/or AREH.

48. Denies the allegations in paragraph 48 of the Complaint.

As to the alleged “Misrepresentations about Oak’s Capital Contributions”

49. Denies the allegations in paragraph 49 of the Complaint.

50. Denies the allegations in paragraph 50 of the Complaint, except admits that Mr. Simpson properly sent Capital Calls to Oak on October 25, 2023 in accordance with the express terms of the AREH Operating Agreement, and avers that Oak wrongfully ignored them, falsely claiming them to be improper for the sole purpose of advancing their scheme to take over AREH and shutter it for the sole benefit of the Wieners personally in breach of the AREH Operating Agreement and in violation of their fiduciary duties.

51. Denies the allegations in paragraph 51 of the Complaint.

52. Denies the allegations in paragraph 52 of the Complaint.

53. Denies the allegations in paragraph 53 of the Complaint.

54. Denies the allegations in paragraph 54 of the Complaint.

55. Denies the allegations in paragraph 55 of the Complaint, and avers that there are no discrepancies in AREH’s books and records.

**As to the false allegations of
“Simpson’s Past Record of Misconduct and Breaches of Fiduciary Duty”**

56. Denies the allegations in paragraph 56 of the Complaint, and avers that Mr. Simpson never “held hostage” any funds due Oak, he provided extensive information to Oak concerning the status of their investment in AREH and the AREH portfolio properties, never improperly threatened legal action against Oak, and never wrongly directed counsel for AREH to stop work. To the contrary, Mr. Simpson appropriately and properly advised counsel to discontinue work when it was clear Oak was refusing to fund operations and there were insufficient funds to pay AREH’s then outstanding legal bills. Mr. Simpson never made any misrepresentations to Oak concerning capital, never acted in any way inconsistent with the clear terms of the AREH Operating Agreement, and never misled Oak in any way concerning its investments in AREH.

**As to the allegations
“Simpson Refuses to Head JJ Arch’s Removal as AREH’s Managing Member”**

57. Denies the allegations in paragraph 57 of the Complaint and avers that Oak’s efforts to remove JJ Arch as the Managing Member of AREH was illegal and based on numerous false statements and misrepresentations to the Court.

58. Denies the allegations of paragraph 58 of the Complaint, except admits that Mr. Simpson properly opposed Oak’s efforts to remove JJ Arch as AREH’s Managing Member and wrongfully prohibit him from involvement in AREH’s business.

59. Denies the allegations of paragraph 59 of the Complaint.

As to "COUNT I"**(For alleged Breach of Fiduciary Duty Against JJ Arch and Simpson)**

60. As to the allegations in paragraph 60 of the Complaint, repeat and incorporate by reference the responses and allegations stated in paragraphs 1 through 59 above as if stated here in full.

61. Admits the allegations in paragraph 66 of the Complaint, except denies that Oak and JJ Arch are "co-members of AREH."

62. Denies the allegations of paragraph 62 of the Complaint, except admits that JJ Arch as the Managing Member of AREH owed fiduciary duties to Oak.

63. Denies the allegations in paragraph 63 of the Complaint.

64. Denies the allegations in paragraph 64 of the Complaint.

As to "COUNT II"**(For alleged Breach of Contract Against JJ Arch)**

65. As to the allegations in paragraph 65 of the Complaint, repeat and incorporate by reference the responses and allegations stated in paragraphs 1 through 64 above as if stated here in full.

66. Admits the allegations in paragraph 66 of the Complaint.

67. Denies the allegations in paragraph 67 of the Complaint.

68. Denies the allegations in paragraph 68 of the Complaint.

As to "COUNT III"**(For alleged Tortious Interference Against Simpson)**

69. As to the allegations in paragraph 69 of the Complaint, repeat and incorporate by reference the responses and allegations stated in paragraphs 1 through 68 above as if stated here in full.

70. Denies the allegations in paragraph 70 of the Complaint.

71. Denies the allegations in paragraph 71 of the Complaint.

72. Denies the allegations in paragraph 72 of the Complaint.

73. Denies the allegations in paragraph 73 of the Complaint.

As to “COUNT IV”

(For alleged Tortious Interference with Prospective Business Advantage Against Simpson)

74. As to the allegations in paragraph 74 of the Complaint, repeat and incorporate by reference the responses and allegations stated in paragraphs 1 through 73 above as if stated here in full.

75. Admits, on information and belief, the allegations in paragraph 75 of the Complaint.

76. Admits the allegations in paragraph 76 of the Complaint.

77. Denies the allegations in paragraph 77 of the Complaint.

78. Denies the allegations in paragraph 78 of the Complaint.

79. Denies the allegations in paragraph 79 of the Complaint.

As to “COUNT V”

**(For alleged Breach of Fiduciary Duty Against JJ Arch and Simpson
- derivatively on behalf of AREH)**

80. As to the allegations in paragraph 80 of the Complaint, repeat and incorporate by reference the responses and allegations stated in paragraphs 1 through 79 above as if stated here in full.

81. Admits the allegations in paragraph 81 of the Complaint, except denies that Oak and JJ Arch are “co-members of AREH.”

82. Denies the allegations of paragraph 82 of the Complaint, except admits that JJ Arch as the Managing Member of AREH owed fiduciary duties to Oak.

83. Denies the allegations in paragraph 83 of the Complaint.

84. Denies the allegations in paragraph 84 of the Complaint.

85. Denies the allegations in paragraph 85 of the Complaint.

86. Denies the allegations in paragraph 86 of the Complaint.

As to "COUNT VI"
(For an Equitable Accounting Against JJ Arch and AREH)

87. As to the allegations in paragraph 87 of the Complaint, repeat and incorporate by reference the responses and allegations stated in paragraphs 1 through 86 above as if stated here in full.

88. Denies the allegations in paragraph 88 of the Complaint.

89. Denies the allegations in paragraph 89 of the Complaint.

90. Denies the allegations in paragraph 90 of the Complaint, and avers that the statements in the referenced email were in all respects true.

91. Denies the allegations in paragraph 91 of the Complaint.

92. Denies the allegations in paragraph 92 of the Complaint.

93. Denies the allegations in paragraph 93 of the Complaint.

94. Denies the allegations in paragraph 94 of the Complaint.

95. Denies the allegations in paragraph 95 of the Complaint, except avers that false and misleading statements and omissions by Oak's principals. Kevin Wiener and Michael Wiener have damaged Mr. Simpson's reputation and prejudiced his ability currently to enter into business relationships.

96. Denies the allegations in paragraph 96 of the Complaint.

As to “COUNT VII”
(For alleged Fraud Against Simpson)

97. As to the allegations in paragraph 97 of the Complaint, repeat and incorporate by reference the responses and allegations stated in paragraphs 1 through 96 above as if stated here in full.

98. Denies the allegations in paragraph 98 of the Complaint, except admits that a 1031 Exchange was considered.

99. Denies the allegations in paragraph 99 of the Complaint.

100. Denies the allegations in paragraph 100 of the Complaint.

101. Denies the allegations in paragraph 101 of the Complaint.

102. Denies the allegations in paragraph 102 of the Complaint.

103. Denies the allegations in paragraph 103 of the Complaint, and avers that all capital contributions were properly accounted for in AREH’s books and records.

As to “COUNT VIII”
(For a Declaratory Judgment Against Simpson and JJ Arch)

104. As to the allegations in paragraph 104 of the Complaint, repeat and incorporate by reference the responses and allegations stated in paragraphs 1 through 103 above as if stated here in full.

105. Admits that there is a justiciable controversy between the parties as to Oak’s improper removal of JJ Arch as the Managing Member of AREH, denies that Oak’s removal provision was proper and avers that it was not.

106. Admits the allegations in paragraph 106 of the Complaint insofar as Oak improperly sought the removal of JJ Arch as the Managing Member of AREH.

As to“COUNT IX”
(For an Equitable Accounting Against JJ Arch and AREH)

107. As to the allegations in paragraph 107 of the Complaint, repeat and incorporate by reference the responses and allegations stated in paragraphs 1 through 106 above as if stated here in full.

108. As to the allegations in paragraph 108 of the Complaint, admits that Mr. Simpson is the Managing Member of JJ Arch and that fiduciary duties are owed by Mr. Simpson to Oak and Oak to Mr. Simpson, subject to the terms and conditions of AREH Operating Agreement.

109. Denies the allegations in paragraph 109 of the Complaint.

110. Denies the allegations in paragraph 110 of the Complaint.

111. Denies the allegations in paragraph 111 of the Complaint.

112. Denies the allegations in paragraph 112 of the Complaint.

113. Denies the allegations in paragraph 113 of the Complaint.

114. Denies the allegations in paragraph 114 of the Complaint.

AFFIRMATIVE DEFENSES

1. All of Mr. Simpson’s actions on behalf of JJ Arch were authorized by the AREH Operating Agreement and the JJ Arch Operating Agreement.

2. All of Mr. Simpson’s actions on behalf of JJ Arch were proper in accordance with and not actionable under the Business Judgment Rule.

3. All of the claims against JJ Arch should be dismissed in whole or part because Section 3.6 of the AREH Operating Agreement specifically states that “no Member shall be personally liable for the return of any Capital Contributions of, or loans made by, the Members or any portion thereof” and Mr. Simpson’s conduct on behalf of JJ Arch did not

involve bad faith, intentional misconduct, a knowing violation of law, or secure for him financial profits or other advantages to which he was not legally entitled.

4. None of Mr. Simpson's actions on behalf of JJ Arch amounted to willful misconduct, corporate waste or involved improperly conflicted corporate transactions.

5. Oak breached the AREH Operating Agreement by (i) conspiring with Defendant Chassen to oust Mr. Simpson from JJ Arch and AREH in order to mask its efforts to hide its refusal to fund AREH's continued operations; (ii) failing and refusing to make Capital Calls duly demanded of it under the terms of the AREH Operating Agreement; (iii) failing and refusing to pay Mr. Simpson and JJ Arch the Guaranteed Payment due under the terms of the AREH Operating Agreement; (iv) failing and refusing to pay bills for legal services rendered by AREH's outside counsel prior to the commencement of this action; and (v) causing Mr. Simpson and JJ Arch to pay and incur substantial legal fees defending Oak's specious claims against him.

6. Oak committed fraud by falsely stating that it would meet AREH's capital requirements, pay AREH's lawyers and fund AREH's ongoing operations.

7. Oak should be equitable estopped from any recovery in this action due to its intentionally wrongful conduct and unclean hands.

8. Additionally as to "COUNT I," the claim should be dismissed because it is duplicative of Count II, which alleges breach of contract against JJ Arch, and Count V, which alleges breach of fiduciary duty against JJ Arch and Mr. Simpson.

9. Additionally as to "COUNT II," the claim should be dismissed because it is duplicative of Count I, which alleges breach of fiduciary duty against JJ Arch and Mr. Simpson, and Count V, which also alleges breach of fiduciary duty against JJ Arch and Mr. Simpson.

10. Additionally as to “COUNT III” and “COUNT IV,” the claims should be dismissed because Mr. Simpson as the managing member of JJ Arch had the legal right to take all of the actions he did and he did not wrongfully interfere with the rights of any party.

11. Additionally as to “COUNT V,” the claim should be dismissed because it is duplicative of Count I, which alleges breach of fiduciary duty against JJ Arch and Mr. Simpson, and Count II, which alleges breach of contract against JJ Arch.

12. Additionally as to “COUNT VI,” the claim should be dismissed because all of the allegedly actionable statements were either the truth or protected opinion, as they are matters that can neither be proven or disproven as objectively true or false.

13. Additionally as to “COUNT VII,” the claims should be dismissed because none of the referenced statements were false or materially misleading when made.

14. Additionally as to “COUNT VIII,” the claim should be dismissed because the Removal Notice on which Oak’s claim is based was false and misleading in that the purported bases stated in it were untrue and it was issued under false pretenses as part of Oak’s fraudulent efforts to oust Mr. Simpson from AREH and JJ Arch for its own benefit and to the detriment of JJ Arch, AREH and the approximately 200 other investors in the companies that own the AREH portfolio of real estate assets.

15. Additionally as to “COUNT IX,” the claim should be dismissed because (a) Oak failed to make a formal demand for an accounting before seeking judicial relief, and (b) Oak has failed to and cannot demonstrate that it does not have an adequate remedy at law.

WHEREFORE, Derivative-Plaintiff/Nominal-Defendant JJ Arch LLC
demands judgment as follows:

A. That the Complaint of 608941 NJ Inc. be dismissed in its entirety with
prejudice;

B. That JJ Arch LLC's Counterclaims against 608941 NJ Inc. be sustained
and that, on them, the Court enter judgment:

(i) vacating and declaring null and void in its entirety the Court's
Amended Decision + Order on Motion dated November 22, 2023 (NYSCEF
Doc. No. 418),

(ii) directing 608941 NJ Inc. and its principals Kevin Wiener and
Michael Wiener to fulfill all of their obligations under the AREH Operating
Agreement including, but not limited to, (a) meeting all Capital Calls, (b)
immediately paying the Guaranteed Payment to Mr. Simpson, (c) paying
AREH's corporate counsel's, and (d) indemnifying JJ Arch and Mr.
Simpson for all of the legal bills they have paid and incurred to date and
continue to incur in connection with this action, and

(iii) awarding JJ Arch compensatory and punitive damages in amounts
to be awarded at trial; and

C. Such other and further relief as the Court deems just and proper.

Southampton, New York
January 16, 2024

ALTMAN & COMPANY P.C.

By: /s/Steven Altman

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