

COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No. 158055/2023

**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,**

Plaintiffs

- against -

**JARED CHASSEN, and
FIRST REPUBLIC BANK,**

Defendants.

**AFFIDAVIT OF JEFFREY SIMPSON IN OPPOSITION TO 08941 NJ INC.'S ORDER
TO SHOW CAUSE SEEKING A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTIVE RELIEF**

1. I am a plaintiff in the above-captioned action. I make this affidavit in support of mine and Plaintiff JJ Arch LLC's ("**JJ Arch**") opposition to the order to show cause (the "**Motion**") of non-party 608941 NJ Inc. ("**608941**" or "**Oak**") seeking a temporary restraining order and preliminary injunctive relief which would substitute Oak as the managing member of JJ Arch's affiliate, Arch Real Estate Holdings LLC ("**AREH**") in place of JJ Arch.¹

1. I attach as **Exhibit 1** hereto an organizational chart for JJ Arch and its related entities.

2. Oak mounts its Motion largely based on its complaint that “Simpson has repeatedly made extortionate demands to Oak to contribute capital.” *See, e.g.*, Oak Mem at 14. And yet, there is no evidence supplied by Oak that the JJ Arch Capital Calls were unwarranted and they never complained about a single capital call prior to their various attempts to take over the business, starting in July of 2023.

3. Oak, as AREH’s funding partner, has refused to continue to provide funding which would enable it to forestall notices of defaults and foreclosures on certain of its properties. It decided in May and June of 2023 that it would not fulfill its obligations under the Arch, Affiliates, and Investment Loan documents as it simply “did not want to”.

4. The AREH Operating Agreement, NYSCEF doc. No. 3, provides that Oak must meet capital calls under circumstances such as AREH is facing now, Section 3.2 and yet it has refused to do so.

5. There is also no question that Oak has been paying for, controlling and navigating my dispute with defendant Jared Chassen (“Chassen” or “Defendant”), including funding his legal costs exhibit and paying him a salary through an agreement that has been requested that I have yet to receive, in addition to a joint defense agreement. Michael Wiener threatened me in July by saying “you can go the easy way or the hard way”. He even decided to send a memo to me and my team positioning Jared as a “puppet” so that Oak can run the AREH businesses and not trigger lender or investor consent.

6. Oak’s Kevin and Michael Wiener are siding with defendant Chassen to the detriment of the AREH properties. For example, in an August 7, 2003, email from Michael Wiener to Jarred Chassen, Wiener wrote:

“You should really set up an automatic reply saying Jeff is no longer at Arch and the email is monitored so he can’t argue we’re using this as a trap to get privileged or confidential emails to Jeff.”

See the accompanying Israel Aff., Exhibit 1.

Obviously, this proposal was not in the best interests of Arch or the AREH properties since Simpson needed to be in near daily contact with lenders to stave off defaults and otherwise manage the properties.

7. For his part, Chassen wrote the Wieners on August 7, 2023, the following:

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

Israel Aff., Exhibit 2.

8. I deny much of the affidavits submitted by Oak in support of its Motion, but I submit that the pending issue does not turn on a contest of who has or has not behaved well, but on how best to keep AREH alive. Irrespective of their reference letters, the experience of the Wieners is clear, they do not have any. Without additional funding, the business will not survive. They also claim that William Wiener is not mentally in good standings but he too was aggressive about the situation and tried to avoid dialogue on his money problems.

8. I am the best person to navigate AREH through its financial difficulties. I have over two decades of experience in engineering, finance, deal structuring, construction, construction management, real estate investment, and property management. I also have general contractor construction licenses in New York and other markets, which are tied to business under my name personally.

9. AREH sold a portfolio in early 2022 for \$199,000,000 with a property basis of

less than \$140,000,000. This was a portfolio that I assembled from an acquisition perspective, planned and programmed the value-add process, sourced / closed and maintained the loan and managed the disposition for a strong price. \$60,000,000 in profit was considerable on a transaction that was in a hold period of less than 3 years from inception with an equity investment of less than \$25,000,000. This example addresses Wiener's diminishment of AREH's success and my management fortitude.

10. AREH's problems derive from the unwillingness of Oak, as our funding partner to continue to provide funding which would enable us to forestall notices of defaults and foreclosures on certain of our properties. It decided in May and June of 2023 that it would not fulfill its obligations under the Arch, Affiliates, and Investment Loan documents as it simply "did not want to".

11. The AREH Operating Agreement, NYSCEF doc. No. 3, provides that Oak must meet capital calls under circumstances such as we are facing now. Section 3.2, denominated, "Additional Capital Contributions" provides as follows:

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. ...Contributions to exceed Investor Member Maximum Capital Contribution.

3.2.2. Investor Member 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 equal to the Capital Call Amount.

12. On October 24, 2023, I transmitted a capital call to Oak as follows:

608941 NJ Inc.

Re: Arch Real Estate Holdings LLC

To Michael Wiener: Reference is hereby made to the Limited Liability Company Agreement of Arch Real Estate Holdings LLC (the "Company") dated as of December 11, 2017 (the "LLC Agreement"). All capitalized terms used herein shall have the same meanings herein as in the LLC Agreement unless otherwise defined herein.

Whereas on June 26, 2023, 608941 NJ Inc. made a payment in the amount of \$650,000.00 to the Company's account. As noted in the email attached in Exhibit A, this amount was offset by open receivables of a Company Asset, Myrtle Point, shown in Exhibit B;

Whereas this payment should have been credited to the capital account of 608941NJ Inc. at the Company Asset Myrtle Point and funds used toward affiliate accounts payable;

Whereas this payment was instead shown as a payment toward the Investor Member Maximum Capital Contribution;

Whereas, as shown in Exhibit C, we will be making reallocations to properly reflect the Investor Member's \$650,000.00 payment as an increase to its capital account at the Myrtle Point Company Asset and a reduction of the Investor Member's balance applied toward the Investor Member Maximum Capital Contribution:

Therefore, **this notice constitutes a Capital Call Notice in accordance with Section 3.2 of the LLC Agreement. Pursuant to Section 3.2.1 of the LLC Agreement, the Manager has determined that additional funds, in an aggregate amount of \$413,038.00, are required by the Company or a Subsidiary. The Required Contribution by 608941 NJ Inc is \$413,038.00.** Please wire the Required Contribution in immediately available funds to the Company account no later than October 31, 2023.

NYSCEF No.301; Exhibit A to the Motion. (Emphasis added.)

13. On October 27, 2023, counsel for AREH wrote counsel for Oak as follows:

Leslie:

As I mentioned to you on Wednesday evening the company is dealing with a severe liquidity issue - specifically included in that liquidity issue is that the company does not have the requisite cash to fund payroll in the amount of approx.\$300k (the payroll funding payment is due on Monday).

The payroll amount was included in the budget with the recent Capital Call. I am attaching a breakout with payroll related amounts. As you can appreciate, we can't have employees come to work if we can't pay them, and will correspondingly likely lose those employees.

We have not heard back on your client's willingness to honor the Capital Call or whether they had any issues with the budget. Can you advise as to whether your

client intends to provide funding (all or part) in connection with the Capital Call and related budget...

NYSCEF Exhibit 302.

14. Oak refused to tender the capital call. Its representations in Court notwithstanding it has paid nothing towards it.

15. On October 27, 2023, AREH's counsel wrote the following to counsel for Oak:

Subject: Re: Arch - Payroll Funding Request

EXTERNAL: Sent from outside Haynes and Boone, LLP

Leslie:

I'll forward this to my client, but confirming that your client is not willing to fund the very specific payroll of \$299k needed for Monday unless the below conditions are satisfied, correct?²

NYSCEF Exhibit 302.

16. On October 27, 2023, AREH's counsel further transmitted a notice of furlough explaining that in view of Oak's refusal to heed AREH's Capital Call, it would have to suspend the employment of certain office workers. It had no choice.

Leslie:

Given Oak's refusal to honor any portion of the recent Capital Call, including our expressed request for Oak to fund the upcoming payroll, AREH was required to furlough employees.

Please see the attached letter sent to employees. AREH reserves all rights.

See NYSCEF No. 302; Exhibit B to the Motion.

17. The furlough did not encompass "all" AREH employees, but only office workers.

² The conditions Oak insisted upon were draconian and fell wholly outside the rubrics of the parties' operating agreement. *See* NYSCEF Exhibit 302 at p. 4.

The critical property-management based staff were not furloughed and I made sure that they were funded their wages. The Affidavit from Dana King is quite serious where I spoke with her that evening to confirm that she was able to approve a large portion of the property management staff payroll. It was a day or two behind, but I was trying my best to navigate the accounting work to effectuate the funding transfers where I have two challenges. One, where FRB still does not provide me proper access to the accounts per multiple Court Orders. Two, where our staff accountant refused to help me process the payroll for herself and others when she stormed out of my office on the Friday before at 4:30 pm. It was convenient that others left too as their seemed to be yet another communication by Chassen or Oak to find a way to cause operational issues for me.. Chassen and Oak do not do any of the work, I have put in 16 hours a day, 7 days a week trying to keep the business alive.

18. I had many times informed Oak that funding is required to keep people working. The very circumstance that AREH faces today has this concern at its core. Oak refuses to accept what it means to be a partner and loan guarantor when times are tough as well as when times are good.

19. Indeed, the circumstances of which Oak complains in its Motion are due to its own contractual breaches in not supplying funds in connection with our capital call at the corporate and individual property levels, in addition to defamation of my character, an attempt to discredit me and seriously interfere with employees, lenders, and investors.

20. I also note that I have been fully transparent with Oak. Each real estate loan closing had loan documents and guarantee documents that were provided to Oak for review, yet it did defer to the Arch key individuals Tristan Last and Michelle Miller for questions. Oak suggests that they didn't understand what they were getting into. I even gave them specific

examples on how construction loan guarantees worked as it relates to exposure for risk in my initial interactions with Oak in 2017.

21. As I address below, I have not withheld books and records from Oak. Just the converse is true. Thus, there has been constant reporting with Oak for almost 6 years. Oak's Van Biesen spoke with our former controller on a daily and weekly basis. After the controller left in May 2023, Arch faced issues surrounding capital and had trouble finding staff fast enough to fill the gaps to fulfill the work. Oak was aware of this, I asked for assistance but instead was plagued with requests for "forensic" accounting.

22. But Oak is wrong in its complaint that I have withheld information and materials from it. I have offered to allow Oak to review all AREH books and records in its office. **Exhibit 2** hereto reflects the access Oak personnel had to our books and records. Each of the personnel with Oak email addresses had access. I have told Oak countless times that the current predicament does not allow for an accounting audit because of our small staff that was busy helping with business operations. Oak knows I am not an accountant, and they know that our Controller (who spoke with Oak daily) left in May 2023. I even offered for Oak to provide resources to help us rather than forensically audit us which would simply be a distraction when the attention of the staff is needed at the real estate, not to solve agendas of a partner looking for an "I got you" moment and excuses not to fund obligations.

23. Most recently, on October 26, 2023, I caused to be transmitted to Oak an email with comprehensive records for Oak's review. The email, **Exhibit 3** hereto, stated in its text the following:



Arch - Books
Records.msg

All –

I just sent an invite to a Dropbox folder called "Arch – Books and Records" to each of you. We are still in the process of uploading documents to this folder. The items below have currently been uploaded. We will send another update around 5pm with additional items that have been uploaded.

88 University

1. Completed cap table and member list
2. Certificate of formation filed in lieu of articles of incorporation
3. Operating agreements provided
4. EINS provided
5. Property financials provided

Cambridge

1. Completed cap table and member list
2. Certificate of formation filed in lieu of articles of incorporation
3. Operating agreements provided
4. EINS provided
5. Property financials provided back to 2022, waiting on remaining

Melrose

1. Completed cap table and member list
2. Certificate of formation filed in lieu of articles of incorporation
3. Operating agreements provided
4. EINS provided
5. Property financials provided

Tuscaloosa

1. Completed cap table and member list
2. Certificate of formation filed in lieu of articles of incorporation
3. Operating agreements provided
4. EINS provided

Columbia

- 1) Cap table and Member addresses
 - 2) Articles of Org
 - 3) Operating Agreements
 - 4) Federal state and local tax info
 - 5) Financials
- #### Birmingham

- 1) Cap table and Member addresses
- 2) Articles of Org, Not complete
- 3) Operating Agreements
- 4) Federal state and local tax info
- 5) Financials

Bushwick

1) Cap table and Member addresses

24. Contrary to the Wiener Affidavit in support of the Motion (§18), we have provided Oak with a budget every year since the beginning of the partnership. Many times, these annual meetings were done in person, where we handed the budget to the Oak team. Oak's Frank Van Biesen was the Oak person who handled these matters. When Kevin Wiener made an allegation about budget inflation in the summer of 2023, I provided substantial backup to demonstrate the accuracy of the budget and that if a new budget was not approved, the lesser of that year and the prior would be utilized. The budget expenditures were also verified and illustrated as part of the capital calls.

25. Contrary to Oak's assertions, *see* Oak Mem. at 6, I have not "admitted to improper use of company funds." Nor have I "engaged in a campaign of misinformation to investors." *See* Oak Mem. at 7.

26. Oak also alleges: "JJ Arch has also repeatedly breached the AREH LLC Agreement by demanding capital contributions directly from Oak without following the procedures set forth in the agreement." Oak Mem. at 15:

27. As the Court can see from NYSCEF No.301; Exhibit A to the Motion, I have fully complied with the governing operating agreement in issuing the latest capital call and I have complied at all times in the past, no matter which system was utilized as Oak never complained or dismissed the notices before this past summer when they ran out of money.

28. We have illustrated that we have used many systems to request capital that were never controversial to Oak until now and the proof is that they funded on those requests. This is another attempt to attack me, rather than help the business succeed through an impossible time in the business cycle for real estate investors.

29. JJ Arch has properties that have nothing to do with Oak but stand to be adversely affected by its Motion, which I have \$4M of personal equity invested in and personal recourse on all of the loans. They are as follows:

225 Head of Pond
Water Mill NY

1640 Montauk Hwy + Affiliate Operating Co
Water Mill NY

550 Metropolitan Ave Retail
Brooklyn NY

146 East 89th Street
Manhattan, NY

30. Following is a brief synopsis of the properties maintained by Arch Real Estate Holdings LLC that have capital needs or loan issues.

Myrtle Point – Madison Realty Capital (“Madison”) construction loan. The project has been out of balance, mostly for mortgage interest expense since early spring, 2023. AREH and Madison worked on many proposals to get the project back in compliance, but they require fresh equity. Oak suggested that they may invest more funds but have put in money since this time and the project has essentially stopped in the last month. Arch and Affiliates have over \$1,000,000 of debt on the project for staff it paid for. Vendors have over \$6,000,000 debt on the project. I have worked with the parties to try to find a resolution. It seemed that Oak would finally agree to put fresh capital in, if it was released off the guarantee and Simpson took over the obligations – this is as of Friday, October 20, 2023. There is no actual foreclosure notice but the lender sent a draft as a wakeup call. This project is 80% complete.

Nostrand – Madison - Loan on Loan – the loan has not had debt service paid in 1 year and a no lender default letter has been issued. The lender is willing to work with AREH and Oak if a small amount of capital is invested.

88 University – CIM – many letters of default were sent from this lender. The lender has been speaking with AREH and its partners daily about a resolution. They set a foreclosure date for early 2024 but, in my estimation, that is not their

intention. They sent a letter proposal over the past few weeks to restructure for all parties. They are working in good faith, as is AREH.

435 Central – Avant Capital – this is a distressed project (part of the acquisition strategy) and the loan was in foreclosure. AREH negotiated a forbearance until December 1, 2023. The lender has a short leash on a default for debt service payments and other provisions with a stipulation of forbearance and consent to judgement of foreclosure filed with the courts. Since there were limited funds available Miller and Simpson funded a portion of the last interest payment. Additional interest is due on November 1, 2023, and the loan matures on December 1, 2023. There are no funds available to make the interest payment unless Oak funds it through a Capital Call. I inquired about this under Oak's leadership and no reply of merit.

1010 / 1351 – KSR loans – These were distressed projects as well and the loans were in foreclosure. AREH executed a series of forbearances, the last of which expired on August 31, 2023. AREH missed paying the lender a further extension payment (which would have had to been negotiated and the lender was open to it) and any interest that would have been due on September 1 and October 1. One of the two assets had a foreclosure sale this past week, but the lender is working with AREH on both assets where it can buy back in at par, so long as it is completed within 30 days. The second asset has an auction date on November 9, 2023.

Birmingham – Stone Beach – this multifamily property is now short on reserves and cannot make its first problematic interest payment in full. The lender seems to have a desire to work with the parties, but fresh cash will be required. A default notice was issued for missing interest payment due on October 1 as funds were needed to support operations.

16th Street- Valley National – there is a maturity default, but the lender seems to be open to working with AREH.

9 Vandam – Maxim Capital – the project is out of balance due to construction costs and interest expense. The last 3 interest payments were not made (~\$150,000). The lender will work with AREH if those payments are made immediately. The project is 80% complete. There is also a loan maturity at the end of November 2023.

31. I alerted Oak countless times of the cash needs surrounding the properties where the notices have been issued. I either sent Capital Calls, "Cash Needs" projections, or a *global dashboard*. **Exhibit 5** hereto comprises requests transmitted in May and June of this year, Michael Wiener's view was that if he could not control the circumstances he would try to "cherry pick" investments. This consistent theme started in June 2023 where Wiener told me and all of his team

members, “Simpson must leave or we will not fund another dollar”. Oak also knows that the infrastructure of over 100 employees that I built relies on the deals to fund properly for the staff to be compensated through related party Agreements (all pre-approved and every investor LLC discloses this). If the properties are not funded, I am stuck with salary obligations without any source to pay for them. I had to reduce the staff slowly and strategically managed to still have a 60-person team despite all of Oak’s funding breaches, but ultimately had to furlough office staff as there was no more funds to pay them and I would not break labor laws to keep staff working without explicit knowledge that there were funds to pay them.

32. Oak’s guarantees are the Wieners’ concern and I have worked tirelessly for months pleading and begging with lenders to let them off for minimal dollars and many times I offered myself personally as a replacement, while maintaining control as Managing Member.

33. In the Oak memo in support of the Motion, Oak alleges: “Simpson and JJ Arch have also failed to make debt payments, which has thrown several properties into foreclosure. In at least one instance, Simpson did not even respond to the debt servicer until after the initial date for payment had passed. Simpson then failed to notify Oak until the eve of the default, which is non-remedial, in addition to having never made a capital call for the property.” Oak Mem. at 14. This is false. Oak was fully advised of all the financial problems we have faced, and it received capital calls where needed.

34. In the Oak memo in support of the Motion, Oak alleges: “Simpson has repeatedly made extortionate demands to Oak to contribute capital (and not other investors).” Oak mem at 14. This too is false. All investors received notices and Oak is conspicuous in being the key funding partner which neglected to supply capital and they have a dilution right when they provide Member Loans to investors of 18% interest or 125% cram down.

35. In the Oak memo in support of the Motion, Oak alleges: “Simpson and JJ Arch have also failed to make debt payments, which has thrown several properties into foreclosure.” Oak mem at 14. Our inability to make debt payments owes directly to Oak’s withholding capital.

36. In the Oak memo in support of the Motion, Oak alleges: “Simpson has also failed to properly apprise Oak of his failure to carry out an appropriate 1031 Exchange, which has substantial tax implications for Oak.” Oak Mem. at 14.

37. In September 2021 Arch reached out to investors to inform them that it would be putting up certain properties for sale (two portfolios, one property, so 3 investor groups). As part of this communication, Arch expressed its intent to create a 1031 vehicle to potentially defer the recognition of capital gains and requested investor’s feedback on their interest in participating. Given the 1031 requirements, investors would need to elect to join the vehicle prior to signing the contract to sell the property and the identification of any replacement property investments. As a result, the 1031 vehicle would need to be fully discretionary in which all or a portion of funds could be reinvested.

38. Prior to fully committing to the 1031 investment vehicle, Arch issued a formal letter to investors describing the transition, structure of the new vehicle and tax deferred treatment. (The memorandum is in the form appended hereto as **Exhibit 4.**) Specifically, the letter stated that the manager will “endeavor” to undertake a like - kind exchange. Moreover, “to the extent that the Company does not reinvest in sufficient property to cause your full investment to continue on a tax-deferred basis, you will be responsible for your share of the tax.” Because of the 1031 requirements, the 1031 vehicle needed to be created prior to signing the sale contracts for the properties in December 2021. A contract was ultimately signed for \$199m which included the NCSC portfolio as well as two of our other assets, Riverbank and Midtown.

39. Given the size of the transaction and the total committed 1031 vehicle proceeds of close to \$39,000,000, approximately \$14m of which were generated from the sale of NCSC, the reinvestment process was extremely complex. Given the size of the proceeds we needed to place the majority of funds in multiple properties. The sale closed on February 28, 2022. The 1031 exchange properties had to be identified within 45 days of the closing and fully invested within over a 180-day period following the closing. The Arch team had identified numerous properties for placement however, given the different stages of the due diligence, negotiation and contract process not all of the properties would transition to ownership.

40. We had specifically called out the Center Point portfolio in Birmingham. This acquisition closed in December 2021 and 1031 funds were placed in the portfolio after the sale closed. Investors were informed about this allocation at the end of March. Investors were informed about placement of 1031 funds into a second property, 88 University, in May 2022. There was one additional property that closed at the end of the 1031 period. As part of the 1031 plan, Arch anticipated closing on a property with the address 1580 Nostrand. Arch owned the loan on the property, but it needed to convert to equity ownership to place 1031 proceeds. Based on the information Arch had at the time, it reasonably believed that it would have the equity position within the 180-day 1031 investment period. In order for the 1031 to be successful in terms of significant tax deferral, this property needed to be included. Unfortunately, Arch was unable to convert its position from lender and owner in time and as a result, the tax benefits were unable to be achieved. Ultimately, we made gross distributions of approximately 40% of the NCSC 1031 commitment since we did not place all the funds. There was nothing nefarious about these efforts and the proper approach was taken. It just proved unsuccessful.

41. Oak alleges, regarding the Bushwick project, “An email from Michelle Miller (an Arch employee) dated 6 August 2023 contains a Bushwick capital table attachment, which includes an accounting of member loans. When comparing this to the Contribution Table provided in the Arch - Books & Records folders, the member loans have entirely disappeared. Additionally, the capital amounts by entity changed dramatically without any explanation or reconciliation.” (van Biesen Aff. ¶ 7). Oak Mem. At 7. This is hearsay and I am not an accountant. Oak was aware that we lost our controller in May, and we have been trying to catch up with reconciliation. No one has deleted Oak’s Capital account. It is also interesting that the date of that e mail from Miller was the same date as the “coup” occurred.

42. Oak alleges, for the 16th Street project, “In an email from Yechiel Lehrfield (an Arch employee) dated 19 April 2023, a reconciliation of 1031 sale proceeds is provided both in the email body as well as in supporting attachments. An amount of \$46,070 is shown as being advanced to the 16th Street deal on behalf of 608941 NJ. When comparing this to the Contribution Table provided in the Arch - Books & Records folders, this amount is completely missing.” (*Id.*). Oak Mem. At 7. Again, this is hearsay, and I am not an accountant. Oak is very aware that we lost our controller in May, and we have been trying to catch up with reconciliation. No one has deleted Oak’s or another other Capital accounts.

43. Oak alleges, Rêver Motors is separate from AREH, but on the AREH payroll. Oak Mem. at 6. We used one laborer from another affiliate to help there and reimbursed his cost. It was less than \$20,000 and it was disclosed fully given that both businesses are majority controlled by me. This is not an unusual or a problematic situation, especially when the HR team was made aware of it.

44. Oak alleges: “JJ Arch has also repeatedly breached the AREH LLC Agreement by demanding capital contributions directly from Oak without following the procedures set forth in the agreement.” Oak Mem. at 15. I deny the truth of this assertion and refer the Court to NYSCEF No.301; Exhibit A to the Motion, which is a formal capital call I issued.

45. Oak alleges: “In response to Simpson’s decision to furlough all of AREH’s employees, Oak was forced to remove JJ Arch as Managing Member.” Oak Mem. at 9.

46. Plaintiffs deny that Oak had a valid basis to remove JJ Arch as Managing Member since its own failure to fund was responsible for the furlough and because the furlough did not encompass critical property management personnel but was limited to office workers and most notably they had a funding obligation and they refused to fulfill after countless requests.

47. If the Wieners decided they wanted out of the business, the AREH agreement has a 3-strike rule so that if they said no on 3 property presentations, the exclusivity and obligations would be over, in addition to a 5-year exclusivity which expired in December of 2022. Knowing this, we met with them in middle of 2022 inquiring about their intentions to continue with Arch and got reactions that were about what they want to do, when they want to do it, without any commitment. Yet, the Wieners did not reject a single deal in the AREH real estate acquisitions during the first 5 years or ever for that matter.

48. Oak alleges:
Similarly, and as learned from discussions with an AREH accountant, under Simpson’s leadership, and indeed, at his specific direction, AREH accounting staff have been directed to move money across the various entities under the AREH umbrella to fund obligations, reflecting a “degree of informality, lack of documentation, and general lack of discipline or rigor in processes” that concerned the accounting professionals, who nevertheless felt obligated to comply with Simpson’s demands. The accountant also described other irregularities, including severe understaffing in the accounting department, inaccurate classification of certain transactions as “distributions,” inappropriate charges to property-level entities for accounting work by outside accountants that was not so performed, and other misconduct. *See* Nov. 3 Wiener Aff ¶ 22. Oak Mem. At 7.

49. The assertions are generalities based upon hearsay and I deny them completely.

50. Oak alleges, “Simpson has also repeatedly engaged in self-dealing in violation of his fiduciary duties. For example, Simpson withheld the sale proceeds from an Oak affiliate’s interest in a property on Biscayne Blvd in Miami, by demanding that Oak first pay Simpson approximately \$60,000 in pre-development fees to which he had no legitimate claim. By putting his own financial interest above his duty of loyalty to Oak, Simpson has engaged in a clear breach of his fiduciary duties.” Oak Memo. at 14.

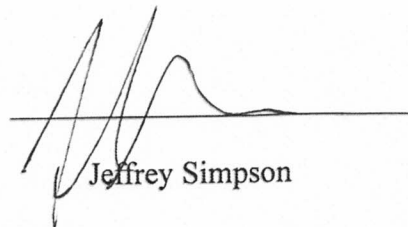
51. I did not urge Oak to do anything with regard to 2501 Biscayne Blvd. We (myself and other team members, including outside architects, vendors) spent years meeting potential partners and investors trying to solve the family problem that existed around this property. Michael thought their father overpaid for it and, in fact, he paid 2.5 times what we did for the property across the street. One day I thought to bring in a joint venture partner but after that call, that Chassen participated in, Chassen insisted that his cousin’s company, Infinity, should be involved. I warned about the conflict but proceeded with Wiener and Chassen on this path. It ultimately led to many controversial conversations and pressure between Chassen and me. There were other circumstances where Chassen asked Wiener to back his friend’s restaurant on the 2501 property that failed and his own brother to help Wiener with short term rentals, also a failure. When Wiener asked to have Infinity provide liquidity for AREH in 2023, I advised of a conflict of interest for this very reason. I was ignored and a secret meeting occurred in July at Infinity’s office with Chassen, Michelle Miller (who was told not to tell me about the meeting) Michael Wiener, without me to strategize about how to solve Oak’s liquidity needs at Arch, even though I told him not to on several occasions. Wiener also signed an agreement with Infinity (behind my back) to help

catch up AREH's accounting, which they claim they did not know it was behind since May, 2023.

52. The balance of Wiener's assertions here are being addressed in the dueling motions and submissions made by me and Chassen in the context of the case at large.

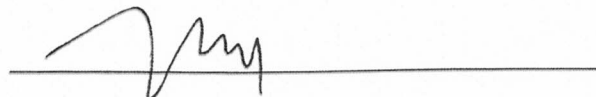
53. The Plaintiffs exploration for bankruptcy protection is merely an exercise in prudence, that was suggested by corporate counsel to AREH, after coming to the same conclusion of where we are today, how to continue without liquidity. AREH had not thus far determined to do so, but there is no reason why it should not mention its contemplation of it to Oak, considering how it would stand to be affected by such filing. All third party legal or real estate professionals get to the same conclusion in minutes when they are told that the operating business and properties are struggling for liquidity to cover their bills and obligations with no financial resolution available. AREH, Affiliates, and Investment Entities have payables in excess of \$20M currently. Approximately half of this would not have occurred if Oak funded their obligations under the Madison Loans referenced above.

For the foregoing reasons, and those stated in the accompanying memorandum of law, and Affirmation of counsel, Sam P. Israel, the Court should deny the Motion in its entirety and should allow the operative agreements control the matters at hand so that the parties can resolve the matters in a businesslike matter without exhausting the use of the Courts and legal fees.



Jeffrey Simpson

Sworn to before me this 10th day of November



Notary Public

TING CHOI
Notary Public - State of New York
No. 01CH6406060
Qualified in Queens County
My Commission Expires Mar. 23, 2024

CERTIFICATION OF WORD COUNT

As counsel to the Plaintiffs, I hereby certify that the foregoing submission comprises 6,056 words.

Dated: New York, New York

November 12, 2023

Respectfully submitted,

SAM P. ISRAEL, P.C.

By: /s/ Sam Israel

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