

SUPREME 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.

**MEMORANDUM OF LAW IN OPPOSITION TO OSC SEEKING THE APPOINTMENT
OF A RECEIVER**

Plaintiffs Jeffrey Simpson (“**Simpson**”) and JJ Arch LLC (“**Arch**” or “**JJ**”, together, the “**Plaintiffs**”) by and through their undersigned counsel, submit this memorandum of law, together with an affidavit by Simpson (the “**Simpson Aff.**”) in opposition to the order to show cause of non-party 608941 NJ Inc. (“**608941**” or “**Oak**”) seeking the appointment of a receiver to manage the affairs of Arch (the “**Motion**”), and hereby state as follows.

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PRELIMINARY STATEMENT

Oak mounts its Motion largely based on hearsay culled from the dispute between defendant Jared Chassen (“Chassen”) and Jeffrey Simpson, which matters are hotly contested but here have involvement and direction by 35 Oak (“Oak”) which was behind the scenes up until now. The dispute has been exacerbated by the unwillingness of Oak, as Arch’s funding partner, to continue to provide funding—as it is required to do by contract-- which would enable the Plaintiffs to forestall notices of defaults and foreclosures on certain managed properties.

Substantively, the Motion invokes default notices transmitted to Defendants by lenders on properties under management by AREH, which notices are being effectively dealt with by Simpson, JJ, and AREH. Oak also complains that it was deprived of AREH’s books and records which, as Simpson demonstrates, has not been the case.

The appointment of a receiver for Arch would interfere with the company’s management of real properties, the progress it is making in resolving defaults on behalf of AREH and it is not necessary to safeguard the interests of 608941. Further, Oak has merely a 20% interest in AREH and has no interest in Arch, which owns separate assets and involves the interests of non-parties in same.

To displace Simpson at this point amid his efforts to protect JJ and AREH would affect the management of not only AREH properties but property unrelated to AREH and owned exclusively by Arch, in addition to triggering a change in control and recourse obligations in the investment entity loans.

COUNTER STATEMENT OF FACTS

JJ Arch, LLC has properties that have nothing to do with Oak but stand to be adversely affected by the Motion, as do the interests of related non-parties. They are as follows:

225 Head of Pond
Water Mill NY

1640 Montauk Hwy + Affiliate Operating Co, Rever Motors
Water Mill NY

550 Metropolitan Ave Retail
Brooklyn NY

146 East 89th Street
Manhattan, NY

Simpson Aff. at ¶69.

Apart from these unrelated properties, Arch owns the construction, property management, development, and advisor affiliates in 7 AREH properties. Arch has a significant staff across the divisions—100 persons on average. It is the managing member on every property that Arch is affiliated with. Appended to the accompanying Simson Affidavit as **Exhibit 1** is an organizational chart for Arch and AREH as well as a discussion of its properties under management.

JJ by Simpson has consistently cooperated with Oak by, among other things, disclosing all operating agreements to Oak's Frank Van Biesen and offering to make Arch's books and records available for viewing. Simpson Aff. ¶¶66-68. There were modifications to the books and records throughout the years. These documents were also shared with Oak which received closing binders on each property from counsel. Id.. Thus, each real estate loan closing had loan documents and guarantee documents that were provided to Oak for review, yet they defer to the Arch key

individuals Tristan Last and Michelle Miller for questions. Simpson engaged in many conversations with Frank Van Biesen and Oak's Michael Wiener to explain the liabilities of the transactions and the related loan agreements. Simpson always disclosed the risks. Simpson Aff.--68. There was a separate structure, agreements, and bank accounts for each transaction. Frank Van Biesen spoke with the Arch team regularly concerning documents, financials, etc., which were always shared. Simpson Aff.¶25.

It is no surprise that the real estate business has faced major headwinds caused by inflation and interest rates changes in the last 12 months. Arch, like other investors in the sector, has experienced these challenges. However, the AREH office portfolio is limited, and its multifamily properties are generally modest and affordable. All part of a larger investment strategy that Simpson and JJ shared with AREH and Oak, in its planning for investment in a potentially challenging time. Additionally, as discussed below, the interest rate protection measures Arch has implemented for many of its properties are proving to be beneficial. Simpson Aff.¶13.

Thus, while the current business environment has made it challenging for business to be ordinary when larger cash needs exist and the markets have softened in general, Arch and Simpson have been actively working with capital partners and lenders to navigate these difficulties and find the best path forward. Simpson Aff.¶ 14.

Simpson submits that Arch and AREH still have an excellent construction management team which have been involved in tirelessly ensuring smooth operations and continuous improvement. Lenders are facing similar challenges to real estate operators like AREH, but it has successfully convinced most of them that they are partners in navigating these times. AREH has gained awareness of the key concerns surrounding most of the projects. Simpson Aff.¶16.

AREH's seed capital investor, namely Oak should understand the challenges it faces and not continue to undermine its vision and business. Simpson alerted them of the challenges and capital needs as far back as December of 2022.

Simpson plans to continue to collaborate with partners and lenders, closely monitor market trends, and adapt strategies accordingly. By staying resilient and proactive, he believes he can position AREH to make the most of the opportunities that lie ahead in the real estate industry. Simpson Aff ¶. 73.

In his accompanying affidavit, Simpson provides the current state of affairs for each AREH property and addresses his efforts to address their lenders. They are as follows:

Myrtle Point – Madison Realty Capital construction loan. This project is 80% complete and active negotiations with its lender continues. Simpson Aff. ¶ 19.

Nostrand – Madison Realty Capital Loan on Loan Financing. The lender is willing to work with Arch and Oak if a small amount of capital is invested, documents have been drafted and negotiations continue. *Id.* Arch and its partners daily about a resolution to the underlying debt. *Id.*

Columbia – Walker Dunlop – The lender has a desire to work with the parties but there is a cash requirement to follow through with growing accounts payable and property repairs. *Id.*

435 Central – Avant Capital – Arch negotiated a forbearance until December 1, 2023. The lender is open to an extension. *Id.*

1010 / 1351 – Kassin Sabbagh Realty. One of two assets had a foreclosure sale but the lender is working with Arch 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. *Id.*

Birmingham – Stone Beach – The lender seems to have a desire to work with AREH on a solution, but fresh cash will be required. A default notice issued for missing interest payment due on October 1, 2023 as funds were needed to support operations. *Id.*

Melrose – Stone Beach – on November 10th, they sent a default letter for change in control.

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

9 Vandam – Maxim Capital – the project is out of balance due to construction costs and interest expense. The last 2 interest payments were not made (~\$100,000). The lender will work with Arch if those payments are made immediately. The project is 80% complete. There is also a loan maturity at the end of November, 2023. *Id.*

All of these properties require deft hands in supervision by Simpson. They also necessitate the continued funding efforts of Oak, which has unreasonably withheld its investment through failed capital contributions after countless capital call notices (formal or not). AREH is managing defaults on the properties and keeping the business intact within reason. *See Simpson Aff.* ¶19.

As testament to Simpson's managerial prowess, in early 2022 Arch sold a portfolio for \$199,000,000 with a property basis of less than \$140,000,000. This was a portfolio that Simpson assembled from an acquisition perspective, planned and programmed the value-add process, sourced / closed and maintained the loan on 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 refutes the Weiners' diminishment of AREH's success. *See Simpson Aff.* ¶ 18.

Rather than honor its funding obligations, Oak's Kevin and Michael Weiner are siding with Chassen to the detriment of the AREH properties, reputation and business. In an August 7, 2003 email from Michael Weiner to Jarred Chassen, Weiner 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 Israel Aff., Exhibit 1.

Obviously, this proposal was not in the best interests of JJ or the AREH properties inasmuch as Simpson needed to be in near daily contact with lenders to stave off defaults and

otherwise manage the properties in addition to life / safety concerns on active construction projects that Simpson had the license for.

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

Boys, need to speak in morning. Need to work on cause event backup together.
Israel Aff., Exhibit 2.

Simpson denies much of the affidavits of Michael Wiener, Oak's Chief Executive Officer and Kevin Wiener Director and the Corporate Secretary of Oak, as is reflected in the Simpson Affidavit accompanying this submission. Among other things, Simpson never misrepresented his credentials and record of success at Greystone. *See* Simpson Aff. at ¶ 18.

According to Michael Weiner:

[Simpson made] misrepresentations to Oak concerning capital. For instance, regarding the 550 Metropolitan Avenue development in which Oak is a General Partner, it came to Oak's attention that although the relevant member loan provisions in the underlying agreements allow Oak to fund shortfalls and accrue an 18% interest rate, AREH at Simpson's direction had made a commitment to other investors that such loans would accrue at only 12%. AREH and Simpson made this commitment without Oak's knowledge, authorization, notification, or any amendment to the underlying agreements.
M. Weiner Aff at ¶36c.

Simpson denies these assertions as being truthful. He also denies that Oak "was kept totally in the dark about the 2021 amendments to the JJ Arch operating agreement," as asserted by Michael Weiner. Oak has seen copies of these amendments as part of closing binders and otherwise made available to Oak through dropbox. Furthermore, Simpson never "became angry and disrespectful towards" the Weiners, notwithstanding M. Weiner's assertion to the contrary. *See* Simpson Aff. at ¶29.

Simpson denies that by "late Spring 2023 it was apparent AREH was in serious trouble under Simpson's leadership". Simpson has continued to work tirelessly with lenders to address the

unwillingness of Oak as guarantor to fulfill its obligations. Simpson alerted Oak about capital concerns dating back to December, 2022. There is but a single complaint about Simpson prior to the Summer of 2023. *See* Simpson Aff. ¶29.

Simpson notes that he has been fully transparent with Oak. He disclosed all operating agreements to Frank Van Biesen at Oak. There were modifications to the documents throughout the years. These documents were also shared with the lenders, and Oak received closing binders on each from counsel. 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. Many times, Simpson engaged in conversations with Frank Van Biesen and Michael Wiener to explain the liabilities of the transactions and the related loan agreements. Simpson always disclosed the risks. *See* Simpson Aff. ¶29. There was a separate structure, agreements, and bank accounts for each transaction. Frank Van Biesen spoke with the Arch team regularly and documents, financials, etc were always shared. *See* Simpson Aff. Id., ¶ 90.

Simpson denies that in Spring 2023 AREH was in serious trouble *under his leadership*. *See* M. Weiner Aff. at ¶30; Simpson Aff. ¶29. He has continued to work tirelessly with lenders to solve the unwillingness of Oak as guarantor to fulfill its obligations. The organization structure of the properties and his interactions with their lenders were disclosed to Van Biesen who was the main Oak contact for AREH for most of the time and was even part of early negotiations. More recently, Simpson asked Michael Weiner to engage with Frank Van Biesen and he refused, favoring instead a blame game, with Simpson as his target. Simpson Aff. ¶ 31.

There has been constant reporting with Oak for almost 6 years. Frank Van Biesen spoke with Arch's former controller on a daily and weekly basis. Simpson Aff. ¶ 29. After the controller

left in or about May, 2023, AREH faced concerns about keeping up with corporate accounting needs and had trouble finding staff fast enough to fill the gaps to fulfill the work. It started to give Michael Weiner a chance to avoid obligations for insignificant reasons. In a normal sense a month or two would go by and the work would catch up and ultimately another individual had been catching up but the “urgent” demands that the Wieners have were not always answered the day / minute they were posed.

Simpson alerted Oak countless times of the cash needs surrounding the properties where notices have been issued. He either sent capital calls, “Cash Needs” projections, or a *global dashboard*. Simpson Aff.¶¶ 68-70; Simpson Aff. Exhibit 3, comprised of the most recent accounting and portfolio analyses and Exhibit 5 thereto comprised of *cash needs* notices. Michael Wiener’s view was that if he could not control the circumstances he would try to “cherry pick” investments. Simpson Aff.¶ 75. This consistent theme started in June, 2023 where Wiener told Simpson 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 Simpson built relies on the deals to fund properly for the staff to be compensated through related party agreements (all pre-approved and to every investor the LLC discloses this). If the properties are not funded by Oak, Simpson is stuck with salary obligations without any source to pay for them. Simpson Aff.¶ 35.

As of this writing, Simpson has managed to continue paying the staff across all AREH divisions without any lender or equity participation. He has reduced the staff slowly and strategically managed to have a 60-person team. Only recently did he have to furlough office workers non-essential to AREH business. Oak’s guarantees are the Wieners’ concern and they have worked for months pleading with lenders to let them off the guarantees for minimal dollars. Many times, Simpson offered himself personally as a replacement.

Simpson informed Oak that funding is required to keep AREH personnel working. The very circumstance that AREH faces today has this concern at its core. Oak knows this but refuses to supply capital. Oak refuses to accept what it means to be a partner when times are tough as well as when times are good.

Oak complains about Arch's attempted 1031 investment. Admittedly, in September 2021 AREH 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, AREH 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. Prior to fully committing to the 1031 investment vehicle, AREH 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 to the Simpson Aff. as **Exhibit 2**.)

There was nothing nefarious about these efforts and the proper approach was taken. It just proved unsuccessful, and the exchange was never consummated. Simpson Aff. ¶ 44. AREH actually returned 40% of investors capital in advance of the exchange deadline noting that the market changes made the success of matching qualifiable assets likely.

As to AREH's needs to cover its base-line costs, Kevin Weiner alleges:

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

See K. Weiner Aff. at ¶52.

Simpson denies that he withheld books and records from Oak. Exhibit 4 to the Simpson Affidavit reflects the access Oak personnel had to AREH's records through Drop Box. Simpson repeatedly

offered opportunities to Oak to come to the AREH office and work with the accounting team, hire outside support, etc. Oak even attempted to hire another partner, namely Infinity, to act as a resource to complete accounting work that was behind during the first two weeks of August, 2023. As to the funds, these are reimbursement of staff costs, benefits and property fees that are months old; it is all compliant with applicable agreements. See also Exh. 5, which conveys relevant documents to Oak during the pendency of this Motion.

On the matter of AREH's solvency concerns, Michael Weiner alleges:

While Oak has also recently learned from the various filings in the JJ Arch Proceeding that the AREH Entities face serious solvency concerns, any bankruptcy proceeding will in fact compound Oak's losses by potentially triggering hundreds of millions of dollars in liabilities under certain guaranties Oak and its parent have executed. (Exhibit 18, Exhibit 19). Aware of the consequences to Oak, Simpson has threatened to put the AREH Entities into bankruptcy, notwithstanding that any such action requires Oak's consent under the AREH LLC Agreement. (Chassen Aff. ¶ 23). As Chassen recounted in this proceeding: "Simpson in text messages and in verbal communications to me and Michelle Miller, a junior partner/employee, threatened to put all the Arch entities into bankruptcy in order to leverage to us and 35 Oak to follow his orders without resistance or he would crash the business. Knowing it was against the Arch and JJ Arch Operating Agreements to file such bankruptcy, Simpson openly declared his plan to blow up the business and warned others that he would do so if they disobeyed him saying, '[a]nybody that chooses to do anything without my permission or my consent is no longer going to be a part of this organization.'" (Chassen Aff. ¶ 23).

See K. Weiner Aff. at ¶50.

That the Plaintiffs may be considering filing for bankruptcy protection is merely an exercise in prudence. It was never threatened as retaliation. Arch has not thus far determined to do so, but there is no reason why it should not mention its contemplation of bankruptcy to Oak, considering how it would stand to be affected by such filing.

Kevin Weiner alleges:

...But at this point, we have no confidence that any of our money will ever be returned to us even if the properties ultimately turn around. This is especially true where Simpson will not even provide any books, records or accounting to show us

where the previously-invested money has gone, where the newly-demanded money will go, or otherwise allow any visibility at all into what is happening. And if Simpson is willing to hold hostage an entity he controls where we are 100% of the equity, how can we trust him to look after our interests where we aren't?

See K. Weiner Aff. at ¶ 39.

Simpson has provided Oak with a budget every year since the beginning of the partnership.

Many times annual meetings were done in person, where Simpson handed the budget to the Oak team. **Exhibit 6** to the Simpson Affidavit reflects the most recent budget as “cash needs” memos.. Frank Van Biesen was the one that handled these matters for Oak. The Weiners know that Arch's Controller (who spoke with Oak daily) resigned in May, 2023. Simpson offered to allow Oak to review all Arch's books and records in its office. **Exhibit 4** to the Simpson Affidavit reflects the access Oak personnel had to Arch's books and records even beforehand. Each of the personnel with Oak email addresses had access to the Drop Box files. Simpson has told Oak countless times that the current predicament does not allow for a full-scale accounting audit because of Arch's small staff. This was never sufficient for Oak. When Kevin Wiener made an allegation about budget inflation in the summer of 2023, Simpson provided substantial backup to demonstrate the accuracy of the budget. Simpson Aff. ¶ 68.

Most recently during the pendency of the Motion Arch transmitted the following to Oak, as reflected in Simpson Aff., **Exhibit 5**:



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

Additionally, bank statements for the following entities have been uploaded:

☐ ARCH ADVISORS Reserve LIC☐ ARCH ASSET MANAGEMENT LLC☐ ARCH BUILD Bronx 2201☐ ARCH BUILD Brown 2151☐ ARCH BUILD Center P 2235☐ ARCH BUILD Columbia 2102☐ ARCH BUILD Melrose 2185☐ ARCH BUILD MtVernon 2177☐ ARCH BUILD Tusc 2128☐ ARCH BUILD Vandam 2169☐ Arch Builders 435 Central☐ ARCH BUILDERS 88U 2219☐ Arch Builders Llc 5373☐ Arch Builders Llc 6360☐ Arch Builders Llc 8674☐ Arch Builders Llc 9373☐ ARCH BUILDERS METRO 2060☐ Arch Builders OH CM

- ☐ ARCH BUILDERS Passthrough 0122
- ☐ ARCH DEVELOPERS LLC 2326
- ☐ ARCH NOSTRAND LLC 6075
- ☐ ARCH NOSTRAND MM LLC 1303
- ☐ ARCH PROP MAN Main Ops 0673
- ☐ ARCH PROPERTY HOLDINGS 2 L 237
- ☐ ARCH PROPERTY HOLDINGS 2 LLC
- ☐ ARCH PROPERTY MANAGEMENT L 619
- ☐ ARCH REAL ESTATE HOLDINGS 2013
- ☐ ARCH REAL ESTATE HOLDINGS LLC
- ☐ AUSTIN - OPERATING 1846
- ☐ AUSTIN SD 0801
- ☐ BIRMINGHAM CP CPX 1540
- ☐ BROADMOORE GARDENS OP 1203
- ☐ BROADMOORE GARDENS SD 1810

- ☐ CENTER POINTE OP 9636
- ☐ CENTER POINTE RI 0154
- ☐ CENTER POINTE SD 0188
- ☐ CLAY LANDINGS OP 0220
- ☐ CLAY LANDINGS RI 6215
- ☐ CLAY LANDINGS SD 6223
- ☐ COLUMBIA CAPEX 6402
- ☐ Construction Services and 049
- ☐ COPPER CREEK OP 1336
- ☐ COPPER CREEK SD 5995
- ☐ DRAKE ARCH COLUMBIA 1 LLC 2418
- ☐ DRAKE ARCH TUSCALOOSA 1 LL 105
- ☐ HAMR BORROWER 3 LLC 0942 DACA
- ☐ HARBOUR - OPERATING 0918
- ☐ HARBOUR - SD 0785
- ☐ MYRTLE POINT CM LLC 4110

Simpson is fully aware of the challenges facing Arch and AREH and is the best person to navigate them. To oust him as manager at this stage would obviate the progress he has made with property lenders to forestall foreclosures and to secure further financing. Replacing him with an outside receiver would be ruinous for investors, exacerbate litigation—add to litigation costs-- and likely propel inescapable insolvencies at all LLC levels.

ARGUMENT
THE MOTION SHOULD BE DENIED AND NO RECEIVER APPOINTED

The decision to appoint a receiver is one within the Court's discretion. *See, e.g., United Chelsea Nat'l Bank v Rumican 190 Corp.*, 228 AD2d 279, 643 N.Y.S.2d 586 (1st Dept 1996); *Hahn v Wylie*, 54 AD2d 622, 387 N.Y.S.2d 255 (1st Dept 1976). Nevertheless, it has been repeatedly observed that “the appointment of a receiver is a drastic remedy which could potentially, and unnecessarily, increase the cost of litigation.” *S.Z.B. Corp. v Ruth*, 14 AD2d 678, 219 N.Y.S.2d 889 (1st Dept 1961).

The appointment of a receiver of a going concern can “properly be invoked only where there is a clear evidentiary showing of the necessity for the conservation of property and the protection of the interests of the litigant.” *Glassner v. Kaufman*, 244 N.Y.S.2d 449, 451, 19 A.D.2d 885 (1st Dep’t 1963) (“Plaintiff’s papers, upon which the receivership was granted, fail to demonstrate any danger of the dissipation of the limited assets of this personal service business, or, in view of the nature of the business, that a receiver is necessary and would be able to continue the operation of the business so as to preserve plaintiff’s interest. Under all of the circumstances, it was an improvident exercise of discretion to grant the motion for a receivership.” *Glassner*; *see also Vardaris Tech, Inc. v. Paleros, Inc.*, 853 N.Y.S.2d 601, 49 A.D.3d 631(2d Dep’t 2008) (“The Supreme Court improvidently exercised its discretion in granting the plaintiff’s motion pursuant to CPLR 6401 for the appointment of a temporary receiver of the business and assets of the defendant corporation”).)

Indeed, “[t]he appointment of a temporary receiver is an extreme remedy resulting in the taking and withholding of possession of property from a party without an adjudication on the merits.” *Schachner v Sikowitz*, 94 AD2d 709, 709, 462 NYS2d 49 [1983]. Therefore, a motion seeking such appointment “should be granted only where the moving party has made a clear

evidentiary showing of the necessity for the conservation of the property at issue and the need to protect the moving party's interests." *Lee v 183 Port Richmond Ave. Realty*, 303 AD2d 379, 380, 755 NYS2d 664 (2003); *see also Secured Capital Corp. of N.Y. v Dansker*, 263 AD2d 503, 504, 694 NYS2d 409 [1999]; *Iannone v Iannone*, 31 AD3d 713, 715, 820 NYS2d 86 [2006]; *Matter of Kristensen v Charleston Sq.*, 273 AD2d 312, 709 NYS2d 853 (2000); *cf. Friedman v Ragin*, 228 AD2d 642, 645 NYS2d 56 (1996); *Watson v Lampkin*, 2011 NY Slip Op 30050(U), 2011 N.Y. Misc. LEXIS 676 (NY Co. January 6, 2011) (" Vincent presented proof that he has obtained \$1 million insurance coverage, effective as of October 9, 2010. Since there is now protection against harm in the form of insurance coverage, the drastic remedy of appointing a receiver is not warranted."); *Matter of Armienti & Brooks*, 309 A.D.2d 659, 767 N.Y.S.2d 2 (1st Dept 2003).

The fact is that Simpson's management skills and experience with Arch's lenders are the best prescription for navigating AREH's challenges. The Weiners' complaints about him are completely rebutted in the accompanying Simpson Affidavit and are self-serving aspersions intended to advance Oak's independent interests, as aligned with those of Chassen, with whom, as shown above, they have conspired. There is no clear evidentiary showing by unrebutted admissible evidence of the necessity for cancelling his stewardship of Arch. *Eg., DaSilva v DaSilva*, 225 AD2d 513, 638 NYS2d 771 (1996)("Here, the unsupported allegations and accusations set forth by the plaintiff fell far short of the required 'clear evidentiary showing that property of the corporation was in danger of being 'removed from the state, or lost, materially injured or destroyed' ").

Further, to displace Simpson at this point amid his efforts to protect Arch and AREH would affect the management of not only their properties but property unrelated to AREH and owned exclusively by Arch. It would also tip the scale in the dispute between Chassen and Simpson to

the latter's detriment by putting incalculable economic pressure on Simpson and the Arch companies. "The Court must exercise extreme caution before making such an appointment." *Watson* 2011 N.Y. Misc. LEXIS 676, citing *Matter of Armienti & Brooks*, 309 A.D.2d at 661; *Natoli v. Milazzo*, 35 A.D.3d 823, 826 N.Y.S.2d 716 (2d Dept 2006). Accordingly, Watson's motion for appointment of a receiver is denied."). And such an exercise of extreme caution could only lead to the denial of the Motion.

CONCLUSION

For the foregoing reasons, and those set forth in the Simpson Affidavit and Israel Affirmation, the Motion should be denied in its entirety.

Dated: New York, New York
November 12, 2023

Respectfully submitted,

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CERTIFICATION OF WORD COUNT

I hereby certify that the foregoing submission is 4,806 words.

By: /s/ Sam Israel

Sam P. Israel, Esq.