

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.

AFFIRMATION OF EMERGENCY

STEVEN ALTMAN, an attorney duly admitted to practice before the courts of the State of New York, hereby affirms under penalties of perjury as follows:

1. I am counsel to Plaintiff Jeffrey Simpson (“Simpson”) and JJ Arch LLC (“JJ Arch”) in the above-captioned action (“Plaintiffs”). I make this affirmation in support of Plaintiffs’ motion, by order to show cause, (“OSC”) seeking (1) permission from the Court to terminate Jared Chassen (“Chassen”) from JJ Arch pursuant to the terms of the JJ Arch Operating Agreement; and (2) modification of the Court’s November 22, 2023, Order (NYSCEF No. 418) under N.Y.C.P.L.R. § 6314, to appoint JJ Arch as Managing Member of Arch Real Estate Holdings LLC (“AREH”) with full authority to restructure the AREH-managed real estate investments subject to any contractual right by 608941 NJ Inc. (“Oak”) or any other party to consent to “Major Decisions.” The allegations made herein are made upon information and belief, based on communications with the client and the case file maintained by my office.

2. I submit this Affirmation of Emergency pursuant to the Court’s Order dated January 9, 2024 and to inform the Court that, due to the exigent nature of the issues underlying the instant motion, Plaintiffs respectfully request that the Court entertain this motion on the day that it is presented to the Court.

3. The instant motion sets forth Plaintiff’s urgent need to terminate Mr. Chassen from JJ Arch pursuant to the terms of the JJ Arch Operating Agreement and to have JJ Arch reinstated as Managing Member of Arch Real Estate Holdings LLC (“AREH”) with full authority to

restructure the AREH-managed real estate investments subject to any contractual right by 608941 NJ Inc. (“Oak”) or any other party to consent to “Major Decisions.”

4. As set forth in further detail in the Affidavit of Jeffrey Simpson, the accompanying Memorandum of Law and the Declaration of Douglas Propp (an investor who invested \$19 million in an AREH-advised investment property), since the entry of this Court’s Order on November 22, 2023 (“November Order”), Chassen and Oak have been working hand-in-hand to destroy AREH’s business and use their mutual control of AREH to disadvantage the approximately 200 non-Oak investors with approximately \$100 million at risk while benefitting Oak who serves as the guarantor for the loans on those investment properties. Specifically, Oak and its employee Chassen have been using the unchecked control that the November Order granted to them, to attempt to engineer for Oak self-serving releases from its personal guarantees. Simpson and the non-Oak investors are now squarely aware of Oak’s attempt to prioritize its release as a guarantor on multiple transactions including with respect to the Myrtle Point and Columbia deals – all with Chassen’s consent. For example, without immediate action, upon information and belief, Oak and Chassen are expected to close the Myrtle Point transaction any moment to the detriment of Mr. Propp and without Mr. Propp’s consent despite his contractual consent rights.

5. In addition, on January 11, 2024, the lender to an AREH-managed property put a \$6.9 million loan on that property into default on the basis that Oak’s purported October 31, 2023 removal of JJ Arch as the Managing Member of AREH violated a contractual “change of control” provision. As a result, a non-Oak investor that guaranteed that loan with Oak is now personally liable for full payment of the \$6.9 million loan. Given that like “change of control provisions” exist in other loan documentation for AREH-advised properties, it is likely that this harm will continue without intervention from the Court.

6. Lastly Mr. Chassen continues to improperly use his minority position at JJ Arch to make distributions to himself from JJ Arch in breach of the JJ Arch Operating Agreement, to interfere with Simpson's management of JJ Arch investments, to unreasonably withhold consent to the sale of JJ Arch investments for the purpose of starving Simpson of liquidity while Chassen earns a salary from AREH as authorized by Oak and to harm JJ Arch investors by refusing to consent to appropriate loan modification requests.

7. For the foregoing reasons it is urgent that this Court hear the OSC on an urgent basis.

Dated: Southampton, New York
January 29, 2024

Pursuant to CPLR 2217(b), Mr. Simpson ~~seeks~~ not previously sought the relief sought by this motion. *Stk*

Steven Altman

Steven Altman