UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Case #24-08649 (JAV)

IN RE: JJ ARCH LLC, Appellant.	On Appellate Review Bankr. Pro. #24-10381 (JPM) Before the Honorable Jeannette A. Vargas, D.J.

REPLY BRIEF OF APPELLANT JJ ARCH LLC

ORAL ARGUMENT REQUESTED

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BANKRUPTCY RULE 8012 DISCLOSURE STATEMENT

Appellant JJ Arch LLC ("JJ Arch"), a private nongovernmental party, hereby discloses and certifies that there are no corporate parents, affiliates and/or subsidiaries of JJ Arch which are publicly held.

REQUEST FOR ORAL ARGUMENT

Simpson comes to this Court as a stalwart fiduciary seeking protection. Pursuant to Federal Rule of Bankruptcy Procedure 8019, Appellant respectfully requests the opportunity to be heard under the presumption of oral argument (Fed. R. Bankr. Pro. 8019(b)), based on the complexity of the facts and surrounding litigation and the fundamental issues of justice, civil rights, and due process due to a whistleblower under constant attack in multiple venues, including the threat of criminal prosecution and Appellees' failed attempts to break the attorney-client bond in this matter and prevent the presentation of his cause, for the benefit of all creditors and other interested parties, and in the interest of justice.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: JJ ARCH LLC, Appellant.	Case #24-08649 (JAV) Bankr. Pro. #24-10381 (JPM) Before the Honorable Jeannette A. Vargas, D.J. **CORRECTED** **REPLY BRIEF** *ORAL ARGUMENT REQUESTED*

PRELIMINARY STATEMENT

Appellant JJ Arch LLC ("Appellant," the "Debtor," or "JJ Arch") respectfully submits this Reply Brief in response to Appellees' Brief, which was filed by counsel for Appellee Arch Real Estate Holdings LLC ("AREH"), jointly for Appellees AREH and Jared Chassen ("Chassen"). They are the same parties and counsel which jointly moved to dismiss the underlying bankruptcy proceeding before the Honorable John P. Mastando III, B.J., *In re JJ Arch LLC*, Bankr. Pro. #24-10381 (the "Bankruptcy Proceeding"), and they continue to abuse process to the detriment of Jeffrey Simpson ("Simpson") – including multiple flagrant attempts to deny Simpson access to justice, including by twice naming both attorney and client in motions for sanctions, attempting to bring criminal contempt

charges against Simpson five times, the last time of which included undersigned counsel (with all charges dismissed by the Supreme Court, although the contempt "charges" against Simpson remain at present), moving for Rule 11 sanctions against both Simpson and his former counsel, moving to hold both Simpson and undersigned in contempt before the District Court, and suing his directors' and officers' insurer to enjoin funding of Simpson's costs of defense – across a litany of actions that are memorialized demonstratively through Exhibit A. (Decl. Ex. A.)

Under the acknowledged direction and control of an unnamed foreign adversary, 35 Oak Holdings Ltd. ("Oak"), operating through its wholly owned American subsidiary, 608941 N.J. Inc., including through a common-interest agreement between Oak and Chassen, while AREH's counsel was likewise appointed by Oak – which no party has ever denied – Appellees continue to go to extraordinary lengths to defeat the Bankruptcy Proceeding. Their cause appears not simply to advance Oak's objectives of evading federal jurisdiction and its ripple effects on its interests across the U.S. and Canada, but now it is a matter of self-preservation, as the truth draws nearer through these series of litigations. The multitude of lawsuits that have emanated from Oak's hostile takeover of the Arch Companies continues to rise, and yet remains unaccounted for. This fact alone justifies the Bankruptcy Court's exercise of jurisdiction to hear the matter.

Simpson, in his capacity and standing as Managing Member of JJ Arch – a

legal status which the Supreme Court deliberately left intact, despite Simpson's lack of control over JJ Arch's fiduciary functions over the Arch Companies, other than in pursuing this appeal as a whistleblower, which he has done and continues to do to his own personal detriment, including the depletion of nearly all of his assets and an ongoing and continuing threat of criminal prosecution – beseeches this Honorable Court for remedy against an active conspiracy, which has been and is being perpetrated against him, through abusive use of process designed to silence him and destroy his interests, and JJ Arch's creditors in the following actions:

1) *Simpson v. Chassen*, Index #158055/2023 (N.Y. Sup. Ct. N.Y. County, Comm. Div. Aug. 15, 2023) (the "case-in-chief," or "State Court Action"); *Great American Ins. Co. v. Arch Real Estate Holdings LLC*, Index #653208/2024 (N.Y. Sup. Ct. N.Y. County, Comm. Div. June 25, 2024); and *Chassen v. Simpson*, Index #654928/2024 (N.Y. Sup. Ct. N.Y. County, Comm. Div. Sept. 22, 2024). These actions are before the Honorable Joel M. Cohen, J.S.C. of the Commercial Division of the Supreme Court of the State of New York for New York County.

2) *In re JJ Arch LLC*, *supra*, the underlying Bankruptcy Proceeding before Judge Mastando, as referenced and captioned above.[1]

[1] Oak and Chassen have also appeared as creditors in Chapter 7 bankruptcy brought on behalf of Simpson's family office whose members include both Jeffrey and Yael Simpson. *In re YJ Simco LLC*, Case #25-10437 (Bankr. S.D.N.Y. 2025).

3) Through their bad faith prosecution of sanctions against Simpson and each of his counsel, in succession,[2] in the U.S. District Court for the Southern District, in which Mr. Simpson sought refuge from Oak and Chassen's defamation of his personal and professional reputation, perjury, and two unfounded contempt actions, through the post-bankruptcy dismissal removal petitions, filed *pro se*, in relation to the three interrelated Supreme Court actions referenced above:

a) *Simpson v. Chassen*, Case #25-02372 (S.D.N.Y. Mar. 20, 2025), remanded for nonpayment of the filing fee, before the Honorable Laura Taylor Swain, C.J., and Case #25-04004 (S.D.N.Y. May 9, 2025), refiled and remanded with attorneys' fees to Chassen's counsel in the case before the Honorable Jesse M. Furman; attorneys' fees were reduced in undersigned's post-award appearance and opposition to the fee petition by Mr. Chassen's counsel. It is noteworthy that although AREH also moved for attorneys' fees in that action, it failed to submit proofs on inquest, and further that the timesheets submitted by Chassen's counsel reference communications with counsel for AREH as well as Oak. (Decl. Ex. A.)

b) *Great American Ins. Co. v. Arch Real Estate Holdings LLC*, Case #25-2375 (S.D.N.Y. Mar. 20, 2025), remanded, before the Honorable Mary

[2] The Lorenc Law Firm appeared in the case-in-chief in a limited capacity and pending a withdrawal motion at the time. (Dec. Ex. A.) Undersigned appeared in the removal of the case-in-chief to the District Court in *Simpson v.* Chassen Case #25-04004 (S.D.N.Y. May 9, 2025) for the purpose of seeking reconsideration of the attorneys' fee award issued against both attorney and client. (Dec. Ex. A.)

Kay Vyskocil, D.J. Great American Insurance Company ("Great American") filed the underlying interpleader action a single day following the lifting of the automatic stay. The case concerns Great American's sudden and inadequately noticed internal decision to stop funding JJ Arch's Directors' and Officers' coverage for "costs of defense," which it authorized only three months earlier, for payment to the three law firms handling the Bankruptcy Proceeding at the time.

c) *Chassen v. Simpson*, Case #25-02373 (S.D.N.Y. Mar. 20, 2025), remanded, before the Honorable Jennifer H. Rearden, D.J. and the Honorable Henry J. Ricardo, Mag. J. Chassen filed the underlying action for the stated purpose of divesting Simpson of control over several JJ Arch-controlled entities.

4) *Wietschner v. 9 Vandam JV LLC*, Index #655573/2023 (N.Y. Sup. Ct. N.Y. County, Comm. Div. 2023), in which AREH's counsel in this action, both before the Bankruptcy Court and this District Court, and in the State Court Action before Justice Cohen, serves as counsel to the JJ Arch-affiliated entity being sued. The Wietschner Family Trust is the key plaintiff, suing for monies lost in the development of 9 Vandam Street, New York, New York 10013. This property was under the management of the Arch Companies. Messrs. Simpson, Chassen, and Oak hold the ultimate membership interests in 9 Vandam JV through their original membership interests in AREH. (Decl. Exs. A-B.)

ARGUMENT

I. Appellees Cannot Evade Their Own Wrongdoing

Appellees seek to limit the scope of the record on appeal despite engaging in layers of textbook conflicts of interest, made apparent not just through a secretive Joint Defense Agreement, but also through Oak's dual representation on both sides of the "v" in the *Wietschner*, *supra*, action, as discussed in more detail below. Although Appellant intends to pursue all manner of remedy before the Supreme Court, the conflict's existence is a matter of public records, involving a complicate array of facts, which are synthesized in the demonstrative exhibits annexed to this brief. (Decl. Exs. A-B.) Far from being outside the record of which the Court may take judicial notice, the evidence cited in Appellant's Brief consists entirely of the entries on the docket in the underlying State Court action, which are cited in the interest of revealing an active fraud upon the courts.

Appellees' conduct has seriously affected the integrity of the judicial process, yet opposing counsel wishes for this Court not to exercise its discretion to prevent an abuse of process from occurring in this very action. Given the systemic nondisclosures of material evidence and the incurably conflicted nature of the conflict in this matter – which permeates throughout all active and mounting litigation involving the Arch Companies from the beginning of Oak's conquest for control – the risk of fraud is of such great a nature that it could not have been

discovered earlier with due diligence, justifying its introduction at this stage. Although relief from judgment, on bases such as fraud upon the Courts, is available under Rule 60 of the Federal Rules of Civil Procedure, Appellant's requested relief in this action includes that the District Court remand the matter to the Bankruptcy Court for judicial inquiry into these issues, insofar as they bear upon the Bankruptcy Court's Dismissal Order. In further support of this issue, Appellants provide only a technical response, buried in the middle of a run-on paragraph (Appellees Br. at 47-48) – in a joint brief filed by AREH, and not by Chassen's counsel, and further lacking any verification from the same – to the serious allegations of Chassen's misstatements to the Bankruptcy Court. The fact remains neither party has accounted for the materiality of Chassen's misstatements to the Bankruptcy Court, namely that he received no compensation from Oak, even though he did, and even though there is evidence his legal fees were paid for, and may still be being paid for, as well. (Appellant Br. at 15.)

To the contrary, Appellees assert that Appellant's Brief "brazenly misrepresents the record. (Appellees Br. at 24.) Despite the eye-catching headline, Appellees provide just two instances of the sort of misrepresentations alleged.

Appellees' first contention is disproved by the record. Appellees state: "Appellant asserts as fact that '[t]he Bankruptcy Court expressed concern over 'Chassen, AREH and Oak's continuing efforts to frustrate the discovery process.'

App. Brief at 20 (citing A-716). However, a review of that quote makes clear that the Court was not 'expressing concern,' but that the foregoing was merely the Court's quotation of Appellant's own arguments, leading to the Court's conclusion in the very next paragraph that "[t]he Court is unpersuaded." A-715-16. (Appellees Br. at 24-25.) Although the internally quoted passage restates Appellant's argument before the Bankruptcy Court, the fact remains that the Court stated that it was mindful "of the argument for discovery in this case – indeed, the pending Motions to Dismiss raise 'complicated issues,' the resolution of which will likely require an evidentiary record. *See* [Ch. 11 Dkt., Doc. 64, p.48] ('The Court does think there are a number of complicated issues that the parties have raised and discovery does make sense on these issues.')." (Bankr. Doc. #131, Abstention Order, at 20 n.16.)

Moreover, these findings were made in the context of the presumption, founded on principles of federalism and comity, that the Court "must ultimately 'presume that a state court will operate efficiently and effectively.'" (Appellant Br. at 19. No discovery has been exchanged, however, since the Abstention Order was issued on June 10, 2024, and despite unanswered demands put forth by Simpson's former counsel, the Altman Law Firm, dating to December 5, 2023 through present by both undersigned counsel and Debtor's predecessor counsel (NYSCEF Doc. #427-34; Doc. #608-09, renewed request for depositions; Doc. #628, same; Doc. #915, email exchange over discovery dispute; Doc. #1279-90, deposition demands

by subsequent counsel, the Lorenc Law Firm), This includes unfilled motions to compel, submitted by two proposed Orders to Show Cause, disclosure of the self-titled "Common Interest, Joint Prosecution and Joint Defense Agreement" (the "Joint Defense Agreement") formed between Chassen and Oak (NYSCEF Doc. #889), under motion sequence #20, on February 28, 2025 (NYSCEF Doc. #1334-45), and motion sequence #29, on July 30, 2025 (NYSCEF Doc #1704-04).

Although Oak's counsel has repeatedly averred that they would disclose the Joint Defense Agreement, no disclosure has been made – despite the ongoing criminal contempt trial against Simpson, in which Chassen and the Receiver falsely allege legally insufficient "charges" that both attorney and client violated the Court's Orders. (Decl. Ex. A.) Indeed, the vast majority of undersigned's time since being retained on April 7, 2025 has been spent investigating the case and defending against multiple contempt motions and demands for attorneys' fees. (Decl. Ex. A.) It is for this reason that Appellant urged the Court for a modest extension of the filing date for its opening brief – a motion which AREH opposed, while at the same time arguing in the Supreme Court Action that the criminal contempt trial against both attorney and client should proceed as planned, and furthermore reiterating counsel's views that no evidentiary hearing was required. (Rajotte Ex. A; NYSCEF Doc. #1682, stating–"AREH's position is that Monday's [contempt] hearing should go forward as scheduled.")

To the contrary, after two years of litigation, punctuated by remands and unfulfilled discovery requests in both the Supreme Court and the Bankruptcy Court, including Appellees' postponement of motions on which the Court indicated discovery would have been compelled. (*See* Bankr. Pro. Doc. #236, Statement of the Issues on Appeal, Issue 11, stating–referring to "the postponement of motions and proceedings in order for other parties to avoid discovery obligations").

Any exchange of documents yet remains to be seen, and no depositions of Messrs. Chassen, K. Wiener, M. Wiener, van Biesen, or anyone else apart from Simpson have taken place. For Simpson's part, in his pursuit of telling the truth, he subjected himself to a seven-hour deposition of Simpson himself in February 2025 (NYSCEF Doc. #1374), which included vexatious questioning designed to ridicule Simpson and prey upon his distress and retaliate against him as a whistleblower (NYSCEF Doc. #1320, video montage of Simpson's testimony by Chassen's counsel, rejected as evidence under the evidentiary doctrine of completeness).

AREH's counsel, moreover, has acknowledged in the State Court Action that additional Arch-related lawsuits exist, yet they remain undisclosed. (NYSCEF Docket #1321, stating–"AREH or AREH-affiliated entities are parties to more than a dozen other lawsuits and arbitrations concerning various AREH properties. These proceedings are pending in multiple jurisdictions, including New York, Florida,

South Carolina and Alabama," and that "AREH faces potentially inconsistent and competing discovery obligations in multiple actions across multiple fora").

Undersigned is not privy to any of the discovery items referenced by AREH's counsel, although the *Wietschner*, *supra*, case, among others, shows that Simpson's interests are directly at stake. *See also* 435 Central Condo Dev. Holdings LLC, supra (alleging that "representations were false and known to be false to Arch through Simpson on behalf of JV Holdings LLC when made").

Just this afternoon, undersigned was provided the following email message from counsel defending the JJ Arch-affiliated entity in a multimillion-dollar personal injury lawsuit, which was brought by Morgan & Morgan on behalf of four residents, two of whom are alleged to have been severely injured following a deck collapse at a garden-apartment complex in the Birmingham area. *Jackson v. Pebble Creek Borrower LLC*, Case #01-CV-2023-902315.00 (Jefferson County Cir. Ct., Ala. 2023): "Ben, as we understand it, our representative for Pebble Creek in the Jackson litigation is Kevin Weiner. We have not been authorized to speak to any other representatives regarding the defense of the matter." (Decl. ¶3.) The deck collapsed on June 25, 2023, at the height of Oak's circumvention, self-dealing, and hostile takeover of the Arch Companies, which it ultimately consummated under the Joint Defense Agreement with Chassen on August 6, 2023. (Decl. Ex. B.) This is also the property referenced in footnote 4 of Appellant's brief, which provides

how work orders were increasing while rental income was diminishing during this same time period on account of Oak's failure to fund AREH's operating costs and its stated refusal to observe its guarantee obligations. (Appellant Br. at 8 n.4.)

At the same time, since at least November 28, 2023, AREH has held direct and exclusive access to all of Simpson's emails and business records. (NYSCEF Doc. #1322, Proposed Order, stating–"AREH may access the AREH email account of Jeffrey Simpson for purposes of the identification of documents that are potentially responsive to discovery demands made in such Other Proceedings to which AREH or any company managed by AREH is a party, including through the application of an ESI discovery protocol as agreed to by the parties in Other Proceedings"; further providing–"AREH, any company managed by AREH, or AREH's Counsel are not restricted from accessing, reviewing, or producing any documents from Jeffrey Simpson's AREH email account identified as potentially responsive to discovery demands made in such Other Proceedings that are not Segregated Documents"); Doc. #1365, entering AREH's proposed ordered effective March 17, 2025). Kevin Wiener, likewise, has access to Simpson's personal financial information, which was only provided to Simpson on May 20, 2025 and shared via Dropbox in connection with the receivership over the four JJ Arch/non-AREH properties sought by Chassen. (NYSCEF Doc. #1721-28.)

These emails include attorney-client communications by counsel for the Arch Companies, retained by Simpson, advising that it was JJ Arch's fiducial obligation to either liquidate or file for bankruptcy to head off staggering losses from rapidly climbing interest rates placing capital calls on variable-interest, federally backed loans worth hundreds of millions of dollars. (Appellant Br. at 16; Bankr. Doc. #185, Opp. to Dismissal at 2; Bankr. Doc. #184, Liquidation Plan; *see also* NYSCEF Doc. # 228, email from Y. David Scharf, Esq., stating–"The commitment of our clients to pay for our services is essential and if that commitment has changed I need to be told so we can comply with our obligations to the court and clients."; Doc. #923-24, 926, Great American's assurance of coverage to JJ Arch's former counsel to file for bankruptcy dating from November 2023, and later (inadequate) notice of withdrawal of coverage in May 2024)

Even without addressing discovery, or Oak's or AREH's unfettered access to Simpson's personal information and attorney-client materials, AREH's counsel has failed to identify any of the "Other Proceedings" to which it refers. The term "Other Proceedings" is defined as any action "other than the instant action" before the Supreme Court (see Index #158055/2023, supra (Feb. 27, 2025) (NYSCEF Doc. #1322)). Neither Oak nor AREH, furthermore, have revealed any information concerning Arch's assets under management or liabilities since Oak assumed control of AREH under the Interim Orders issued on November 28, 2023.

(NYSCEF Doc. #412, 418, stating—"[D]uring the pendency of this action and subject to further order of the Court, Oak representatives Michael Wiener, Kevin Wiener, and Frank van Biesen shall each be permitted to have online viewing access to the Arch Accounts listed on Exhibit A, attached hereto, and shall each be given authorized signer access to make transactions in the Arch Accounts.") To date, Simpson does not know which properties remain under Arch's portfolio, even though he, and other members of his former team, invested in several of them.

Their second and only other contention is dismissible outright, on purely linguistic grounds, based on Appellees' self-serving definition of what "focused" means in reference to the following statement in the brief, alleged to be false: "Appellant further states that Appellees' objections … 'focused on the litigation tactics, not the Debtor's compliance with its fiduciary obligations.'" App. Brief. at 25. However, the Dismissal Motion raised a number of allegations concerning the Debtor's failure to comply with its obligations under the Bankruptcy Code alleging a 'dereliction of duties.' A-229-30, 232-35, 244-45." (Appellees Br. at 25.)

Appellant's statement is a conclusion, in the brief's penultimate sentence, before citation, which is backed by the body of argument with respect to 11 U.S.C. § 1112(b)(4)(B), which, as summarized in the brief, "requires both a 'substantial or continuing loss to or diminution of the estate' and 'the absence of a reasonable likelihood of rehabilitation.'" (Appellant Br. at 23-24.) The brief continues:

> The Debtor's Plan proposed to liquidate non-core assets and distribute the proceeds to creditors. The plan projected payment in full on all allowed claims. Courts have repeatedly recognized that where a debtor proposes a feasible liquidating plan and actively administers the estate, there is no "continuing loss" and the plan provides a reasonable path forward…. Here, the Plan "sets forth its intention to sell certain assets, pay in full all Allowed Claims, and, following the Effective Date of the Plan and subject to payment of all Claims, the Reorganized Debtor will distribute the remainder of its assets to the holder of Interests or his nominee."

(Appellant Br. at 24 (citation omitted).)

Moreover, Appellant cited to the Federal common law principle that "good faith may be found when the debtor demonstrates the existence of 'unusual circumstances' that are aligned with the best interests of creditors and the estate." (Appellant Br. at 24 (citing 11 U.S.C. § 1112(b)(1)-(2); *In re BH S & B Holdings, LLC*, 439 B.R. 342, 346 (Bankr. S.D.N.Y. 2010).) It continues that "[u]nusual circumstances in this case include strong indicia of collusion amongst non-creditor adversary parties, a highly complicated corporate structure, and an unprecedented post-pandemic spike in interest rates," and states in conclusion:

> ***As further support, no creditor moved to dismiss the case.*** The motion was brought by AREH and Chassen – insiders with an interest in derailing the estate's claims and returning control to state court litigation. Their objections focused on litigation tactics, not the Debtor's compliance with its fiduciary obligations. ***Great caution***

> ***applies in practice against granting dismissal where the real goal is to gain leverage in a two-party dispute***.

(Appellant Br. at 24-25 (emphasis added) (citation omitted).)

II. Appellant Substantially Complied with All Briefing Requirements

Appellees attempt to shift the focus away from the evidence of their deceit to technical and nonprejudicial asserted defects in Appellant's Brief, despite the fact that, at the same time the brief was being written, Chassen, with AREH's support, were pursuing criminal prosecution of both Simpson and his counsel in the State Court action. The case law is clear that nonprejudicial errors as to form fail to evidence "gross non-compliance" (Appellees Br. at 25, 53.) with the Federal Rules of Bankruptcy Procedure. *See, e.g.*, *In re Mikulec Indus., Inc.*, Case #CIV-91-33E, 1991, U.S. Dist. LEXIS 13198 (W.D.N.Y. June 5, 1991) (declining to dismiss an appeal despite procedural errors, and noting that absent evidence of bad faith in the submission, minor procedural defects did not justify dismissal).

First, Debtor's Statement of Issues on Appeal (Bankr. Pro. Doc. #236) preserved all issues embodied in Appellant's three stated Issues Presented. The Statement of Issues on Appeal includes the following, for example, whether the Bankruptcy Court erred in finding: that Debtor filed the Bankruptcy Petition in *bad faith* (Issue #2); that 11 U.S.C. § 1112(b)(2) did not apply "*to the factors at bar* to not dismiss the Bankruptcy Court proceeding" (Issue #3); or that the litigation

involved *primarily third parties* (Issue #7). (Bankr. Pro. Doc. #236). These issues are illustrative of the Statement of Issues presented for the District Court's review:

1) Whether the totality of the circumstances warrant bad faith whether subjectively or objectively, notwithstanding the asymmetrical nature of the litigation against Simpson, evidence of collusion amongst his adversaries, and where his decision to bring JJ Arch into bankruptcy was based on the legal advice of multiple outside counsel and withdrawn assurances from JJ Arch's directors and officers insurer to afford Simpson "costs of defense" coverage.

2) Whether the record supports gross mismanagement under 11 U.S.C. § 1112(b)(4)(B) where Simpson lacked consistent legal representation, lack access to Arch's books and records, with Oak maintaining his own personal and business records, and in the face of an onslaught of litigation attacks by derivative and proxy adversaries and forum-shopping under a joint-defense compact designed to evade federal review of Arch's national real estate portfolio.

3) Whether the estate reflects a substantial or continuing loss or diminution of value under 11 U.S.C. § 1112(b)(4)(A) since filing for bankruptcy, where a non-creditor adversary maintains a campaign to defame, disparage, and publicly humiliate the Debtor's representative, in order to distort or distract from the truth of his allegations, while his adversaries have failed to account for the value of Arch's assets, failed to provide discovery, and evaded responsibilities to attend court hearings

> and submit to cross-examination, while at the same time providing inconsistent information within the State and Federal Courts.

(Appellant Br. at 3-4).

Second, as to the standard of appellate review, although Appellant's Brief does not definitively cite to this Court's standard of review, Appellees' Brief cures any oversight, notwithstanding the fact that Appellees' Brief accurately cites the *clearly erroneous* standard in reviewing the Bankruptcy Court's fact findings on whether cause exists, and the *abuse of discretion* standard under a jurisprudential review of the remedy of dismissal. Both standards are contained in the seminal case, which is cited by both parties, involving the Second Circuit's review of the District Court's affirmation of a bad faith dismissal, *In re C-TC 9th Ave. P'ship*, 113 F.3d 1304 (2d Cir. 1997).

Although Appellees assert that Appellant did not address the propriety of dismissal (Appellees Br. at 50-53), the brief discussed equitable factors at length, including that the "[u]nusual circumstances in this case include strong indicia of collusion amongst non-creditor adversary parties, a highly complicated corporate structure, and an unprecedented post-pandemic spike in interest rates." (Appellant Br. at 24.) Appellees discuss equitable factors, on the other hand, in passing reference to the standard of review without application. (Appellees Br. at 37, 51.)

Finally, Appellees raise a conclusory challenge in passing to Appellant's Statement of Jurisdiction in its opening brief as inadequate, without further explanation. To the extent that the jurisdictional statement in Appellant's Brief does not strictly conform to the requirements of Federal Rule Bankruptcy Procedure 8014(a)(4)(A), (C)-(D), Appellant submits the following clarification:

This Court has jurisdiction under 28 U.S.C. § 158, because this appeal arises from a final order of the bankruptcy court dismissing the underlying bankruptcy case. Venue is proper pursuant to Section 158, as the Bankruptcy Court for the Southern District of New York presided over the proceeding. Specifically, Debtor appeals from the Memorandum Opinion and Order to Dismiss the Chapter 11 Case, dated October 11, 2024 (the "Dismissal Order"),[3] in the underlying bankruptcy proceeding (the "Bankruptcy Proceeding") before the Honorable John P. Mastando III (Bankr. Doc. #215, Mot. to Dismiss.) Notice of appeal was timely filed on October 22, 2024, in accordance with Rule 8002(a) of the Federal Rules of Bankruptcy Procedure, which requires that a notice of appeal be filed within fourteen days of the entry of the judgment, order, or decree appealed from. (Bankr. Pro. Doc. #218; *see also* Doc. #227, granting Debtor's motion for an extension to

[3] The Dismissal Order incorporates, insofar as applicable, the findings of fact and conclusions of law of Bankruptcy Proceeding rulings on June 10, 2024 – *i.e.*, the Memorandum Opinion and Order to Remand the Chapter 11 Case (the "Remand Order"), and the Memorandum and Opinion and Order to Lift the Automatic Stay (the "Lift Stay Order"). (Bankr. Docs. #131-32, Remand and Lift Stay Orders.)

file a Designation of Record and Statement of Issues on Appeal; Doc. #235, Designation of Record; Doc. #236, Notice of Transmittal of Record of Appeal.)

III. Opposing Counsel Is Hopelessly Conflicted

On November 8, 2023, filed the *Wietschner*, *supra*, action on behalf of the Wietschner Family Trust, an investor in the Arch Companies, against the JJ Arch-affiliated entity, 9 Vandam JV LLC. As summarized in the annotations following the table describing the parties and counsel to the *Wietschner*, infra, action, JJ Arch (whose original members included Simpson as Managing Member, and Chassen) and Oak hold the ultimate membership interests in 9 Vandam JV. (Decl. Ex. A.) The *Wietschner*, *supra*, case is before the Honorable Anar Rathod Patel, J.S.C.

Since November 9, 2023, Meister Seelig & Fein has also represented Oak in the case-in-chief via counsel's appearance on NYSCEF, together with Haynes and Boone, which served as Oak's lead counsel since intervening on October 17, 2023. Haynes and Boone gave notice of withdrawal on June 10, 2025.

On June 7, 2024, Olshan Frome Wolosky appeared behalf of 9 Vandam JV in the *Wietschner*, *supra*, action, replacing the Polsinelli Law Firm, which first appeared in that action on January 8, 2024. The same day, Olshan Frome Wolosky also filed *Arch Real Estate Holdings LLC v. Great American Ins. Co.*, Index #652914/2024 (N.Y. Sup. Ct. N.Y. County, Comm. Div. June 7, 2024), on behalf of AREH, for the purpose of enjoining the Great American's payment of costs of

defense coverage to JJ Arch's counsel in the Bankruptcy Proceeding. The automatic stay was still in effect at the time that AREH commenced the lawsuit. Great American then filed its interpleader action, *Great American Ins. Co. v. Arch Real Estate Holdings LLC*, *supra*, on June 25, 2024, the day after the lifting of the automatic stay in relation to the Bankruptcy Proceeding.

On October 21, 2024, AREH substituted the Polsinelli Law Firm for Olshan Frome Wolosky in the case-in-chief before Justice Cohen. As Simpson was losing control of AREH, the Polsinelli Law Firm appeared on November 8, 2023 in the case-in-chief to replace counsel appointed by Simpson. This is the same day that Meister Seelig & Fein filed the *Wietschner*, *supra*, action, and the day preceding Meister Seelig & Fein's NYSCEF appearance on behalf of Oak in the main case.

These conflicts of interest are actionable and patently unethical, notwithstanding the fact that Simpson was never given the opportunity to provide informed consent. (Decl. Exs. A-B.) Although remedies, such as attorney disqualification, the drawing of negative inferences, compelling discovery and factfinding, and even dismissal against a conflicted party in collusion are actionable in the Supreme Court, these are issues inherent to the administration of justice in this action, providing further support for remand to the Bankruptcy Court for judiciary inquiry into a continuously emerging pattern of misconduct.

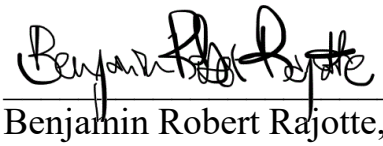
CONCLUSION

For the foregoing reasons, Appellant respectfully requests the relief sought in its opening brief, namely: (1) restoring the Bankruptcy Proceeding pending the Supreme Court's disposition of all non-core issues presented on remand; (2) at the same time, remanding the case to the Bankruptcy Court so that it may determine whether to maintain or set aside the Lift Stay Order; and (3) granting such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: August 15, 2025
Hartford County, Connecticut

MAIDEN LANE LAW GROUP



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

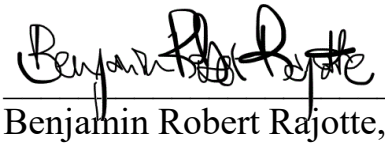
IN RE: JJ ARCH LLC, Appellant.	Case #24-08649 (JAV) Bankr. Pro. #24-10381 (JPM) Before the Honorable Jeannette A. Vargas **VERIFICATION**

I, Benjamin Robert Rajotte, Esq., pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that this submission is true and correct to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, including all facts presented by counsel in the exhibits to this brief.

Respectfully submitted,

Dated: August 15, 2025
Hartford County, Connecticut

MAIDEN LANE LAW GROUP



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