

February 27, 2025

VIA NYSCEF AND EMAIL

Hon. Joel M. Cohen
Supreme Court of the State of New York
New York County
60 Centre Street
New York, New York 10007
Sfc-part3@nycourts.gov

Re: **Jeffrey Simpson, et al. v. Jared Chassen, et al., Index No. 158055/2023**

Dear Justice Cohen:

This firm represents Arch Real Estate Holdings LLC (“AREH”), which is a nominal defendant in the above-referenced matter. I write to respectfully request modification of existing Court Orders to clarify AREH’s obligations in discovery in multiple lawsuits and arbitrations pending in New York and other jurisdictions. Specifically, AREH anticipates being required to respond to demands for production from the AREH email account of Jeffrey Simpson.

Given the matters disputed before this Court, the replacement of AREH’s Managing Member, and the Court’s prior statements restricting access to Simpson’s emails, AREH respectfully submits that this Court should enter an Order placing clear limitations on AREH’s ability to access and review potentially privileged Simpson emails in order to protect the attorney-client privilege and maintain the status quo in this case. Absent clarification on this issue, AREH faces potentially inconsistent and competing discovery obligations in multiple actions across multiple fora.

Prior to seeking the Court’s intervention, AREH’s Managing Member sought to reach an agreement with Simpson for joint submission to the Court on this issue, but Simpson declined.

This Court’s Prior Orders

This Court previously indicated that after 608941 NJ Inc. (“Oak”) replaced JJ Arch LLC (“JJ Arch”) as the Managing Member of AREH, Oak was prohibited from reading Mr. Simpson’s emails, even if it technically would have access to them in its Managing Member role. During the November 3, 2023, hearing, this Court stated:

I do agree that under no circumstances, and this is -- there are provisions like this one of the JJ Arch orders. I think, you know, you are all in litigation. You should not be reading each other's emails even if you have that technical capability, you know, in charge of the

IT function. That will be dealt with extremely harshly. I will view that as akin to spoliation. It will be a discovery violation of the highest order to basically take discovery by force.

(NYSCEF Doc. No. 374 at 37:18-38:1) (emphasis added).

Subsequently, AREH's former counsel, Griffin LLP, wrote the Court seeking clarification and guidance as to the preservation of attorney-client communications with the prior Managing Member in light of the Court's interim order placing Oak into the role as Managing Member of AREH. In response, the Court ordered that "given the unusual circumstances, Oak and its counsel may not use this temporary appointment as an opportunity to review confidential communications between Mr. Simpson/JJ Member and AREH's current [now former] counsel." (NYSCEF Doc. No. 325.)

Ultimately, the Court entered a preliminary injunction order continuing Oak's role as Managing Member of AREH. (NYSCEF Doc. No. 418.) AREH's Managing Member has not reviewed potentially privileged emails in Simpson's AREH email account, but the issue of production from that account will ripen in ancillary litigation. Document requests have already been served in one arbitration proceeding.

AREH's Discovery Dilemma

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. Production of documents in those cases will necessitate a search of AREH's email files, including Simpson's account, and a review of potentially relevant emails for responsiveness and for privilege.

The review and production from Simpson's email account raises two concerns about the treatment of potentially privileged information. First, Simpson's email account undoubtedly contains emails to and from AREH's prior counsel in this action, Griffin LLP, which this Court has prohibited Oak from accessing. (NYSCEF Doc. No. 325.) Second, Simpson's email account may contain communications with his personal attorneys and with JJ Arch's attorneys, including with respect to the subject matter of this lawsuit.

Absent an order and clarification from this Court, it is unclear how AREH can review and create a privilege log of such materials as part of discovery. Further, different jurisdictions may reach different conclusions as to whether privilege applies vis-à-vis AREH to these emails sent from an AREH email account. AREH may face competing inconsistent orders, with one jurisdiction requiring review of such materials for production, while another jurisdiction prohibiting AREH from doing the same. A single decision setting forth a different scope of review by AREH places counsel and AREH's management in the untenable position of being required to review documents in one matter that they are restricted from reviewing in another.

AREH's Request For An Order

This Court should enter an Order restricting AREH's access to potentially privileged Simpson emails. Document requests regarding properties in AREH's portfolio cannot be answered without a review of Simpson's email account. To the extent Simpson emails are identified as potentially responsive, those emails must be reviewed and either produced or logged. Inevitably, email communications to Simpson's personal counsel, JJ Arch's counsel, or AREH's prior counsel Griffin LLP¹ will be identified for review. This Court has prohibited AREH from accessing such materials. But, absent Court Order, responsive documents cannot be properly withheld from production unless an attorney reviews those documents and determines that they are privileged.²

Therefore, AREH respectfully requests that the Court clarify its prior rulings and enter an Order allowing AREH to access and search Simpson's email account for purposes of identifying Simpson's email communications to Simpson's personal counsel, JJ Arch's counsel, or AREH's prior counsel, Griffin LLP, and segregating those emails from the documents to be reviewed and produced (the "Segregated Documents"). Counsel for AREH can produce responsive non-privileged communications that are not Segregated Documents. To the extent Segregated Documents are identified, AREH requests that the Court order that its counsel create a simple log identifying and recording the Segregated Documents, provide that log to Jeffrey Simpson, and further order that AREH is restrained and enjoined from accessing, reviewing, or producing any of the Segregated Documents without further order of the Court. AREH has submitted a form of proposed Order simultaneously herewith consistent with this request.

To the extent that any party in another litigation or arbitration seeks production of a Segregated Document, that party can seek production directly from Jeffrey Simpson whether by subpoena or otherwise. Simpson was provided with a complete copy of his AREH email account following Oak's assumption of the role as Managing Member of AREH, placing him in possession of the emails falling within the scope of AREH's proposed Order.

AREH's proposed Order safeguards any confidentiality concerns and preserves the status quo in this action while allowing AREH to meet its discovery obligations in other proceedings. Parties seeking production of documents would have the opportunity to seek production of Segregated Documents from Simpson directly, allowing Simpson to safeguard and assert the attorney-client privilege.

¹ AREH does not concede that communications with its prior counsel can be withheld from it on the basis of privilege. The relief sought herein concerns discovery demands made by third parties. AREH reserves all rights.

² Simpson likely has waived any attorney-client privilege that would have been applicable to communications with Offit Kurman, Wiggin and Dana, and Griffin by filing communications with those law firms on the docket in this lawsuit and citing them affirmatively in presenting argument to this Court. (*See, e.g.*, NYSCEF Doc. No. 929.) AREH takes no position on this issue and reserves all rights.

Conclusion

Given the potential relevance of Simpson's emails in multiple litigations and the need to establish a process that protects the attorney-client privilege, guidance from this Court is critical to preserving the confidentiality of such communications.

We appreciate the Court's guidance on this matter and are available for a conference to further discuss this discovery issue at the Court's convenience should such a conference be necessary.

Respectfully submitted,

/s/ Jonathan T. Koevary
Jonathan T. Koevary

cc: All Counsel of Record (via NYSCEF)