

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

GREAT AMERICAN INSURANCE
COMPANY,

Plaintiff,

-against-

ARCH REAL ESTATE HOLDINGS, LLC,
JEFFREY SIMPSON, JARED CHASSEN,
WIGGIN AND DANA LLP, GRIFFIN LLP,
and OFFIT KURMAN PA,

Defendant.

Index No. 653208/2024

Motion Seq. No: 1

**ARCH REAL ESTATE HOLDINGS, LLC'S MEMORANDUM OF LAW IN
OPPOSITION TO JJ ARCH LLC'S MOTION TO INTERVENE**

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Interpleader-Defendant Arch Real Estate Holdings, LLC (“AREH”) by its attorneys, Olshan Frome Wolosky LLP, respectfully submits this memorandum of law in opposition to the motion by proposed Intervenor Interpleader-Defendant JJ Arch LLC (“JJ Arch”) to intervene in this action (the “Motion”).

Preliminary Statement

JJ Arch cannot intervene in this interpleader action because it has no interest in the proceeds of the insurance policy at issue. Great American Insurance Company (“GAIC”) brought this interpleader action to resolve competing demands for payment of insurance proceeds pursuant to Asset Management Liability Solution Policy No. PEPE246619 (the “Policy”) issued to AREH. JJ Arch is not insured under the Policy, and JJ Arch fails to show that it has a claim to any funds that may be deposited into Court by GAIC. On this basis alone, JJ Arch’s Motion must fail.¹

Additionally, granting the Motion will result in substantial delay and prejudice to the rights of insured parties, including AREH. JJ Arch likely will attempt to remove this Interpleader Action to the chapter 11 proceeding that JJ Arch commenced in the United States Bankruptcy Court, as it has previously in related state court litigation involving AREH and other Interpleader-Defendants. The Motion is part of a broader pattern of activity aimed at misappropriating AREH’s property and avoiding adjudication in the Supreme Court of the State of New York through misuse of bankruptcy law. JJ Arch funded its unauthorized, bad faith chapter 11 bankruptcy with improper GAIC insurance payments. That proceeding paralyzed AREH’s business operations and was a

¹ JJ Arch’s Motion is also premature. At the time of the filing of this opposition, three of the Interpleader-Defendants have not answered the Interpleader Complaint, including AREH. Jared Chassen, one of the Interpleader-Defendants, has not been served with the Interpleader Complaint and has not appeared. Jeffrey Simpson likewise has not been served nor has he appeared (despite submitting papers in support of JJ Arch’s Motion). The Court should not rule on JJ Arch’s Motion until such time as issue has been joined and all parties have been served with process and the motion papers.

blatant attempt to circumvent orders of the Supreme Court of the State of New York (Cohen, J.S.C.) in a prior lawsuit that were adverse to JJ Arch. The bankruptcy court has now rejected JJ Arch's attempt to remove that prior lawsuit on forum shopping and other grounds, but JJ Arch has objected to the bankruptcy court's ruling in an effort to forestall remand.

Here, JJ Arch as debtor hopes to exert greater control and influence over the use of the Policy proceeds by removing the case to its own bankruptcy case, despite the fact that it is not an insured under the Policy. Forcing the Interpleader-Defendants to again seek remand or to pursue their claims to the GAIC Policy proceeds in JJ Arch's bankruptcy prejudices their rights. At very least, removal to bankruptcy court would unnecessarily delay and complicate litigation over the payment of interpleader funds, particularly since the debtor JJ Arch does not have an interest in those funds.

The Court must also deny JJ Arch's request to have GAIC immediately deposit the undisputed portion of the res into the Court. Before any such deposit, the Court must determine the total amount of limits remaining in the Policy because GAIC previously made payments that are not covered by the Policy and that do not erode the limits of liability. AREH commenced a separate lawsuit against GAIC on that issue two months ago. Discovery is needed on all payments made by GAIC before a determination can be made as to the proper amount to be interpledged. GAIC cannot be discharged as a stakeholder until this determination is made. The policy proceeds can only be deposited based on a properly supported motion by GAIC seeking that relief. And that future motion cannot be made until all parties have appeared in this action, the alleged erosion of the Policy limits has been subject to discovery, and the amount to be deposited has been determined.

For the foregoing reasons, and as further set forth below, JJ Arch's motion should be denied in all respects.

Relevant Facts²

A. Background

AREH is a limited liability company that manages a large real estate portfolio. AREH is the sole Named Insured on the Policy. (Simpson Aff. Ex. 2 at Declarations p. 1 [[NYSCEF No. 12](#)]). AREH has two members, which are companies, one of which is JJ Arch, who was the Managing Member of AREH. (King Aff. Ex. 3 at 4-5 [[NYSCEF No. 50](#)]). JJ Arch itself has two members, which are individuals: Jeffrey Simpson and Jared Chassen. (*Id.*).

In August 2023, both Simpson and Chassen each purported to remove the other as a member of JJ Arch, causing disputes to arise as to who rightfully controlled and remained a member of JJ Arch. (King Aff. Ex. 3 at 5 [[NYSCEF No. 50](#)]). Corporate governance disputes also arose between JJ Arch and AREH's other member, 608941 NJ Inc. ("Oak"), regarding control over AREH. Subsequently, Simpson and JJ Arch filed a civil proceeding styled *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 v. Jared Chassen, et al.*, Index No. 158055/2023 (Cohen, J.S.C.), in the Supreme Court of the State of New York, County of New York (the "Simpson Action"). (*Id.* at 5-6).

Because of Simpson's actions and the impact the turmoil at JJ Arch was having on AREH, Oak subsequently intervened in the Simpson Action, bringing an emergency motion for

² The facts set forth below are taken from the accompanying Affirmation of Jeremy M. King, dated August 19, 2024 (the "King Affirmation" or "King Aff."), and the exhibits thereto, as well as the Affirmation of Jeffrey Simpson, dated August 2, 2024 (NYSCEF No. 10), filed simultaneously with the Motion ("Simpson Affirmation" or "Simpson Aff."), and the exhibits thereto.

injunctive relief. (King Aff. Ex. 3 at 6-7 [[NYSCEF No. 50](#)]). On November 20, 2023, Justice Cohen heard oral argument and granted Oak's motion for a preliminary injunction, which among other things, enjoined Simpson and JJ Arch from acting as AREH's managing member, designating Oak to "act in their stead as AREH's sole managing member. . ." (King Aff. Ex. 1 at 2 [[NYSCEF No. 48](#)]).

In an effort to circumvent Justice Cohen's preliminary injunction order and to relitigate the matters already decided in the Simpson Action, on March 7, 2024, Simpson caused JJ Arch to file for voluntary Chapter 11 bankruptcy in a proceeding styled *In re Arch, LLC*, Case No. 24-10381, in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Case"). (King Aff. ¶ 12). On April 1, 2024, JJ Arch's counsel at Wiggin and Dana LLP filed a Notice of Removal of the Simpson Action to the Bankruptcy Case. (King Aff. Ex. 2 [[NYSCEF No. 49](#)]). AREH and JJ Arch member Chassen promptly filed a motion seeking remand of the Simpson Action back to state court. (King Aff. Ex. 3 at 10 [[NYSCEF No. 50](#)]).³

On June 10, 2024, the bankruptcy court issued an opinion and order⁴ approving remand, ruling that the case be sent back to Supreme Court of the State of New York, County of New York. (King Aff. Ex. 3 at 36 [[NYSCEF No. 50](#)]). In so ruling, the bankruptcy court criticized

³ Even prior to the Simpson Action, Simpson used removal to a federal court to obstruct relief sought by other parties. On October 10, 2023, Oak brought an action against Simpson, JJ Arch and AREH (which was then under JJ Arch's control), seeking an emergency hearing and a temporary restraining order (the "Books and Records Action"). Upon the scheduling of the hearing on a TRO to be heard by Justice Cohen (who was already presiding over the Simpson Action), Simpson caused AREH's counsel to remove the action to federal court. (King Aff. Ex. 10 [[NYSCEF No. 48](#)]). That action was ultimately dismissed when relief ordered in the Simpson Action resolved the issues in the Books and Records Action.

⁴ Because the bankruptcy court found that the Simpson Action was not a "core" proceeding, its ruling on the motion to the form of "proposed findings of fact and conclusions of law" to the United States District Court of the Southern District of New York." (King Aff. Ex. 3 at 3 [[NYSCEF No. 50](#)]).

Simpson's and JJ Arch's use of the bankruptcy forum to avoid rulings by the Supreme Court of the State of New York on AREH-related issues. (*Id.* at 34). "It is well-established that 'state-court losers complaining of injuries caused by state-court judgments' cannot use the federal judiciary as an appellate court." (*Id.*). The bankruptcy court noted that "Mr. Simpson made three attempts to nullify Justice Cohen's rulings in the months preceding this bankruptcy," and that exactly one day before putting JJ Arch into bankruptcy, Mr. Simpson sent an email to one of Oak's principals which read:

YOU DON'T KNOW ANYTHING, GO BACK TO CANADA AS YOU ARE PLANNING TO DO ANYWAY AFTER YOU ARE FINISHED RUINING THE BUSINESS THAT I BUILT. THE GROWN UPS WILL HANDLE IT. YOU WILL NEVER BE ALLOWED BACK IN THE US WHEN WE ARE DONE WITH THIS NONSENSE. DON'T SEND ME ANYTHING MORE, YOU WILL BE PROVEN GUILTY ON ALL RESPECTS – GOOD THAT YOU DUPED ONE JUDGE, YOU WON'T DUPE OTHERS.

(*Id.* at 13, 30-31). The bankruptcy court further noted that, after Simpson "unilaterally filed" JJ Arch's bankruptcy petition, JJ Arch's original "narrative" regarding its current ownership "was contradicted twelve days later when Mr. Simpson filed his 1007-2 affidavit." (*Id.* at 34). The record in the Bankruptcy Case to date establishes JJ Arch's practice of gamesmanship. It uses the Bankruptcy Case tactically for its benefit and to avoid unfavorable rulings in New York Court.

Ultimately, the bankruptcy court ruled that the Simpson Action should be remanded, finding that abstention was mandated under 28 U.S.C. § 1334(c)(2), or, alternatively, that permissive abstention and equitable remand were warranted under 28 U.S.C. §§ 1334(c)(1) and 1452(b). (King Aff. Ex. 3 at 36 [[NYSCEF No. 50](#)]). In so holding, the bankruptcy court specifically found that "the tenth [permissive abstention] factor – forum shopping [by JJ Arch] –

weighs in favor of abstention.” (*Id.* at 35). JJ Arch has objected to this ruling in the district court.⁵

In addition, two different motions to dismiss are pending in the Bankruptcy Case. First, one week after JJ Arch filed the Bankruptcy Case, JJ Arch member Chassen filed a motion to dismiss on the grounds that it was a “bad-faith filing that wholly disregards the JJ Arch LL Operating Agreement and defies and disobeys numerous court orders.” (King Aff. Ex. 4 at 2 [[NYSCEF No. 51](#)]). Chassen asserted that the bankruptcy filing was “in contempt of multiple orders entered in the Commercial Division,” including the Preliminary Injunction Order. (*Id.* at 8).

Second, AREH and Chassen have jointly filed a second motion to dismiss in the Bankruptcy Case. This second dismissal motion is based on JJ Arch’s conduct since the filing of the bankruptcy and its continued gamesmanship in the use of that proceeding. As argued to the bankruptcy court, “(i) [JJ Arch] has no legitimate purpose in chapter 11, no assets, hardly any debt, and no ability to reorganize; (ii) [JJ Arch] has been engaged in gamesmanship and dereliction of its duties; and (iii) the only real purpose of the case is to remove what is essentially a two-party dispute[□] from the state court to this Court.” (King Aff. Ex. 5 at 1 [[NYSCEF No. 52](#)]).

And, in addition to these motions, two separate law firms (both defendants in this lawsuit) that previously appeared on behalf of JJ Arch in the Bankruptcy Case have sought to withdraw as counsel. (King Aff. Ex. 5 at 10-11). Both law firms cited fundamental

⁵ In providing this recitation of background facts, AREH does not concede that the bankruptcy court had “related to” concurrent jurisdiction over the Simpson Action. That issue is immaterial to the question presented to this Court on JJ Arch’s Motion. AREH reserves all rights to assert its position on that issue in the appropriate forum.

disagreements with their client as to how the Bankruptcy Case would proceed, with one firm also seeking to withdraw based upon Rule 1.16(c)(6) of the New York Rules of Professional Conduct which provides for withdrawal when a client insists on “presenting a claim or defense that is not warranted under existing law....” (*Id.* at 12). Separately, counsel for Simpson, JJ Arch’s managing member, also sought to withdraw. (*Id.* at 11-12).

Based on these motions, and for purposes of the instant motion before this Court, the clear record from the Bankruptcy Case demonstrates that JJ Arch uses that proceeding to avoid substantive adjudication of state law issues that have arisen with respect to the disputes as between the members of AREH, as well as between JJ Arch’s own members. Allowing JJ Arch to intervene in this action will open the door for it to remove yet another case and will only serve to delay adjudication of the interpleader. JJ Arch should not be permitted to derail this action at the outset, particularly given that it is not insured by the Policy and has no rights to the Policy proceeds.

B. Alleged Erosion Of The Policy Limits

Multiple claims to coverage have been made under the Policy, and AREH disputes GAIC’s position as to the proper erosion of limits resulting from these claims. The Policy is a “Claims Made” Policy with a \$3 million aggregate limit of liability. (Simpson Aff. Ex. 2 at Declarations p. 1 [[NYSCEF No. 12](#)]). According to the Interpleader Complaint, GAIC already has advanced \$894,000.71 in policy proceeds for purported “Costs of Defense,” as defined by the Policy, leaving \$2,105,999.29 of limits remaining. (Simpson Aff. Exhibit 1, (hereinafter “Complaint” or “Compl.”) ¶¶ 33-35 [[NYSCEF No. 11](#)]).

The Interpleader Complaint does not make clear what legal work GAIC determined was proper “Costs of Defense” covered by the Policy and how much GAIC paid to any particular law firm for services rendered. The Interpleader Complaint does make clear that the only payments

made to date have been on behalf of either Simpson or JJ Arch. (Compl. ¶ 7 [[NYSCEF No. 11](#)]).

According to GAIC, Chassen also has asserted rights under the Policy, although he has not received any payment from GAIC. (Compl. ¶ 33-35 [[NYSCEF No. 11](#)]). In addition, on July 5, 2024, AREH gave notice to GAIC of an action styled *435 Central Condo Dev. Holdings LLC v. Midtown Oaks JV Hodlings LLC, et al*, No. 652392/2024 (Sup Ct. N.Y. Cnty.) (the “435 Action”), which is a covered interrelated claim. (King Aff. ¶ 13). GAIC must reimburse AREH’s “Costs of Defense” incurred in connection with the 435 Action. To date, GAIC has acknowledged receipt of AREH’s notice but has not yet taken a position with respect to coverage. (King Aff. ¶ 14).

The Interpleader Complaint alleges that at least two law firms contend they are entitled to the Policy proceeds based on their representation of JJ Arch: Griffin LLP (“Griffin”) and Wiggin and Dana LLP (“Wiggin”). (Compl. at ¶¶ 4-5 [[NYSCEF No. 11](#)]). Griffin represented JJ Arch as its general bankruptcy counsel, and it commenced the Bankruptcy Case for the debtor JJ Arch. (Compl. ¶ 4 [[NYSCEF No. 11](#)]). Wiggin has appeared on behalf of JJ Arch as co-counsel with Griffin for JJ Arch in the Bankruptcy Case. (Compl. at ¶ 5 [[NYSCEF No. 11](#)]). As noted above, both of these law firms have now sought to withdraw from representing JJ Arch. According to the Interpleader Complaint, GAIC anticipates that both Griffin and Wiggin will demand payment of Policy proceeds at least in part resulting from their work as counsel for JJ Arch in JJ Arch’s bankruptcy. (Compl. at ¶ 32 [[NYSCEF No. 11](#)]).

AREH has not yet answered the Interpleader Complaint. However, before this interpleader action was commenced, on June 10, 2024, AREH filed an action against GAIC with respect to any payments that GAIC made in connection with the Bankruptcy Case on the grounds that JJ Arch is not an Insured under the Policy terms. (King Aff. Ex. 6 [[NYSCEF No. 53](#)]).

AREH further asserts that attorney time spent filing and administering a bankruptcy on behalf of a debtor does not constitute covered “Cost of Defense” as defined by the Policy, whether or not JJ Arch qualifies as an Insured. (*Id.* at ¶ 60). For both reasons, some, if not all, of GAIC’s payments do not erode the limits of liability on the Policy and are voluntary payments made by GAIC.

C. Parties Covered By The Policy

The only Named Insured listed on the Policy is AREH. (Simpson Aff. Ex. 2 at Declarations p. 1 [[NYSCEF No. 12](#)]). The Policy also covers “Insured Persons,” defined to include “any natural person who was, is or shall become a director, officer, general partner, manager, managing member, member of the board of managers, management committee member, equivalent executive or employee (including any part-time, seasonal, temporary or leased employees) of an Insured Organization.” (*Id.* at RT Amendment p. 7). GAIC acknowledges that both Simpson and Chassen qualify as Insured Persons⁶ under the terms of the Policy. (Compl. ¶¶ 15-16 [[NYSCEF No. 11](#)]).

In addition, the Policy covers an “Insured Organization.” “Insured Organization” is defined to include the “Named Insured and any Operating Entity.” Operating Entity is defined in Section III.Q. of the Policy, as amended by the RT Elite Real Estate Endorsement (the “RT Amendment”), as follows:

[A]ny Organization (including any Investment Fund and its General Partner(s)) created or acquired prior to or during the Policy Period of which an Insured or several Insureds collectively possess, directly or indirectly, the power to control, manage or direct by reason of an Insured’s:

- (1) ownership of greater than 50% voting securities in such Organization;

⁶ For purposes of opposing JJ Arch’s Motion, AREH takes no position with respect to whether Simpson or Chassen qualify as Insured Persons under the terms of the Policy.

(2) right to elect or appoint a majority of the directors, officers, trustees, trust managers, managers, members, General Partner(s), partnership managers, or joint venture managers of such Organization; or

(3) rights and obligations pursuant to a written agreement governing the management and operation of such Organization.

Operating Entity shall include any entity (including, but not limited to, any holding company, special purpose vehicle or other acquisition vehicle) formed to hold a direct or indirect interest in a Portfolio Company.

(Simpson Aff. Ex. 2 at RT Amendment p. 8-9 [[NYSCEF No. 12](#)]). The definition of Operating Entity further provides that:

Operating Entity shall not include any Organization created or acquired by an Insured Person(s) where such Organization: (i) was not created or established in connection with or to support an Investment Fund; and (ii) the Named Insured is not responsible for the financial reporting and tax filings of such Organization.

(*Id.*). An Investment Fund is defined, in relevant part, to include “any Organization that is a pooled investment vehicle which is created or established prior to or during the Policy Period by an Insured Organization.” (*Id.* at 7).

JJ Arch is a member of the Named Insured, AREH. (*See* King Aff. Ex. 8 at 1 [[NYSCEF No. 55](#)]).⁷ It is not an “Investment Fund.” Further AREH does not own an interest in JJ Arch and does not manage JJ Arch. On November 22, 2023, GAIC analyzed who qualified as an insured under the Policy and concluded that “JJ Arch . . . is not the Named Insured and otherwise does not constitute an Operating Entity as defined in the Policy. Specifically, an Insured does not maintain an ownership interest in JJ Arch; rather, JJ Arch maintains an ownership interest in the Named

⁷ Contrary to JJ Arch’s assertion, it is not an 80% owner of AREH. (*See* Simpson Aff. ¶ 6 [[NYSCEF No. 10](#)]). The AREH Operating Agreement provides for a priority of distributions of AREH’s Cash Flow, as that term is defined in the AREH Operating Agreement, at Section 6.1. Under this distributions provision, JJ Arch is entitled to 80% of AREH’s Cash Flow, but only after certain other conditions have been met, which have not been. (King Aff. Ex. 8 § 6.1 [[NYSCEF No. 55](#)]). The court’s November 22, 2023, Preliminary Injunction Order in the Simpson Action, ordered that Oak act in the stead of JJ Arch “as AREH’s sole managing member....” (King Aff. Ex. 1 [[NYSCEF No. 48](#)]).

Insured, AREH. Accordingly, JJ Arch is not an Insured under the Policy.” (*See King Aff. Ex. 7 [NYSCEF No. 54]*).

JJ Arch served the role of Managing Member of AREH. (*See King Aff. Ex. 8 at 7 [NYSCEF No. 55]*). In that role, JJ Arch was responsible for the tax filing and financial reporting of AREH. (*Id.* § 5.5.1, 5.5.3). JJ Arch’s own tax filings and financial reporting are the responsibility of JJ Arch’s members. (King Aff. Ex. 9 §§ 6.3, 6.47 [[NYSCEF No. 56](#)]).

Argument

A. JJ Arch Should Not Be Allowed To Intervene

In deciding a motion to intervene, the Court analyzes both the purported intervenor’s alleged rights or interests that will be affected by the action, and whether allowing intervention would cause delay or prejudice to the case. “Notwithstanding the apparent mandatory nature of the statute, the court still enjoys a measure of discretion in determining whether the relief should be granted dependant upon a showing that intervention would not prejudice any of the rights of the existing parties.” [*Berry v. St. Peter’s Hosp. of City of Albany*, 250 A.D.2d 63, 69 \(3d Dep’t 1998\)](#). Despite falling within separate CPLR provisions, “[d]istinctions between intervention as of right and discretionary intervention are no longer sharply applied.” [*In re HSBC Bank U.S.A., 135 A.D.3d 534, 534 \(1st Dep’t 2016\)*](#) (citation omitted).

Here, JJ Arch has no right to intervene because it has no interest in the Policy proceeds and allowing it to intervene would delay the case and prejudice the rights of the Intervenor-Defendants.

1. JJ Arch Has No Rights To Policy Proceeds

CPLR 1012 only allows intervention “when the action involves the disposition or distribution of . . . property and the person may be affected adversely by the judgment.” The

intervenor must have “a real and substantial interest in the outcome of the proceedings” *Perl v.*

Aspromonte Realty Corp., 143 A.D.2d 824, 825 (2d Dep’t 1988). JJ Arch contends that it has a right to payment under the Policy, and seeks to intervene in this action on sole the basis that it purports to be insured as an “Operating Entity” under the Policy. JJ Arch’s position is wrong and based on a misreading of the Policy.

JJ Arch erroneously contends that it is an “Operating Entity” because Simpson is an Insured Person as a “director, officer, general partner, manager, equivalent executive or employee of an Insured Organization.” (Mot. at 2 [[NYSCEF No. 21](#)]; Simpson Aff. ¶ 14 [[NYSCEF No. 10](#)]). For purposes of this Motion, AREH does not contest that Simpson qualifies as an Insured Person. But JJ Arch’s Motion does not specify whether JJ Arch contends that Simpson qualifies as an Insured Person due to work performed for AREH or due to his role as “managing member of JJ Arch.” (Simpson Aff. ¶ 5 [[NYSCEF No. 10](#)]). JJ Arch’s submission in support of its Motion only recites that Simpson had a management role at JJ Arch. JJ Arch does not rely on any evidence regarding what role, if any, Simpson had with respect to AREH.⁸

JJ Arch then reasons that because of Simpson’s “exclusive authority to control, manage and direct JJ Arch’s business operations” pursuant to JJ Arch’s operating agreement, JJ Arch qualifies as an insured Operating Entity. JJ Arch attempts to shoehorn coverage into the Policy terms due to the fact (1) that JJ Arch was created prior to the policy period, (2) that Simpson “possess[es], directly or indirectly, the power to control, manage or direct” JJ Arch, and (3) that

⁸ At best, Simpson had no formal title but was a de facto manager of AREH as he was the individual from JJ Arch that acted on JJ Arch’s behalf as managing member. While liability asserted against Simpson for acts committed in his de facto role managing AREH may or may not fall within the coverage terms of the Policy, Simpson’s actions in another capacity, such as in his role managing JJ Arch, do not fall within the terms of the Policy. The Policy applies to the management and business of AREH, not JJ Arch. JJ Arch is not controlled by Simpson in his potentially “Insured” role as de facto manager of AREH.

Simpson's power to do so is by reason of "rights and obligations [conveyed to Simpson] pursuant to a written agreement governing the management and operation of" JJ Arch. (Mot. at 2 [[NYSCEF No. 21](#)]).

JJ Arch's argument fails for two reasons. First, JJ Arch's argument is hopelessly circular. It contends Simpson is an Insured Person due to being the managing member of JJ Arch, an insured "Operating Entity." Then JJ Arch contends that it is insured as an Operating Entity because Simpson, an Insured Person, manages it. The status of either the entity or the individual as an "Insured" is the predicate relied upon for the claim to status as an "Insured" by the other. JJ Arch submits nothing showing a non-circular argument for its coverage.

Second, JJ Arch is not covered for the independent reason that it ignores limiting language in the definition of an Operating Entity that makes clear that JJ Arch does not qualify. Under JJ Arch's position, any company created and managed by an Insured Person, even if wholly unrelated to the business of the Named Insured, would qualify as an Operating Entity. The Policy prohibits that situation by stating that "Operating Entity" does *not* include an Organization when that Organization "(i) was not created or established in connection with or to support an Investment Fund; and (ii) the Named Insured is not responsible for the financial reporting and tax filings of such Organization." (Simpson Aff. Ex. 2 at RT Amendment p. 9 [[NYSCEF No. 12](#)]).

JJ Arch is not an Organization that was created to support an Investment Fund, defined in relevant part as an "Organization that is a pooled investment vehicle which is created or established prior to or during the Policy Period by an Insured Organization." (Simpson Aff. Ex. 2 at RT Amendment p. 7 [[NYSCEF No. 12](#)]). JJ Arch managed AREH, which in turn was the "manager member overseeing all complex organizational structures and real property

investments and transactions” with the power to “control[] all decisions relating to the underlying real property assets held by its subsidiaries.” (Simpson Aff. ¶¶ 9-10 [[NYSCEF No. 10](#)]). JJ Arch was the manager and a member of the Named Insured, AREH, with certain contingent rights to distributions of AREH’s cash flow. Neither company is a “pooled investment vehicle” created by an “Insured Organization.”

Additionally, the Named Insured (AREH) is not responsible for JJ Arch’s financial reporting and tax filings. JJ Arch’s Operating Agreement explicitly designates JJ Arch’s “Members”—defined to be Simpson and Chassen—to be the ones responsible for “any Federal, state or local tax returns required to be filed by” JJ Arch. (King Aff. Ex. 9 § 6.3 [[NYSCEF No. 56](#)]; *see also* § 6.1 (“The Members shall be responsible for keeping the books of account”)). Indeed, Simpson is specifically designated as JJ Arch’s “Tax Matters Partner” pursuant to the IRS Code. (*Id.* § 6.3). Further, under the AREH Operating Agreement, JJ Arch is the “Tax Matters Partner” for AREH with responsibility to prepare and file AREH’s tax returns. (King Aff. Ex. 8 §§ 5.5.1 & 5.5.3 [[NYSCEF No. 55](#)]). JJ Arch also must provide “all information reasonably requested in writing by a Member related to the business, operation, and financial performance” of AREH. (*Id.* § 11.5.2). In other words, JJ Arch is responsible for the tax filings and financial reporting of the Named Insured, not the other way around. AREH is not responsible for the tax and financial filings of its managing member.

Thus, even assuming Simpson is an Insured Person, and that JJ Arch met the preliminary requirements to be an “Operating Entity,” JJ Arch is excluded from the definition of an “Operating Entity.” With no other basis to intervene in this action, JJ Arch’s motion should be denied. *See Perl*, 143 A.D.2d at 825 (finding the intervenor’s interest “in the subject matter of this litigation [was] insufficient to warrant intervention.”); *In re Rapoport*, 91 A.D.3d 509,

([1st Dep’t 2012](#)) (“The proposed intervenors are not named in the will—a fact that they concede—and cannot fulfill the requirement under CPLR 1012 that the judgment may adversely affect their interests”); [*Fisher v. Stone*, 183 A.D.3d 549, 549 \(1st Dep’t 2020\)](#) (finding intervention “properly denied” where “the proposed intervenor cannot demonstrate an ascertainable property interest”). The Policy proceeds must be preserved to pay for claims made by Insureds under the Policy, such as AREH’s claim for Costs of Defense associated with the 435 Action.

2. Allowing JJ Arch To Intervene Would Be Prejudicial

JJ Arch’s Motion should be denied for the additional reason that the relief sought would cause delay and prejudice to the parties. When intervention would cause delay and prejudice, the court should deny the request. *See Osman v. Sternberg*, 168 A.D.2d 490 (2d Dep’t 1990) (Intervention “should be restricted where the outcome of the matter to be determined will be needlessly delayed, the rights of the prospective intervenors are already adequately represented, and there are substantial questions as to whether those seeking to intervene have any real present interest in the property which is the subject of the dispute”).

Here, the danger of removal of this case to the Bankruptcy Case poses a substantial risk of both delay and prejudice to the rights of the Insureds under the Policy. JJ Arch revealed its intention to use the bankruptcy laws to obtain improper tactical advantages when it manufactured a meritless bankruptcy and used the Bankruptcy Case to remove the Simpson Action after being subject to an adverse injunction ruling. The bankruptcy court ruled that the Simpson Action should be returned to state court, but JJ Arch continues to cause disruption and delay by challenging the bankruptcy court’s ruling of remand—despite doing virtually nothing else to advance the Bankruptcy Case.

If permitted to intervene in this action, JJ Arch likely will remove this proceeding to the bankruptcy forum, either immediately or at the first sign of an unfavorable outcome, in an attempt to use the procedures in that court to restrict the payment of legitimate Insured's claims and use the proceeds to pay its own bills. Such action would exponentially delay resolution of this interpleader lawsuit, prejudice payment of legitimate claims, and amplify attorneys' fees for all involved. The Interpleader Action belongs in the Supreme Court of the State of New York.

See *Connectivity Sys., LLC v. Zoning Bd. of Appeals of Town of Ramapo*, 227 A.D.3d 984, 986 (2d Dep't 2024) (considering "the degree to which the proposed intervention will delay and unduly complicate the litigation" and denying motion to intervene).

B. GAIC Cannot Deposit The Res At This Time

JJ Arch requests that GAIC be ordered to "make an immediate deposit of the res with this Court." As explained above, JJ Arch cannot intervene and has no standing to request any action by this Court. The interpleader statute only conveys standing to GAIC to request permission to deposit. CPLR 1006(g) (the stakeholder "may move . . . for an order permitting him to pay the sum of money . . . into court. . ."). Further, that motion by GAIC should only be made "[a]fter the time for all parties to plead has expired" and upon "proof by affidavit . . . of the allegations in [GAIC's] pleading." CPLR 1006(f).

To the extent the Court entertains JJ Arch's request, AREH objects to the deposit of any money with the Court at this time. Placing the funds within the Court's possession risks removal of the res into the Bankruptcy Case by JJ Arch. JJ Arch cannot attempt to control the Policy proceeds by removing this action to the bankruptcy court.

Moreover, the total amount that would be deposited is not yet known and depositing the Policy proceeds into the Court at this time would be premature. GAIC contends that \$2,105,999.29 of Policy limits remains, but AREH already has brought a lawsuit against GAIC

disputing that contention. As set forth in the related action,⁹ GAIC has made voluntary payments to or on behalf of JJ Arch, both because JJ Arch is not an Insured and because payments to file and administer a bankruptcy are not “Costs of Defense” as defined in the Policy.

CMI II, LLC v. Newman & Newman, P.C. 17 Misc. 3d 1107(A) (Sup. Ct. N.Y. Cnty. 2007)

(Collecting cases, noting “[i]t is well-established that interpleader and discharge are not mandatory in every case . . . and that courts have consistently declined to discharged purported interpleaders when they are subject to independent liability” (internal quotations omitted); accord *Inovlotska v. Greenpoint Bank*, 8 AD3d 623, 624–625 (2d Dep’t 2004) (“Greenpoint [Bank] was a named defendant against whom the plaintiff asserted independent liability, and as such, was not a mere stakeholder, notwithstanding the fact that bank claimed no interest in the disputed funds”). The parties need discovery on the total payments by GAIC and what alleged “Costs of Defense” those payments purportedly reimbursed before GAIC can deposit the Policy proceeds into Court.

Additionally, even if the Court orders GAIC to deposit the acknowledged \$2,105,999.29 of Policy limits that GAIC admits remains unpaid into the Registry of this Court, GAIC cannot be discharged following such payment. That deposit would not be “in full satisfaction of [GAIC’s] obligations under the Policy.” (Compl. at 16 [NYSCEF No. 11]). Additional limits remain available under the terms and conditions of the Policy because GAIC’s voluntary payments should not be counted against the available Policy limits.

Conclusion

For the foregoing reasons, AREH respectfully requests that the Court deny JJ Arch’s motion in its entirety and grant such other and further relief as the Court deems just and proper.

⁹ *Arch Real Estate Holdings, LLC v. Great American Insurance Company*, No. 652914/2024 (Sup. Ct. N.Y. Cnty.) (King Aff. Ex. 6 [NYSCEF No. 53]).

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CERTIFICATION BY COUNSEL

I certify that the foregoing brief complies with the word limit of Rule 202.8b. According to Microsoft Word's "word count" function, the brief contains 5082 words, excluding the caption, table of contents, table of authorities, signature block, and this statement.

Dated: New York, New York
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