

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

ELISA WIETSCHNER, as Trustee of the WFIG Trust,

*Plaintiff,*

-against-

9 VANDAM JV LLC,

*Defendant.*

Index No. 655573/2023

**AFFIRMATION OF  
KEVIN WIENER**

**Mot. Seq. No. 1**

**KEVIN WIENER, affirms the following under penalty of perjury:**

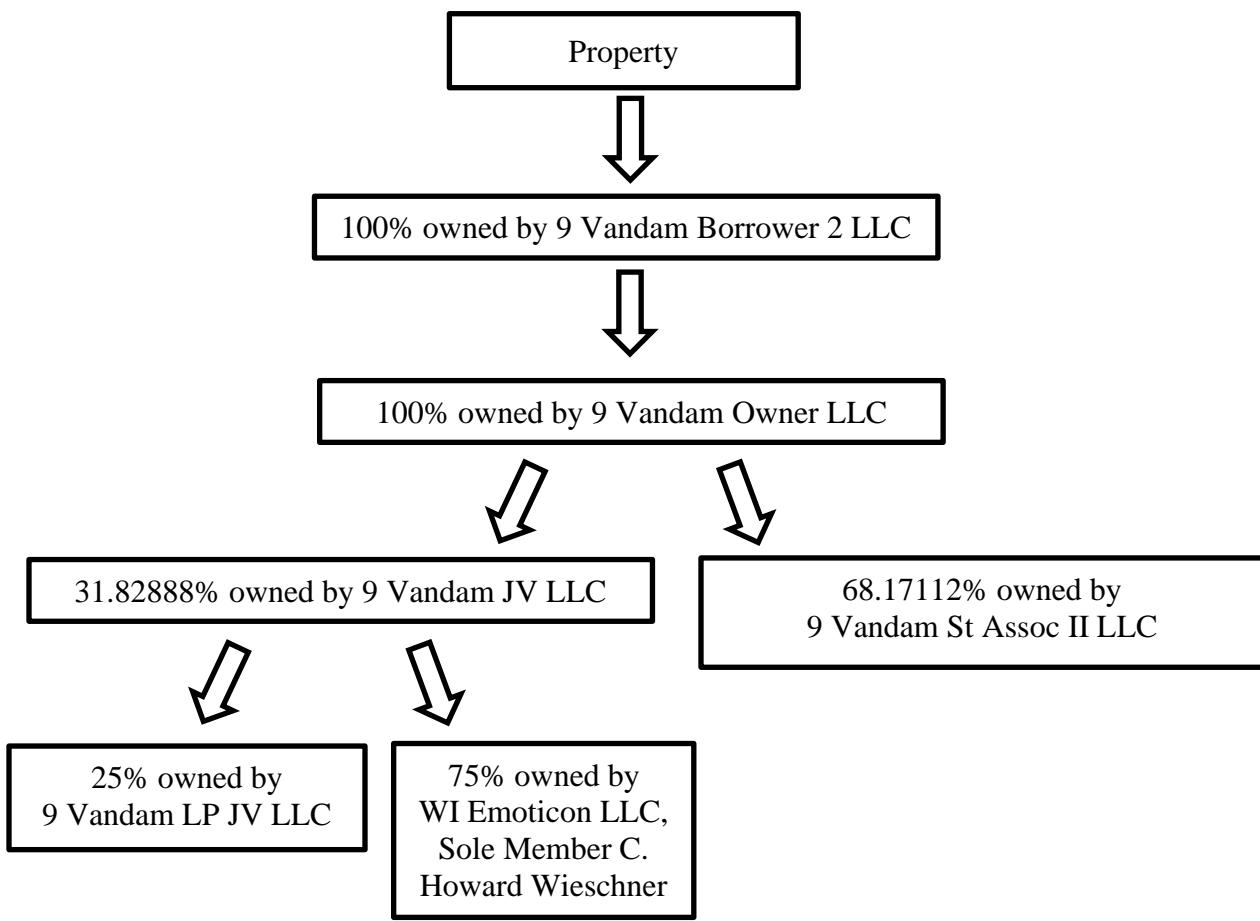
1. I write this affirmation on behalf of 9 Vandam JV LLC (“9 Vandam JV”), the Defendant in the above-referenced matter. Arch Real Estate Holdings LLC (“Arch”) is the managing member of the parent entity of 9 Vandam JV. This investment is one of many structured by non-party Arch.

2. I am currently the Executive Vice President of 608941 NJ Inc. (“Oak”), the Investor Member in Arch, as well as its Canadian in-house counsel. Since Oak has been appointed as acting Managing Member of Arch, my brother and I have both been exercising Oak’s management rights regarding this investment.

3. 9 Vandam JV is part of the ownership of a complex capital structure of the ownership of the real property located at 9 Vandam Street, New York, New York 10013.

4. In or about November 2021, 9 Vandam Borrower 2, LLC (“Vandam Borrower”) acquired the Property. At that time, Vandam Borrower obtained financing from non-party Maxim Credit Group LLC (“Maxim”).

5. For purposes of this motion, the following diagram of part of the ownership structure is relevant (though the distribution of profits or “waterfall” from this investment is different than the ownership structure):<sup>1</sup>



6. WI Emoticon LLC, whose sole member at the time of investment was Howard Wieschner. Because the waterfall of distributions put WI Emoticon LLC's investment behind others, when approached for additional funding, Mr. Wieschner asked that his additional contributions to the investment be a note rather than a further equity investment.

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<sup>1</sup> Copy of the deed to 9 Vandam Borrower 2 LLC and the first and last page of each operating agreement for each level of ownership – showing the ownership interest – is annexed hereto as **Exhibits A and B**, respectively.

7. Notably, those loans were not made to the owner of the Property 9 Vandam Borrower – but to the entity in which Mr. Wiestschner invested, Defendant 9 Vandam JV. Mr. Wiestschner also required that the loans be made through his family’s trust, Plaintiff WFIG Trust, as opposed to being made through his membership interest company,

8. There was, and continues, to be disputes between the original members of Arch, Jeffrey Simpson and Jared Chassen. Those disputes (and other issues) are being litigated before Justice Cohen, of this Court, in a litigation captioned *Jeffrey Simpson, individually and derivatively, as managing member of JJ ARCH LLC, suing derivatively as managing member of Arch Real Estate Holdings LLC et al. v. Jared Chassen et al.* pending under Index Number 158055/2023 (the “**Arch Litigation**”). In the Arch Litigation, Justice Cohen gave Arch’s primary financial backer, Oak, managements rights over Arch (Arch Litigation NYSCEF Doc. [418](#)).

9. Through Oak, my brother Michael Wiener and I are managing Arch, and are in the process of “righting the ship” of its investments, including the 9 Vandam investment.

10. Plaintiff’s motion is solely based on an email from Mr. Simpson, from prior to Oak’s management of the 9 Vandam investment. Plaintiff claims that this email shows that Defendant 9 Vandam JV admitted in writing that it is unable to pay its debts when they come due. That is not what the email says. Nor would that be accurate.

11. Defendant 9 Vandam JV only has an obligation to make payment on the Notes from Mr. Wiestschner when they mature – which has yet to occur. There are plans to ensure that the Defendant 9 Vandam JV will, upon information and belief, have sufficient funds to pay its obligations when they become due as we are exploring multiple exit strategies for the 9 Vandam investment.

**WHEREFORE**, for the foregoing reasons and those stated in the memorandum of law accompanying this Affirmation, the Court should deny Plaintiff's motion for summary judgment in lieu of complaint in its entirety.

I affirm this 16th day of January, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



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**Kevin Wiener**

**CERTIFICATION OF WORD COUNT COMPLIANCE**

I certify under Rule 202.8-b of the Uniform Civil Rules for the Supreme Court that the foregoing **AFFIRMATION** was prepared on a computer using Microsoft Word.

*Type:* A proportionally spaced typeface was as follows:

Name of typeface: Times New Roman

Point Size: 12

Line spacing: Double

*Word Count.* The total number of words in this **AFFIRMATION**, exclusive of the caption, signature block, and this Certification, is **712**.

Dated: New York, New York  
January 16, 2024

**POLSINELLI PC**

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9 Vandam JV LLC*