

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

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,

Plaintiffs,

-against-

JARED CHASSEN and FIRST REPUBLIC BANK,

Defendants.

Motion Sequence No. 3

Index No. 158055/2023

**AFFIDAVIT IN
OPPOSITION**

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

JEFFREY SIMPSON, being duly sworn, deposes and says:

1. I am a plaintiff in the above-captioned action. I make this affidavit in opposition to the motion by Defendant JARED CHASSEN (“Chassen”), by order to show cause, by order to show cause, to (1) compel me to comply with the Court’s interim order dated August 21, 2023 (“Interim Order”), (2) declare null and void my letter to Chassen dated September 1, 2023, terminating Chassen as a member of JJ Arch LLC (“JJ Arch”) (“9/1/23 Letter”), (3) hold me in contempt of the Interim Order, (4) enjoin me from unilaterally acting to terminate Chassen from JJ Arch, and (5) grant such other and further relief the Court deems just and proper. Unless otherwise noted herein, all allegations herein are based on my personal knowledge.

2. The account of my departure from Greystone Development (“Greystone”) provided in the affidavit of Jared Chassen in support (“Chassen Affidavit” or “Chassen Aff.”) is manifestly untrue. I was in charge of Greystone’s entire successful development portfolio. I was able to hire and fire staff as part of my managerial role. After I had achieved much success for the firm, I was

asked by the Chairman to take on the division, as well as to be instrumental in many corporate initiatives.

3. . Contrary to Chassen's affidavit, I was not asked to leave Greystone. No one at the company wanted me to leave. Chassen, not being part of the executive leadership team, was not in a position to know why I left. I felt that after 11 years of service at Greystone, I wanted to launch my own business, where I could control my destiny and my reputation was more than sufficient to do so. My official departure occurred in December 2017 and I was asked to be part of a transition team for six months.

4. At all times since the formation of Arch, I have held a majority of the ownership interest in JJ Arch, inclusive of being the sole Managing Member. (*See* NYSCEF Doc. 11, ¶¶16, 30-31.) It was merely aspirational for Chassen to be a co-controlling party as JJ Arch's original operating agreement provided that privilege after four years. (*See* Exhibit B to opening papers, NYSCEF Doc. 64, Limited Liability Company Operating Agreement of JJ Arch LLC ["JJ Arch Operating Agreement"], § 3.2.) I hoped that he would grow professionally such that he could take on that role, but he did not. He did not have any leadership or decision-making skills. In addition, Chassen has a poor work ethic, often leaving Arch's office prior to lower-ranking Arch employees, and rarely working offsite or at home.

5. When presented with the May 22, 2021 amendment to JJ Arch's operating agreement, which that took away the prospect for co-control over JJ Arch ("5/22/21 Amendment") (Exhibit C to opening papers, NYSCEF Doc. 65), Chassen didn't hesitate, and agreed that I was the only one who should have control of the business forever. (*See* Exhibit 1, emails in which Chassen expressed enthusiasm for the amendment and a willingness to sign it in "blood".) Chassen's assertion that this amendment was coerced (Chassen Aff. ¶ 15) is thus farfetched.

6. At all times since the formation of Arch, JJ Arch has held eighty percent (80%) of the membership interest in Arch, while the remaining twenty percent (20%) of the membership interest in Arch has been held by 608941 NJ Inc., a New Jersey corporation (“NJ Inc.”), which is the passive Investor Member of Arch. (*See* NYSCEF Doc. 11, ¶15.) NJ Inc. made an investment of equity in Arch and provided loan guaranties, but has no authority to control the operation of Arch’s business per section 7.1.2 of the Arch Agreement, and it possesses “negative controls” only for certain Major Decisions. 35 Oak Holdings (“35 Oak”) is the majority shareholder in, and controls NJ Inc.

7. Chassem acknowledges in his affidavit that I am sole Managing Member of JJ Arch (*see* Chassen Aff. ¶ 14) (other than mistakenly asserting such powers last only four years), whereas he possesses certain negative controls, which, in the six years of JJ Arch’s and Arch’s existence prior to his coup, he had never used to limit or restrict any decision of mine.

8. Through JJ Arch, I am the sole Managing Member of Arch. I have curated and run all of Arch’s businesses since the inception, with a highly talented team that has long tenure with me.

9. I adopted a “lead by example” style of business management that I wanted to instill in others. I never changed this work ethic. As times got much more challenging in early 2023, I also took on project management responsibilities to ensure success of complex projects and to eliminate the need to hire more staff with a tough financial environment coming forward.

10. By 2022, five years after I formed Arch with limited assets and resources, JJ Arch, Arch, and their subsidiaries and affiliates (collectively, “Arch Companies”) had owned and invested in over \$1 billion in assets, with some assets already sold and delivered large profits to

investors. This vertically integrated business was established with affiliated companies (“Affiliates”), each with its own license(s) and insurance, with a total of over 100 employees.

11. I run Arch businesses in numerous ways, including capital raising, sourcing and closing debt financing, structuring and sourcing new transactions, providing building construction expertise, etc.

12. I sourced and structured all of the acquisitions and dispositions for Arch Companies, including placing sophisticated enhanced tax structures for the benefit of investors, as required (1031’s, 1033’s, etc). These deals include, but are not limited to, the following, those shown in Exhibit 2.

13. These include properties in the Southeastern United States that the Arch Companies acquired on my initiative, at a time and in a place where capitalization rates were significantly greater than interest rates. These included approximately 5000 units of value-add multifamily properties across the Southeast. This led, in 2022, to Arch’s selling a portion of the portion of the portfolio for \$200 million, resulting in a \$60 million profit. Without my prior multifamily value add experience, none of this would have been possible. The same holds true for office buildings where we own and or manage: 88 University Place in Manhattan, and Cambridge Office Park in Charlotte, NC.

14. I assumed virtually all of the risk on behalf of Arch’s approximately \$500 million of debt. The lenders on Arch’s projects looked to me and my reputation to make the projects successful. Oftentimes that required me to provide a non-recourse carve-out guarantee to backstop the actions of my management. To the extent I did not provide that liability to the lender, I inherited that risk within the backstop of the Arch agreement to the 35 Oak guarantor. As managing member, I currently possess this liability portfolio wide, where we have approximately \$500 million of debt.

In certain circumstances I have provided personal guarantees to support the repayment of the loans, completion of work, and or carry obligations. This places me at risk of far greater risk of personal financial exposure than it does Chassen. Of the \$660 million portfolio at Arch, \$160 million of equity exists, consisting of \$60 million for 35 Oak and \$100 million for other investors (only \$15 million of which are direct investors obtained by Chassen). Chassen purports to be a guarantor with regard to debts secured by several Arch properties (Chassen Aff. ¶ 66). All but one of those properties are owned by JJ Arch, and not owned or managed by Arch, 35 Oak, and Affiliates. Those small personal investments have personal guarantees like a home loan.

15. In Arch's most recent development project, for \$150 million, there are major credit retail tenants that are crucial to the project. In June 2023, Chassen anticipated that those tenants would collapse, taking the project down with it, and he advised me that the project is "dead." I jumped in and resolved, within a week, both adverse issues, thereby resuscitating the project.

16. I make difficult decisions regularly and I am involved in every process of disclosure, reports, analysis, accounting, etc., with regard to Arch Companies I also try my best to be knowledgeable about all of all our obligations and make the best decision given what is in front of me, with merit. Despite what Chassen alleges (Chassen Aff. ¶ 19), I have never made any misrepresentations about real estate projects, nor was I involved in any insufficient reporting to investors; indeed, Arch Companies and I have never held back information from investors. Recently, Jared worked to harm Arch to serve his own interests and those of a minority non-controlling investor, 35 Oak.

17. Chassen contends that I have shirked my duties to the Arch Companies by not being sufficiently involved in its projects (Chassen Aff. ¶ 21) and by not devoting substantially all of my business time to JJ Arch (*id.* ¶ 26). This is false, as I am in the office (or field), working on Arch

Companies projects, no less than 50 to 60 hours a week, besides being on call 24/7 except for religious observance periods. Unlike Chassen, I hold several state construction licenses, including a NYC DOB registration. Accordingly, my supervision is required on job sites from time to time, and I need to be in the know at all times.

18. Arch would be gravely injured if I were excluded from operations and unable to perform hands-on work for it such as dealmaking and construction supervision. On the other hand, Chassen lacks those skills, and accordingly his absence would not inflict a hardship on Arch Companies.

19. Chassen's assertion that I had threatened to put Arch into bankruptcy to force Chassen, Michelle Miller ("Miller") (an Arch employee), and 35 Oak to follow my orders (Chassen Aff. ¶ 23), is a massive distortion of events. Bankruptcy was mentioned (and suggested by several attorneys as possibly the only remedy left) only due to 35 Oak's precipitating a crisis by advising me that it would provide additional funding to the operating business or properties only if I surrendered control to them. This was unacceptable to me, given the lack of experience of the 35 Oak's principals, William Wiener ("W. Wiener") and his son, Michael Wiener ("M. Wiener") Over time, 35 Oak became more aggressive, starting to say things like "you can go the easy way or the hard way," demonstrating that I could either give 35 Oak what it wanted or it would not provide funding per its capital obligations under the Arch Real Estate Holdings LLC operating agreement. This was very challenging for me as a business leader. Bankruptcy may have been the only the option since the debts were piling up and the potential defaults were increasing significantly. Arch corporate had already accumulated over \$2 million of debt for providing services to the properties with which it is affiliated, but no capital to reimburse for its staff. I reported counsel's suggestion of bankruptcy back to the team, including Chassen. I could not, and would not, enter into a

bankruptcy proceeding without further discussion amongst the partners. For Chassen to think that this was a threat is preposterous and shows his lack of business acumen and experience to make executive decisions.

20. In addition, contrary to Chassen's allegations, I did not divert any resources from Arch Companies (*see* Chassen Aff. ¶ 24). Moreover, no one, including Chassen, had ever accused me of doing so, until Chassen did so in his affidavit on this motion.

21. Rêver Motors ("Rêver"), which Chassen makes much to do of (*see* Chassen Aff. ¶ 24), is owned by JJ Arch, and was acquired with Chassen's willing approval and consent. It being a JJ Arch asset, rather than of Chassen and me personally,¹ there is nothing wrong with the use of Arch resources for it. Only one individual an Affiliate's employee was allocated there. I disclosed to JJ Arch's accounting and HR that Rêver should reimburse Arch for his compensation. The outstanding balance owed by Rêver to Arch for such reimbursement is less than \$20,000. That is an intercompany loan, relatively small for a company that has a \$10 million annual operating budget. In addition, I have never spent two to three days per week running Rêver (*see* Chassen Aff. ¶ 24); at most, I have spent one day per week there over the last year, at a time when Rêver was struggling, and even while there I handled Arch Companies business over the telephone.

22. Chassen complains that I was using an Arch staff accountant for my personal assets rather than Arch matters. (Chassen Aff. ¶ 55.). However, that person was also used for Chassen's assets, and the reason for doing so was so that my personal liquidity could be used regularly to fund Arch expenses in the event other funding ran dry.²

¹ Chassen even acknowledges, later in his own affidavit, that the real property on which Rêver is located is owned by JJ Arch rather than by Chassen and me personally. Rêver is located at 1640 Montauk Highway, Water Mill, NY, which is one of the properties as to which Chassen is a personal guarantor of the Arch Companies' debt. (Chassen Aff. ¶ 66.)

² This circumstance is why, when Chassen asked First Republic Bank, in the course of the coup, to remove my access to all Arch accounts, personal bank accounts with that bank became inaccessible as well.

23. In fact, Chassen himself diverted funds from Arch Companies for his own personal or family purposes on multiple occasions. In each of the following instances, Chassen made expenditures of funds from the Arch Companies' accounts without my required advance authorization (and especially since we implemented a new protocol on June 26, 2023):

- (a) On August 4, 2023, \$9,400 for Elmwood Day School for his son (the "Elmwood Day School Payment"). (*See* Exhibit Q to opening papers [email from Chassen to Arch accounting employee requesting payment of \$9,400 "from my JJ"]; Exhibit 5 [screenshot of payments from Arch Companies' account, showing \$9,400 payment to Elmwood Day School].)
- (b) On August 9, 2023, \$25,000 to Chamcha Real Estate Inc., a company owned by Chassen's wife (the "Chamcha Payment"). (*See* Exhibit P to opening papers [email chain wherein Chassen asks Arch employee to make such payment and she confirms making such payment]; Exhibit 5 [screenshot of payments from Arch Companies' account, showing \$25,000 payment to Chamcha Real Estate Inc.]
- (c) On August 23, 2023, \$481.60 to State Farm, for automobile insurance on Chassen's personal car. (*See* Exhibit 5 [screenshot of payments from Arch Companies' account, showing \$481.60 payment].)
- (d) During the period from August 14, 2023 to September 7, 2023, expenditures on the Arch Companies American Express card issued to Chassen totaling \$24,935.59. (*See* Exhibit 7 [email from American Express to Chassen].) Although I do not possess an itemized list of these expenditures, it would not be possible for Chassen to have spent that much money, in such a short time, on expenses related to Arch Companies.

24. Additionally, Chassen asked our Controller (at the time, he resigned in May) to approve and disburse inappropriate transactions in his favor. After the Controller left full-time employment with Arch and was only helping Arch transition remotely and at night, Chassen exploited his relative absence to Chassen's benefit. For example, after the 88 Schwenks property owned by JJ Arch was sold, Chassen instructed him to split the proceeds therefrom with me 50/50 (*see* Exhibit 11), although in fact I was entitled to \$215,000 of those and he was entitled to only \$75,000.

25. Notably, while Chassen usually always copied me on emails to any of our accounting staff members requiring any funding (*see* Exhibit 3), he chose not to in instances in which he diverted funds in his direction (*see* Exhibit Q to opening papers).

26. Chassen asserts that any expenditures he made from JJ Arch's funds were proper, and represent payments of his monthly partnership "draw." (Chassen Aff. ¶62.) However, Chassen, even if owed monies by Arch Companies, could not withdraw or spend them at will. My consent has always been required for all such payments. For this reason, Chassen always copied me when asking our accounting team to release funds to himself personally. (*See, e.g.,* Exhibit 3.) He stopped doing that in June and on June 26, 2023, I installed an updated approval process for all payments. (*See* Exhibit 4.) Chassen chose not to follow it, thereby disregarding my authority under the JJ Arch Operating Agreement, section 3.1, where the managing member is the only person that can draw funds or checks.

27. Chassen's own assertions in his affidavit belie his claims that I diverted or misappropriated Arch Companies' funds. He claims that he has handled all approvals and wire releases from Arch Companies' accounts for the last five years. (Chassen Aff. ¶54.) If this were

true, then that would mean he has approved every instance in which he claims I allegedly diverted Arch funds.

28. I was the signatory on the majority of Arch Companies' bank accounts at First Republic Bank ("First Republic") and other banking institutions. It was rare that there was a legal document in Arch in general that I wasn't the only signatory. For the most part, I made that a policy that I was the only signor across the board unless consent was granted by me prior. Chassen was the only one who could execute under my approval pursuant to Arch Companies' corporate governance. We both were added to bank "signature cards" so that I could grant him access for approving and disbursing funds with my approval. I never thought he would use these powers inappropriately.

29. On August 31, 2023, after the Interim Order, I sent a letter to Chassen, wherein I demanded, among other things, that he reimburse Arch Companies for the Elmwood Day School Payment and the Chamcha Payment. (Exhibit 8.) I have not received any response to this demand.

30. Moreover, after the Interim Order, I repeatedly emailed Chassen, requesting that he return to Arch Companies the funds that he had diverted. He has refused to comply.

31. I learned later that on August 4, 2023, Chassen had ordered an Arch Companies accounting employee to freeze all Arch Companies credit cards except his own (Exhibit 9). He reiterated this request on August 4, 2023, even after being advised that doing so would affect dozens of persons without any notice. (*Id.*) This caused major disruption to Arch Companies, as employees could not use their company cards to make expenditures.

32. I also learned later that Chassen demanded that Computero, our IT consultant, run by Bart Piotrowski ("Piotrowski"), shut me out off Arch Companies' IT systems without good

reason. Piotrowski continued to play games to keep me off the systems for almost two weeks while being told to do so by Chassen.

33. If my bank account access and IT privileges had not been inappropriately revoked, the events that had followed would not have happened. This loss of access caused much damage to me and the business that is irreparable.

34. Chassen has been colluding with 35 Oak since long before the coup began. In the beginning of July and continued on July 12th and 13th, Chassen and I discussed my unhappiness with his performance (not the first time), capabilities, and attitude regarding Arch. As a result of this, Chassen purported to seek a buyout from me of certain property interests in JJ Arch (non Arch related) since he was starving for cash, having taken on a lifestyle beyond his means. While he was negotiating the terms of such a buyout with me, however, he indicated that he expected to act in a manner contrary to my interests. In an email dated July 20, 2023, Chassen asked Jeffery Dayon (“Dayon”), an attorney who may have been representing Chassen or Arch Companies themselves (this is unclear), to give Chassen comments on the proposed buyout agreement, ominously stating, “[I] want to sign that before the relationship sours.” (Exhibit 10, p. 4, Email from Chassen to J. Dayon and others dated July 20, 2023.) When I received these comments from Chassen, I told him that the comments were “aggressive” and he said he had no idea what they meant, he was simply sending them along per his lawyer.

35. This proposed buyout was not consummated. Nonetheless, Chassen used it as an opportunity to swindle money from me. Under the proposed buyout, 88 Schwenks, was to be sold. Ordinarily, I would have been entitled to \$215,000 from that, and Chassen \$75,000. Under the proposed buyout, Chassen and I were to split the proceeds 49/51. The buyout agreement was not consummated, due to its being contingent on a loan that could not be obtained due to Chassen’s

inability to fulfill a liquidity covenant imposed by the lender. However, as mentioned above, Chassen nevertheless directed Arch Companies' accounting staff to pay him 50% of the distribution, without copying me (Exhibit 11), and he was so paid. This also breached the policy I had instituted on June 26, 2023 that all wires required my approval before being released.

36. Also, in May 2023, I paid off a \$1 million line of credit in JJ Arch's name, for which Chassen was responsible for half. Because he didn't have the funds available, I paid off his half as well as mine. I paid off Chassen's half using funds that I had personally set aside as a "rainy day" fund for the benefit of Arch Companies for an emergency.

37. Putting aside the monetary damages to me, this has caused an unnerving experience for several Arch accounting staff members as they now realize that the unintentionally broke protocol due to direction by a very senior person in the business, Chassen. Without the "rainy day" funds and 35 Oak contributing capital, it has been an impossible task to operate the business.

38. By this time Chassen was extremely emotional, due to market conditions and Arch Companies' financial situation due to 35 Oak discontinuing investment in Arch Companies. Chassen had offered in June 2023 to assist by accepting a reduction in his cash compensation from his then \$575,000 level. However, when I followed up on a weekly basis asking what level he was comfortable reducing it by, he avoided answering. Finally, on August 1, 2023, he sent an email stating that he would not accept any reduction. That same day, I asked him to meet with our HR head. The purpose was genuinely to find out what he was working on and to be able to build his compensation into a budget request by 35 Oak. The HR head advised me that he had told her that he was out sick that day and was vomiting. Later that day, however, Chassen's brother-in-law, Dan Jacobs, informed me that Chassen was fine, and later several other Arch individuals were told to

inform me that Chassen was sick, if I had asked them his whereabouts. Chassen had asked them to vouch that he was sick that day when in fact he was not, another lie.

39. Once Chassen realized that our distributions would be reduced, on July 19, 2023, 35 Oak sent to us (via counsel) an exit proposal for me to leave the Arch Companies and for 35 Oak to take control over them. (*See* Exhibit 10, pp. 6-9.) The first step was “Jeff immediately steps away from active day-to-day management of Arch and its subsidiaries and relinquishes authority to act on behalf of Arch and its subsidiaries.” (*Id.* p. 7, ¶1.) I asked Chassen to reply that he had not participated in creating this blueprint. He told me that day that he was not, but would not say it to anyone in writing (on several occasions, similar the compensation reduction conversation above) which also had me skeptical. Chassen also forwarded this blueprint to Berg and solicited commentary. Berg advised him that he cannot proceed without lenders consents (it was not requested when Chassen proceeded later).

40. For a detailed account of the coup, the Court is respectfully referred to my affidavit sworn to August 14, 2023 in support of Motion Sequence No. 1 (NYSCEF Doc. 11), ¶¶ 42-59, attached hereto as Exhibit 21. Some additional details, based partly upon information not available at the time of that affidavit, are provided herein as are relevant to the instant motion.

41. On Saturday, August 5, 2023 I sent Chassen a Resignation notice for cause as I am permitted to do in the JJ Arch and Arch Operating Agreements. I proceeded to notify the appropriate Arch executive employees, Investor Member (35 Oak), Piotrowski for IT support, and First Republic. These were the appropriate channels to follow through with, given such a Resignation. I was faced with practically no response despite persistently reaching out. Something was clearly happening.

42. Later that Sunday evening I received Chassen's letter attempting to resign me, followed by an immediate notice of intention to remove JJ Arch from 35 Oak. My IT privileges were immediately extinguished and Chassen and 35 Oak essentially made the situation as if I was terminated. They did not think of the ramifications for Arch Companies' investors, lenders, employees, debt obligations, or safety obligations via my NYS license at construction projects. They informed all staff to not communicate with me under any circumstance. I learned after the fact that Chassen sent his draft resignation letter of me to Berg and asked him to help craft the document.

43. On August 7, 2023, I went to work, I already learned about the communications corporately but I went to the office that day and every day forward, hoping that my team would come to work but they were clearly told to stay away. Also, I went to First Republic and finally learned that an employee there had, upon Chassen's request, removed me as a signatory from all of Arch Companies' accounts that prior Friday. At this time, none of my personal bank accounts were available to me either. My wife called Chassen to ask him about our bank accounts and our cell phones (which also were held hostage). Chassen asked M. Wiener if he is allowed to give those accounts back to me.

44. On August 7, 2023, Chassen sent an email to M. Wiener and his brother, Kevin Wiener, who had recently also become involved in 35 Oak, advising that they "need to work on cause event backup together," *i.e.*, rationalizing their prior, insufficient, notice of cause event to remove me as Managing Member of JJ Arch. (Exhibit 12.)

45. On August 8, 2023, I sent an emergency letter to Chassen notifying him of his improper behavior and I received no response. I also alerted him that he is not to try to divert my access to our office and warned if he did, I will have to get the authorities involved. It appears on

the same day, 35 Oak and Chassen were soliciting staff to say bad things about me to build their case via the HR head (Exhibit 13). She asked about speaking with counsel, they referred her to Dayon and offered her an indemnity agreement and “protection”. That same day Chassen, asked Paul to install new locks on the office doors to lock me out of the office. I warned him that he could not do this in my letter sent at 6:30 AM that day.

46. On August 9, 2023, Chassen emailed Arch Companies’ HR director, asking her to “provide all the emails you have implicating Jeff into the dropbox.” (Exhibit 13, p. 1.) There was purported file sharing via Dropbox that went from the HR director to Chassen’s personal e mail. (*Id.*) HR requested from 35 Oak a promise of indemnity for any liability arising from the coup. (Exhibit 14.) Chassen asked various Arch employees to speak with Dayon about their potential risks for participating in this coup

47. On August 10, 2023, in response to receiving questions from lenders, LPs, and investors, Chassen sent an email to 35 Oak and its counsel, stating he needs “a company line and what I am saying when backup questions arise, which they will, and very detailed.” (Exhibit 15, Email from Chassen dated Aug. 10, 2023.)

48. In August 2023, Chassen emailed the Wieners inquiring about how to “build a case” against me.

49. On August 13, 2023, Chassen sent an email to the CFO and President of 35 Oak, asking that it “fund retainers” for counsel that Chassen had retained to represent himself (or Arch), including \$50,000 for Dayon’s firm and \$200,000 for Fried Frank, the latter of which was Chassen’s original litigation counsel in the instant action. (Exhibit 16, Email from Chassen dated Aug. 13, 2023.)

50. Chassen has refused to follow the Interim Order, in that he delayed in signing the proper documentation to make me a co-signer on Arch Companies' bank accounts from which I had been removed. This left Arch Companies financially paralyzed, unable to pay, by normal means, overdue or imminently due obligations, including but not limited to payroll, debt service, benefits, and other expenses that it has obligations to pay via partner and loan agreements.³ Had Chassen not stripped me of my signature authority over the Arch Accounts in the first place, these issues would not have arisen.

51. Moreover, Chassen has obstructed two efforts on my part to move the funds in the Arch Accounts to other banks, to get around my continuing Chassen-imposed inability to make transactions in the Arch Accounts. First, I sought to move the accounts to JP Morgan Chase Bank ("JP Morgan"). JP Morgan required, for me to effectuate such transfer, that both Chassen and I co-sign a letter to it. Chassen refused to sign either such letter, claiming that he needed first to interview several regional banks in hopes of obtaining superior service there. (*See* NYSCEF Doc. 107.) This was at a time when Arch Companies had missed several cutoff dates for the payment of payroll. (This is the "JP Morgan Account Obstruction.")

52. Second, I set up accounts for Arch Companies at Citizens Bank ("Citizens"), but Chassen, in his opposition to Plaintiffs' motion for a preliminary injunction, has cried foul (*see* NYSCEF Doc. 96, ¶ 67), notwithstanding that, as discussed in greater detail in my counsel's affirmation in opposition, I have the right to do so without his consent.

53. Chassen has still not acted to restore my status as a global administrator for Arch Companies' GoDaddy account. (This is the "Website Obstruction.") Accordingly, I have been unable to make any changes to Arch Companies' web site. This has harmed Arch Companies'

³ Arch Companies were able to make a payroll payment using ACH, but this is an unconventional and inconvenient method.

reputation, because the site was changed during the coup and those changes have still not been reversed.

54. Chassen did not restore my status as global administrator for Arch Companies' Microsoft365 account until August 26, 2023, five days *after* the Interim Order, without providing a reason for the delay. (This is the "Microsoft Obstruction.") When I asked the Wieners for help in restoring my status as such, they told me that Chassen wouldn't give that up because it would open him up to liability. Some of the findings in this affidavit are a result of research that I was able to complete afterwards.

55. After the Interim Order, I consistently asked Chassen to share with me documentation from the two-week period of my ouster between the coup and the Interim Order, in order for me to be able to reconstruct the events of that period and to ascertain what new obligations Chassen entered into on behalf of the Arch Companies during that period. Chassen has still refused to provide such documentation. (This is the "Documentation Obstruction.")

56. Since the Interim Order, Chassen has undermined the authority the Court restored to me in such order. The Interim Order restored my ability to make transactions in the Arch Accounts, but after its entry, Chassen instructed an Arch Companies accounting employee to refuse to follow my instruction to prepare and send checks and make money transfers from Arch Companies funds in order to pay financial obligations owed by Arch Companies. (This is the "Authorized Expenditure Obstruction.") This employee did not resume following my instructions until approximately a week and a half later.

57. Moreover, after the Interim Order, Chassen continued to authorize the making of transactions from the Arch Accounts without my authorization, even though the Interim Order restored my plenary authority to make such transactions. (These are the "Unauthorized

Expenditures.”) This was extremely concerning to me as I am a fiduciary for many investors. Also, I had already promised lenders and investors that following the Interim Order they would not need to worry about improprieties.

58. By September 1, 2023, the JP Morgan Account Obstruction, Website Obstruction, Microsoft Obstruction, Documentation Obstruction, Authorized Expenditure Obstruction, and Unauthorized Expenditures – all of which had occurred subsequent to the Interim Order -- had prolonged the crisis at Arch Companies, impaired my ability to carry out my powers under the JJ Arch Operating Agreement, and frustrated the purpose of the Interim Order of returning the Arch Companies to the status quo prior to the forced terminations of early August 2023. The Arch Companies could not continue to proceed in such manner.

59. Accordingly, on September 1, 2023, I sent a Notice of Cause Events to Chassen pursuant to the JJ Arch Operating Agreement, forcing his resignation as a member JJ Arch (the 9/1/23 Letter). (*See* Exhibit G to moving papers, NYSCEF Doc. 69.) The 9/1/23 Letter cited, *inter alia*, the JP Morgan Account Obstruction, Website Obstruction, Microsoft Obstruction, Documentation Obstruction, Authorized Expenditure Obstruction, and Unauthorized Expenditures as Cause Events or as parts of Cause Events, each of which constituted willful misconduct, breach of fiduciary duty, and/or misappropriation of JJ Arch’s funds. (*Id.*)

60. On September 13, 2023, Chassen moved items from Arch Companies’ Dropbox folder to his personal account. (*See* Exhibit 17, Arch Companies Dropbox activity report for Sept. 13, 2023.) This was done from his house in the Hamptons.

61. Chassen’s claim that he would not approve hiring Aleksandr Vinokur as Arch Companies’ new information technology provider because he believed he had a responsibility to interview other IT providers before entering into any long-term contract with one (Chassen Aff.

¶59) is untrue. In the email chain in which Chassen addressed Mr. Vinokur's proposal, Mr. Vinokur expressly stated that he was offering his services on a month-to-month basis. (Exhibit 18.) At that time, Arch had no IT support whatsoever for its employees, which was highly detrimental to the company.

62. Chassen claims that he was unable to return to work following the Interim Order, because he was suffering from Covid-19. (Chassen Aff. ¶ 58.) However, given his past feigning of illness to avoid coming to the office, to the point of asking his coworkers to lie on his behalf, as discussed in paragraph 38 above, I was fully justified in being skeptical. And Chassen did not tell me about his alleged illness until after having already missed a number of days of work.

63. Contrary to Chassen's implication (Chassen Aff. ¶49), neither I, nor anyone acting at my direction, ever shut off Chassen's viewing access to the Arch Accounts. Chassen still has had such access, as of September 14, 2023 (*see* Exhibit 19, printout showing Chassen's access to Arch Accounts as of Sept. 14, 2023), and as of today.

64. My team and I have spent countless hours trying to unwind, restore, and fix the damage that Chassen caused to every bit of the company infrastructure. He had company passwords and authentications for company accounts going to his family members and to past employees with whom he had kept relationships, although they were not present in the office to use those resources. It was overwhelming to find the extent of corporate noncompliance that existed because of him. I proposed to bring in a very talented assistant (with a legal background) to help, yet Chassen was an obstructionist about this too. Besides corporate infrastructure issues, we found that our Quickbooks files were not even linked up with current staff in any way. We also had a tax lien being imposed on the Arch business. These are all matters that he was supposed to have been attending to in his corporate role.

Chassen Cannot Be Permitted to Have Signature Authority Over Any of Arch Companies' Bank Accounts, Whether with First Republic, Citizens, or Any Other Bank

65. Given Chassen's misconduct towards Arch Companies, in particular his misappropriation of funds from the Arch Accounts and failure to pay it back upon request, it is essential that Chassen not be granted signature authority, or any other transaction privileges, with regard to any bank accounts maintained by Arch Companies. That would represent yet another opportunity for Chassen to line his pockets at the expense of Arch Companies.

66. Chassen's actions contrary to the interests of the Arch Companies are consistent with the self-interested reason he provided in July 2023, prior to the coup, to remain with Arch Companies in the event of a 35 Oak buyout, wherein he wrote, "For me, because I want to keep income and make sure I protect to the best of my ability the significant equity F&F invested on my word." (Exhibit 20.) Absent from Chassen's response is any desire for the continued well-being of Arch Companies.

67. Besides demonstrating disloyalty on his part, Chassen's attempted coup is continuing to inflict damage on the Arch Companies, and third parties. Chassen's alleged claims have caused massive confusion in Arch corporate compliance and the authority of members, despite explicitly clear operating agreements.

Conclusion

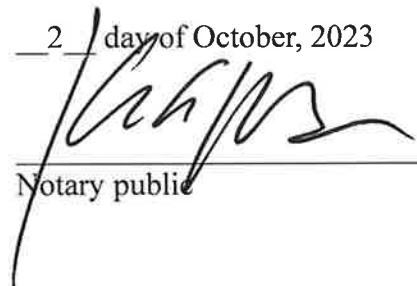
69. For the reasons set forth herein, and in the accompanying affirmation of Adam Leitman Bailey, and in the accompanying memorandum of law in support, it is respectfully requested that the Court deny Chassen's motion in all respects.



JEFFREY SIMPSON

Sworn to before me this

2 day of October, 2023



Notary public

KATHERINE A. HARVEY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01HA6052161
Qualified in Queens County
My Commission Expires December 11, 2026