

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – COMMERCIAL DIVISION

-----X
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

Index No. 158055/2023

-against-

Justice Joel M. Cohen

JARED CHASSEN and FIRST REPUBLIC BANK,

Defendants

-----X
JARED CHASSEN, individually and derivatively
on behalf of JJ ARCH LLC, as member,
and derivatively on behalf of
ARCH REAL ESTATE HOLDINGS LLC,
as member of JJ ARCH LLC,

Counterclaim Plaintiff

-against-

JEFFREY SIMPSON and YJ SIMCO LLC,

Counterclaim Defendants

-and-

JJ ARCH LLC and
ARCH REAL ESTATE HOLDINGS LLC,

Nominal Defendants

-----X
608941 NJ, INC.

Plaintiff

-against-

JEFFREY SIMPSON, JJ ARCH LLC and ARCH REAL
ESTATE HOLDINGS LLC,

Defendants,

-and-

ARCH REAL ESTATE HOLDINGS LLC,

Nominal Defendant

-----X

~~PROPOSED~~ ORDER FOR THE PRESERVATION OF PRIVILEGED MATERIAL

On November 3, 2023, this Court entered an Order To Show Cause Seeking A Temporary Restraining Order And Preliminary Injunctive Relief As An Alternative To Appointment Of A Temporary Receiver Of JJ Arch LLC [NYSCEF 321] granting a temporary restraining order providing that “pending the hearing of the Order to Show Cause, Oak will serve as managing member of AREH, owing all applicable duties to AREH and its Members.” Subsequently, on November 22, 2023, this Court entered an Amended Decision + Order On Motion [NYSCEF 418] amending its November 20, 2023 Interim Decision and Order [NYSCEF 412] and granting a preliminary injunction ordering that “during the pendency of this action and subject to further order of the Court,” “Oak shall continue to act in [Jeffrey Simpson and JJ Arch LLC’s] stead as AREH’s sole managing member in accordance with Section 7.1 of the Limited Liability Operating Agreement of AREH (the “Operating Agreement”), owing all applicable duties to AREH and its members.”

Now, in order to preserve and protect any privilege potentially applicable to email communications sent to or from Jeffrey Simpon’s email account maintained by Arch Real Estate Holdings (“AREH”);

It is now:

ORDERED that AREH's counsel, including counsel representing any company that is managed by AREH, (collectively "AREH's Counsel") in pending lawsuits, arbitrations, and proceedings other than the instant action (hereinafter "Other Proceedings") 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; and it is further

ORDERED that AREH's Counsel in Other Proceedings shall be permitted to identify and segregate from other documents to be reviewed for potential production in Other Proceedings emails contained in Jeffrey Simpson's AREH email account that are potentially privileged communications by and amongst Jeffrey Simpson, Jeffrey Simpson's personal counsel, counsel for JJ Arch LLC, or Griffin LLP acting as counsel to AREH (hereinafter, the "Segregated Documents"); and it is further

ORDERED that AREH's Counsel in Other Proceedings shall create a log of Segregated Documents making a record of all emails that constitute Segregated Documents (the "Segregation Log"). The Segregation Log shall contain only the date on which the email was sent, the time that the email was sent, the author of the email, and the recipients of the email including recipients that were carbon copied on the email. To the extent possible, the Segregation Log should be created by using metadata captured during document collection by e-discovery software. The substance of any communications contained in any Segregated Document shall not be reviewed. A copy of the Segregation Log shall be provided to Jeffrey Simpson; and it is further

ORDERED that AREH, any company managed by AREH, and AREH's Counsel in Other Proceedings are hereby restrained and enjoined from further accessing, reviewing, or producing any of the Segregated Documents without further leave of this Court; and it is further

ORDERED that 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; and it is further

ORDERED that Jeffrey Simpson is restrained and enjoined from producing any Segregated Document that is a communication with Griffin LLP acting in its role as counsel to AREH without first providing AREH's Counsel the opportunity to review the communication, object to its production, and seek a protective order in the Other Proceeding," if necessary; and it is further

ORDERED that this Order does not determine and shall not be construed as authority on the question of whether Jeffrey Simpson's AREH email account falls within the scope of discovery in any Other Proceeding or is within the possession, custody, or control of any party in any Other Proceeding; and it is further

ORDERED that this Order shall not be construed to restrict or limit the ability of any party in any Other Proceeding from seeking production via subpoena or appropriate discovery device of any documents within the possession, custody, or control of Jeffrey Simpson; and it is further

ORDERED that this Order shall not be construed to restrict any other Court or arbitral body from reviewing and determining any claim of privilege or any other claimed entitlement to any privilege, protection, or right to withhold materials from production in discovery that is asserted in any Other Proceeding in accordance with the law applicable in such Other Proceeding.

3/17/25

DATE



JOEL M. COHEN, J.S.C.