

SCHWARTZ LAW PLLC
150 Broadway, Suite 701
New York, NY 10038
Tel: 347-460-5379
Email: allen@allenschwartzlaw.com

November 25, 2024

VIA NYSCEF

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: Great American Insurance Company v. Simpson v. Arch Real Estate Holdings, LLC, et. al., Index No. 653208/2024

Dear Justice Cohen:

This firm represents Jared Chassen (“Chassen”) in the above-captioned action. We write in opposition to Jeffrey Simpson’s (“Simpson”) proposed Order to Show Cause (the “OSC”) seeking a temporary restraining order enjoining Mr. Chassen from “litigating with . . . Professional and Executive Insurance Carrier, Great American Insurance Company . . . so that Simpson is not precluded from seeking or obtaining insurance coverage to . . . provide counsel to attend to the various claims, counterclaims, and derivative claims where he is urgently harmed without representation.” NYSCEF No. 106. For the reasons detailed below, the Court should decline to sign the OSC.

I. GAIC Approved Coverage to both Mr. Simpson and Mr. Chassen, While Declining Coverage for JJ Arch

In 2023, GAIC issued coverage to Arch Real Estate Holdings, LLC (“AREH”) in the total amount \$3,000,000.00, inclusive of Costs of Defense (the “Policy”). NYSCEF No. 2. The Policy was a “claims made” policy with a policy period between April 18, 2023 and April 14, 2024. *Id.*

On or about November 22, 2023, GAIC provided coverage to Mr. Simpson under the Policy finding that Mr. Simpson qualified as the de facto managing member of AREH by virtue of his role as managing member of JJ Arch. NYSCEF No. 54. GAIC declined coverage to JJ Arch. *Id.*

Mr. Chassen made a claim under the Policy in late 2023, long before Mr. Simpson filed the bad-faith bankruptcy on March 7, 2024, and was approved for coverage on or about April 25, 2024. NYSCEF No. 104 at ¶ 25.

II. After Mr. Chassen Was Approved for Coverage, Mr. Simpson Refused Even a Single Cent Going to Mr. Chassen

According to GAIC’s interpleader complaint (the “Interpleader Complaint”), at the time of the filing GAIC had “advanced \$894,000.71 incurred by Simpson,” and so, at the time of the Interpleader Complaint, “\$2,105,999.29 remains of the Policy’s Limit of Liability.” NYSCEF No. 1 at ¶¶ 33, 35.

In or about April 2024, GAIC, recognizing that both Mr. Simpson and Mr. Chassen were covered, sought to reach an equitable compromise, and “offered to divide the remaining policy proceeds equally between Simpson and Chassen.” *Id.* at ¶ 8. But instead of accepting that compromise, Mr. Simpson refused any compromise. As GAIC states in the Interpleader Complaint, “Simpson rejected the proposal unequivocally and . . . threatened to sue GAIC if GAIC advances any Costs of Defense incurred on Chassen’s behalf.” *Id.* He “insisted that no Costs of Defense payments be made on behalf of Chassen.” *Id.* at ¶ 38. Mr. Chassen was told by GAIC that because Mr. Simpson refused any compromise, GAIC would not advance any of Mr. Chassen’s or Mr. Simpson’s legal expenses and would instead interplead the remaining funds.

III. In Addition to the \$894,000.71 GAIC Already Advanced to Simpson, Simpson Appears to have Incurred Several Hundred Thousand Dollars in Additional Legal Expenses in Connection with the Bad-Faith Bankruptcy

Offit Kurman, P.A., which represented Mr. Simpson personally in his bad-faith JJ Arch bankruptcy, has claimed here that it is owed \$133,037.69 under the Policy. *See* NYSCEF No. 43. Wiggin & Dana LLP, JJ Arch’s counsel in the bad-faith bankruptcy, claims that it is owed “approximately 350k.” NYSCEF No. 117, May 27, 2024, 10:51 a.m. email.¹ And it appears that Griffin LLP, JJ Arch’s co-counsel counsel in the bad-faith bankruptcy, claims that it is owed “241k.” *Id.*, May 27, 2024, 9:58 a.m. email. If those claims were to be paid out under the Policy, it would total \$1,618,037.80, more than half of the Policy, with Mr. Chassen yet to receive any reimbursement or advancement of any of his legal expenses despite also being covered under the Policy.

IV. On September 20, 2024, Mr. Simpson Caused JJ Arch to Remove this Proceeding to the Bad-Faith JJ Arch Bankruptcy

Despite the Bankruptcy Court finding that his removal of the action captioned *Simpson v. Chassen*, Index No. 158055/2023 was an act of improper forum shopping, (*In re JJ Arch LLC*, 2024 Bankr LEXIS 1347, at *46-47 (S.D.N.Y. June 10, 2024), on September 20, 2024 Mr. Simpson went ahead and removed this proceeding to his bad-faith JJ Arch bankruptcy anyways. NYSCEF Nos. 87-89. In dismissing the bankruptcy, the Bankruptcy Court found that this proceeding too was “brought before this Court by a purported principal of the Debtor motived by

¹ This email chain was also filed to NYSCEF on November 14, 2024 by Simpson in the action captioned *Simpson v. Chassen*, Index No. 158055/2023 at NYSCEF No. 929 in support of his request for affirmative relief.

a non-bankruptcy purpose.” *In re JJ Arch LLC*, 663 BR 258, 291 (Bankr S.D.N.Y. 2024). Mr. Simpson’s bankruptcy itself has been adjudged by the Bankruptcy Court to have been filed in subjective and objective bad faith and to have caused a substantial or continuing loss to or diminution to JJ Arch. *In re JJ Arch LLC*, 663 BR at 275-288 (dismissing bankruptcy for, inter alia, bad faith and gross mismanagement).

V. Mr. Chassen Has Brought Viable Claims against GAIC

On November 19, 2024, Mr. Chassen brought direct and derivative counterclaims against GAIC for aiding and abetting Mr. Simpson’s breaches of fiduciary duty, for tortious interference with Mr. Chassen’s rights under the JJ Arch Operating Agreement, for breach of the implied covenant of good faith and fair dealing, and for declaratory relief that any payments towards the unlawful bankruptcy do not dilute the Policy. NYSCEF No. 104.

The counterclaims allege that Mr. Simpson breached his fiduciary duties to Mr. Chassen and JJ Arch in filing the bad-faith bankruptcy, and GAIC “knowingly induced or participated in the breach, and that the plaintiff was damaged as a result of the breach.” *Smallberg v Raich Ende Malter & Co., LLP*, 140 A.D.3d 942, 944 (2d Dep’t 2016). “Knowing participation in a breach of fiduciary duty occurs when the defendant provides substantial assistance to the primary violator.” *Id.*

Not only did GAIC fund the bad-faith JJ Arch bankruptcy (GAIC claimed JJ Arch was not even an insured), but a recent email that Mr. Simpson filed to NYSCEF in support of his request for relief shows that GAIC reviewed and approved the bad-faith bankruptcy petition before it was filed, a petition wherein Mr. Simpson stated that he was the “sole member” based on the court nullified August 5, 2023 termination email, and despite court orders barring any further unilateral terminations. NYSCEF No. 114, March 7, 2024 4:43 p.m. email.² Another email he filed suggests that GAIC’s counsel and Scott Griffin, Esq. worked together since January 2024 to hatch the bad-faith bankruptcy filing. NYSCEF No. 116, Jan. 5, 2024 4:02 a.m. email.³ Mr. Simpson himself asserts in his memorandum of law that “GAIC saw the merits through KBR [its law firm] since there properties in many states, 2004 discovery would be an option and we would proceed on that basis . . . there is explicit evidence where GAIC endorses the bankruptcy.” NYSCEF No. 108 at 7-8.

The counterclaims also allege that GAIC tortiously interfered with Mr. Chassen’s consent rights under the JJ Arch Operating Agreement by intentionally and improperly procuring Mr. Simpson’s filing of the JJ Arch bankruptcy as “sole member” and without Mr. Chassen’s consent, that GAIC has acted with bad faith in favoring Mr. Simpson over Mr. Chassen, and declaratory relief that the payments to the bankruptcy are not Costs of Defense within the meaning of the Policy and thus the remaining policy funds are greater than the sum asserted by GAIC.

GAIC has until December 9, 2024 to file a responsive pleading to the counterclaims.

² See also *Simpson v. Chassen*, Index No. 158055/2023 at NYSCEF No. 926.

³ See also *Simpson v. Chassen*, Index No. 158055/2023 at NYSCEF No. 928.

VI. Mr. Chassen Opposes GAIC’s Proposal to Advance \$250,000.00 More of the Policy to Simpson while Advancing or Reimbursing Nothing to Mr. Chassen

On October 30, 2024, GAIC filed a letter to the Court proposing to advance Mr. Simpson a further \$250,000.00 under the Policy. NYSCEF No. 102. On November 4, 2024, Mr. Chassen sent a letter to GAIC in opposition. Mr. Chassen noted that GAIC has already paid nearly a third of the policy to Simpson without making any payments to Mr. Chassen despite finding that Mr. Chassen is also covered under the policy. Further, Mr. Chassen noted that Mr. Simpson’s refusal to accept any apportionment prompted GAIC to file the above-captioned interpleader action. After GAIC filed the interpleader action, Mr. Simpson then acted to delay the interpleader by causing JJ Arch to remove the interpleader action into his adjudicated bad-faith JJ Arch bankruptcy. Mr. Chassen urged that GAIC should not reward Simpson by disbursing more of the remaining policy proceeds to him—all while Mr. Chassen has received nothing—when it is Mr. Simpson’s implacable position with respect to the insurance funds that caused GAIC to stop payments and seek to deposit the funds with the Court. Mr. Chassen also informed GAIC that Mr. Simpson owns at least three income producing rental properties on Park Avenue in New York City and a second home in Southampton, New York. Mr. Simpson also continues to take funds from JJ Arch controlled entities.

All other interpleader defendants opposed GAIC’s proposal. *See* NYSCEF No. 102.

Mr. Simpson sent an email to Offit Kurman, P.A., with the Court copied, objecting to any payment to his former counsel. *See* Ex. A.

IV. Mr. Simpson Fails to Establish any Basis to Enjoin Mr. Chassen from Suing GAIC and the Court Should Decline to Sign the OSC

Mr. Simpson’s application is beset with procedural defects. Mr. Simpson’s affirmation is unsworn (*see* CPLR 2106) and he testifies to no facts, but simply restates his request for injunctive relief. *See* NYSCEF No. 107. While Mr. Simpson’s memorandum of law asserts facts, it is of no evidentiary value since those facts are contained in a memorandum of law. *Brown v Smith*, 85 A.D.3d 1648, 1649 (4th Dep’t 2011) (“[A] memorandum of law also has no evidentiary value.”). Mr. Simpson’s motion also does not comply with CPLR 2217(b) or 22 NYCRR 1250.4 and is not predicated on any claim in a pleading. Further, Mr. Simpson has defaulted in the interpleader action.

But beyond procedural defects, Mr. Simpson’s request should be denied based on his unclean hands. “It is an ancient maxim that he who comes to equity must come with clean hands.” *Amarant ex rel. Mercury Beach-Maid v D’Antonio*, 197 A.D.2d 432, 434 (1st Dep’t 1993). Mr. Simpson unclean hands are already an adjudicated fact. The Bankruptcy Court found that he filed the bankruptcy in both subjective and objective bad faith, removed proceedings for improper purposes, and breached his fiduciary disclosure obligations to the Bankruptcy Court and Chassen. *In re JJ Arch LLC*, 663 BR at 275-288. Now, incredibly, after incurring hundreds of thousands of dollars on the contemptuous, adjudicated bad-faith bankruptcy, he comes to this Court trying to

stop Mr. Chassen from seeking to recover from GAIC for substantially assisting his wrongdoing because he contends such claims are preventing GAIC from disbursing him more funds.

Further, equity does not favor Mr. Simpson when he refused any payment to Mr. Chassen and threatened to sue GAIC if they paid Mr. Chassen a single cent, which, according to GAIC's complaint, is what necessitated GAIC to file this interpleader in the first place. And equity does not favor Mr. Simpson when he removed even this proceeding to the Bankruptcy Court and delayed its adjudication—forcing Mr. Chassen to file yet another motion to remand before the Bankruptcy Court—only to now claim that he is entitled to emergency equitable relief.

There is also no authority that would support this Court enjoining Mr. Chassen from asserting legal claims such as the ones asserted here. Mr. Simpson establishes no basis to enjoin Mr. Chassen from suing GAIC and asserting legal claims predicated in part on Mr. Simpson's own misconduct that will be tested through the ordinary legal process. And while GAIC is seeking to enjoin Mr. Chassen from suing GAIC it in the context of this interpleader action pursuant to CPLR 1006 as a purported "disinterested stakeholder," the CPLR gives no authority to Mr. Simpson, as a claimant, to seek such relief. Further, "[i]t is well settled that courts have consistently declined to discharge interpleading stakeholders where such parties are potentially independently liable to the interpleaded defendants." *Transamerica Fin. Life Ins. Co. v Simmonds*, 2008 NY Slip Op 51907[U], *5 (Kings Co. 2008) (citing cases).

Finally, Mr. Simpson establishes no irreparable injury. Mr. Simpson does not even purport to establish that he is unable to afford counsel without the insurance proceeds; indeed, Mr. Simpson does not do this because he owns several Manhattan Park Avenue income producing rental properties, and two residences, including a second home in the Hamptons. And even if Mr. Simpson could establish that he cannot afford counsel, counsel is not a right in a civil proceeding.

I. Conclusion

Because Mr. Simpson's motion is procedurally defective, seeks relief that cannot be obtained by preliminary injunction, and does not establish his right to equitable relief, the Court should deny the TRO request and decline to sign the order to show cause.

Sincerely,

/s/
Allen Schwartz, Esq.

CC: All appearing parties via NYSCEF