

Simpson v Chassen

2024 NY Slip Op 34074(U)

November 18, 2024

Supreme Court, New York County

Docket Number: Index No. 158055/2023

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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JEFFREY SIMPSON, INDIVIDUALLY AND
DERIVATIVELY, AS MANAGING MEMBER OF JJ ARCH
LLC, SUING DERIVATIVELY AS MANAGING MEMBER
OF ARCH REAL ESTATE HOLDINGS LLC, JJ ARCH LLC,

Plaintiffs,

- v -

JARED CHASSEN, FIRST REPUBLIC BANK, YJ SIMCO
LLC, ARCH REAL ESTATE HOLDINGS LLC,

Defendants.

INDEX NO. 158055/2023

MOTION DATE 10/28/2024

MOTION SEQ. NO. 013

**INTERIM DECISION +
ORDER ON MOTION FOR
TEMPORARY
RESTRAINING ORDER**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 013) 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 761, 762, 763, 764, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876

were read on this motion for TEMPORARY RESTRAINING ORDER.

On October 20, 2024, Defendant Jared Chassen moved by order to show cause to modify this Court’s prior injunctive orders and for a temporary restraining order (“TRO”) prohibiting Plaintiff Jeffrey Simpson from “acting as managing member of JJ Arch” and placing Chassen in that position.

The Court initially declined to sign the proposed order to show cause because “the Court ha[d] been presented with a notice of removal of this case to federal District Court (NYSCEF 635), but ha[d] not yet been presented with a final order” from the federal courts remanding the proceeding to this Court (NYSCEF 708). On October 28, 2024, Chassen filed a notice of remand and attached an order by the Hon. John P. Mastando III, Judge of the United States

Bankruptcy Court for the Southern District of New York, remanding the case to “New York Supreme Court, New York County, Commercial Division” (the “Final Remand Order”) (NYSCEF 709, 710, 759).

Contemporaneously with filing the notice of remand, Chassen renewed his motion for a temporary restraining order and preliminary injunction restraining Simpson from acting as managing member of JJ Arch and putting Chassen in charge (NYSCEF 711). The Court indicated it would exercise jurisdiction on the basis of the of the Final Remand Order (NYSCEF 765). The Court conducted a hearing on October 30, 2024, regarding the requested TRO. At that hearing, Simpson appeared pro se on behalf of himself individually.

CPLR 6313 allows the Court to enter a temporary restraining order where the movant shows “that immediate and irreparable injury, loss or damages will result unless” the non-movant “is restrained.” Under CPLR 6314, a party may move to modify or vacate an injunction on a showing of “compelling or changed circumstances that render continuation of the injunction inequitable” (*see Wellbilt Equip. Corp. v Red Eye Grill, L.P.*, 308 AD2d 411, 411-12 [1st Dept 2003]; *see also Heublein, Inc. v R.H. Macy & Co.*, 25 AD2d 825, 825 [1st Dept 1966]). “[A] court has inherent power to modify its equitable directives” (*Wellbilt Equip. Corp.*, 308 AD2d at 411).

Upon reviewing the submissions by Chassen and Simpson (*see* NYSCEF 711-57; NYSCEF 805-76), and after considering their arguments made on the record at the October 30 hearing, the Court is amenable to Chassen’s argument that the original orders aiming to restore the status quo under the JJ Arch operating agreement as amended—and, accordingly, permitting Simpson to continue as JJ Arch’s managing member—may need to be revised due to Mr. Simpson’s subsequent conduct (NYSCEF 36, 86, 159, 412, 418-19, 604; *see also* NYSCEF 3-4).

However, the Court is not satisfied that Chassen has shown, on the current record, that the appropriate modification is to simply install *Chassen* as the managing member. Simpson has active claims against Chassen and has sought to remove him as a manager of JJ Arch since the outset of this litigation (*see* NYSCEF 1; NYSCEF 605), and there has not yet been a determination on the merits of those claims. Although Chassen has made a persuasive case that Mr. Simpson has not consistently acted in the best interests of JJ Arch, he also has not established that he is better able to serve that role. Aside from a letter from a single investor requesting Mr. Chassen's ascension, mainly out of frustration over Mr. Simpson's purportedly chaotic leadership, there is no evidence in the record to suggest that Mr. Chassen (rather than, for example, an experienced receiver) has the necessary skills to right the ship during the pendency of this lawsuit. He might, but that has not been established to the Court's satisfaction at this juncture.

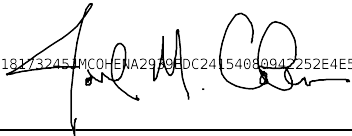
Furthermore, Chassen's motion seeks to modify an order granting in part *Mr. Simpson's* request for injunctive relief at the outset of this case. Modifying that order to effectively jettison Mr. Simpson, without any tether to Mr. Simpson's own claims, would be inappropriate. To obtain injunctive relief, Mr. Chassen must seek relief based on his affirmative claims for relief, perhaps with amendment to take into account recent facts and circumstances.

Accordingly, it is

ORDERED that the branch of Chassen's motion seeking a temporary restraining order that "Chassen shall act as managing member of JJ Arch" during the pendency of this motion is **denied with prejudice** on the current record, and the branch of the motion seeking a temporary restraining order which "enjoin[s] and restrain[s]" Simpson "from acting as managing member of

JJ Arch” is **denied without prejudice**. The Court will order full briefing of the motion for a preliminary injunction in a signed OSC.

This constitutes an Interim Decision and Order of the Court. **The Clerk is directed to mark this case restored to the active docket.**

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JOEL M. COHEN, J.S.C.

11/18/2024
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: