

UNITED STATES DISTRICT COURT
DIVISION OF ST. THOMAS AND ST. JOHN

10/12/12 10:15 AM

BOARD OF DIRECTORS OF
SAPPHIRE BAY CONDOMINIUMS WEST,

Plaintiff,

v.

GEORGE R. SIMPSON,

Defendant

CIVIL ACTION NO.
2004-62

DEFENDANT REQUESTS
A JURY TRIAL

**DEFENDANT GEORGE R. SIMPSON'S MOTION FOR SUMMARY
JUDGEMENT**

COMES NOW, the Defendant, George R. Simpson, Pro Se, and files this motion for summary judgement.

**I. SHORT CONCISE LIST OF MATERIAL FACTS
REQUESTED BY JUDGE SANCHEZ¹**

1. Arbitration was required by Sapphire Bay Condominiums West bylaws for this dispute, therefore this Court has no Jurisdiction:

This Court has no Jurisdiction in this case, because the by-laws of the Condo Association (ARTICLE XI) call for Arbitration to be completed prior to filing a lawsuit, and such arbitration was not performed.

The dispute covered by this lawsuit falls within the definition of the Arbitration clause (Article XI) of the By-Laws, and therefore this Court has no jurisdiction.

In Defendant's ANSWER to the Plaintiff's First Amended Complaint, Defendant made the following statement, *which the Court and Plaintiff refused to act upon.*

¹ Any motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 shall be accompanied by a separate, short, and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried. Only those facts which are material to the issues in dispute shall be included in the enumerated statement of facts. Each factual assertion shall be accompanied by a citation to the specific portion(s) of the record that support the assertion, including the exhibit, page, and line number. The Court will not consider factual assertions not supported by a citation to the record.

“There is no justifiable dispute, but if there were, it should be submitted to Arbitration as required by the Condo Association By-laws instead of filing a lawsuit with this Court.”

Citation: ¶ 8 through 13, pages 6 to 8.

2. Steven Kerschner was not qualified to be a Director, therefore Plaintiff did not have Standing to file or continue this lawsuit:

Steven Kerschner was not qualified to be a Director of Plaintiff Board of Directors when he was “elected” to the Board in September of 2003. He represented that he was a part owner of his mother’s condo unit. He became an owner of the unit in October of 2003 and there is no evidence that he was ever a part owner. Because Mr. Kerschner did not have the necessary bylaw required credentials to be a Director, therefore the Board was not duly constituted, and Plaintiff did not have standing to file the Complaint in the instant lawsuit.

Attorney Feuerstein keeps bringing up the fact that Judge Moore, in a hearing at the beginning of this lawsuit, ruled that Mr. Kerschner had title due to an unrecorded deed that Mr. Kerschner testified under oath he had, but never produced.

The only deed that Defendant has seen is filed with the USVI Land Office, and that Deed and Mr. Kerschner’s mother’s sworn affidavit shows that Steven Kerschner’s mother was the sole owner of the condo unit in September 2003, when Kerschner was “elected” to the Board when he was not qualified to be a Director. *Citation: ¶ 14 through 21, page 8 to 10, Exhibit 1.*

3. Jack Donohue, Jack Golden, and Jay DePol were not qualified to be Directors:

Jack Donohue, Jack Golden, and Jay DePol were not qualified to be directors, and therefore the Board was not legally constituted. Defendant Simpson served attorney Feuerstein with a request for documents. Three of the requests pertained to these three “Directors” qualification to become Directors. Attorney Feuerstein would not provide evidence that any of these three were qualified to be Directors. Therefore the Board was not duly constituted, and Plaintiff did not have standing to file the Complaint in the instant lawsuit.

Citation: ¶ 22 through 28, page 10 to 11, Exhibit 1AA and 2.

4. Illegal Proxies were used to elect “Directors”, therefore Plaintiff had no standing to file or continue lawsuit:

The by-laws of the Condo Association and the USVI Condominium Law require that the Proxy statement used to elect Board Directors designate a person to vote for the owner signing the Proxy. In fact, that is the definition of a Proxy, a contract which allows a

designee to vote for someone else. The Proxies used to elect all the Board members were not legal Proxies, because the Proxy failed to designate a person to vote on behalf of the owner signing the proxies. Therefore the Board of Directors of Sapphire Bay Condominiums West was not duly constituted, and Plaintiff did not have standing to file the Complaint in the instant lawsuit. *Citation:* ¶ 29 through 37, page 11 and 13, Exhibit 3.

5. Plaintiff Illegally filed lawsuit in violation of the USVI Trade Name Statute:

The Court should dismiss the Plaintiff's Complaint, because, at the time this lawsuit was filed, Plaintiff was in violation of the filing requirements of the USVI Trade Name Statute, and therefore is not allowed to initiate or continue a lawsuit in a Court of the US Virgin Islands.

Not registering the Trademark carries the very stiff penalty of barring the offender from suing or continuing a lawsuit in any Court of Law in the US Virgin Islands.

Therefore Plaintiff could not bring or continue the instant lawsuit. The instant lawsuit must be dismissed for failure to comply with the USVI Trade Name Statute. *Citation:* ¶ 38 through 46, Pages 13 to 14, Exhibit 3A.

6. Plaintiff sued the wrong party; Defendant Simpson is not the website owner:

The Defendant is not the website owner and did not control the use of Plaintiff objected to use of "their name" on the website www.sapphirebaycondos.com.

Had Plaintiff wanted to stop certain trade names from being used on a website, "www.sapphirebaycondos.com", Plaintiff should have sued the registered owner of the website in question. Plaintiff sued George R. Simpson, who did not then, and does not now, have dominion and control of the website in question.

Defendant has no control, whatsoever, over the website, and never did have any control of the website.

The Plaintiff, illegally constituted, sued George R. Simpson, because he had exposed fraud, embezzlement, and dishonesty on the illegally constituted Board, and those people, who were illegally sitting on the Board, wanted to get back at George R. Simpson.

Citation: ¶ 47 through 51, page 14 and 16, Exhibits 4 and 5.

7. Plaintiff cannot prove that damage claims exceed \$75,000:

The Plaintiff had no right to file the instant lawsuit in Federal Court. The Plaintiff has not shown that damages from the claims of Plaintiff would exceed \$75,000. In fact, Plaintiff knew all along that they had no standing to file any lawsuit, because they were

not a legally constituted Board of Directors under the laws of the US Virgin Islands.

Citation: ¶ 52. Pages 15 and 16.

Counterclaims: *Citation:* ¶ 53 through 79, page 16 through 20.

II: LEGAL STANDARD FOR SUMMARY JUDGEMENT

1. Summary judgement is appropriate only if the record shows that there are no genuine issues of material fact and the moving party is entitled to judgement as a matter of law. See Fed. R. Civ. P. 56 (c); see also 2-J Corp. v. Tice, 126 F.3d 539, 540 (3d Cir. 1997). Specifically, Rule 56(c) provides that summary judgement is properly rendered:
2. *“if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law. A summary judgement, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the amount of damages.”*
3. Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that there are no genuine issues of material fact in the dispute. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-32, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); Carter v. Exxon Co., 177 F.3d 197, 202 (3d Cir. 1999); Ideal Dairy Farms, Inc. v. John Labatt, Ltd., 90 F.3d 737, 743 (3d Cir. 1996). An issue of material fact is said to be genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).
4. When considering a motion for summary judgement, a court must view all facts and inferences in a light most favorable to the nonmoving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); Oritani Savings & Loan Assoc. v. Fidelity & Deposit Co. of Maryland, 989 F.2d 635, 638 (3rd Cir. 1993); Troy Chemical Corp. v. Teamsters Union Local No. 408, 37 F.3d 123, 125-26 (3rd Cir. 1994).
5. In determining if summary judgement is appropriate, the court’s function is not to weigh the evidence and determine the truth of the matter, but to determine whether there are genuine issues of material fact in dispute. Carter, 177 F.3d at 202. (citation omitted). The underlying purpose of summary judgement is to avoid a pointless trial in cases where it is unnecessary and would only cause delay and expense. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976), cert. Denied 429 U.S. 1038, 97 S.Ct. 732, 50 L.Ed.2d 748 (1977).

III: DISCUSSION

Standing

6. Plaintiff's Complaint has been without standing from the day the Complaint was filed. Plaintiff, in filing the lawsuit said they had standing, when they knew they did not have any right to file the lawsuit.
7. Defendant's answer to the Complaint included the following reasons why the Complaint should be dismissed.

Defendant's Relief Requested

- The Court should dismiss the Plaintiff's Complaint, because the Arbitration clause of the Sapphire Bay Condominiums West Association, to which Plaintiff and Defendant are bound, requires that Arbitration be used to try cases such as the one covered by this lawsuit.
- The Court should dismiss the Plaintiff's Complaint, because the Plaintiff is not a legally formed Board of Directors, due to the fact that Board Member Kerschner was not qualified to be a Director, and all the Directors were elected with illegal proxies, and therefore cannot represent the Condo Association in filing this lawsuit. Therefore Plaintiff has no standing in representing the Sapphire Bay Condominiums West Association of Owners.
- The Court should dismiss the Plaintiff's Complaint, because, at the time this lawsuit was filed, Plaintiff was in violation of the filing requirements of the Trade Name Statute, and therefore is not allowed to initiate or continue a lawsuit in a Court of the US Virgin Islands.
- Defendant is not the website owner and did not control the use of the Plaintiff objected to captioned phrase:

1. Arbitration Clause:

8. This Court has no Jurisdiction in this case, because the by-laws of the Sapphire Bay Condominiums West Association (ARTICLE XI) call for Arbitration to be completed prior to filing a lawsuit, and such arbitration was not performed.

**“ARTICLE XI
Arbitration**

Section 1. Arbitration. *If informal discussions of any dispute between a unit owner and the Board which shall fail to resolve the controversy, the issue shall be referred to arbitration. American Arbitration Association rules shall be observed. Each party shall select one arbitrator who shall agree upon a third arbitrator to be selected. The place of arbitration shall be St. Thomas unless an alternate place is agreed upon by both parties to the controversy.”*

9. The dispute covered by this lawsuit falls within the definition of the Arbitration clause (Article XI) of the By-Laws, and therefore this Court has no jurisdiction.
10. At a hearing held on June 20, 2005, the Honorable Brenda Hollar ruled that a different lawsuit filed by Sapphire Bay Condominiums West against George R. Simpson (Plaintiff in this case):
“...shall be dismissed due to lack of this Court’s Jurisdiction over disputes between the Condo Association and Owners. Such disputes between the Condo Association and owners must be handled in Arbitration per the requirements of the Sapphire Bay Condominiums West Bylaws Arbitration provisions.”
11. Plaintiff, who had sued Defendant Simpson in that case, was forced to withdraw their Complaint in three other suits against George R. Simpson, due to the Arbitration Clause of the bi-laws of the Sapphire Bay Condominiums West. Even though Defendant has motioned *four times to this Court* for Plaintiff to withdraw from the instant lawsuit, due to the Arbitration Clause, Plaintiff and the Court have refused to take the dispute from the instant lawsuit to arbitration, as required by the bylaws of Sapphire Bay Condominiums.
12. In Defendant’s “ANSWER” to the instant lawsuit “First Amended Complaint”, in response to Plaintiff’s paragraph 8, Defendant makes the following demand.

“There is no justifiable dispute, but if there were, it should be submitted to Arbitration as required by the Condo Association By-laws instead of filing a lawsuit with this Court.”

A Court may allow a lawsuit to continue, when the lawsuit continues with both parties not complaining, under the theory that both parties started down the road that way. But, from the beginning, this objection was made to the Court in Defendant’s

“ANSWER”, and the Court and the Plaintiff refused to act upon the demand of Defendant Simpson.

13. The instant lawsuit must be ruled in favor of Defendant Simpson, because the disputes in this lawsuit must be litigated by arbitration in accordance with the Arbitration Clause of the Sapphire Bay Condominiums West Condo Association.

2. Plaintiff Board of Directors of Sapphire Bay Condominiums West was/is not duly elected, was/is not legally constituted, because Steven Kerschner did not have the necessary credentials to be a Director.

14. The Board of Directors of Sapphire Bay Condominiums West is not a duly elected Board of Directors. The By-laws of Sapphire Bay Condominiums West require that Directors be an owner or spouse of an owner, and the By-laws require that a duly elected Board have 5 members. Mr. Steven Kerschner, Director and President of the Board, misrepresented himself as an owner, when he was not an owner.
15. The Plaintiff knew that these Directors were not qualified to be directors. The Plaintiff knew that this lack of qualification of Directors left the Board of Directors NOT DULY elected, and not able to file the instant lawsuit.
16. Plaintiff and Plaintiff's attorney Feuerstein represented that the Plaintiff was duly constituted, when they knew it was not.
17. *See:* Defendant's Exhibit 1 Title Report showing Barbara Kerschner, Steven's mother, as owner of Unit D-13, an apartment he claimed he owned, but he did not have any ownership in the apartment. Mr. Kerschner was neither owner, nor spouse of an owner, when he was elected to the Board in September on 2003.
18. Defendant's Exhibit 1 also contains a copy of the “Official Record” of the USVI Land Records office showing that Barbara Kerschner, not her son Steven, was the Sole Owner of Unit D-13. Note that the sworn AFFIDAVIT which is a part of this official record certifies that Barbara Kerschner is the sole owner of the property as of October 10, 2003.
19. Steven Kerschner was “elected” to the Board in September of 2003 – one month before he became an owner.
20. Since Mr. Kerschner was not qualified to be a Director, there were less than the bylaws required number of Directors, and the Plaintiff is/was not a “Duly elected Board of Directors of Sapphire Bay Condominiums West”.

Attorney Feuerstein's assertion that Judge Moore ruled that Mr. Kerschner had title.

Attorney Feuerstein frequently says that Mr. Kerschner had title to his mother's condo unit, due to an unrecorded title (deed). Mr. Kerschner testified to that effect at a hearing early in this lawsuit before Judge Moore. Such a valid title was not produced at the hearing, and no such title (deed) has ever been produced. Attorney Andrew Capdeville (attorney for the Plaintiff) also testified that that title existed. Defendant filed a motion with this Court to cite Mr. Kerschner for perjury, but that motion has never been acted upon by the Court. (See: Exhibit 1-AA)

Note, in the transcript of Mr. Kerschner's testimony, he says he was part owner for 22 years. He also says that he provided proof of that ownership to the Board. But that proof of ownership has never been provided to Defendant Simpson, in spite of repeated inquiries. There is absolutely no evidence of Mr. Kerschner's ownership. Judge Moore ruling that Mr Kerschner was a part owner was entirely based upon Mr. Kerschner's testimony, with no evidentiary support whatsoever, and is contradictory to the sworn Affidavit of Steven Kerschner's Mother.

That same "unrecorded deed" was discussed at the March 17, 2004 SBCW Board of Director's meeting. Defendant requested the "Documents" addressed in the minutes of the Board meeting, but the request was not fulfilled. No documents were received, should any documents exist.

See: Exhibit 2, page 4 Document Demand 5 and Response.

Demand:

"5. The minutes to the SBCW Board of Directors meeting of March 17, 2004, page 2, at the bottom of the page says Steven Kerschner's ownership of Unit D-13, "Steve Kerschner addressed the first point in the letter in detail with Documents. "Please provide copies of all of these "Documents" referenced in these minutes.

Response: (from attorney Feuerstein)

"The Plaintiff objects to this document demand on the grounds that without further information it cannot-extrapolate what "Documents" refers to, whether the above referenced Minutes are genuinely quoted, and further objects that whatever such "Documents" may be, the request had nothing to do with, and no relevance to the claims and causes of action in this matter".

The March 17, 2004 minutes have been placed on the record in this instant lawsuit by Defendant and on the record in other cases that Plaintiff has filed against Defendant Simpson. Those "Documents" supposedly were "proof of ownership" of Unit-13.

Why would Plaintiff not want them given to Defendant?

If Plaintiff is going to file EIGHT LAWSUITS against George R. Simpson, they should have had legal council, which would at least make sure that Plaintiff had standing.

21 Since Plaintiff is not a legally constituted Board of Directors, it cannot bring this lawsuit against Defendant.

3. Plaintiff Board of Directors of Sapphire Bay Condominiums West was/is not duly elected, was/is not legally constituted, because Jack Donohue, Jack Golden, and Jay DePol did not have the necessary credentials to be a Director.

22. Exhibit 2, attached hereto, dated July 9, 2012 is a copy of attorney Feuerstein's answers to Defendant's 25 (twenty-five) request for documents. Attorney Feuerstein, *in scores of pleadings for over two years*, was not being honest with the Court, saying that all 25 of these requests for Documents were protected by a March 4, 2010 Protection Order from another case in this Court.

23. After over two years of stating falsely that all 25 of Defendant's document requests were protected by the March 4, 2010 Protection Order, attorney Feuerstein admitted that only 4 of the 25 requests (not all 25, as he had been claiming for two years) for Documents were covered by a very limited Protection Order. (in Exhibit 2, attached hereto)

24. Attorney Feuerstein's refusal to provide documents in accordance with Defendant's request for Documents numbers 5, 12, 13 and 16 *amount to admissions by Plaintiff that "Directors" Jack Donohue, Jack Golden, and Jay DePol were not qualified to be directors*, and therefore the Board was not legally constituted.

25. Without being able to supply the basis for the election of officers, Plaintiff's representations of Standing in their Complaint cannot be proven, and the Lawsuit must be dismissed.

26. If these men were qualified to be "Directors", why can't Plaintiff supply proof of their qualifications? If Plaintiff wants to prove it has standing in the instant lawsuit, it must prove that all Directors are/were qualified to be Directors.

27. Plaintiff's attorney in his amended complaint, stated that the Board was "Duly Elected", when he knew it was not. Four of the Directors could not be qualified as Directors.
28. Because the Board was not "Duly Elected", and not "Legally Constituted", they did not have the authority to form (appoint) a nomination committee for the next year's election. And that year's directors, therefore, were not "Legally Constituted", because the nominating committee was not legally formed. This "Illegally Constituted" situation carried over to today, wherein none of the Directors is legally elected, and the current Board is not legally constituted.

4. All of the Plaintiff Board of Directors of Sapphire Bay Condominiums West were illegally elected, because the Proxies used to elect them were in violation of the provisions of the Condo Association Bylaws and in violation of the USVI Condominium Act.

29. Furthermore, the Plaintiff Board is not a duly elected Board of Directors, because all of the "directors" on the Board were elected with defective Proxies.
30. The by-laws of the Condo Association (ARTICLE IV, Sections 8. Voting and Section 9. Majority of the Unit Owners) and the USVI Condominium Law require that the Proxy statement designate a person to vote for the owner signing the Proxy. In fact, that is the definition of a Proxy, a contract which allows a designee to vote for someone else. The Proxies used to elect all the Board members were not legal Proxies, because the Proxy failed to designate a person to vote on behalf of the owner signing the proxies.
31. Two example proxies used to "elect" the Directors in the September 2003 and September 2004 election are attached hereto as Exhibit 3. These proxies were supplied to Defendant by Plaintiff's attorney Feuerstein, who confirmed that these were actual copies of proxies.
32. Because the Board was not "Duly Elected", and not "Legally Constituted", they did not have the authority to form (appoint) a nomination committee for the next year's election. And that year's directors, therefore were not "Legally Constituted", because the nominating committee was not legally formed. This situation carried over to today, wherein none of the Directors is legally elected, and the current Board is not legally constituted.

33. The Plaintiff knew that these Directors were not qualified to be directors, because they had been elected with defective Proxies. The Plaintiff knew that this lack of duly elected Directors left the Board of Directors NOT LEGALLY constituted and not able to file the instant lawsuit.
34. Plaintiff and Plaintiff's attorney Feuerstein represented that the Plaintiff was duly constituted, when they knew it was not.
35. Attorney Feuerstein's position about the proxies used by Plaintiff is that "there are many forms of Proxies". But the Plaintiff, after Defendant alerted them about the fact that the proxies were illegal, now uses a proxy form, which designates a person to vote for the person signing the proxy.
36. At the telephone conference held in the instant case by Judge Sanchez, attorney Feuerstein insisted that Judge Moore, in his hearing of August 9, 10, 2004 had ruled that the form of the Proxy used by Plaintiff was "legal". On Defendant's rereading of the entire August 9, 10, 2004 transcript, no discussion of Proxies was found. The question of Proxy legality came up in open Court a long time after the August 9, 10, 2004 hearing, before the Honorable Brenda Hollar (USVI Superior Court). Attorney Feuerstein and Defendant Simpson were present. Judge Hollar had been given a copy of the Exhibit 3 proxies. When she was reading it, she said:

"This in not a legal proxy, it doesn't designate a person to vote for the person signing the proxy".

37. The legal dictionary defines proxy as follows:

Proxy:

"A proxy is a person who is designated by another to represent that individual at a meeting or before a public body. It also refers to the written authorization allowing one person to act on behalf of another.

In corporate law, a proxy is the authority to vote stock. This authority is generally provided by the charter and bylaws of a corporation or by a state statute. If authority is not provided, a stockholder cannot vote by proxy. The record owner of the stock whose name is registered on the corporate books is the only individual who can delegate the right to vote. In the absence of an express requirement, no particular form is necessary for a proxy. It must, however, be evidenced by a sufficient written grant of authority. A proxy is not invalid if minor errors or omissions appear on the document.

Generally any power that a stockholder possesses at a corporate meeting can be delegated to a proxy. An ordinary proxy can vote on regular corporate business, such as the amendment of the bylaws. The proxy is not authorized to vote, however, on extraordinary corporate business, such as a merger, unless given special authority to do so. When a proxy acts within the scope of her authority, under agency principles, the stockholder is bound as if she acted in person."

Since the Board of Directors was illegally elected, without legal proxies, the Board was not legally constituted and could not bring this or any other lawsuit.

5. The Court should dismiss the Plaintiff's Complaint, because, at the time this lawsuit was filed, Plaintiff was in violation of the filing requirements of the Trade Name Statute, and therefore is not allowed to initiate or continue a lawsuit in a Court of the US Virgin Islands.

38. Defendant knows that SBCW did not own the name Sapphire Bay Condominiums West at the time Plaintiff filed the instant lawsuit. Plaintiff had not registered the Trademark or Service Mark, "Sapphire Bay Condominiums West", and therefore had no right to claim protection under any law.
39. Defendant was able to register "Sapphire Bay Condominiums West" for ownership in his own name, therefore that fact alone proves that Plaintiff was not in compliance with the Statute, which required registration of the Trademark or Service Mark.
40. Not registering the Trademark carries the very stiff penalty of barring the offender from suing or continuing a lawsuit in any Court of Law in the US Virgin Islands.
41. Therefore Plaintiff could not bring or continue the instant lawsuit. The instant lawsuit must be dismissed for failure to comply with the USVI Trade Name Statute.
42. Plaintiff did not have standing in this or any other Court in the US Virgin Islands. Plaintiff was in violation of the filing requirements of the Trade Name Statute (Ch. 21, T11 § 1201 Registration of business name by person, partnerships, and associations) at the time of filing of this lawsuit.
43. The Trade Name Statute stipulates (Ch. 21, T11 § 1201 Effect of failure and neglect), that the "association .. required by the provisions of this chapter, to file a certificate and pay a registration fee, and failing to do so may not commence or maintain any action in any Court of the United States Virgin Islands for the enforcement of any

right or obligation arising out of doing business in the United States Virgin Islands...”.

44. At the time this lawsuit was filed, Plaintiff had not filed the required certificate with the Lieutenant Governor’s Office; Plaintiff was in violation of the Trade Name Statute. In fact, it was not until more than a year after the filing of this lawsuit that Plaintiff received the required certificate showing ownership of its name “Sapphire Bay Condominiums West”.
45. The Plaintiff’s instant Complaint arises out of Plaintiff’s “doing business in the United States Virgin Islands”, therefore, by law, Plaintiff is (was) not allowed to “commence or maintain” this action in this Court in the United States Virgin Islands.
46. Therefore: Plaintiff’s Complaint in the instant lawsuit must be dismissed and a summary judgement entered in the name of Defendant, George R. Simpson. Exhibit 3A is a sworn AFFIDAVIT from Elmo D. Roebuck, Jr, “Director of the Division of Corporations and Trademarks of the Office of Lieutenant Government of the Virgin Island”. He confirms, that even one year after the filing of the instant lawsuit, (the date that the trade name, by law had to be filed) there was no filing in the name of “SAPPHIRE BAY CONDOMINIUMS WEST”. He says:

“That after a careful search of the trade name records, a trade name certificate bearing the name SAPPHIRE BAY CONDOMINIUMS WEST could not be found, evidencing its filing in the Virgin Islands with the Office of the Lieutenant Governor, Division of Corporations and Trademarks”.

Judge Moore, in the August 2004 hearing, ruled that, even though Plaintiff had not complied with the Trade Names Statute, that because they had filed their bylaws with another part of the USVI Government, they should not have to comply with the “no lawsuits” provision of the statute. Judge Moore made up a new law with that ruling, which is outside of his authority.

Plaintiff’s Complaint should be dismissed, because Plaintiff was not registered in the *Virgin Islands with the Office of the Lieutenant Governor, Division of Corporations and Trademarks*, and therefore could not bring or continue the instant lawsuit

6. The Defendant is not the website owner and did not control the use of the Plaintiff objected to use of “their name” on the website “www.sapphirebaycondos.com”.

47. Had Plaintiff wanted to stop certain trade names from being used on a website, "www.sapphirebaycondos.com", Plaintiff should have sued the registered owner of the website in question. Plaintiff sued George R. Simpson, who did not then, and does not now, have dominion and control of the website in question.
48. Attached, hereto, are Exhibits 4 and 5, sworn Affidavits from 1) The Internet Provider for the website www.usvicondos.com and www.sapphirebaycondos.com, and 2) the Owner of the successor website (www.usvicondos.com) which was the subject of the instant lawsuit.
49. Defendant has no control, whatsoever, over the website, and never did have any control of the website.
50. The Plaintiff, illegally constituted, sued George R. Simpson, because he had exposed fraud and dishonesty on the illegally constituted Board, and those people, who were illegally sitting on the Board, wanted to get back at George R. Simpson. Defendant Simpson had uncovered \$1 Million of embezzlement, which the "Board" ignored.
51. Furthermore, the site is not a Commercial site. Therefore, once there was notice that Plaintiff wanted certain words to be removed, and they were removed by the site's owner, that is all that is necessary for an "Attack Website" or a "Whistle Blowers" website to conform to the law and avoid a claim of infringement.
- USVICondos.com, like its predecessor. SapphireBayCondos.com is an editorial site with no commercial content or purpose. It operates under the finest tradition of "tell it like it is" 1st Amendment Journalism. Today, the site is continuing to expose an enormous amount of corruption, law breaking, extortion, and mis-management at Sapphire Bay Condominiums West.
- The USVICondos.com site and the SapphireBayCondos.com site are not commercial. Judge Moore's ruling that the subject website of the instant lawsuit was a "commercial" site on the internet has no evidentiary support in the law and equity, and the ruling should be reversed by this Court.
- The ruling that the site is a "commercial speech" site has no basis in fact or law, and that ruling should be overturned.

7. The Plaintiff had no right to file the instant lawsuit in Federal Court. The Plaintiff has not shown that damages from the claims of Plaintiff would exceed \$75,000. In fact, Plaintiff knew all along that they had no standing to file any lawsuit, because of items 1 through 5 above.

52. Because Plaintiff had no standing to file this lawsuit, they should be sanctioned by this Court. The lawsuit should be dismissed and a summary judgement entered in the name of Defendant Simpson.

Counterclaim

53. Defendant, in his "Answer to Plaintiff's Amended Complaint" gave the following counterclaim (under the caption of "Defendant's Relief Requested"):

"The Court should reverse the Temporary Injunction rulings issued by this Court, and hold a hearing to receive evidence and hear testimony, so the Court can determine appropriate damages due Defendant."

The Court and Plaintiff chose to ignore that statement, and continue to damage Defendant for over eight years. Plaintiff should be forced to compensate Defendant Simpson for his damages.

Defendant's Basis for Damages in Counterclaim

54. Plaintiff and their attorneys Andrew Capdeville and Alan Feuerstein have known that they had no right to be in court with this Case, and that there was no basis for the case. Since the case came to Court, Defendant has proven that there were (are) now, additional reasons have surfaced that the Plaintiff has no right to be in Court (items 1 through 6 above).
55. Attorney Feuerstein's refusal to provide documents in accordance with Defendant's request for Documents numbers 5, 12, 13 and 16² amount to admissions by Plaintiff that "*Directors*" Steven Kerschner, Jack Donohue, Jack Golden, and Jay DePol were not qualified to be directors, and therefore the Board was not legally constituted.
56. Without being able to supply the basis for the election of officers, Plaintiff's representations of Standing in their Complaint cannot be proven, and the Lawsuit must be dismissed.
57. If these four men were qualified to be "Directors", why can't Plaintiff supply proof of their qualifications? Plaintiff must prove that Plaintiff has "Standing", which requires proof that all Directors are/were qualified to be Directors. Plaintiff provides no

evidence that the men were qualified to be Directors of Sapphire Bay Condominiums West Board of Directors.

58. Defendant Simpson had already provided this Court with a copy of a sworn affidavit from "Director" and Board President Steven Kerschner's mother proving that Steven Kerschner's own stated qualifications to be Director were untrue. He claimed to have been a part owner of Condo Unit D-13, when he was elected to the Board. His mother's sworn affidavit stated that she (his mother) had been the sole owner of the Condo Unit at that time.
59. This is proof that Kerschner was not qualified, and without a full complement of Directors specified by the by-laws, the Board is not legally constituted. The lack of representation that Golden, Donohue, and DePol were qualified to be Directors add further proof of the fraud that has been going on for at least ten years.
60. Attorney Feuerstein's refusal to provide copies of Proxies requested in Defendant request for Documents number 20, would suggest that the proxies from all the years 2002, 2003 and 2004 were illegal (as the 2003 Board Election Proxy provided to the Court by Defendant Simpson was illegal – It did not designate a person to vote the Proxy). Exhibit 3 contains copies of two separate signed Proxies from the 2004 Election of the Board. The same proxy form was used for the election in September 2003. The Proxy samples were provided by attorney Feuerstein to George R. Simpson in 2006), which did not designate a person to vote the Proxy, and therefore was illegal, in violation of the Condo Association bylaws and the USVI Condominium Act.
61. Plaintiff's illegal and frivolous lawsuits forced Defendant Simpson to stop working on his computer businesses and work almost full time fighting Plaintiff and their lawyers, who bombarded Defendant Simpson with motions for more than eight years.
62. George R. Simpson has spent his entire career (since graduating from Engineering School) as a computer entrepreneur. (His resume is attached as Exhibit 6)
63. In 2002, he started to develop software for an "online file backup" business. It is Defendant's belief that he was the first to work on such a project. Defendant

² Defendant requested that Plaintiff's attorney provide proof that Directors Kerschner, Donohue, Golden, and DePol were qualified to be directors. Attorney Feuerstein refused to provide any document for any of the pretend Directors.

Simpson's "online file backup" became named "FileSavior", with website www.FileSavior.com – reconstructed as www.filesavior.net.

64. Stephanie Simpson and Defendant George R. Simpson are unable to find reliable third-party sources of market value, but they estimate the "online file backup market", today, is an over a billion dollar industry, and still growing fast.
65. Defendant Simpson developed working prototypes of "FileSavior" in 2002 and alpha/beta tested it for over three years, all the while refining and improving it.
66. In 2003, Defendant Simpson brought his daughter, Stephanie Simpson, on to the FileSavior project as *Director of Product Development*. Ms Simpson is a college graduate mechanical engineer and an experienced marketing and program manager with extensive experience in high-tech computer businesses. Ms Simpson's responsibilities included the marketing, website development, business planning, and fund-raising for the FileSavior business.
67. In 2005 and 2006, it became evident that Defendant Simpson was going to have to spend most of his time fighting frivolous lawsuits, which were illegally and maliciously started and continued by Plaintiff. They had filed eight suits against him, and he was forced to file four lawsuits to try to recover some of his losses.
68. There can be no question that Plaintiff Board of Directors knew they were not duly elected, and had no right to run the business of Sapphire Bay Condominiums West. They were spending about \$1 Million Dollars (\$1,000,000) a year without the authority to do so.
69. Likewise, there can be no question that the lawsuits against Defendant Simpson were frivolous, without any merit, whatsoever, and every illegal member of the Plaintiff Board of Directors knew it.
70. *But attorney Feuerstein was very clever at keeping "a good thing going".*
71. Even though attorney Feuerstein knew that his lawsuits against Simpson had no merit, they were making big monies for attorney Feuerstein. He has billed Plaintiff over \$1 Million in the eight years that he has continued litigation against Defendant George R. Simpson
72. Because of the amount of time required for the Sapphire Bay Condominiums West initiated lawsuits, Defendant Simpson had to suspend FileSavior. Stephanie Simpson was let go, and the project died.


73. And Defendant's other businesses (Suffolk Research Service, Inc. and Office Management Systems Corp.) diminished in size. What had been businesses producing over \$350,000 per year became marginal businesses producing less than \$40,000.
74. Defendant Simpson seeks \$150,000,000 (One Hundred and Fifty Million Dollars) in Damages from Plaintiff to cover his damages from losing his lead in the "Online File Backup Market" with his FileSavior Software Product, and then, having to abandon it entirely.
75. When you get sued, you have to defend yourself. If you do not have the funds to hire competent legal help, you must act as your own attorney. That is what Defendant was forced to do.
76. Had Defendant Simpson had competent outside lawyers, his legal bills would have been over \$1Million (and still climbing) defending these frivolous lawsuits without merit, initiated and continued by Plaintiff's illegal Board members.
77. Because of the malicious and frivolous activities of Plaintiff and their attorneys, described herein, Defendant Simpson was forced to give up a \$150,000,000 (one hundred and fifty million dollar) "FileSavior.com" business opportunity, and those moneys should be paid to Defendant Simpson by Plaintiff.
78. In addition to the Plaintiff induced loss due to FileSavior.com having to be abandoned, Defendant Simpson has experienced millions of dollars in damage to his reputation. Because Plaintiff has filed eight frivolous lawsuits against him, he has become the target of ridicule, and a website has been erected to monitor the progress of the lawsuits. See: <https://sites.google.com/site/simpsonlitigation/home>
79. A partial summary judgement must, therefore, be entered in favor of Defendant, as to Plaintiff's liability on Defendant's counterclaims. The amount of damages, however, should be determined by a trial.

FOR THE FORGOING REASONS, Defendant requests that the Court issue an Order for Summary Judgement in favor of Defendant, reserving decision on amount of damages/counterclaims, until a trial is held.

Respectfully Submitted:

GEORGE R. SIMPSON, PROSE

DATED October 12, 2012

By: 

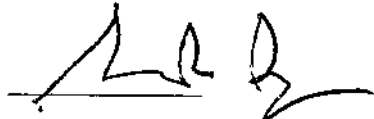
George R. Simpson
PO Box 775
Hampton Bays, NY 11946
631-357-9502

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing pleading was served by mailing the same, postage prepaid, by hand delivery or by facsimile on the 12th day of October, 2012..

To: Alan Feuerstein
Feuerstein & Smith, LLP
475 Delaware Avenue
Buffalo, New York 14202-1303

Via: Mail Fax Hand

A handwritten signature in black ink, appearing to be 'ALB', is written over a horizontal line.