

No. _____

**IN THE SUPREME COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

**In RE Sapphire Bay Condominiums West Board of Directors,
Respondent**

**The Honorable Dawn L. Henry, Esq Commissioner
The Planning Organization,
Respondent**

PETITION FOR WRIT OF MANDAMUS

Petitioner:

George R. Simpson
Hampton Bays, NY 11946
Email: info@suffolkresearch.com

Respondents:

Sapphire Bay Condominiums West
6345 Estate Smith Bay
St Thomas, VI

Dawn L. Henry, Esq., Commissioner of
The Department of Planning and Natural
Resources
Cyril E. King Airport
Terminal Building, 2nd Fl.
St. Thomas, VI 00802

LIST OF PARTIES AND COUNSEL

Petitioner:

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Email: info@suffolkresearch.com

Respondents:

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WEST

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STATEMENT OF THE CASE

Respondents:

1. Sapphire Bay Condominiums West (SBCW), an un-incorporated association.
2. The Department of Planning and Natural Resources, Coastal Zone Management, Dawn L. Henry, Esq., Commissioner

Relief Requested:

It is requested that the Court order the Coastal Zone Management Department to enforce the law, requiring SBCW to file for permits and pay the applicable fines. SBCW should be ordered to apply for and obtain permits for all the unfiled CZM and Building Permits. The SBCW units and commons areas should be closed during the Permit application and approval period.

George R Simpson should be awarded \$5 million dollars to compensate him for his losses and troubles associated with SBCW Coastal Zone Management and Building Permit unlawful activities.

Statement of Jurisdiction

This Writ of Mandamus is filed in accordance with Rule 21 of the Federal Rules of Appellate Procedure and the USVI Supreme Court Rules of Appellate Procedure, and Rule 13, Writs of Mandamus and Prohibition Directed to a Judge or Judges and Other Extraordinary Writs.

Introduction:

This Writ of Mandamus outlines horrific CZM Permit and Building Permit lawbreaking for at least 12 years by the Board members of Sapphire Bay Condominiums West Association.

Many different Boards of Directors of SBCW for years exposed owners and their guests to danger due to construction projects, which had no permits, were not inspected – and therefore were *unsafe*.

As important, due to the non filing of permit applications, SBCW condo owners were subjected to enormous liability for the payment of catastrophic fines for lawbreaking by the un-incorporated SBCW association, which liability must be shared with the owners.

Detailed herein are penalties of over 1.5 Billion Dollars.

Background:

George R. Simpson, who filed this Writ, and his wife bought a condo unit (# C-4) at SBCW in 2003. They soon recognized serious problems with the way the SBCW Condo Association was managed, and Simpson detailed the violations in a Memo to the Board.

That memo started an avalanche of lawsuits filed by the SBCW Board of Directors, its Board members and its General Manager, against George R. Simpson.

Five lawsuits were filed against Simpson.

It took twelve years for all of the lawsuits to conclude, and *Simpson prevailed in each of the lawsuits*.

In 2005, Simpson sold his condo unit and left the Virgin Islands, in large part because of the unsafe premises created by the many CZM and Building Permit violations. Simpson wishes to come back to Sapphire Bay Condominiums West, but will not do so until the CZM and Building violations are fixed.

Statement of Facts

Nature of the Case

The condominium association, Sapphire Bay Condominiums West, knowingly and intentionally performed many development projects in violation of the Coastal Zone laws and Building Permit laws of the US Virgin Islands government. Many unlawful activities have existed for over thirty (30) years.

All of the members of the association's Board of Directors have known about these unlawful activities (and done nothing to rectify them) for at least twelve (12) years.

The fines for these lawbreaking activities number in excess of \$1,593,750,000 (1.59 Billion Dollars).

Nature of the Violations and the Fines required by USVI Code

For CZM Permit violations: The USVI Code Title 12, Chapter 21, provides the following:

“(c) (3) In addition to any other penalties provided by law, any person who intentionally and knowingly performs any development in violation of this chapter shall be subject to a civil fine of not less than one thousand dollars nor more than ten thousand dollars per day for each day during which such violation occurs.”

The figure \$10,000 per day was used below, because of the many violations, for over 30 years in some cases.

For Building Permit violations: The USVI Code Title 29, Chapter 5 provides the following

“(g) Any person who fails to secure a permit or certificate under this chapter of regulation, fails to pay the permit or certificate fee, or violates any provision of any permit or certificate issued under this chapter or regulation shall be subject to a civil penalty of \$1,500 per day per violation.”

For penalties for CZM violations. The USVI Coder Title 21 says:

(c) (2) “Any violation of this chapter or any regulation or order issued hereunder shall constitute a misdemeanor. Any person convicted of such a violation shall be fined in accordance with the provisions of subsection (c), paragraph (1) hereinabove, or imprisoned not more than one year, or both.”

Unsafe Facilities

Projects Without Permits

All the Directors, the three General Managers, and the association’s two attorneys, Alan Feuerstein and Andrew Capdeville, allowed the owners and their guests to be subjected to the danger of un-inspected premises. All 110 condo units are unsafe due to the installation of new electrical service by an unlicensed electrician, Rupert Butts, which work *was not* covered by a building permit and was not inspected by a building inspector. (See Appendix 3)

Replacement of 31 Staircases

Thirty-one metal staircases were fabricated, replacing wooden staircases. These replacement staircases were built without a structural engineer, without drawings, and without CZM permits or building permits or inspections. (See Appendix 1)

Moving of Air Conditioning Condenser Units from the Roof to the Ground Below

When the Condos were constructed, the Condenser units for the AC were placed on the roof of each Condo unit. These Condenser units were moved from the roof to the ground without building permits or inspections. (See Appendix 2)

Installed Fresh Water From Sea Water Plant.

A fresh water plant was installed without any CZM or Building permits. (See Appendix 4)

Installed Replacement Fresh Water From Sea Water Plant.

The original freshwater plant was replaced with a new plant, without any permits.

(See Appendix 4)

Installed Lights Along the Paths of the Condo Units.

Lights were installed along the paths of the SBCW units, without permits.

An Estimated 300 Construction Projects Initiated and Completed at SBCW Without Building Permits.

110 projects involving the installation of revised electric service were completed in the condo units at SBCW. Many more projects involving plumbing and electrical changes were also completed at SBCW.

None of the projects were issued building permits.

Estimates of Penalties:

| Project | Required | Days since instal | Calculated Fine | Reference |
|--|--|--|-------------------------------|------------------|
| Install about 31 replacement staircases. | CZM Permit required | 5,475 days \$10,000/day | \$54,750,000 | Appendix 1 |
| Move 110 air conditioning condenser units from roof to ground | CZM Permit required | 5,200 days \$10,000/day | \$52,000,000 | Appendix 2 |
| Install a fresh water from sea water plant | CZM Permit required | 6,000 days \$10,000/day | \$60,000,000 | Appendix 4 |
| Replace fresh water from sea water plant | CZM Permit required | 1,200 days \$10,000/day | \$12,000,000 | Appendix 4 |
| Install lights along path around the condo property | CZM Permit required. | 6,500 days \$10,000/day | \$65,000,000 | --- |
| An estimated 300 construction changes without building permits | Building permits required for all construction modifications were not obtained | 300 violations 3,000 days \$1,500 / day. | <i>\$1,350,000,000</i> | Appendix 3 |
| <i>Total</i> | | | <i>\$1,593,750,000</i> | |

Argument:

Every SBCW Owner and Every SBCW Board Member Knew About the CZM and Building Code Violations as Far Back as September, 2004.

In September 2004, George R. Simpson filed a counterclaim in case Superior Court Civil 168. That counterclaim detailed the SBCW CZM and building code violations. (See Appendix 5).

That counterclaim motion was never answered by SBCW attorney Capdeville. Neither did the Court answer any of Simpson's motions pertaining to the CZM and building code violations.

In 2015, Simpson again filed this counterclaim with the USVI Supreme Court.

Each of the 110 owners was sent two letters detailing the CZM and building code violations. (October 25, 2010 <http://usvicondos.com/letter.pdf> and January 4, 2011. <http://usvicondos.com/dec.pdf>).

Therefore, no owner can claim that they have not been informed of the CZM and building permit violations; they have known of the violations for at least the last six years.

The website containing these two letters and the disclosure of the CZM and building permit violations. (<http://usvicondos.com/Unsafe.html>) was the subject of two lawsuits filed by the SBCW Board of Directors against George R. Simpson.

It should be noted that the Board of Directors of SBCW and the Board's attorney, Andrew Capdeville, sued George R. Simpson over content on the website www.usvicondos.com. (USVI Superior Court, CIVIL NO. 168/2004, USVI District Court CIVIL NO.2004-62)

Simpson won all three lawsuits.

Since 2005, a website, www.usvicondos.com has contained a detailed analysis of the SBCW CZM and building permit violations.

(See: <http://usvicondos.com/Unsafe.html>)

Certainly each of the many Directors for the last twelve years were aware of the CZM and building violations, and the association's two attorneys were aware of the CZM and building violations. The three Condo General Managers were also aware of the CZM and building violations. (Frank Barry was General Manager of SBCW until 2006)

How Can This Law Breaking for So Long By So Many Be Explained?

The attitude of owners at SBCW was that the USVI Government was a "Banana Republic", which doesn't enforce its laws. Mr. Simpson's impression of meetings with inspectors at the Department of Planning and Natural Resources was that they were content to look the other way. They were indifferent to their policing responsibilities, with an attitude of: "*Don't rock the boat*".

George R. Simpson reported the CZM and Building Code violations to Planning and Natural Resources inspectors three times (in 2004, 2011, and 2016). Nothing was done to fix the problem.

Who Should Go to Jail?

The VI code requires that individuals who have the knowledge of the CZM violations and the ability (authority) to fix the CZM violations, but don't fix them, go to jail.

By that criteria, at least 30 Directors in office between 2004 and this year must go to jail.

The International Building Code says that any *un-inspected building change is unsafe*.

All the Directors, the three General Managers, and the association's two attorneys, Alan Feuerstein and Andrew Capdeville, allowed the owners and their guests to be subjected to the danger of un-inspected premises. All 110 condo units are unsafe due to the installation of new electrical service by an unlicensed electrician, Rupert Butts, which work *was not* covered by a building permit and was not inspected by a building inspector¹. .

In summary of the violations, CZM violations: 31 metal staircases replacing wooden ones, 110 air conditioner condenser units moved from the roof to the ground, the installation of *two* fresh water from sea water plants, and installation of lights on paths around SBCW grounds. Building permit violations: 300 projects involving electrical, plumbing and structural changes in the condo units without building permits and inspections.

All the Directors who were in office over the last twelve years, the three General Managers, and the above named two attorneys should go to jail and pay fines stipulated by V.I.C. Title 12, Chapter 21, Paragraph 913, (c) (g).

Certainly the two attorneys ought to be jailed and disbarred. By their position as "*officers of the Court*", they have an extra responsibility to abide by the law, and advise their clients to do so.

Key condo association officers, particularly, should be considered for jail terms: Steven Kerschner and Stephen Sokolow, Board President and Vice President, who were in 2004 made aware of the violations, and recent Board Presidents: Steven Kerschner, William Dzio and Nancy Giges.

¹ In 2005, Rupert Butts moved off island

George R. Simpson's Interest in Solving These Problems

Why is George R. Simpson interested in solving these problems, since he is no longer an owner of a condo unit?

Mr. Simpson and his wife were owners of SBCW unit C-4 in 2003, 2004 and 2005. They were forced to sell their unit, in large part by the unsafe premises caused by the CZM and building permit violations. Mrs Simpson is afraid of being killed due to CZM and unsafe Building Code violations.

The Simpsons liked the SBCW beach and the condo units. Mr. Simpson's wife, Jean, is an avid snorkel diver, and she believes that the snorkel diving off the beach at SBCW is *unmatched, anywhere in the world.*

After the code violations are fixed at SBCW, the Simpsons plan to buy another unit and reside at SBCW.

Simpson's Damages

Due to the fact that George R. Simpson was persistent in his demands for the SBCW Board to fix the code violations, he was subjected to relentless harassment by Board members, the Board's attorneys and General Manager. The attorneys had him assaulted in the Superior Court house, resulting in his having a TIA (mini stroke). He and his wife were assaulted in the Condo parking lot, resulting in his wife having to go to the hospital ER with a head wound which required many stitches. George R. Simpson, due to the stress induced by the harassment, contracted a serious case of prostate cancer which he has to this day. Mr. Simpson also has frequent TIA's resulting from the assault.

SBCW shall be ordered to pay George R. Simpson, \$5 Million (Five Million Dollars). for damages caused to him and his businesses.

How Would SBCW Pay a *Billion Dollar+ Penalty?*

SBCW is an unincorporated association. The 100 plus owners are subject to the USVI code “*Joint and Several*” statute. There are owners with substantial assets, and it is expected that they, collectively, will be able to pay the fines.

Conclusions

The degree of irresponsibility for twelve years by SBCW Board Members is unimaginable. No CZM permits were applied for. Construction modifications were made to all units of the Condo facility. No building permits were applied for in decades.

The consequences of this irresponsibility are enormous. According to the International Building Code, *un-inspected building changes are unsafe*. Hundreds of building changes were made without building permits, all of which were un-inspected, and unsafe.

In September of 2004, George R. Simpson filed a counter claim (Appendix 5, Superior Court, Civil 2004/168) detailing the violations complained about in this WRIT.

According to the VI Code, all 30 Directors who were in office from 2004 through 2016 should go to jail.

All of the Directors of the Condo Association and their attorneys and General Managers were aware of the CZM and Building Permit violations for at least the last twelve years, yet no steps were taken to fix the enormous violation problems – EVER. They had total indifference to the safety of the facilities and the financial condition of its owners.

The fines for this irresponsibility amount to *over 1.5 Billion Dollars*.

NOW THEREFORE:

It is requested that the Court order SBCW to file for permits under the Coastal Zone Management and Building Permit Rules.

The SBCW facilities should be shut down (no unit can be used) until all permits have been issued and all inspections have been successfully completed and approved.

Order that the unincorporated SBCW pay fines equal to \$1.59 Billion Dollars.

The SBCW Directors between 2004 and 2016 should be sent to jail. Two SBCW Attorneys, and three SBCW General Managers should be jailed.

The two SBCW attorneys should be disbarred.

SBCW shall be ordered to pay George R. Simpson, \$5 Million (Five Million Dollars) for damages caused to him and his businesses.

October 12, 2016

Respectfully submitted,

George R. Simpson, Pro Se

/s/ George R. Simpson

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Word Count

The Petition has 2,933 words, less than the maximum allowed by the Court Rules

/s/ George R. Simpson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing appeal brief and attached Appendix was served by mailing the same, postage prepaid, by hand delivery or by facsimile on the 13th day of October, 2016.

Dawn L. Henry, Esq., Commissioner of
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