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

THE BOARD OF DIRECTORS OF SAPPHIRE BAY CONDOMINIUMS WEST

Plaintiff,

-v-

GEORGE R. SIMPSON, et al.

Defendant.

Civil Number: 2004-62

PRE-ARGUMENT MEMORANDUM

To Honorable Lawrence F. Stengel
United States District Court Judge for the
Eastern District of Pennsylvania

Respectfully submitted,
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DATED: January 20, 2009

PRE-ARGUMENT MEMORANDUM

COMES NOW, Feuerstein & Smith, LLP, attorneys at law, on behalf of their clients;

1. The Board of Directors of Sapphire Bay Condominiums West (in the civil action number 04-62)
2. Alan R. Feuerstein (in the civil action 04-134)
3. George Wood (in the civil action number 07-47)
4. Andrew Capdeville and Alan R. Feuerstein (in the civil action number 07-51), and
5. Stephen Sokolow (in the civil action number 07-77)

and does hereby submit the following as the Pre-Argument Memorandum that the Court has directed to be filed on or before January 20, 2009.

This Memorandum is submitted to the Court pursuant to the Order of this Court dated January 12, 2009 and is intended to set forth the respective position of the above litigants represented by Feuerstein & Smith, LLP, and outstanding motions.

I. Background of All Cases Pending Before this Court[1]

On January 29, 2003 the Plaintiff, George R. Simpson, and his wife, Jean S. Simpson, purchased unit C-4 at Sapphire Bay Condominiums West, a condominium complex located on the island of St. Thomas in United States Virgin Islands. Sapphire Bay Condominiums West has been designated as a condominium association by virtue of the declarations establishing a plan for condominium ownership under the condominium act of the Virgin Islands in the United

[1] The case of George R. Simpson v. Stephen Sokolow (civil action number 07-77) was voluntarily dismissed by George R. Simpson after the case was removed from the Superior Court of the Virgin Islands Division of St. Thomas and St. John. Plaintiff George R. Simpson re-filed this case in the United States District Court for the Eastern District of New York Long Island Division on Jun 14, 2007. (civil number 07-2388)

States (Chapter 33, 28, Virgin Islands Code) and by recording same with the Recorder of Deeds for St. Thomas and St. John in the United States Virgin Islands on September 16, 1969.

In accordance with the Virgin Islands Law, Sapphire Bay Condominiums West filed its by-laws and its rules and regulations as amended on September 30, 2001.

Shortly after purchasing his condominium unit, the Plaintiff, George R. Simpson, made an application to the Board of Directors of Sapphire Bay Condominiums West requesting a change in his front condominium windows from traditional jalousie windows to double-pane windows.

The Board of Directors of Sapphire Bay Condominiums West denied Mr. Simpson's application to change his windows on his and his wife's condominium unit. After the denial by the Board of Directors, Mr. Simpson began a campaign of retaliatory conduct against Sapphire Bay Condominiums West (SBCW) and its Board of Directors and set up an internet grudge website, www.sapphirebaycondos.com. At the same time, Mr. Simpson also began registering the trade name "Sapphire Bay Condominiums West" and a number of similar names with the Virgin Islands Recorder of Deeds and Trademark Office, claiming that he owned the subject trade name of Sapphire Bay Condominiums West.

As a result of this conduct, the Board of Directors of Sapphire Bay Condominiums West commenced a Lanham Act trademark infringement case against Mr. Simpson [15 U.S.C. §1051 et. seq., §1114, §1125(a) and §1125(d)]. After a F.R.Civ.P. Rule 65 hearing, George R. Simpson was permanently enjoined from claiming ownership of the Sapphire names and was Ordered by the Court to remove the website that he opened. Mr. Simpson appealed the decision of the District Court of the Virgin Islands Division of St. Thomas and St. John to the Third Circuit

Court of Appeals. The Third Circuit Court of Appeals affirmed the District Court of the Virgin Islands granting injunctive relief on April 20, 2004.

After the injunction was issued, Mr. Simpson "re-titled" his "grudge" website as www.usvicondos.com where it remains. Mr. Simpson has also authored, designed and published additional websites, including: www.andrewcapdevillesucks.com, www.alanrfeuersteinsucks.com, www.stevenkerschnersucks.net, www.georgewoodsucks.com, and www.stephensokolowsucks.com.

It is the position of Feuerstein & Smith, LLP's clients that all of the actions brought by Simpson occurred as retaliation against Sapphire and its Board of Directors for denying his application to change his front condominium windows and in retaliation for commencing the proceedings against Simpson for trademark infringement. The action against Simpson is described below. (see II)

II. Action Number One

The Board of Directors of Sapphire Bay Condominiums West v. George R. Simpson, individually and d/b/a North American Alliance for Honest Corporate Management

The Plaintiff's Complaint in this action was filed by the Board of Directors of Sapphire Bay Condominiums West on May 24, 2004. Plaintiff's action is described above (see background of all cases before the Court). Action Number One was brought against the Defendant as a result of the Defendant's improper poaching and use of Plaintiff's trade name. Plaintiff tried to pass off the illegal website, www.sapphirebaycondos.com, as "the official website of Sapphire Bay Condominiums West", he tried to misappropriate Plaintiff's trade names, and he was also sued for common law trademark infringement under §715, 716 and 717 of the Restatement of Torts. Additional common law claims have been brought by Plaintiff against Defendant as well.

Procedurally, after Sapphire Bay Condominiums West made a Motion for an Injunction, Honorable Thomas Moore, the then presiding District Court Judge in the Virgin Islands, held a F.R. Civ. P. Rule 65 hearing and after the hearing, granted to SBCW a permanent injunction.

The Third Circuit Court of Appeals affirmed the District Court of the Virgin Islands' grant of the injunction to SBCW, on April 20, 2004.

The following motions are presently pending before this Court and should be argued on February 7, 2009:

(1) The Plaintiff's Motion that the Court Grant Further Relief, filed August 19, 2004 under docket entry # 29 with Memorandum of Law filed on same date under docket entry # 30;

(2) The Plaintiff's Motion for Entry of Default, filed October 18, 2004, docket entry # 53 and renewed on November 17, 2005 under docket entry # 75;

(3) The Plaintiff's Motion to Hold the Defendant in Contempt of Court, filed November 9, 2004 under docket entry # 58 with Memorandum of Law filed on November 29, 2004 under docket entry # 65;

(4) The Plaintiff's Motion for Costs on Appeal Taxable in the District Court, filed May 11, 2005 under docket entry # 66 with Memorandum of Law filed on same date under docket entry # 67; and

(5) The Plaintiff's Motion for Summary Judgment that was filed on April 17, 2006 under docket # 85.

Further, if this Court should deny the Plaintiff's Motion for Summary Judgment, the following should also be argued thereafter on February 7, 2009:

(1) The Plaintiff's Motion for Discovery Under FRCP 26, filed October 18, 2004, docket entry # 52.

III. Action Number Two

Alan R. Feuerstein v. George R. Simpson, civil action number 04-134.

This action was commenced by Alan R. Feuerstein individually against the Defendant, George R. Simpson. The action was commenced in September of 2004. The action that was brought against Mr. Simpson is based upon intentional interference with business relations, libel and defamation of character. While Alan R. Feuerstein, Senior Partner at the Law Firm of Feuerstein & Smith, LLP, was representing Sapphire Bay Condominiums West in the above Action Number One, George R. Simpson forwarded to a member of the Board of Directors a four (4) page letter including libelous statements which constitute defamation.

In the correspondence authored by Mr. Simpson dated September 13, 2004, Mr. Simpson advises Dr. Golden that it is unfortunate that Dr. Golden's wife hired Alan R. Feuerstein because Alan R. Feuerstein is only interested in getting a fee and not advising her on the truth about her rights under the SBCW by-laws and the Virgin Islands Condominium Law.

He advised Dr. Golden that Mr. Feuerstein's conduct was blatantly dishonest and was the "kind of thing that lawyers get disbarred for." Mr. Simpson advised Dr. Golden that Mr. Feuerstein was making dishonest statements, and that Mr. Feuerstein is dishonest. He further attempted to discourage Dr. Golden from running as a member of the Board of Directors of Sapphire Bay Condominiums West that the Board of Directors of Sapphire Bay Condominiums West is using Feuerstein, who is a dishonest lawyer.

On September 15, 2004, Mr. Simpson was sent a cease and desist and retraction demand letter. Mr. Simpson refused to retract and cease and desist, and an action was commenced

against Mr. Simpson in the District Court of the Virgin Islands, Division of St. Thomas and St. John.

Mr. Simpson made a Motion to Dismiss the case commenced against him by Feuerstein, alleging that "the amount in controversy does not reach Seventy-five Thousand Dollars ($75,000)."

On November 10, 2004, Plaintiff's Opposition to Defendant's Motion to Dismiss was filed and the Motion is still pending before this Court. Plaintiff has filed his Notice of Trial Readiness with the Court.

III. Action Number Three

George R. Simpson v. George Wood, civil action number 07-47.

The Plaintiff, George R. Simpson, filed an action against George Wood originally in the Superior Court of the Virgin Islands Division of St. Thomas and St. John. The action was removed from the Superior Court to the District Court and the Defendant, George Wood, filed his Answer to the Plaintiff's Complaint.

It is Sapphire Bay Condominiums West's position that Mr. Simpson has filed multiple lawsuits against past members of the Board of Directors of Sapphire Bay Condominiums West including George Wood, Steven Kerschner, and Stephen Sokolow in order to create extensive costs and legal expenses to Sapphire Bay Condominiums West, its condominium owners, and in retaliation for Sapphire's refusal to allow Mr. Simpson to change his front windows and, in retaliation for the commencement of the Lanham Act case as described above (see Action Number One).

The Defendant, George Wood, is a former member of the Board of Directors of Sapphire Bay Condominiums West and a former President of the Board. He was elected as a member of

the Board of Directors on September 19, 2004 and elected as the Board of Directors President on the same day.

The following motions are presently pending before this Court and should be argued on February 7, 2009:

(1) The Defendant's Motion for Summary Judgment filed on September 18, 2007 under docket entry # 105 with Memorandum of Law filed on same date under docket entry # 107 and Reply to Opposition filed on December 3, 2007 under docket entry # 125; and

(2) The Defendant's Motion for Sanctions Pursuant to FRCP 11 filed on November 26, 2007 under docket entry # 123.

In an identical lawsuit that Mr. Simpson brought against another board member, Stephen Sokolow, Honorable Joanna Seybert dismissed Simpson's claims. (See Action Number Five below.)

IV. Action Number Four

George R. Simpson v. Andrew Capdeville and Alan R. Feuerstein, civil action number 2007-51.

This action was commenced by the Plaintiff, George R. Simpson, against Attorney Andrew L. Capdeville and Attorney Alan R. Feuerstein. Andrew Capdeville is the former lawyer for Sapphire Bay Condominiums West and Alan R. Feuerstein is the present lawyer for Sapphire Bay Condominiums West. As described above (see Action Number One), after having his request to change his front jalousie windows to double-pane windows denied, George R. Simpson began a retaliatory smear campaign by setting up a website, www.sapphirebaycondos.com and poaching SBCW's trade names.

In the website, the Plaintiff Simpson commenced a campaign of defamation, libel, and intentional interference with business relations targeting Sapphire and Andrew Capdeville (who

represented Sapphire at the time when Sapphire refused to allow Simpson to change his windows). Capdeville commenced a defamation of character lawsuit against Simpson as a result of this.

In the present lawsuit brought by Plaintiff Simpson against Attorneys Capdeville and Feuerstein, Mr. Simpson alleges that the conduct of Feuerstein and Capdeville in connection with their representation of Sapphire has caused Simpson and his wife certain damages. Mr. Simpson also alleges that Mr. Capdeville and Mr. Feuerstein caused the arrest and prosecution of Mr. Simpson during a Court-ordered deposition, during which he assaulted two (2) Court officers.

All of the conduct that Simpson complains of occurred when Feuerstein and Capdeville represented or continued to represent Sapphire Bay Condominiums West in lawsuits that were either brought by Plaintiff Simpson or against Plaintiff Simpson in which Attorneys Capdeville and/or Feuerstein were the attorneys of record.

Pending before the Court is the Defendant's Motion to Dismiss filed on December 10, 2007 under docket entry # 126 with Memorandum of Law filed on same date under docket entry # 127, which should be argued before this Court on February 7, 2009

V. Action Number Five

George R. Simpson v. Stephen Sokolow, civil action number 07-77.

As set forth above, this action was voluntarily discontinued by Plaintiff, George R. Simpson, and then re-filed and recommenced in the United States District Court for the Eastern District of New York Long Island Division. [See footnote one (1) above]. This case was dismissed on March 10, 2008 by the Memorandum and Order of Judge Joanna Seybert attached hereto.

VI. Conclusion

Feuerstein & Smith, LLP respectfully submits this Pre-Argument Memorandum in accordance with the Order of this Court dated January 12, 2009. Any pending motions not referenced in this memorandum should be deemed by this Court to be waived and/or moot.

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DATED: January 20, 2009

Respectfully Submitted,
FEUERSTEIN & SMITH, LLP

BY: *s/ Alan R. Feuerstein*

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CERTIFICATE OF SERVICE

I, Alan R. Feuerstein, hereby certify that on the 20th day of January, 2009 electronically filed the foregoing Pre-Argument Memorandum via CM/ECF, which will send notification of filing to all parties, and also served the foregoing Pre-Argument Memorandum via First Class Mail directed to the following addresses:

George R. Simpson
P.O. Box 775
Hampton Bays, New York 11946

Honorable Lawrence F. Stengel
United States District Court
Eastern District of Pennsylvania
Room 14614 U.S. Courthouse
601 Market Street
Philadelphia, Pennsylvania 19106-1797

s/ Alan R. Feuerstein
Alan R. Feuerstein

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
GEORGE R. SIMPSON,

Plaintiff,

- against -

STEPHEN SOKOLOW,

Defendant.
----------X

MEMORANDUM AND ORDER
07-CV-2388 (JS)(ETB)

APPEARANCES:

For Plaintiff: George R. Simpson, Pro Se
P.O. Box 775
Hampton Bays, NY 11946

For Defendant: Alan R. Feuerstein, Esq.
Feuerstein & Smith, LLP
17 St Louis Place
Buffalo, NY 14202

SEYBERT, District Judge,

INTRODUCTION

On June 13, 2007, Plaintiff George R. Simpson ("Plaintiff") commenced this action against Stephen Sokolow ("Defendant"). Presently pending before the Court are numerous motions, including (1) Defendant's motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(c), (2) Plaintiff's motion to amend his Complaint, and (3) both parties' motions for sanctions pursuant to Federal Rule of Civil Procedure 11. For the reasons set herein, Defendant's motion to dismiss is GRANTED, Plaintiff's motion to amend is DENIED, and both parties' motions for sanctions are DENIED.

BACKGROUND

The facts of this case are taken from the Complaint. The

Court presumes these facts to be true for the purpose of the motion to dismiss.

Plaintiff, currently a resident of New York, was a resident of St. Thomas, United States Virgin Islands, from April 1, 2003 until September 14, 2005. During that time, Plaintiff was an owner of a unit at the Sapphire Bay Condominiums West ("Sapphire Bay"), located in St. Thomas.

Defendant is a resident of St. Thomas and owns a unit at Sapphire Bay.[1] Defendant was a member of the Board of Directors ("Board") of Sapphire Bay from September 2001 through September 2005. Plaintiff alleges that Defendant and the other Board members were elected by defective proxies and were fraudulently serving on the Board. Plaintiff also asserts that Defendant and three other Directors did not have the necessary credentials and were not qualified under Sapphire Bay's Bylaws and Rules and Regulations to be directors. Defendant allegedly knew that he and the other Directors were not qualified, yet Defendant continued to serve on the Board as Vice-President.

Plaintiff alleges that Defendant led a "campaign of slander and harassment against Plaintiff and Plaintiff's wife . . . eventually causing them to sell their apartment." (Pl's Comp. ¶

[1] In the Complaint, Plaintiff alleges that Defendant is a resident of New York. However, in response to Defendant's motion to dismiss, Plaintiff alleges that Defendant is a resident of St. Thomas, and provides an affidavit from Defendant supporting a St. Thomas residency.

17.) The Complaint does not list any specific details about how Defendant slandered or harassed Plaintiff and his wife.

Plaintiff alleges that Defendant knowingly covered-up Sapphire Bay's filing violations with the Coastal Zone Management and Permits Department of the Department of Planning and Natural Resources of the United States Virgin Islands ("CZM"). According to Plaintiff, the permit violations are so grave that they have rendered Sapphire Bay's units and common areas unsafe, and have exposed the condominium owners to uninsured liabilities. Again, Plaintiff does not list any specific filing violation or specific unsafe condition.

Plaintiff received bills for the Board's legal expenses, which Plaintiff does not believe was his responsibility to pay. The monthly bills for the unpaid balance of these legal fees caused Plaintiff and his wife "enormous stress." (Id. ¶ 36.) Plaintiff and his wife were also distressed when Defendant allegedly allowed Frank Barry ("Barry"), Sapphire Bay employee and manager, and Alan Feuerstein ("Feuerstein"), the Condo association lawyer and the attorney on this case, to "carry on an inappropriate relationship, flaunting the relationship on the ground of Sapphire Bay . . . including riding around the premises arm in arm in the Condo owned golf cart, giggling and laughing like teenage girls as they taunted and harassed Plaintiff" and his wife. (Id. ¶ 38.)

Plaintiff alleges that the stress he experienced by these

actions compelled him to put his condominium unit up for sale in early 2005. Defendant required that Plaintiff pay accrued condominium attorneys' fees before Plaintiff could sell his apartment. Apparently Defendant eventually withdrew this request, although the dispute delayed the sale of Plaintiff's apartment and caused Plaintiff to accrue attorneys' fees.

Plaintiff states that Defendant extorted money from Plaintiff to replace the windows in Plaintiff's apartment, causing Plaintiff additional stress and accrued legal fees. Additionally, Defendant, Barry, and Feuerstein stalked Plaintiff and his wife, and rode on a golf cart to Plaintiff's window to take photos of Plaintiff's wife.

Defendants are alleged to have violated the condominium rules on several occasions. Among other things, Plaintiff alleges that Defendant allowed unlicensed contractors to work at Sapphire Bay, permitted Barry to take 12 weeks vacation when Sapphire Bay employees were only allowed 4 weeks, and allowed Barry to have a cat in violation of the by-laws prohibition on pets. Plaintiff has a phobia of cats and was particularly stressed by Barry's cat, which was allowed to roam freely on the Sapphire Bay property.

Plaintiff alleges fraud, misrepresentation, misfeasance, malfeasance, defamation, intentional infliction of emotional distress, and a violation of Plaintiff's First and Fourth Amendment rights.

DISCUSSION

I. Standard of review

A. Rule 12(b)(1)

A defendant may move to dismiss pursuant to Rule 12(b)(1) by attacking the complaint on its face and alleging that a plaintiff failed to allege facts supporting subject matter jurisdiction, or he can argue that based on the facts alleged, jurisdiction lacks. Tasini v. N.Y. Times Co., Inc., 184 F. Supp. 2d 350, 353 (S.D.N.Y. 2002). The material a court may review depends upon the type of attack being made. Harriman v. I.R.S., 233 F. Supp. 2d 451, 456 (E.D.N.Y. 2002). When a defendant claims a plaintiff failed to allege facts required for jurisdiction, a "court should review the complaint, deeming all averments as true, for sufficiency." Id. at 457. If a defendant factually challenges allegations in a complaint, a court "may consider affidavits and other material beyond the pleadings to resolve the jurisdictional question." Id.; see also Araujo v. John Hancock Life Ins. Co., 206 F. Supp. 2d 377 (E.D.N.Y. 2002) (citing Robinson v. Gov't of Malaysia, 269 F.3d 133, 141 n. 6 (2d Cir. 2001)).

Truth of the allegations in the complaint is not presumed, but "rather, the burden is on the plaintiff to satisfy the Court, as fact-finder, of the jurisdictional facts." Tasini, 184 F. Supp. 2d at 353-54 (quoting Guadagno v. Wallack Ader Levithan Assoc., 932 F. Supp. 94, 95 (S.D.N.Y. 1996), aff'd, 125

F.3d 844 (2d Cir. 1997) (citations omitted)).

B. Rule 12(b)(6)

In Bell Atl. Corp. v. Twombly, -- U.S. --, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), the Supreme Court disavowed the half-century old standard set forth in Conley v. Gibson that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957), (overruled by Bell Atl. Corp., 127 S. Ct. 1955 (2007). Holding that "Conley's 'no set of facts' language has been questioned, criticized, and explained away long enough," the Supreme Court expressly rejected the standard in favor of a requirement that the plaintiff plead enough facts "to state a claim for relief that is plausible on its face." Bell Atl. Corp., 127 S. Ct. at 1969, 1974. The Court explained that the complaint "must be enough to raise a right to relief above the speculative level." Id. at 1965. To be clear, Bell Atlantic does not require "heightened fact pleading of specifics, but only enough facts to state a claim for relief that is plausible on its face." Id. at 1974.

The Second Circuit has interpreted Bell Atlantic to require "a flexible 'plausibility standard," which obliges a pleader to amplify a claim with some factual allegations in those

contexts where such amplification is needed to render the claim plausible." Iqbal v. Hasty, 490 F.3d 143, 157-58 (2d Cir. 2007). In applying this new standard, the district court must still accept the factual allegations set forth in the complaint as true and draw all reasonable inferences in favor of the plaintiff. See Cleveland v. Caplaw Enter., 448 F.3d 518, 521 (2d Cir. 2006); Nechis v. Oxford Health Plans, Inc., 421 F.3d 96, 100 (2d Cir. 2005).

C. Rule 12(c)

A Rule 12(c) motion for judgment on the pleadings is properly made after the close of the pleadings. FED. R. CIV. P. 12(c). A court analyzes a 12(c) motion under the same standard of a motion made pursuant to Rule 12(b)(6). See Greco v. Trauner, Cohen & Thomas, L.L.P., 412 F.3d 360, 363 (2d Cir. 2005). "Thus, accepting the allegations contained in the complaint as true and drawing all reasonable inferences in favor of the plaintiff, a complaint should not be dismissed under Rule 12(c) unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id.

II. Lack Of Subject Matter Jurisdiction

Defendant asserts that this Court lacks subject matter jurisdiction over the instant action because: (1) Plaintiff's Complaint does not properly allege a claim under any federal statute, and (2) Plaintiff lacks standing to sue because he no longer is an owner of a condominium unit at Sapphire Bay. The

Court disagrees.

A. Federal Jurisdiction

Although Defendant correctly states that Plaintiff fails to state a cause of action under 28 U.S.C. § 1343 (a)(3), the cause of action was removed from the Superior Court of the Virgin Islands Division of St. Thomas and St. John, pursuant to 28 U.S.C. § 1441, based upon diversity of citizenship, 28 U.S.C. § 1332. Section 1332(a) vests federal courts with jurisdiction over civil actions between citizens of different states where the amount in controversy exceeds $75,000. A review of the papers confirms that Plaintiff is a citizen of New York and seeks an amount far greater than $75,000, specifically $4,000,000 in compensatory damages and an additional $4,000,000 in punitive damages. Defendant himself removed the action from state court based upon diversity of citzenship, and signed an affidavit affirming that he is a citizen of St. Thomas.

In his response to Defendant's motion to dismiss, Plaintiff concurs that the Court has jurisdiction based upon diversity of citizenship. Inexplicably, Defendant does not respond to Plaintiff's arguments, and does not address Section 1332(a) whatsoever in his motion papers, but rather continuously argues that federal question jurisdiction under Section 1343 does not exist.

B. Standing

Article III, Section 2 of the United States Constitution requires that a plaintiff have standing to bring suit. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). Article III limits the jurisdiction of federal courts to claims that are "cases" or "controversies," and standing is an essential element of the case-or-controversy requirement. U.S. CONST. art. III, § 2; see also Arizonans for Official English v. Arizona, 520 U.S. 43, 64, 117 S. Ct. 1055, 137 L. Ed. 2d 170 (1997). "The essence of the standing inquiry is whether the parties seeking to invoke the court's jurisdiction have 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.'" Duke Power Co. v. Carolina Envtl. Study Group, 438 U.S. 59, 72, 98 S. Ct. 2620, 57 L. Ed. 2d 595 (1978) (quoting Baker v. Carr, 369 U.S. 186, 204, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962)).

In order to satisfy the standing requirement, a plaintiff must meet an "irreducible constitutional minimum", which requires

> (1) that the plaintiff have suffered an injury in fact - an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) that there be a causal connection between the injury and the conduct complained of - the injury must be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not

> before the court; and (3) that it be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Bennett v. Spear, 520 U.S. 154, 167, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997) (citing Lujan, 504 U.S. at 560-561).

Defendant argues that Plaintiff lacks standing because he sold his condominium unit in September of 2005, and therefore no longer has a personal stake in the activities of the Sapphire Bay Board and no longer may be redressed by a decision of this Court. The Court disagrees. The harm Plaintiff alleges in this case and the redress he seeks has nothing to do with whether Plaintiff is a current owner of a unit at Sapphire Bay. In his Complaint, Plaintiff clearly states that he is seeking redress for actions allegedly committed by Defendant which caused Plaintiff pain and suffering and led Plaintiff to sell his condominium unit. Plaintiff need not be a resident of Sapphire Bay to receive monetary compensation for actions committed by Defendant that caused Plaintiff to sell his apartment. Accordingly, the Court finds that Defendant's standing argument is without merit.

III. Arbitration Agreement

Article XI of the Sapphire Bay Bylaws and Rules and Regulations states, "any disputes between a unit owner and the Board . . . shall be referred to arbitration." Defendant argues that the arbitration clause governs Plaintiff's claims, and Plaintiff may not litigate his claims in a federal court. The

Court finds that the claims related to Defendant's position as a Director on the Sapphire Bay Board are subject to arbitration.

A. The Federal Arbitration Act

The Federal Arbitration Act ("FAA") states that "an agreement in writing to submit to arbitration . . . [is] valid, irrevocable, and enforceable." 9 U.S.C. § 2. Under such an agreement, a court may compel the parties to submit to arbitration. 9 U.S.C. § 206. The FAA does not give a district court discretion "but instead mandates that district courts shall direct the parties to proceed to arbitration" if such an agreement exists. Genesco, Inc. v. T. Kakiuchi, Ltd., 815 F.2d 840, 844 (2d Cir. 1987) (quoting Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 218, 105 S. Ct. 1238, 84 L. Ed. 2d 158 (1985) (original emphasis)). With the FAA, Congress created a "liberal federal policy favoring arbitration agreements . . . ." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983).

B. Standard For Arbitrability

Similar to the standard of review on a summary judgment motion, "if there is an issue of fact as to the making of the agreement for arbitration, then a trial is necessary." Chau v. W. Carver Med. Assocs., P.C., 06-CV-526, 2006 U.S. Dist. LEXIS 92297, at *4-*5 (E.D.N.Y. Dec. 21, 2006) (quoting Bensadoun v. Jobe-Riat, 316 F.3d 171, 175 (2d Cir. 2003)); see also Canada Life Assur., 242

F. Supp. 2d at 354. This Court may not compel arbitration until making a four-part inquiry. First, the parties must have formed a valid arbitration contract. Second, Plaintiff's claims must be within the scope of the agreement. Third, Plaintiff's statutory claims must be arbitrable. And fourth, if the Court determines that only a portion of the statutory claims is arbitrable, it must determine whether to stay the remainder of the claims pending arbitration. See Chau, 2006 U.S. Dist. LEXIS 92297, at *5 (quoting JML Indus. v. Stolt-Nielsen SA, 387 F.3d 163, 169 (2d Cir. 2004)). If all of a plaintiff's statutory claims are arbitrable, and staying the proceedings serves no purpose, the Court should dismiss the case and compel arbitration. See Lewis Tree Serv., Inc. v. Lucent Tech., Inc., 239 F. Supp. 2d 332, 340 (S.D.N.Y. 2002).

The parties do not dispute that a valid arbitration agreement exists. Plaintiff also agrees that "a suit against a valid director and officer of the Sapphire Bay Condominiums West condo association for acts committed within the scope of the authority of the Board and the Board Member/Officer has to be submitted to arbitration first." (Pl's Objection to Def.'s Motion to Dismiss). However, Plaintiff argues that his claims are not subject to arbitration because Defendant was not a valid Board Member/Officer, and because Plaintiff is suing Defendant in his individual capacity as an owner of a unit at Sapphire Bay rather than as a Board Member/Officer.

Plaintiff argues that the Board allowed proxies which did not conform with Sapphire Bay by-laws, and that Defendant was not a valid Director because he was elected by the deficient proxies. The Court finds that any disagreement regarding the use of proxies and the election process is a dispute between a unit owner and the Board, and therefore is subject to the arbitration clause.

To the extent that Plaintiff sues Defendant in his capacity as a unit owner and not as a Director, the Court finds that a suit against Defendant in his personal capacity is intertwined with an action against Defendant in his official capacity. It would be impossible for the Court to resolve whether Defendant, in his personal capacity, falsely represented the Board of Directors, misrepresented the legality of the Board, and disregarded his responsibility as a Director without also ruling on whether Defendant committed the aforementioned acts in his official capacity as a Director. See Choctaw Generation L.P. v. Am. Home Assur. Co., 271 F.3d 403, 407 (2d Cir. 2001) (finding that merits of the case were bound up with a dispute between the parties that was subject to arbitration); Dassero v. Edwards, 190 F. Supp. 2d 544, 549 (W.D.N.Y. 2002) (finding that agreement containing arbitration clause played a central role in plaintiff's claims and "it would be virtually impossible to litigate or resolve this case without extensive reference to the Agreement"). The Court finds that Plaintiff's claims of fraud, misrepresentation, misfeasance,

and malfeasance are subject to the arbitration clause, and Plaintiff cannot resolve these issues in a judicial forum without first submitting the claims to arbitration. Additionally, the Court finds that a stay of this action would serve no purpose, and accordingly DISMISSES the fraud, misrepresentation, misfeasance, and malfeasance claims.

IV. Remaining Claims

Plaintiff has also asserted defamation, intentional infliction of emotional distress, violation of his First Amendment right to free speech, and a violation of the Fourth Amendment right of equal protection against Defendant in his personal capacity. The Court finds that these claims are not subject to the arbitration clause because they do not involve an action committed within the scope of the authority of the Board, but nonetheless DISMISSES the claims for the reasons stated below.

A. Constitutional Claims

Plaintiff utilizes 42 U.S.C. § 1983 to assert a claim against Defendant for violating Plaintiff's First Amendment right of free speech and his Fourth Amendment right to equal protection. Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured.

To state a claim under § 1983, a plaintiff must allege (1) that the challenged conduct was attributable at least in part to a person acting under color of state law, and (2) that such conduct deprived him of rights, privileges, or immunities secured by the Constitution or laws of the United States. See Dwares v. City of New York, 985 F.2d 94, 98 (2d Cir. 1993).

Only under highly limited circumstances, not present here, would private individuals be held liable under Section 1983. See Spear v. Town of West Hartford, 954 F.2d 63, 68 (2d Cir. 1992); see also Rendell-Baker v. Kohn, 457 U.S. 830, 838-42, 102 S. Ct. 2764, 73 L. Ed. 2d 418 (1982); Flagg Bros. Inc. v. Brooks, 436 U.S. 149, 157-60, 98 S. Ct. 1729, 56 L. Ed. 2d 185 (1978). Defendant is a private individual who is not alleged to have any connection with any government body, and has not acted under color of state law. Accordingly, Plaintiff has not presented a cognizable Section 1983 claim, and Plaintiff's First and Fourth Amendment claims must be DISMISSED.

B. Defamation

Plaintiff alleges that Defendant defamed Plaintiff and his wife in letters written to Board members and in minutes of the Board meetings. The Court finds that Plaintiff has not met the pleading requirements for a defamation claim.

Under New York law, a defamation claim must allege: (1) a false and defamatory statement of fact; (2) regarding the plaintiff; (3) publication by defendant to a third party; and (4)

injury to the plaintiff as a result thereof. See Uyla M. Mills v. Miteq, No. 06-CV-0752, 2008 U.S. Dist. LEXIS 9209, at *4 (E.D.N.Y. Feb. 7, 2008) (citing Weldy v. Piedmont Airlines, Inc., 985 F.2d 57, 61 (2d Cir. 1993)). In a defamation claim, the "particular words complained of [must] be set forth in the complaint." N.Y. C.P.L.R. § 3016(a). Here, Plaintiff vaguely asserts that Defendant defamed him and his wife, but does not mention the substance of the statements. Accordingly, Plaintiff fails to meet the pleading requirements for a defamation claim, and his defamation claim must be DISMISSED. See Bobal v. Rensselaer Polytechnic Inst., 916 F.2d 759, 763 (2d Cir. 1990) (dismissing defamation charge because plaintiff "fail[ed] to plead adequately the actual words spoken.").

C. Intentional Infliction of Emotional Distress

In New York, a plaintiff asserting a claim for intentional infliction of emotional distress must demonstrate: "(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress." Sudore v. SUM 41, No. 04-CV-6047T, 2005 U.S. Dist. LEXIS 26499, at *6 (W.D.N.Y. Sept. 12, 2005) (quoting Howell v. New York Post Co., Inc., 81 N.Y. 2d 115, 121, 612 N.E.2d 699, 596 N.Y.S.2d 350 (1993)). The requirements for this claim are rigorously applied and difficult to satisfy. See Daniels v. St. Luke's - Roosevelt Hosp. Ctr., No. 02-CV-9567, 2003 U.S. Dist. LEXIS 18772, at *20-21 (S.D.N.Y. Oct. 17 2003); Howell,

81 N.Y. 2d at 122; Murphy v. American Home Prods., Corp., 58 N.Y.2d 293, 303, 461 N.Y.S.2d 232, 236, 448 N.E.2d 86 (1983). Here, Plaintiff has not met this high standard. Although he alleges that Defendant acted intentionally, the Court finds that the Complaint fails to allege facts which would lead the Court to believe that Defendant acted intentionally, or that Defendant's alleged conduct was extreme and outrageous. Accordingly, the Court DISMISSES Plaintiff's intentional infliction of emotional distress claim.

V. Leave To Amend

Plaintiff seeks leave to file an Amended Complaint to (1) assert that the Sapphire Bay arbitration clause does not bar claims between two condominium unit owners, (2) explain that federal jurisdiction exists due to diversity of citizenship, and (3) assert additional facts to clarify Plaintiff's claims.

Federal Rule of Civil Procedure 15(a) generally governs the amendment of pleadings. Rule 15(a) provides that [a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . . Otherwise a party may amend the party's pleadings only by leave of court or by written consent of the adverse party; and leave shall be freely given as justice so requires. Fed. R. Civ. P. 15(a); see also Lucente v. Int'l Bus. Machs. Corp., 310 F.3d 243, 259 (2d Cir. 2002); Branum v. Clark, 927 F.2d 698, 705 (2d Cir. 1991). Leave to amend should be denied only because of undue delay, bad faith, futility, or prejudice to the non-moving party, and the decision to

grant or deny a motion to amend rests within the sound discretion of the district court. Aetna Cas. and Sur. Co. v. Aniero Concrete Co., Inc., 404 F.3d 566, 603-04 (2d Cir. 2005); Zahra v. Town of Southold, 48 F.3d 674, 685 (2d Cir. 1995).

The Court has already ruled that several of Plaintiff's claims are subject to arbitration regardless of whether the claim is brought against Defendant in his official or personal capacity, and that jurisdiction in this case is proper because of diversity of citizenship. Additionally, the Court has reviewed Plaintiff's proposed amended complaint, and finds that the new language does not salvage the deficiencies in Plaintiff's defamation and intentional infliction of emotional distress claim. The Court concludes that the amendment would be futile, and DENIES Plaintiff's motion to amend the complaint.

VI. Sanctions

Both parties filed motions for sanctions pursuant to Federal Rule of Civil Procedure 11. Defendant argues that Plaintiff's Complaint is baseless and frivolous, and that Plaintiff has acted in bad faith by creating several derogatory websites, such as one with the domain name "stephensokolowsucks.com." Defendant asks the Court to impose attorneys fees, costs, and expenses on Plaintiff as a result of his alleged sanctionable conduct. In turn, Plaintiff argues that Defendant should be sanctioned because his papers are filled with "lies" and "scandalous" statements, and requests that Defendant's attorney be

disbarred, fined, and jailed. Although both parties have inundated this Court with endless motions and papers, the Court finds that the parties' conduct has not risen to a sanctionable level, and accordingly DENIES the motions for sanctions.

Rule 11(c) permits a district court to impose sanctions on the attorneys, law firms, or parties who have violated Rule 11(b) of the Federal Rules of Civil Procedure. It is well established that "[t]he decision whether to impose a sanction for a Rule 11(b) violation is . . . committed to the district court's discretion." Perez v. Posse Comitatus, 373 F.3d 321, 325 (2d Cir. 2004). Even where the Court determines the existence of a Rule 11(b) violation, a district court is not required to impose sanctions. See id. If the Court decides to impose sanctions, dismissal of the action is among the appropriate sanctions a court may impose. See Safe-Strap Co., Inc. v. Koala Corp., 270 F. Supp. 2d 407, 417-18 (S.D.N.Y. 2003). Although Rule 11 applies to pro se litigants as well as parties represented by counsel, "the court may consider the special circumstances of litigants who are untutored in the law." Maduakolam v. Columbia University, 866 F.2d 53, 56 (2d Cir. 1989) (citing to Fed. R. Civ. P. 11 advisory committee's notes.).

Here, the Court finds that Plaintiff's conduct is not sufficiently egregious to warrant sanctions. There is nothing in the record to indicate that Plaintiff brought his claim for an improper purpose, or that Plaintiff knew that his Complaint was

frivolous or not warranted by existing law. Similarly, the Court finds that Defendant's conduct is not sanctionable. Plaintiff has not proven that Defendant lied to the Court, or brought defenses that are not warranted by existing law.

CONCLUSION

For the reasons stated above, Defendant's motion to dismiss is GRANTED (docket # 11), Plaintiff's motion to file an Amended Complaint is DENIED (docket #20), Plaintiff's motions for sanctions against Defendant are DENIED (docket # 24 and # 39), Defendant's motion for sanctions against Plaintiff is DENIED (Docket # 32). Defendant's supplemental motion to amend or correct the notice of his motion to dismiss (docket # 31), Plaintiff's motion to strike Defendant's supplemental motion (docket #33), Plaintiff's motion to strike Defendant's motion for sanctions (docket #35), and Plaintiff's motion to strike Defendant's opposition to Plaintiff's motion to strike Defendant's motion for sanctions (docket #38) are all DISMISSED as moot. The Clerk of the Court is directed to mark this case CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: Central Islip, New York
March 10, 2008