

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

BOARD OF DIRECTORS OF SAPPHIRE)	
BAY CONDOMINIUMS WEST)	Civil Action Number: 2004/62
)	
Plaintiff,)	
)	
-v-)	
)	
GEORGE R. SIMPSON)	
)	
Defendant.)	

**PLAINTIFF’S OPPOSITION TO “DEFENDANT GEORGE R. SIMPSON’S
ADDITIONAL MOTION TO DISMISS PLAINTIFF’S FIRST AMENDED COMPLAINT”
DATED FEBRUARY 14, 2009**

The Board of Directors of Sapphire Bay Condominiums West by and through its counsel Feuerstein & Smith LLP submits the following in opposition to George R. Simpson’s “Additional Motion to Dismiss Plaintiff’s First Amended Complaint” dated February 14th 2009 and states the following:

Summary of Opposition

The pro se Defendant George R. Simpson has improperly made his “additional motion” which seeks to have this court reverse its previous orders denying the relief defendant again requests. The defendant made his initial motion to dismiss plaintiff’s complaint on June 28th 2004 (docket entry #5). During the injunction hearing that was held before the Honorable Thomas Moore on the 10th day of August, 2004 (at page 143), Judge Moore denied Defendant’s motion to dismiss. Mr. Simpson again brought up his motion to dismiss after plaintiff filed and served its motion for summary judgment. Defendant, after being served with plaintiffs’ motion

refused to respond (docket entry # 79 and 80). In response, the Court *again* denied pro se defendant's motion (docket entry #89) on August 3rd 2006.

Mr. Simpson never made a motion for "reconsideration" (L.R.Ci 7.0.3) and the time within which to so move has long ago expired.

The sole "jurisdictional" argument raised by the defendant (the Arbitration Clause Argument) is discussed below. Defendant's motions have no merit factually or legally, his present claims have been addressed and rejected. Simpson's present motion shows that he will continue to ignore the restraint issued by this court (docket entries 18,19) and will consistently and contemptuously refuse to accept the fact that his present claims have been roundly rejected by this court and the Third Circuit Court of Appeals. His continual violation of this court's injunction order MUST be met with the most stringent of sanctions.

A. Arbitration Clause Argument

1. Mr. Simpson alleges that Plaintiff's claim in the case of "Board of Directors of Sapphire Bay Condominiums West v. George R. Simpson" (civil action number 2004-62) should be dismissed in that the Court does not have jurisdiction because of the condominium by-laws arbitration clause. Mr. Simpson is incorrect with respect to his assertion that this Court does not have jurisdiction.
2. Pursuant to 28 U.S.C. §1338, the District Court has original jurisdiction of any civil action arising under any act of Congress relating to patents, plant variety production, copyrights and **trademarks**. Such jurisdiction is **exclusive**.
3. Mr. Simpson's alleges that the subject arbitration clause relating to this trademark infringement action is applicable. Mr. Simpson is incorrect. Therefore, his Motion must be denied.

4. This action was commenced in June of 2004 and has resulted in the District Court's issuance of a preliminary and permanent injunction. Simpson sold his condominium unit (C-4) on September 13th 2005. Mr. Simpson has filed an Appeal of the injunction order to the Third Circuit Court of Appeals. The Third Circuit Court of Appeals affirmed the decision of Honorable Thomas Moore in its opinion and Order dated May 2, 2005 (see United States Court of Appeals for the Third Circuit number 004-3690, *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*).
5. The decision and the opinion of this Court filed May 2, 2005 shows that the defendant has voluntarily litigated this case and continues to litigate this case in the District Court to this very day. The docket in this case shows a plethora of motions, requests, oppositions and rulings. Pending before this court are numerous motions, including Plaintiffs motion for contempt of court, a motion to expand the injunction issued on May 2, 2009, and Plaintiff's motion for Summary Judgment. The failure to submit to arbitration at an early stage results in a waiver of the right to arbitration by the party actively engaging in litigation. *Hoxsworth v. Blinder, Robinson & Company, Inc.*, 980 F.2d. 912, 925 (3d. Cir. 1992); see also, Annotation, *Defendant's Participation in Action as Waiver of Right to Arbitration of Dispute Involved Therein*, 98 ALR3d 767, 773-4 (1980).
6. The Third Circuit decisions on the issue of litigation-related waiver continue to apply the *Hoxsworth* factors to waiver determinations where the parties participated actively in litigation. *Grape Tree Shores, Inc v. Ehleiter*, Slip Opinion 2006 W.L. 88920, 3 (D.VI 2006). Therefore, Defendant Simpson's "substantial invocation of the litigation process", actively litigating the case including personally proceeding pro se in connection with the

two day testimonial hearing upon plaintiff's Motion for a Preliminary and Permanent Injunction, testifying during the preliminary and permanent injunction hearing, opposing the Plaintiff's Motion for Summary Judgment, and other pending and past motions clearly results in any wavier that might otherwise have been asserted. See also *Glavlik Construction Company v. H.F. Campbell Company*, 526 F.2d. 777 (3d. Cir. 1975).

7. The extensive litigation that has occurred, the numerous pleadings, responses, and Motions and the Defendant's Motions and pleading practice alone including but not limited to Motions for Sanctions, default, oppositions, that Mr. Simpson asserts are still present before this Court demonstrates a clear intent by defendant to dispose of this case using the judicial process. Therefore, Mr. Simpson's Motion must be denied.

B. Simpson's Says He Doesn't Own or Control the Subject Site

8. Mr. Simpson also seeks dismissal based upon his allegation that he does not own or control the website "www.sapphirebaycondos.com."
9. In making this Motion, Mr. Simpson again submits himself to F.R.Civ.P. sanctions because this issue has already been decided by this court. During oral argument before this court which took place on February 9th 2009, counsel read the relevant portion of the Hon. Thomas Moore decision and order of May 2nd 2005 including the finding that Mr. Simpson maintains substantial dominion and control over the subject website. Mr. Simpson's incredible disagreement and refusal to accept these lawful findings and rulings that he is the owner of the site and that he is responsible for the contents of the site is indeed fascinating. These facts addressed by the Third Circuit Court of Appeals in its affirmance as set forth above cause these findings to now be incontestable and "the law of the case". After the District Court ordered that Simpson remove the subject website from the internet Simpson also filed his submission dated August 18th 2004 entitled

“Defendant George R. Simpson’s Notice to the court of his compliance with the Court’s order” which admits his total dominion and control over the website.

10. The simple truth of the matter is that Mr. Simpson has set up the “www.sapphirebaycondos.com” website, the successor site “www.usvicondos.com” website, as well as numerous other websites (see below) which were vindictively erected by Simpson to “punish” those with whom he disagrees. Mr. Simpson already had his “bite at the apple” with respect to that issue, and he lost.
11. Mr. Simpson is hiding behind his pseudonym and is attempting to profit from his own wrongful conduct. Therefore, Mr. Simpson’s Motion should be denied in its entirety.

Defendant Argues that He Has Not Violated Copyright Law

12. The argument that Mr. Simpson again says that the www.sapphirebaycondos.com owner stopped using a phrase that Mr. Simpson indicates was objected to, and that somehow allows him to obtain dismissal of the underlying claims. This court has already ruled against Mr. Simpson on this issue in its injunction orders (ruling of Hon. Thomas Moore transcript page 143 et. seq)
13. Mr. Simpson continues to use the protected name of Sapphire Bay Condominiums West claiming it as his own, and continues to this day to use the Sapphire Bay Condominiums West name in his www.usvicondos.com website and in his numerous other websites..
14. This is the subject of the contempt proceedings that are presently before this Court.
15. Mr. Simpson has previously raised this issue, the issue was likewise rejected by Honorable Thomas Moore in his Order granting to the Plaintiff a preliminary and permanent injunction on August 10, 2004.
16. Therefore, Mr. Simpson’s latest Motion and attempting to raise this issue has no merit whatsoever and should be denied.

C. Mr. Simpson's Fourth Ground for Dismissal Which Alleges That Plaintiff Has No Standing Because Plaintiff Was In Violation of the USVI Trade Name Registration Act Has No Merit and Must Be Denied

17. The same issue that Mr. Simpson raises before the Court has already been raised by him in connection with the proceedings before Honorable Thomas Moore that took place on August 4, 2004. His claim was rejected at that time and likewise must be rejected at this time (ruling of Hon Thomas Moore of August 10th 2004).

D. Plaintiff's Opposition to Defendant's Fifth Ground for Dismissal (The Kerschner Issue)

18. Mr. Simpson, ad nauseum, alleges that director and former (and present) Board President Steven Kerschner did not have qualifications to be a Board Member and therefore, the Plaintiff cannot bring this lawsuit against the Defendant.

19. Mr. Simpson also raised this allegation before Honorable Thomas Moore and the Court properly rejected this assertion based upon the equitable title statute in the Virgin Islands. It is astonishing and incredible that Mr. Simpson continues to raise issues that have been already decided against him and not only wastes time of the precious judicial resources of the Court but also opposing counsel. Mr. Simpson's continual refusal to accept the court's ruling on this issue is underscored by his recent changes to his www.usvicondos.com website, his recent erection of another offending website www.usvicondoboardcrook.com and his website www.stevekerschnersucks.com.

E. Plaintiff's Opposition to Defendant's Sixth Ground for Dismissal (The Illegal Proxy Argument)

20. Mr. Simpson continuously alleges that a proxy form utilized by the Sapphire Bay Condominium Association was illegal.

21. Mr. Simpson has no basis for such an allegation. Proxies come in many forms and simply are used to allow an absent voter to have his vote given by a proxy or nominee. Simpson sold his condominium at Sapphire on September 13th 2005 to Mr. and Mrs.

Irribarren (see Summary Judgment Record at page 717) and his reliance on this nonsense underscores his shallow understanding of Civil Practice. Somehow Mr. Simpson must think that if a court was to rule that the proxies used by Sapphire in electing its board of directors were “illegal” that this will somehow benefit him. No basis to dismiss this proceeding can be based upon such an interesting yet baseless position.

**F. Plaintiff’s Opposition to Defendant’s Seventh Ground for Dismissal
(Defendant says that Plaintiff doesn’t own its name “Sapphire”.)**

22. The Plaintiff opposes Mr. Simpson’s seventh ground for dismissal which alleges that there was no violation of copyright law because Plaintiff does not own the rights to the “copyrights” to Sapphire Bay Condominiums West. Mr. Simpson already lost on this issue as well (and is continually confusing the term “copyright” with the term “trademark”).
23. This is an incredible statement when one simply reads the decision of Honorable Thomas Moore and the Affirmance from the Third Circuit (supra). Mr. Simpson’s continuous refusal to understand simple trademark law underscores the disingenuousness of his conduct. His further assertion that State Law controls Federal Law is a clear misinterpretation of the Supremacy Clause.
24. Based upon the foregoing, Mr. Simpson’s seventh ground for dismissal must again be denied.

**G. Plaintiff’s Opposition to Defendant’s Eighth Ground for Dismissal
(The \$75,000 Amount in Controversy Non-issue)**

25. Mr. Simpson does not understand the difference between diversity of citizenship [which requires a Seventy-five Thousand Dollar (\$75,000) amount in controversy exclusive of interest, costs and attorneys’ fees] vis a vis federal question jurisdiction which does not require an amount in controversy.

26. Despite this simple concept, the damages sustained by Sapphire in connection with the wrongful conduct of Mr. Simpson is incredible and greatly exceeds Seventy-five Thousand Dollars (\$75,000) and Mr. Simpson's alleged Motions must be denied. The costs to Sapphire that have emanated from Simpson's defamatory websites is in the hundreds of thousands of dollars, at the very least.

**H. Plaintiffs Opposition to Defendant's Ninth Grounds For Dismissal
(The "www.etcornegods.com." Religion Issue)**

27. The allegation that Mr. Simpson makes is that the Plaintiff has violated Federal Rule of Evidence Rule 610 because the Plaintiff is using Defendant's religious beliefs to discredit him.

28. Mr. Simpson should be ashamed of himself in even raising this issue. No one has attempted to discredit Mr. Simpson and his continued and published claims that he was contacted by God and extraterrestrials and was directed by god to describe to the world a secret embedded and encoded language that underlies the English language. These issues were never even raised in the underlying case. Mr. Simpson is clearly entitled to his own "religious beliefs"; however, Plaintiff is unaware of any "religious belief" that might have been violated and that relates in any way to Mr. Simpson's belief that he is the messiah and the noteworthy www.etcornegods.com website "religion".

29. Based upon the foregoing, Mr. Simpson's Motion to Dismiss should be denied.

**I. Plaintiff's Opposition to Defendant's "Statement"
(That the Directors of Sapphire, its Manager and Attorneys have Perpetrated a Scheme
Against Simpson)**

30. Mr. Simpson alleges that counsel for the Plaintiff, the condominium former manager, and "fraudulently elected directors of the Board of Directors of Sapphire Bay Condominiums West" are perpetrators of a large scheme to defraud owners of Sapphire Bay, the Virgin Islands Government, and the Defendant for millions of dollars.

31. Mr. Simpson will take every opportunity available to defame, libel, and slander anybody who disagrees with him.
32. The entirety of the cases regarding Mr. Simpson emanate from a denial of his request to change the front style of his condominiums windows from jalousie windows to double pane windows. This request that was denied by the Board of Directors (later a judge from the Superior Court of the Virgin Islands Division of St. Thomas and St. John later allowed him to make the changes “by default” because the Board of Directors failed to respond to Simpson’s request quickly enough).
33. It is again unclear why Mr. Simpson again brings up this defamatory and libelous “argument”. Mr. Simpson’s motivation apparently is to infect these proceedings with his baseless vindictive libel.

CONCLUSION

All of the arguments that defendant makes should have been brought to the Court’s attention in a motion for reconsideration. The time for such a motion long ago expired.

Exclusive jurisdiction over Plaintiff’s “Trade mark” claim is properly before this court.

All of the arguments made by Mr. Simpson have been raised before and have been rejected. The rulings of this court have already rejected all of the arguments raised by the defendant in its prior rulings.

By making the present claims Mr. Simpson has squarely violated the injunctions issued by this court. Sanctions and Costs should be awarded against Simpson. Sanction motions against Defendant are presently pending before this court.

Counsel in the near future will be making a further submission to expand the nature of the preliminary and permanent injunction that was previously granted by this Court. Plaintiff will be additionally submitting additional supplementary documentation confirming Mr. Simpson’s

