

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
LONG ISLAND DIVISIONAL OFFICE**

GEORGE R. SIMPSON

Plaintiff,

-v-

STEPHEN SOKOLOW

Defendant.

Civil Number: 07-2388

Assigned District Court Judge: Seybert
Magistrate Judge: Boyle

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR F.R.Civ.P. RULE 11
SANCTIONS AGAINST ALAN R. FEUERSTEIN**

*Respectfully submitted,
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*TO: George R. Simpson
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DATED: October 18, 2007

COMES NOW, Feuerstein & Smith, LLP, Alan R. Feuerstein, Esq., of counsel, in opposition to Plaintiff's Motion of October 11, 2007 moving that the Court issue "Rule 11 Sanctions" against Alan R. Feuerstein and the Law Firm of Feuerstein & Smith, LLP, and in opposition sets forth the following:

I. INTRODUCTION

1. The *pro se* Plaintiff, George R. Simpson, alleges that sanctions pursuant to F.R.Civ.P. Rule 11 should be issued against Attorney Alan R. Feuerstein and the Law Firm of Feuerstein & Smith, LLP. His allegations have absolutely no merit factually, and legally, and his Motion should be denied, and cross-sanctions issued against the *pro se* Plaintiff as a result of his wrongful improper commencement of the Motion for Sanctions against counsel for the Defendant herein.
2. The Plaintiff Simpson has brought the instant Motion in bad faith and his allegations are an attempt to reargue his opposition to Defendant's Motion to Dismiss his Complaint. All of the issues raised in his "Rule 11" Motion are identical to Plaintiff's opposition to Defendant's Motion to Dismiss but now Simpson attempts to attack counsel for the Defendant by alleging that the very issues that are the "death knell" of his claims are meritless and counsel for the Defendant "knows it".
3. The following response exposes Simpson for what he is. He is a person who without any proof or evidence will allege anything to attempt to achieve his unwarranted position. Cross-sanctions must be issued against Plaintiff for his bizarre and unscrupulous conduct.

II. THE PLAINTIFF GEORGE R. SIMPSON HAS FAILED TO COMPLY WITH THE REQUIRED "SAFE HARBOR" PROVISIONS OF F.R.CIV.P. RULE 11

4. Under F.R.Civ.P. 11(c)(1)(A) a Motion for Sanctions under F.R.Civ.P. 11 cannot be filed with the Court until twenty-one (21) days until after it has been served on the parties. The purpose of this "mandatory safe harbor provision" is to provide ample time for a party to avoid

sanctions by withdrawing or correcting the challenged paper before the Motion is filed with the Court. In re: Pennie & Edmonds, LLP, 323 F.3d. 86, 89 (2d Cir. 2003)

Therefore, procedurally, the Plaintiff has flatly failed to comply with Rule 11 and his Motion must be denied.

III. ARBITRATION – THE CONDITION PRECEDENT

5. Plaintiff alleges that the arbitration clause of the by-laws of Sapphire Bay Condominiums West does not apply to disputes “between two (2) or more individual owners, such as Plaintiff Simpson and Defendant Sokolow”. Plaintiff makes the same argument in his opposition to Defendant’s Motion to Dismiss and in his “Rule 11” Motion he tries to argue this issue again.
6. In Defendant’s Motion to Dismiss Plaintiff’s Complaint, Defendant attaches the Order of Honorable Brenda Hollar dated April 19, 2005 to show to the Court that Mr. Simpson, the Plaintiff, has already been advised that disputes of the nature described in his Complaint must go to mandatory arbitration.¹
7. The *pro se* Plaintiff Simpson alleges that the Order issued by Honorable Judge Brenda Hollar was issued “in error” and “acknowledged as such by Judge Hollar at a hearing shortly after the Order was published”, and she “never corrected the mistaken Order by written Order” and that “she acknowledged that she had been wrong” and that Attorney Alan R. Feuerstein lied to the Court regarding the Order of Judge Brenda Hollar.
8. Mr. Simpson, the Plaintiff, is fully aware of the fact that Judge Hollar’s decision was never vacated, modified, amended, declared to be “issued in error” or appealed and in fact, after a Motion for “reconsideration” was brought by Mr. Simpson in George R. Simpson v. Myrna Golden, civil number 318-2004, (action pending in the Superior Court of the Virgin Islands

¹ Defendant’s Motion to Dismiss is pending before the Court having been filed on July 30, 2007

Division of St. Thomas and St. John) his Motion to Reconsider was withdrawn by Mr. Simpson and an Order confirming Mr. Simpson's withdrawal of his Motion for Reconsideration was Ordered.²

9. The Order referred to dismissed Plaintiff's Complaint for lack of jurisdiction and referred the case to binding arbitration. The Order is attached hereto as Exhibit 1. The transcript of the proceedings that took place on June 20, 2005 (after Mr. Simpson made his Motion for Reconsideration) is attached hereto as Exhibit 2 and the Order of the Court confirming that Mr. Simpson withdrew his Motion for Reconsideration is attached hereto as Exhibit 3.
10. A review of the transcript of the proceedings of June 20, 2005 shows that Mr. Simpson, the *pro se* Plaintiff herein, knew that the Court dismissed his case based upon the mandatory arbitration provisions in the by-laws of Sapphire Bay Condominiums West (at page 2, 3)

Mr. Simpson: "Well, Your Honor, you issued an Order, and at the last time in the Order you dismissed the case.

The Court: "Okay".

Mr. Simpson: "I, in turn, provided a Motion. You had dismissed the case on the basis of the fact that there is an arbitration clause in the by-laws of the condominium, and that arbitration clause prevents a lawsuit between the Board and a unit owner.

*But it says nothing about disputes between two (2) owners, and I submitted a Motion to the Court that the case be reinstated, because the dispute was not between the Board and an owner, but that it is between two (2) owners."*³

11. The Court, after hearing arguments from the Plaintiff, Mr. Simpson, and the Defendant's counsel stated (at page 18-19)

The Court: "The Court has seen the Order, and the Court has heard the arguments of counsel. And assuming what you're saying is correct, Mr. Simpson,

² Mr. Simpson's action against Ms. Golden was based upon Ms. Golden's ownership of a cat in the Sapphire Bay Condominium complex. See Defendant's Memorandum of Law in Support of Motion to Dismiss at pages 1, 2, 18 and 19.

³ Exhibit 2, page 2, 3

what's going to happen when Ms. Golden comes here and says that whether the Board had authority or not, she was relying on it, and they had ostensible authority to allow her to have the cat. Am I not going to be in the same position? Why should I hold her responsible when she's waiving something from a Board saying that she can have those cats there?"

Mr. Simpson: "Your Honor, the authority here is not the Board, it's the by-laws because the Board had no authority to change the by-laws without the unit owners. The Board is not a party to this dispute."

The Court: "Yes, it is, because you're saying that they acted illegally. Now, that's the question, whether you got in the wrong person"

At page 20,

The Court: "Why isn't the Board in this matter? You know, I am just saying that obviously they are an indispensable party. If you're saying, and what you're saying is true, that they didn't have any authority to arbitrarily and capriciously allow her to have a cat when the rules and regulations say no cats, that is them."

12. Further, the Court, in advising the Plaintiff, George Simpson, that he has "got the wrong party", states as follows (at page 37):

The Court: "Absolutely, I understand that. But I'm saying that he may be coming back here, and I'm saying if he's got the wrong party, I am going to look at them and grant attorney fees and I'm going to whip them on you".

Attorney Feuerstein: "I understand."

The Court: "I'm talking about him because if you have the wrong party, you have the wrong party."

Mr. Simpson: "Your Honor think of it in my terms. I bought the condominium –"

The Court: "If you have the wrong party, you have the wrong party. And if you're leaving out an indispensable party, you are leaving out an indispensable party. And if you want to deliberately avoid the Board so that you won't go to arbitration, you are not going to do it at the expense of everybody."

Mr. Simpson: "Your Honor, my Complaint is not with the Board, my Complaint is with her."

The Court: "You are saying it's not with the Board."

Mr. Simpson: “Just think in terms of me looking at the by-laws and I read that clause and find out that –“

The Court: “Well, first of all” –

Mr. Simpson: “It doesn’t apply to her and I sue her.”

The Court: “Mr. Simpson, first of all you are an owner and you take interest in the by-laws. The by-laws is the Bible of your ownership. It has already been brought to my attention that she’s only an owner within the meaning of the by-laws. She is really a tenant. She may not have even seen it. She can care less. Her obligations to pay her rent even though by law, she is applicable to the whole by-laws.....”

13. The Court advises Mr. Simpson at page 40:

The Court: “Alright. It seems to me that under this basis you have the wrong party. Your quiver all the time is with the Board, and then all of a sudden conspicuously you are saying that this woman is nothing but a tenant.”

Mr. Simpson: “So you’re claiming, Your Honor, that I sued the wrong party?”

The Court: “I don’t know how many times I have to tell you that. And you want to make sure that it’s not the Board so you don’t have to go to arbitration because you love the Court even though you’re telling everyone you’re getting beat up over here. You love it over here.”

So to that extent, Mr. Simpson, I have prepared the Order and now I have to reverse it. Now, when are you going to be ready to proceed with this case?

14. At page 42:

The Court: All right. How soon will you be ready?

Mr. Simpson: Well, I am going to accept your ruling, Your Honor, and go to arbitration.

The Court: Are you withdrawing your Motion to Reinstate?

Mr. Simpson: Yes, Your Honor.

The Court: Alright.

Attorney Feuerstein: No objection Judge.

The Court: Alright, thank you. And I'll rule and consider entertaining attorney fees."

15. After the proceedings, the Court Ordered Plaintiff's withdrawal of his Motion for Reconsideration (Exhibit 3).
16. Mr. Simpson's outrageous statements to this Court that the subject Order was issued "in error", was "acknowledged by Judge Hollar as such", "that the Judge never corrected her mistaken Order" and that "Mr. Feuerstein lied about the Order" are outrageous falsehoods submitted to this Court warranting the most stringent of sanctions, to be imposed against Simpson.
17. Mr. Simpson's specific knowledge of the arbitration requirements at Sapphire Bay Condominiums West for those in office as members of the Board of Directors also is evident when one reviews the transcript of "Dr. Steven Klein, et al. v. George R. Simpson", (civil number 522/04) case pending in the Superior Court of the Virgin Islands, Division of St. Thomas and St. John, where he (Simpson) himself moves to dismiss in favor of arbitration. (Exhibit 8)
18. The transcript of the proceedings in "Dr. Steven Klein" shows that Simpson is fully aware of the distinction between "an owner of a condominium unit" and "an owner of a condominium unit who sits on the Board of Directors". In the instant case, the Defendant Sokolow is an owner of a condominium unit who sits on the Board of Directors and at all times relevant to the Complaint of Mr. Simpson was acting as a member of the board. Simpson says he has sued him "individually". He alleges in his pleading that he is suing him "individually". He knows, however, that when there is a dispute with a board member who is an owner acting in his capacity as a member of the Board of Directors, that the arbitration provision in Sapphire's by-laws require arbitration and the suit must be dismissed. (Exhibit 8 at page 21)

The Court: "Then why are we going through all of this? You're saying this is a case where the board members have a case against you. And you are saying

now you're applying the rule for arbitration. So are you saying that I don't have jurisdiction?"

Mr. Simpson "Yes."

The Court: "Alright."

Mr. Simpson: "I'm saying you don't have jurisdiction, and I'm saying it's not a proper Plaintiff."

The Court: "Alright."

Further, the Court, after discussing the mandatory arbitration provisions included in the by-laws and determining that Dr. Klein was not a member of the Board of Directors thus requiring bifurcation of the case states (at page 31):

The Court: "Attorney – counsel – Mr. Simpson, what's wrong with that? You say you want arbitration. I don't see it's so clear-cut with respect to Steven Klein, because his cause of action is before he came a board member."

Mr. Simpson: "Well, Your Honor, this letter was sent to Steven Klein who was a friend of mine. He's not anymore a friend of mine, and it was sent to no one else, just him. This got lies, lies, lies. He claims it was sent to many third party. It wasn't. The only reason that anybody else got a copy of it was, Steven Klein showed it to this guy and showed it to Frank Barry and everyone else. I said those things about Frank Barry and about the Board because I think they are true and I can prove it."

The Court: "I don't want to know about that. I'm saying that you just told me you want arbitration, but I see a distinction with respect to your good friend, Mr. Klein."

Mr. Simpson: "My good friend?"

The Court: "You said that's your good friend."

Mr. Simpson: "My good friend Klein has sold his apartment and left the island. He is no longer a board member, ok, he doesn't have any seat in here."

The Court: “But his cause of action isn’t because he is a board member. He said it happened before, because you were trying to intimidate him from running.”

Mr. Simpson: “This action happened because this guy wants to make more money off the Board.”

The Court: “I don’t want to know why it happened. You seem to be beating a dead horse. Is there anything wrong with severing everyone but Steven Klein and sending the rest to arbitration?”

Mr. Simpson: “Nothing wrong, Your Honor.”

The Court: “Alright. That’s what I’m going to do. Steven Klein remains.”

The Court thereafter states as follows at page 34:

The Court: “Well, you just taught me today that we taught you a lesson; that you know about the by-laws and you know how it works. So you learned a lesson, and so now your renewed Motion has been granted in part. Everyone other than Dr. Steven Klein will be referred to arbitration pursuant to the by-laws because I find that all of the comments, whether they are derogatory or whether they are defamatory or whatever it arises out of how many board members got to be board members, whether they are legitimate board members, and how they operate or fail to operate the complex, all that will be going to arbitration.

Mr. Simpson: “You are saying that the Steven Klein lawsuit will continue; is that what you’re saying?”

The Court: “It will continue because of the representation of counsel that they are saying the cause of action arose when he was not even a board member, so it has to be in his private capacity. So everything that has been alleged had to have taken place before he took office.”

IV. LACK OF STANDING

19. It would be a simple matter if the *pro se* Plaintiff’s conduct ended there, however, it does not.

The Plaintiff alleges that Defendant’s Motion to Dismiss based upon Plaintiff’s lack of standing is a “total fabrication of a disparate disingenuous argument which violates F.R.Civ.P. Rule 11”.

Nothing could be further from the truth. Simpson sold his and his wife's apartment at Sapphire Bay Condominiums West prior to commencing these proceedings and therefore he simply has no right whatsoever to bring the proceedings because he does not have standing, he is not a real party in interest, and this Court must dismiss his case.

20. The standing issue is fully briefed in Defendant's Motion to Dismiss Plaintiff's Complaint, at page 7.

V. EQUITABLE TITLE

21. Simpson, *pro se*, goes further in his F.R.Civ.P. Rule 11 Motion and incredibly again claims that Board officer, Steven Kerschner, was not eligible to be a director at Sapphire Bay Condominiums West despite the fact that Simpson has had the concept of "equitable ownership" explained to him *ad nauseum*.⁴

22. Mr. Simpson's argument about "ownership" is the same argument that he and his wife concocted during the proceedings before Honorable Thomas Moore in the District Court of the Virgin Islands Division of St. Thomas and St. John during the preliminary and permanent injunction hearing that took place on Monday and Tuesday, August 9th and August 10th of 2004. A copy of Mrs. Simpson's testimony is attached hereto as Exhibit 4.

23. In her testimony, while under direct examination from the Plaintiff, George R. Simpson, *pro se*,

Mr. Simpson, in questioning his wife at page 101 states:

Mr. Simpson: "My contention, Your Honor, is that the – that Mr. Kerschner was not qualified to be a director, and he is not today qualified to be a director. And if the condominium association does not have five (5) directors, it is not properly – in proper standing."

The Court: "Alright."

⁴ The issue of equitable title is discussed in Defendant's Memorandum of Law in Support of his Motion to Dismiss at pages 11-13.

Mr. Simpson: “I think it’s extremely important that we get to the bottom of this question.”

The Court: “Are you familiar with Virgin Islands Real Estate Law Ms. Simpson?”

The Witness: “Yes, in that I am an owner –“

24. Ms. Simpson goes on to describe a title search performed showing that there is no record of the deed being recorded and showing that the Kerschner unit is totally in Kerschner’s mother’s name (page 103). Mrs. Simpson states at page 113:

The Witness: “From my understanding, if it is not recorded with the government, it doesn’t exist.

Attorney Feuerstein: Who told you that?

The Court: ***I don’t care, that is not the law of the Virgin Islands.***” (emphasis added)

25. The testimony of Steven Kerschner was also given on August 10, 2004 and a transcript thereof is attached hereto as Exhibit 5. In his testimony, after having been called as a witness by Mr. George Simpson, and after being questioned about his “ownership” of his condominium unit, Kerschner states at page 83 that he has evidence that he was given a partial interest in the subject condominium unit by his mother prior to his serving on the Board of Directors thereby making him a co-owner. He describes the documents as a “quit claim deed” and indicates that he does not know if the subject quit claim deed was filed.

26. The District Court, after considering all of the evidence, issued its ruling and specifically addressed the issue of Steven Kerschner’s ownership and his ability to sit as a member of the Board of Directors of Sapphire Bay Condominiums West (which Mr. Simpson still contests despite the Court Order and ruling and findings) as follows (at Exhibit 6, page 164):

The Court: “That brings me up to something else I wanted to clear up, because I don’t think I made clear ruling before.

Mr. Simpson challenged the composition of the Board, of Mr. Kerschner not being an owner. As you understand the evidence, he holds a quit claim deed to the, whatever unit that is, at the condominium.

I also find from the evidence, both from Mr. Simpson and someone else, I don't remember who, that that has not been recorded.

Now ordinarily a recording conveyance is followed by recording at the Recorder of Deeds, to complete. But there is case law – and I don't remember the case, but in any rate there is case law that an unrecorded deed passes title. The only distinction is that it does not protect from a bonafide purchaser for value who doesn't know about it, and acquires a deed and records it. In other words, in this case the race to the Recorder's Office is effective. Whoever gets there first has the enforceable title.

So, based on the evidence that's before me, Mr. Kerschner does have sufficient title and interest in a condominium unit there to be a member of the Board. (emphasis added)

Mr. Simpson's allegations that Steven Kerschner was not eligible to be a member of the Board of Directors of Sapphire Bay Condominiums West has no merit, has been ruled upon, and therefore, any allegations that Mr. Simpson makes that Mr. Kerschner's seating was ineligible is nonsense.

27. The Court ruled in favor of Sapphire Bay Condominiums West and issued a permanent injunction against Mr. Simpson's continued use and poaching of the "Sapphire Bay Condominiums West" name. (Exhibit 7)

28. Going further, Mr. Simpson has been also advised of the concept of equitable title in the proceedings in the Superior Court of the Virgin Islands Division of St. Thomas and St. John entitled Dr. Steven Klein, Frank Barry and the Board of Directors of Sapphire Bay Condominiums West v. George R. Simpson, (Exhibit 8 at page 6).

Attorney Feuerstein: "The allegation of no title shows a misunderstanding by Mr. Simpson. He doesn't understand the concept of equitable titles and probably didn't read 28 V.I.C. §124, which describes equitable titles, and is not familiar with the case of Royal Bank of Canada v. Clark, which is the lead case involving unrecorded deeds, as Mr. Kerschner has an unrecorded deed.

I did not cite those cases in my brief, Judge, but if you would like to, I can for the record. The equitable title statute in the Virgin Islands is 28 V.I.C. §124. The Clark, which is Royal Bank of Canada, is 3 sub and 3 F. Supp. 599 District of the Virgin Islands. There is also a further cite which is recording requirement in order to have priority which is 28 V.I.C. §129”.

29. Further, Mr. Simpson “brought up” the issue of the Board’s composition before Honorable Rhys Hodge on March 21, 2005 in the case of The Board of Directors of Sapphire Bay Condominiums West v. George R. Simpson, case number 168-04, pending in the Superior Court of the Virgin Islands Division of St. Thomas and St. John. In that case, Defendant Simpson again alleged that the entire Board was not duly constituted. The Court addressing the issue and in responding to the *pro se* Defendant Simpson’s allegation that has never seen a subject mortgage and after the Defendant states (Exhibit 9 at page 281):

The Defendant: “I went to the Deed’s Office and it is not recorded there.

The Court: You don’t have to have it recorded”⁵

30. Further, and in response to the “Rule 11 warning letter” of Mr. Simpson dated August 22, 2007, (Exhibit 10) Mr. Simpson is again advised that his assertions of Mr. Kerschner’s failure to record his deed does not in any way restrict his ability to be a member of the Board of Directors. The response letter advises Simpson as follows:

“Third, you continued refusal to understand the doctrine of equitable ownership is incredible. Your assertion that Mr. Kerschner’s equitable ownership of property did not entitle him to sit on the Board of Directors is likewise incredible. You have been directed to the case of Royal Bank of Canada v. Clark, 373 F.Supp. 599, 10 V.I.C. 415, and 28 V.I.C. §124 which has interpreted the term ‘conveyance’ to include unrecorded deeds and unrecorded liens. Federal Judge Thomas Moore’s explanation of this to you on the record in the proceedings that took place on August 10, 2004 (transcript page 164 and 165) clearly states that Mr. Kerschner does have sufficient title and interest to be a member of the Board.”

⁵See transcript of proceedings before Honorable Rhys S. Hodge Judge March 21, 2005, case number 168-04, Superior Court of the Virgin Islands Division of St. Thomas and St. John, Exhibit 9 at page 281.

31. Mr. Simpson has been warned on numerous occasions in this case and in others that his claim has no merit and that his refusal and failure to withdraw would result in the Defendant's Rule 11 Motions (Exhibit 11).

VI. CONCLUSION

32. The *pro se* Plaintiff, George R. Simpson, makes deliberate false statements and false allegations to this Court in support of a Motion for F.R.Civ.P. Rule 11 sanction against Attorney Alan R. Feuerstein and the Law Firm of Feuerstein & Smith, LLP. His "Rule 11" Motion is a blatant attempt to recast his oppositions to Defendant's Motion to Dismiss into an accusatory inflammatory diatribe against Defendant's counsel. The Exhibits attached hereto establish that Mr. Simpson is fully aware of the fact that the arbitration clause of Sapphire Bay Condominiums West's by-laws applies to disputes of the particular nature that is the subject of his Complaint because each and every act that he complains of against Mr. Sokolow occurred while Mr. Sokolow was a member of the Board of Directors of Sapphire Bay Condominiums West and was not acting individually. The arbitration clause has been explained to the Plaintiff, Mr. Simpson, time and time again, and he is fully aware of the nature of the arbitration clause yet continues to pursue this baseless lawsuit and attempts to intimidate by disingenuously alleging Rule 11 violations.

33. The subject Order of Judge Brenda Hollar was never modified, appealed, issued by mistake, or acknowledged that "it was wrong" by Judge Hollar or any other Court. To the contrary, the Plaintiff's own conduct in withdrawing his Motion for Reconsideration of the Order of Judge Hollar (Exhibit 1, 2, 3) has resulted in the Order being entitled to res judicata and collateral estoppel.

34. Likewise, Mr. Simpson's allegation that Defendant's Motion to Dismiss is based upon a "bizarre claim" that Plaintiff has no standing is amazing. Simpson sold his and his wife's condominium unit and therefore, is no longer an owner. By giving up his rights as an owner, he lost standing and he is now attempting to circumvent the arbitration clause because as a non-owner he has no right to arbitrate and no right to sue.
35. Finally, Plaintiff's Simpson's incredible, continuous lack of understanding the basic concept of equitable title and his attempts to convince the Court that this legal issue has never been explained to him is bizarre, incredible and is total nonsense.
36. Based upon the foregoing, Simpson's Motion for Rule 11 sanctions should be summarily dismissed, and, this Court should Order that Simpson be held liable for all attorney fees, costs, expenses, disbursements and sanctions.

WHEREFORE, Plaintiff's Motion should be denied and sanctions should be awarded against Simpson in the form of attorney fees costs and expenses.

DATED: Buffalo, New York
October 18, 2007

Respectfully submitted,
FEUERSTEIN & SMITH, LLP

BY: *s/Alan R. Feuerstein*

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CERTIFICATE OF SERVICE

I, Maria Palacios, hereby certify that on the 18th day of October, 2007 served the within Defendant's Opposition to Plaintiff's Motion for F.R.Civ.P. Rule 11 Sanctions against Alan R. Feuerstein via U.S. First Class Mail directed to the following:

George R. Simpson
Post Office Box 775
Hampton Bay, New York 11946

s/Maria Palacios _____
Maria Palacios