

**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

**MEMORANDUM OF LAW IN 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
Post Office Box 775
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DATED: October 18, 2007

The Plaintiff, George R. Simpson, had made a Motion alleging that F.R.Civ.P. 11 sanctions should be imposed against Attorney Alan R. Feuerstein and the Law Firm of Feuerstein & Smith, LLP. This Memorandum of Law is submitted in opposition to the Plaintiff's Motion for Rule 11 sanctions.

I. PLAINTIFF'S MOTION FOR SANCTIONS

The Plaintiff, George R. Simpson, has opposed the Defendant's Motion to Dismiss his Complaint¹. Defendant's Motion to Dismiss Plaintiff's Complaint is based upon numerous factual substantive and legal defects in the Plaintiff's Complaint. Defendant's Motion to Dismiss Plaintiff's Complaint was filed on July 30, 2007 and brings before the Court numerous arguments including assertions that the controversy alleged by the Plaintiff is not justiciable in this Court, that the Court has no jurisdiction, that the Plaintiff has no standing, that he is not a real party in interest, that the Plaintiff's claim cannot be pursued as a result of his failure to comply with conditions precedent (mandatory arbitration) during a time when Simpson was a condominium owner, and that all of his alleged causes of actions fail to state claims upon which relief can be granted.

The Defendant made his Motion to Dismiss before the time within which his Answer was required to be served, and therefore, no Answer of the Defendant has been supplied in connection with these proceedings. The Plaintiff, George R. Simpson, *pro se*, in response to the Defendant's Motion to Dismiss failed to supply any documentation or opposing evidence whatsoever supporting his claims for relief and simply alleges that he has standing, that the arbitration provisions of the Sapphire Bay Condominiums West by-laws are inapplicable to disputes between owners, that Stephen Sokolow is an owner of an apartment and condominium unit at Sapphire, and that standing exists despite the fact that Simpson and his wife sold their condominium unit prior to the commencement of these proceedings.

In reply to the Plaintiff's opposition, the Defendant opposes his Motion to amend his Complaint based upon the doctrine of futility, because Simpson and his wife sold their condominium unit prior to the commencement of these proceedings and therefore has no standing, and further states

¹ Defendant's Motion to Dismiss Plaintiff's Complaint is pending before the Court.

and alleges that the Plaintiff has failed to comply with conditions precedent which require that while an owner, Simpson had to commence arbitration proceedings with respect to the dispute that he allegedly has with Sapphire Bay Condominiums West's Board of Directors.

Therefore, the Defendant has alleged that jurisdiction does not exist in this Court, that the Plaintiff has no capacity to file suit because he is not a real party in interest, he has failed to comply with arbitration requirements, he is not a proper party, and his attempts to revise and amend his Complaint would be futile in light of these defects.

Simpson also alleges that the Board of Directors of Sapphire Bay Condominiums West is unable to act because of an allegation that a member of the board (Steven Kerschner) did not have "title" to his condominium unit. However, the Defendant has shown and established that Simpson has time and time again been advised by Courts, in letters, and by direct citation to case law that the *doctrine of equitable ownership* in the Virgin Islands allows Steven Kerschner to hold office and therefore, Plaintiff's Complaints regarding Mr. Kerschner have no merit.

The Motion to Dismiss Plaintiff's Complaint is presently before the Court. After the briefing on the Motion to Dismiss Plaintiff's Complaint was complete, the Plaintiff, George R. Simpson, brought a Motion pursuant to Rule F.R.Civ.P. 11; a review of his Motion for Sanctions shows that Simpson has violated the "safe harbor" rule which states that a Motion for Sanctions under F.R.Civ.P. cannot be filed with the Court until twenty-one (21) days after it has been served on the parties [F.R.Civ.P. 11(c)(1)(A)]. Additionally, a review of Simpson's Rule 11 Motion shows that nothing he alleges therein even comes close to sanctionable conduct. Simon DeBartolo Group v. Richard E. Jacobs, 186 F. 3d. 157, 166 (2d. Cir. 1999) A Motion for Sanctions must identify the specific conduct that deserves sanctioning and the rule, statute, or the person violated. Ted Lapidus, S.A. v. Vann, 112 F. 3d. 91, 97 (2d Cir. 1997)

Therefore, Simpson's Rule 11 Motion is defective as a matter of law, defective as a matter of fact, and sanctions should be imposed against Simpson pursuant to F.R.Civ.P. 11 because a false and defective Motion for Sanctions itself is subject to F.R.Civ.P. 11.

II. ARGUMENT ONE

A Motion for Sanctions under F.R.Civ.P. 11 cannot be filed with the Court until twenty-one (21) days after it has been served on the opposing party F.R.Civ.P. 11(c)(1)(A). See Truesdell v. Southern Cal. Permanenté Medical Group, 293 F.3d. 1146, 1152 (9th Cir. 2002) 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. (Notes to F.R.Civ.P. 11 §21)

In this case, Simpson simply has filed the Motion for Rule 11 sanctions without having properly served it on the party twenty-one (21) days prior to filing and therefore, his Motion is procedurally defective.

III. ARGUMENT TWO

The allegations contained in Mr. Simpson's Rule 11 Motion do not justify any award of sanctions. To the contrary, Simpson's filing of a Rule 11 Motion is sanctionable in and of itself.

All of the arguments that Mr. Simpson raises in his F.R.Civ.P. Rule 11 Motion are the same arguments that Simpson has brought in opposition to the Defendant Stephen Sokolow's Motion to Dismiss the Plaintiff's Complaint. Simpson's claims have no merit because Mr. Simpson and his wife sold their condominium unit at Sapphire Bay Condominiums West before commencing this action. He therefore has no standing. This issue is adequately described in the Defendant's Motion to Dismiss. (at page 7)

In addition to the foregoing, while he was an owner at Sapphire Bay Condominiums West, because he complains of actions of Stephen Sokolow and the board (while Stephen Sokolow was a member of the Board of Directors of Sapphire Bay Condominiums West), Simpson was required to

have commenced arbitration proceedings with the board pursuant to the by-laws of Sapphire Bay Condominiums West. This issue is fully briefed out with respect to the Motion to Dismiss the Plaintiff's Complaint (at page 18). The argument that Simpson raises with respect to "sanctions" and his allegation with respect to the by-laws requiring arbitration have been explained to him time and time again *ad nauseum*. Mr. Simpson simply does not wish to acknowledge that he has failed to commence arbitration proceedings and that he has no standing.

The issue regarding Steven Kerschner's equitable ownership of his apartment at Sapphire Bay Condominiums West has been explained to Mr. Simpson repeatedly. Time and time again Courts, Judges, and in pleadings Mr. Simpson has been advised that the concept of equitable ownership of real property in the Virgin Island entitles Steven Kerschner to sit as a member of the Board of Directors. Mr. Simpson simply chooses to ignore this.

All of the allegations brought by Simpson in his "Rule 11 letter" have been fully and completely briefed before the Court in the Defendant's Motion to Dismiss Plaintiff's Complaint. Mr. Simpson is attempting to re-cast his opposition to the Defendant's Motion to Dismiss Plaintiff's Complaint into outrageous allegations that he states justify sanctions be imposed against opposing counsel. Contemporaneously filed with this Memorandum of Law is the Defendant's Opposition to the Plaintiff's Motion for Rule 11 sanctions and the exhibits attached thereto. The exhibits and allegations contained therein in opposition to Plaintiff's Motion clearly show that Simpson's arguments are baseless, have no merit, and further, they expose Simpson for what he really is.

IV. ARGUMENT THREE

The Court must sanction George R. Simpson for his "bad faith" and his "fraud" on the Court. George R. Simpson has filed a baseless Rule 11 Motion for Sanctions. His allegations that counsel has lied to the Court are outrageous and untrue. Simpson has, time and time again, been advised by Courts that the doctrine of equitable title allows Steven Kerschner to own real property in the Virgin Islands and sit as a member of the Board of Directors at Sapphire Bay Condominiums West. George

R. Simpson has been advised time and time again that the mandatory arbitration provisions of Sapphire Bay Condominiums West by-laws require that arbitration take place and that the commencement of litigation is barred unless and until this condition precedent has been met. Mr. Simpson has sold his condominium unit that was previously owned by he and his wife at Sapphire Bay Condominiums West and therefore, he simply has no standing to commence these proceedings.

Under its inherent power, the Court may sanction a person for conduct in “bad faith” or for a “fraud on the Court” Chambers v. NASCO, Inc., 501 U.S. 32, 43-45 111 S. Ct. 2123, 2132-2133 (1991) Eisemann v. Greene, 204 F. 3d. 393, 396 (2d. Cir. 2000). The bad faith of Simpson in making this Rule 11 Motion that is procedurally, factually and legally meritless justifies the most severe sanctions to be imposed against him.

WHEREFORE, it is respectfully submitted that the Plaintiff’s Motion should be denied, and that sanctions be imposed against Simpson pursuant to F.R.Civ.P. 11.

DATED: Buffalo, New York
October 18, 2007

Respectfully submitted,
FEUERSTEIN & SMITH, LLP

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CERTIFICATE OF SERVICE

I, Maria Palacios, hereby certify that on the 18th day of October, 2007 served the within Memorandum of Law in 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