

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

GEORGE R. SIMPSON

Plaintiff

v.

STEVEN KERSCHNER

Defendant

CIVIL NO. 250/05

FRAUD; MISREPRESENTATION;  
INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS;  
MISFEASANCE; MALFEASANCE;  
DEFAMATION;  
AND ACTION FOR DAMAGES

**FIRST AMENDED COMPLAINT**

Here comes George R. Simpson, Prose, on behalf of himself and other similarly situated owners of Sapphire Bay Condominiums West, and files this First Amended Complaint alleging the following.

This First Amended Complaint is identical to the original Complaint except 1) misspelling of Defendant's name in the Caption is corrected in the First Amended Complaint, and 2) the First Amended Complaint contains the additional COUNT FIVE, for Intentional Infliction of Emotional Distress, and additional COUNT SIX, Action for Damages.

**Jurisdiction**

1. This court has jurisdiction and authority to grant the requested relief pursuant to 4 V.I.C. § 76, Rule 65 of the Federal Rules and Civil Procedure, and 5 V.I.C. § 1261.
2. Plaintiff, George R. Simpson is a resident of St Thomas, Virgin Islands, and an owner of unit C-4, at the Sapphire Bay Condominiums West Condominium Association. The condominium is organized pursuant to By-laws and Rules and Regulations, amended September 22, 1991, and in accordance with the provisions of Chapter 33, Title 28, of the Virgin Islands Code, known as the "Condominium Act of the Virgin Islands".

3. Sapphire Bay Condominiums West is located at 6345 Smith Bay, St. Thomas, Virgin Islands.
4. Defendant STEVEN KERSCHNER, is an owner of Unit D-13, Sapphire Bay Condominiums West, 6345 Smith Bay, St. Thomas, Virgin Islands 00802.

Facts

5. Both Plaintiff and Defendant are owners of condominium units at Sapphire Bay Condominiums West.
6. Defendant Steven Kerschner has claimed to be a member of the Board of Directors of Sapphire Bay Condominiums West for four years (from September 2000 through September 2004).
7. In fact, throughout his four years as Director, Mr. Kerschner misrepresented his qualifications to be Director. In order that he could be a “Director” of the Condo Association, Mr. Kerschner misrepresented that he was a part-owner of Condo Unit D-13 with his Mother Barbara Kerschner, when in fact, Barbara Kerschner was the sole owner and Steven Kerschner had no ownership of the apartment, whatsoever.
8. Board Member and President Steven Kerschner, for the entire term as Director and President, was neither an owner, nor the spouse of an owner. The By-laws of the Sapphire Bay Condominiums West require that all Board Directors be either an apartment unit owner or a spouse of an owner.

Sapphire Bay Condominiums West ByLaws, ARTICLE ii, Section 1.  
Number and Qualifications.

“The affairs of the Condominium shall be governed by a Board of Directors. The Board of Directors shall be composed of five persons, all of whom shall be owners or spouses of owners...”

9. The roster of the SBCW condo association and the billing records of the condo association as of August 26, 2003 show Mr. Kerschner’s mother, Barbara, to be the owner of the condo he claimed he owned.
10. The official land ownership records of St. Thomas, VI, at each of the times that Mr. Kerschner was elected to be a “Director” show Barbara Kerschner to be the sole owner of Unit D-13, not Steven Kerschner. (See: Plaintiff Exhibit 1, Title Opinion). The Title for Unit D-13 shows that Barbara Kerschner has been the sole

owner for a long time, longer than the period Steven Kerschner has been a Director of Sapphire Bay Condominiums West Board of Directors.

11. A Quit Claim Deed (Plaintiff Exhibit 2) dated October of 2003, after Mr. Kerschner's last election to the Board, shows that Mr. Kerschner had not been a part-owner for all the years he was a "Director".
12. The March 15, 2004 letter from Plaintiff to the Board of Directors of Sapphire Bay Condominiums West (See Plaintiff Exhibit 3), Point number 1 questions Mr. Kerschner's qualifications to be a Board Member. He, nor the Board of Directors, ever answered that letter with any documentation showing that Steven Kerschner was an owner and qualified to be a Board member, when he was elected to the post of Director.
13. The Minutes of a Sapphire Bay Condominiums West Board of Directors meeting held on March 17, 2003 also show that Steven Kerschner misrepresented his ownership and therefore his right to be a Director, and the "Boards" standing as a legally constituted board. Those minutes stated:

**"1. Steve Kerschner is not entitled to be a SBCW Board Member or President of the Board.** Steve Kerschner addressed the first point in the letter in detail with documents. He is now a full owner of the apartment but had been half with his mother, Barbara."
14. Mr. Kerschner, and all of the other "Board Members" who approved those minutes knew that this statement was false, and that the Board was not a legally constituted Board, and had not been a legally constituted Board, since the first election of Steven Kerschner to the Board in September of 2000.
15. At a hearing held in August, 2004 in a Lawsuit, District Court, Civ 2004-62, of the United States Virgin Islands, Sapphire Bay Condominiums West (SBCW) v George R. Simpson, Mr. Steven Kerschner, when under oath, committed perjury by testifying that he had been a part owner of a Condo unit at Sapphire Bay Condominiums West, when he had not been an owner.
16. Since Mr. Kerschner had not been an owner, when he was elected to the Board, he was not eligible to be a Board member. Therefore there were not enough Board members to have a legally constituted Board, and therefore the Board of Directors of Sapphire Bay Condominiums West could not have filed Civ 2004-62 lawsuit,

or any other lawsuit in a court of law. Therefore the complaint in that District Court Case against Plaintiff (in this case, Defendant in the District Case) George R. Simpson should have been dismissed.

17. Because of Mr. Kerschner's lying under oath (Perjury) about his qualifications as Board Member, the case (Civ 2004-62) was not dismissed; instead the judge ruled against Plaintiff, George R. Simpson, finding that there was a valid Board, and Plaintiff has experienced substantial harm to his business, harm to his reputation, and loss of business in a new "Resorts Promotion" business, which he was setting up.
18. Even though Steven Kerschner was proven to be "not a Director" – beyond a doubt – in March of 2004, he did not resign. He continued to make decisions as the "President" of the Board and Director. Steven Kerschner continued to violate the trust that he had with owners, and caused enormous damage to Plaintiff and other owners.
19. Steven Kerschner, acting as Board "President", headed up a campaign of harassment and defamation of Plaintiff, including defamatory statements made at an open Board meeting March 17, 2003, where many false statements were made against Plaintiff in front of 30 owners. At the meeting, Steven Kerschner as President encouraged the reading of an extremely vindictive and defamatory letter "To the Board of SBCW" by fellow board member, Steve Sokolow.
20. The minutes to this March 17, 2003 meeting, containing the defamatory statements and Mr. Sokolow's letter were sent to all the owners of SBCW. Other correspondence containing equally untrue and defamatory statements were sent to all the owners. These communications had only one purpose: Defaming Plaintiff George Simpson. (Exhibit 4, Minutes of March 17, 2004 Board Meeting, Pages 1, 2)

**Untrue and Defamatory Exempts from Mr. Sokolow's letter, Published by Steven Kerschner:**

- ❑ They represented that George Simpson had not received approval for his window change, when in fact he had received "Default" approval.

- ❑ He represented that Plaintiff had a campaign of harassment of certain Board members when this was not the case.
    - ❑ He represented that George R. Simpson had not received permission to remove the interior wall of his apartment when manager Frank Barry had provided permission.
    - ❑ He said of George R. Simpson “When an individual has become so obsessed with the board’s action, it is time for him to think that he may be in the wrong place. ...”
21. Steven Kerschner has also been involved in a campaign to harass Plaintiff and his wife, including stalking Plaintiff in a golf cart, riding with Condo manager Frank Barry, taking pictures of Plaintiff and his wife and their apartment, and driving by Plaintiff’s apartment in the golf cart, pointing, waving, and laughing at Plaintiff and his wife and their apartment.
  22. Steven Kerschner has led a campaign of slander and harassment. He manipulated others to ruin the life of Plaintiff and his wife, and making it impossible to have quiet enjoyment of their apartment.
  23. During Mr. Kerschner’s terms as Board Member, the activities of the Board have been conducted dishonestly to the detriment of Plaintiff and all other owners.
  24. Mr. Kerschner, has been the spearhead of an effort to continue to evade and cover-up extensive filing violations by the SBCW Condo association and its owners with the Coastal Zone Management and Permits Departments of the Department of Planning and Natural Resources of the USVI Government.
  25. This massive cover-up involves potential CZM Filing fines of as large as \$50,000,000 (\$50 Million) and as many as 500 building permit violations.
  26. These CZM filing infractions carry with them a jail term for anyone who knowingly neglects their responsibility under the CZM laws.
  27. The permit violations are so extensive that virtually every apartment and all commons areas are unsafe due to permit violations, and no area of the Condo facilities would be covered by insurance should a serious accident/claim occur.
  28. Steven Kerschner, together with others at his direction, deceived the CPA auditors, and did not disclosed the enormous contingent liabilities which exist at SBCW, to the extreme detriment of Plaintiff and his fellow owners.

29. Steven Kerschner, as Board President, has instigated the filing of five frivolous lawsuits against George R. Simpson. These lawsuits are exposing the Owners of SBCW to needless legal expense and damages, which will be paid to George Simpson in settlement of the frivolous actions. (Estimated to amount to \$500,000 in legal fees and \$20,000,000 of damages.)
30. Steven Kerschner, as President of the Board was charged with the job of enforcing the ByLaws, yet he himself violated the ByLaws. He has used Condo employees to do construction work in his apartment, even though that is forbidden by he Rules and Regulations of the Condo Association's ByLaws.
31. Steven Kerschner, who according to the Condo ByLaws is the supervisor of manager Frank Barry, has provided virtually no effective supervision of Mr. Barry. There is an "unclean" relationship between Steven Kerschner and employee Frank Barry.
32. Steven Kerschner encouraged manager Frank Barry to commit perjury in two lawsuits which are pending, and Frank Barry is still on the payroll.
33. Employee Frank Barry is permitted to violate the Rules and Regulations of the Condo Association.
34. Steven Kerschner has allowed many dishonest activities of Manager Frank Barry to go unchecked, including misappropriation of association of funds during the four years Steven Kerschner has been a Board Member and President of the Board..
35. The Condo Association has eight or nine employees, of which only one to two is working at a time, on the average. This scandalous activity suggests mismanagement at best, perhaps kick-backs and outright stealing.
36. Reporting to Steven Kerschner, Frank Barry is allowed to take as many as 12 weeks vacation when Condo Association policy allows only 4 weeks.

COUNT ONE

Fraud

37. Plaintiff re-alleges paragraph 1 through 36, and incorporates the same by reference.

38. Defendant deliberately and fraudulently represented his ownership of a Condo Unit.
39. Defendant represented that he was a part owner of Unit D-13 for the time period September, 2000 through September 2004 when in fact, he was never an owner until October, 2003.
40. He deliberately and fraudulently represented that he met the Condo Association ByLaw requirements for Board Membership and President of the Board, when in fact, he was not qualified to be a Board Member or President of the Board.
41. This action casts doubt upon the legality of any of the Board's activities.

COUNT TWO  
Misrepresentation

42. Plaintiff re-alleges paragraph 1 through 41, and incorporates the same by reference.
43. Defendant deliberately misrepresented his apartment ownership and qualifications for Director and President, so he could use his position for himself and his friends.

COUNT THREE  
Misfeasance

44. Plaintiff re-alleges paragraph 1 through 43, and incorporates the same by reference.
45. Defendant had a total disregard for his responsibilities as Director and President of the Board.
46. Defendant failed to properly supervise manager Frank Barry.
47. Whereas Mr. Kerschner had responsibility for rigid enforcement of the ByLaws, he adhered to them when he wanted to adhere to them and did not when he did not want to adhere to them. He directed the Board of Directors to initiate many frivolous lawsuits against Plaintiff, with disregard of the pertinent Law and relevant facts.
48. Mr. Kerschner committed perjury and thereby caused Plaintiff substantial emotional and financial harm.

49. Mr. Kerschner deliberately acted, and caused the Board to act in a way to harm Plaintiff's reputation, harassed him, and prevented him from being able to quietly enjoy his home.
50. Defendant continued his deliberate violation of Article 11 of the Rules and Regulations, even though Defendant was given written and oral warnings that such violation is continuing to cause emotional and other harm to Plaintiff and his family.

COUNT THREE  
Malfesance

51. Plaintiff re-alleges paragraph 1 through 50, and incorporates the same by reference.
52. Defendant knew he was not qualified to be a Board member, and he knew that he was performing dishonest, but in spite of this, he continued his behavior with reckless disregard of the interest of Plaintiff and the other owners.
53. Defendant knew he was not qualified to be a Board member, yet he used his position on the Board to damage the reputation of Plaintiff, and harassing Plaintiff in the name of the Board, and he continues to do so.

COUNT FOUR  
Defamation

54. Plaintiff re-alleges paragraph 1 through 53, and incorporates the same by reference.
55. Defendant, acting as Board Member and President of the Board, had a fiduciary responsibility to be fair with all owners.
56. Contrary to his responsibility, Steven Kerschner deliberately defamed Plaintiff and his wife in letters to owners, at one or more open Board meetings, and in minutes to Board meetings distributed to all owners.

COUNT FIVE  
Intentional Infliction of Emotional Distress

57. Plaintiff re-alleges paragraphs 1 through 56, and incorporates the same by reference.

58. Defendant, acting as Board Member and President of the Board, had a fiduciary responsibility to be fair with all owners.
59. Contrary to his responsibility, Steven Kerschner deliberately and intentionally inflicted emotional distress upon Plaintiff and his wife.
60. Mr. Kerschner deliberately acted, and caused the Board to act in a way to harm Plaintiff's reputation, harassed him, and prevented him from being able to quietly enjoy his home.

COUNT SIX  
Action for Damages

61. Plaintiff re-alleges paragraphs 1 through 60, and incorporates the same by reference.
62. Due to the aforementioned reasons, Plaintiff has been greatly damaged.
63. In addition, other owners have been damaged.
64. Plaintiff seeks recovery of the Damages for himself and for other owners.

Relief Requested

WHEREFORE, the Plaintiff prays for the following relief:

- a) For actual and compensatory damages;
- b) For costs and attorney fees; and,
- c) For whatever other relief the Court deems just and proper.

DATED: \_\_\_\_\_, 2005

GEORGE R. SIMPSON, PROSE

By: \_\_\_\_\_

George R. Simpson  
6345 Smith Bay  
Sapphire Bay Condominiums West  
Unit C-4  
St. Thomas, Virgin Islands 00802  
Cell Phone: 631-357-9502

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing pleading was served by mailing the same, postage prepaid, by hand delivery or by facsimile on the \_\_\_\_ day of May, 2005.

***By Certified Mail***

To: Steven Kerschner  
22 Deepwood Ln  
Norwalk, CT 06854

Steven Kerschner  
Kerschner Development Company, LLC  
5 Eversley Avenue  
Suite 200  
Norwalk, CT 06851

Via: Mail  Fax  Hand