

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DISTRICT OF ST. CROIX

THE ASSOCIATION OF ST. C
CONDOMINIUM OWNERS, INC.,

Plaintiff,

v.

MARJORIE ROBBINS, JACKIE JOSEPH,
KAREN RASMUSSEN, DIANA
ROBINSON, ANN MARIE MEDINA and
SHARONE PIERRE,

Defendants.

CIVIL NO. SX-2022-CV-00401

**MOTION TO SHOW CAUSE WHY DEFENDANTS, THEIR COUNSEL, AND
OTHERS ACTING IN CONCERT WITH DEFENDANTS SHOULD NOT BE
HELD IN CONTEMPT OF COURT FOR VIOLATING THE APRIL 25, 2024
TEMPORARY RESTRAINING ORDER**

On April 25, 2024, the Honorable Judge Harold W.L. Willocks issued a detailed and specific temporary restraining order enjoining “Defendants, their officers, agents, servants, employees, and attorney, **and any other persons who are in active concert or participation with them** (hereinafter “Defense Parties”) from calling or conducting any meeting or special meeting under the name of the Association of St. C Condominium Owners, Inc. for the removal of Board members on Thursday, April 25, 2024 or any other day.” *See*, Temporary Restraining Order dated April 25, 2024, at pps. 2-3 (emphasis added). The Court stated unequivocally that it “finds it most equitable to grant the temporary injunction **to preserve the status quo.**” *Id.*, at p. 2 (emphasis added). Despite the Court’s clear and unambiguous order and its stated intent to maintain the status quo, the Defendants, on April 25, 2024, and on the advice of their



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counsel, while aided and abetted by Darin Bokeno, Valerie Stiles, Willis Gaffney, Michael Joe Darrah, Paul Hartline, Jeff Landback, Martin Levy, Corrie Warm¹, Joe Estes, Debbie Hennings, and Cheryl Goodridge (collectively, “Defense Parties”) conducted and participated in the very meeting the Court specifically enjoined them from conducting. Since then, several of the Defense Parties have sought, *by force*, to take control of the Association and remove the current Board of Directors. The Defense Parties have threatened and harassed the Association’s employees, threatened to terminate the employees, threatened to terminate legal counsel for the Association and the Board, demanded attorney work product from the Association’s counsel, changed the locks, spread misinformation about the Court’s clear and unambiguous order throughout the St. C community, and defamed the current Board members and their counsel through inflammatory and patently false statements. The conduct of the Defense Parties has been directed, guided, and supported by their counsel who was served with the TRO, has knowledge of the TRO’s contents, and who is an officer of the Court. As a result of the contemptuous conduct of the Defense Parties and their shared and joint counsel, the Association has suffered over \$9,488.23 in losses, which continues and increases every day, has sought police intervention on at least two occasions, and has employees who fear for their physical safety and their jobs. The Association, therefore, seeks an order to show cause why the Defendants, their counsel, and Bokeno, Stiles, Gaffney, Darrah,

¹ “Warm” is also referred to as “Warrum” in the Exhibits. Any reference to “Warm” also includes “Warrum” for purposes of this motion.

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Hartline, Landback, Levy, Warm, Estes, Hennings, and Goodridge should not be held in civil and criminal contempt for their continuing violation of the Court's order. The Association also seeks an order compensating the Association for its losses, imposition of a daily fine of \$500.00 against each individual Defense Party and their counsel to coerce compliance with the TRO, attorney fees and costs associated with filing and prosecuting the instant motion, and a finding by the Court declaring the actions and votes taken at the illegal April 25, 2024 meeting null and void *ab initio* and in violation of the TRO. The Association cites the following points and authorities in support of this motion.

RELEVANT FACTS AND PROCEDURAL HISTORY

The Association, acting through its Board of Directors and on behalf of members of the Association, brought the instant action against Defendants, who are former board members and board committee members due to their mishandling of hurricane recovery funds, failure to employ controls to combat fraud and waste, abuse of positions of authority, and other violations of law and the Association's bylaws. *See*, Complaint in SX-2022-CV-0041. The exhibits submitted in support of the Complaint provide support for the allegations and include board minutes documenting the transfer of Hurricane Maria insurance proceeds from specially designated accounts to the Association's operating accounts with funds being expended without any supporting documentation, while members of the Association simultaneously sought funds to repair their condominium units and common areas. *Id.*, at Exhibits "4", "17", "18", "19", "20", "21", and "22" to the Complaint. In addition, the minutes of the board meetings and

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documented transactions support allegations of misappropriation of reserve funds, waivers of fees for at least one of the defendants in the main action while she served on the Board, and conflicts of interest with a board member who was also the realtor to third parties who purchased condominium units from the Association, among other wrongful conduct. *Id.* Significantly, the Introductory Statement of the Complaint reads:

[t]his action is being brought by the Association as the result of concerted efforts and campaign by the Defendants to cover up their wrongdoings **by attempting to oust the current Board of Directors** who are investigating the Defendants for breaching their fiduciary duties under the Declaration, Bylaws, and Condominium Act, while serving on the Board or a committee, on behalf of the St. C Association.

See, Complaint, at p. 1 (emphasis added).

Defendants and others acting in concert with them continued to rally to oust the current Board even after the Complaint was filed. On February 15, 2023, counsel for the Defendants forwarded correspondence to the undersigned wherein he claimed to represent “over 50 homeowners at St. C Condominium” and threatened:

[s]hould you ignore the foregoing demands, as you have in the past, **we will ensure that the Board cannot achieve a quorum, preventing the Board from conducting the business of the Association** and requiring that it reset the Annual Meeting. Additionally, **our clients will take steps to call a special meeting for the removal of certain Board members that fail to adhere to the legitimate requests of our clients.**

Exhibit “1”, Letter from Kevin D’Amour, Esq. to the undersigned and Jay Stucki dated February 15, 2023. Bokeno attached a list of his clients to the letter, which list contains the names of the following Defense Parties: Bokeno, Stiles, Gaffney, Darrah, Landback, Levy, and Estes. As such, Defense Parties made clear their concerted effort to call a

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“Special Meeting” for purposes of removing the current Board as far back as February 15, 2023. The letter containing the threats from D’Amour follows an earlier email from one of the Defendants, Sharone Pierre, who circulated and presented a Petition for Special Meeting signed by three of the very Defendants who are accused of wrongdoing in the instant action, along with Stiles and Levy. **Exhibit “2”**, Email from Defendant, Sharone Pierre to Board dated April 4, 2022, with accompanying petition for Special Meeting. Therefore, it is clear from the records that Defense Parties have been acting in concert with each other as far back or even before early 2023.

As predicted, individuals associated with the Defendant in this action including many of the Defense Parties, filed a separate action against the individual Board members and others to further the Defendants’ attempts to oust the current Board and stop the investigation into the Defendants’ wrongdoings. *See*, Complaint in *Bokeno, et. al. v. Merna, et. al.*, Case No. SX-2023-CV-00198, at p. 12 (seeking a “temporary and preliminary injunction prohibiting the President and the Board from conducting the business of the Association . . .”). Those plaintiffs, referred to herein as the Bokeno Plaintiffs, seek, among other things, an order requiring the Board and its President to hold a Special Meeting and an order preventing the Board from conducting the business of the Association, which includes investigating and prosecuting the Defendants for their misdeeds. *Id.* The Bokeno Plaintiffs are represented by the same counsel as the Defendants in this matter, Kevin D’Amour. Immediately recognizing the existence of a conflict of interest in D’Amour’s concurrent representation of the Defendants here and

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the Bokeno Plaintiffs, the Association moved to disqualify D'Amour in both matters. The Association argued and continues to argue that "there is a high probability that his clients' legal positions could conflict as the case proceeds and the defenses evolve." *See*, Motion to Disqualify dated July 26, 2023, at p. 15. The Association highlighted, in great detail, the inherent conflict posed by D'Amour in representing the multiple Defendants and the Bokeno Plaintiffs and further argued "[t]hese facts also show the risk of D'Amour having to limit his advocacy on behalf of one defendant, so as not to damage the defense of another client. *See*, the Association's Reply to Opposition to Motion to Disqualify, at p. 11.

In response to the Motion to Disqualify and of particular significance to this instant motion to show cause, the Defendants, Bokeno Plaintiffs, and their counsel asserted: "**[t]he interests of the Bokeno Plaintiffs are aligned and will continue to be aligned, with the interests of the Defendants in this matter i.e. removal of the current Board of the Association.**" *See*, Opposition to Motion to Disqualify dated August 15, 2023, at pps. 5-6 (emphasis added). The following Defense Parties are also Bokeno Plaintiffs: Bokeno, Stiles, Gaffney, Darrah, and Levy. These Defense Parties all executed affidavits purporting to waive D'Amour's non-waivable conflicts of interest thereby confirming the alignment of their interests and efforts to oust the current Board of Directors.

Consistent with their joint representation in the Opposition to the Motion to Disqualify, the Defense Parties previously sought and continue to seek to force the

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current Board to conduct a special meeting for the purpose of ousting the current Board and halting the investigation and civil prosecution of the Defendants. *See* **Exhibit “2”**. Most recently, the Defense Parties, with the support of their joint and shared counsel and as indicated in D’Amour’s letter of February 15, 2023, launched a campaign in the St. C community to prevent the current Board from constituting a quorum at its annual meetings and misleading members of the St. C community with false statements. The Defense Parties organized under the name of “Owners for Positive Change) (hereinafter “OPC” or “Defense Parties”), led by Bokeno, have successfully prevented the Board from achieving a quorum at its annual meetings. **Exhibit “3”**, Email announcement from OPC dated June 23, 2023, and identifying its membership; *see also*, **Exhibit “4”**, Facebook post by Bokeno in OPC group chat instructing Association members not to participate in the annual meeting to prevent the election of Board members and consideration of Bylaws; *see also*, **Exhibit “5”**, Facebook post by Bokeno in OPC group regarding Board’s failure to achieve quorum. Members of the OPC include the following Defense Parties: Robbins, Rasmussen, Medina, Pierre, Bokeno, Stiles, Gaffney, Darrah, Landback, Levy, and Estes. *See* **Exhibit “3”**. The Defense Parties’ campaign to dismantle the Board and halt the investigation and prosecution into the Defendants’ misdeeds include harassment of other Association members who are not members of OPC and adding names to their group and actions without authority. **Exhibit “6”**, Email between “Nicole F.” and Bokeno dated February 16, 2023; **Exhibit “7”**, Email from Chris A. Williams to Jason May dated March 27, 2024; and *see also*, **Exhibit “8”**, Email

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exchange with Bokeno and Association member dated June 6, 2023. Moreover, D'Amour communicates and disseminates information to members of the Association through Bokeno's communications and is often copied or referenced in communications distributed by Bokeno and the Defense Parties. **Exhibit "9"**, Facebook post in OPC group by Bokeno dated March 26, 2024, announcing a special meeting under the guidance of legal counsel.

Fraudulent Notice for a Special Meeting

On March 18, 2024, the Defense Parties placed packets on the porches and at the doors of all unit owners. **Exhibit "10"**, Letter from Christine Merna to Association members dated March 21, 2024. The packets were fraudulent and misleading inasmuch as they purported to be from the Association and included material for a Special Meeting bearing the header of the Association. **Exhibit "11"**, Agenda for fraudulently noticed Special Meeting. The notice of the Special Meeting, organized by Defense Parties, and not the Association was scheduled for Thursday, April 25, 2024. Significantly, the "Special Meeting" was organized pursuant to advice provided by D'Amour. **Exhibit 12"** (stating, "As owners, and under the guidance of legal counsel, we have assumed the responsibility of organizing a special meeting due to the BOD's refusal to adhere to Bylaws and acknowledge the 43+ owners who signed a petition requesting a special meeting."). Defendants, such as Marjorie Robbins participated in the planning of the meeting by collecting proxy forms so they could vote at the meeting. *Id.*, Email from Marjorie Robbins to OPC and D'Amour requesting proxy forms dated March 26, 2024.

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Temporary Injunction

On April 23, 2024, the Association filed motions for temporary restraining orders in both matters to enjoin the Defense Parties from: 1. holding and representing themselves to the community as the Association of St. C Condominium Owners, Inc.; 2. from soliciting or calling a Special Meeting; and 3. from conducting an illegal Special Meeting under the name of the Association of St. C Condominium Owners, Inc. or any meeting for the removal of Board members on Thursday, April 25, 2024, or any other day. Flagrant Violation of the Temporary Restraining Order. *See*, Emergency Motion for Temporary Restraining Order or, in the alternative, for Preliminary Injunction, at p. 2.

On April 25, 2024, the Court, in the instant matter, granted the Association's motion for emergency injunctive relief and enjoined "Defendant, their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them (hereinafter "Defense Parties") from calling or conducting any meeting or special meeting under the name of the Association of St. C Condominium Owners, Inc. for the removal of Board members on Thursday, April 25, 2024, or any other day." *See*, Temporary Restraining Order dated April 25, 2024, at p. 3. The Court explained that it "will reserve Plaintiff's request to enjoin the Defense Parties from holding and representing themselves to the community as the Association of the St. Condominium Owners, Inc. **since it does not have the same urgency as the meeting that is taking place later today**", thereby making clear the express intent of the Court to prohibit the purported "Special Meeting" from occurring. *Id.*, at p. 2.

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Finally, the Court stated the intent of the order as maintaining the status quo until it could hold a hearing on the request for preliminary injunction. *Id.*

The TRO has since been extended for an additional 14 days. *See*, Order dated May 8, 2024.

Defense Parties Flagrant Violation of the Temporary Injunction

Defense Parties and their counsel ignored the Court's Order entirely and conducted the very meeting they were expressly enjoined from conducting. **Exhibit "13"**, Email from OPC dated May 3, 2024, announcing action taken at the illegal Special Meeting and bearing the subject line "New St. C BOD elected at Special Meeting". Since the issuance of the TRO, the Defense Parties have done the following in furtherance of its violation of the restraining order:

- on April 25, 2024, and after the TRO was issued, Bokeno, using an OPC email account, sent out an email blast with the subject "MEETING IS STILL ON":

----- Forwarded message -----

From: **ownersforpositivechangeatstc**

<ownersforpositivechangeatstc@gmail.com> Date: Thu, Apr 25, 2024 at 5:53 PM

Subject: MEETING IS STILL ON

To: <president@stccondo.com>, **kevin.damour** <kevin.damour@comcast.net>, **Liz Gonzalez** <lgonzalez@usvilawfirm.com>

Hello everyone,

Tonight's Special Meeting is still on. THE JUDGE GRANTED A RESTRAINING ORDER FROM THE 6 DEFENDANTS IN THE OTHER CASE FROM HAVING A MEETING. BUT THERE IS NO ORDER PREVENTING OWNER'S FOR POSITIVE CHANGE FROM HAVING OUR MEETING. **CONFIRMED BY OUR LAWYERS. WE ARE A GO.** THE MEETING IS NOT CANCELLED.

THANK YOU AND SEE YOU TONIGHT.
Owners for Positive Change at St. C

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Exhibit “14”, Email from Bokeno dated April 25, 2024, informing Association members that Defense Parties are conducting the Special Meeting (emphasis added). In his email, Bokeno stated Defense Parties are proceeding with the Special Meeting despite the TRO and under the advice of counsel. D’Amour and another member of D’Amour’s firm are copied on the email.

- On April 30, 2024, D’Amour sent a letter to undersigned counsel referring to the Bokeno Plaintiffs matter and stating in relevant part:

[t]he Defendants in this case have been removed from the Board by a unanimous vote at Special Meeting duly noticed at which a quorum of the membership of owners of the Association was established.

Exhibit “15”, Letter from D’Amour to Walker dated April 30, 2024 (emphasis added).

- On May 2, 2024, Bokeno emailed counsel for the Association, Jay Stucki, a letter terminating his services. **Exhibit “16”**, Email Transmittal of Redlined Termination letter, and **Exhibit “16a”**, Termination letter in redline. The termination letter was in draft form and redlined by Jeniffer Koockogey-LaJoie, an attorney in D’Amour’s firm. Bokeno then sent a final version of the termination letter to Stucki with the inclusion of the corrections made by Attorney Koockogey-LaJoie. **Exhibit “17”**, Email Transmittal of final version of Stucki termination letter, and **Exhibit “17a”**, PDF version of Stucki termination letter. In the letter,

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Bokeno, upon the advice of his counsel, states:

[t]he owners of the Association of St. C recently held a special meeting on April 25th to remove all current directors and officers of the St. C BOD and elect new ones. The special meeting was duly noticed pursuant to the Bylaws, a quorum was obtained, and the vote was held pursuant to the Bylaws. The vote was unanimous, and the owners of the Association of St. C voted to remove all current directors of the St. C Board . . .

(emphasis added).

- Also, on May 2, 2024, Bokeno emailed the undersigned a letter purporting to terminate her services containing much of the same language included in the termination letter sent to Stucki. **Exhibit “18”**, Email transmittal of termination letter to Walker, and **Exhibit “18a”**, Termination letter sent from Bokeno to Walker.
- On May 3, 2024, Bokeno announced to the entire Association that Defense Parties proceeded with the “Special Meeting” despite the clear and unambiguous order of the Court. In this announcement, Bokeno, as the mouthpiece for the Defense Parties, boldly states:

----- Forwarded message -----

From: **ownersforpositivechangeatstc**

<ownersforpositivechangeatstc@gmail.com> Date: Fri, May 3, 2024 at 1:56 PM

Subject: New St. C BOD elected at Special

Meeting To: <presidentstcbod@outlook.com>

CC: jlandback <jlandback@yahoo.com>, Valerie Stiles <gypsyrose1952@yahoo.com>,

Paul Hartline <hartlinepaul2@yahoo.com>, M.Joseph Darrah

<houstondarrah12@gmail.com>, Marty St. C <marty@crucianstuff.com>, Willis Gaffney

<gaffneywillmd11@gmail.com>, C W <PacileoJax@gmail.com>

Good day,

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The owners of the Association of St. C Condominium Owners Inc. recently held a Special Meeting on April 25th to remove all current and previous directors and officers of the St. C Board of Directors and elect new ones. The Special Meeting was duly noticed pursuant to the Bylaws, a quorum was obtained, and the vote was held pursuant to the Bylaws. The vote was unanimous, and the owners of the Association of St. C Condominium Owners Inc. voted to remove all current directors and officers of the St. C Board, namely: Christine Merna, Sibyll Jones, Tommy McGlothlin, Michael Ryan Pickard, Sabrina Ferris, Mark Pratt, James Bonacci, Jessica Hodge, Rachel Haverkorn, and Anquanette Gaspard and any other wrongfully appointed director or officer. A vote was held to elect a new interim BOD and that was also achieved by unanimous vote of the quorum of owners.

The quorum, vote to remove, and votes to elect were verified via appointed Special Meeting presiding officer Darin Bokeno and Secretary Joe Estes Unit #201. The Special Meeting was witnessed and recorded by Debbie Hennings, an unbiased outside professional licensed court stenographer hired for the meeting. The Special Meeting was also witnessed and guided by the hiring of a certified parliamentarian, Cheryl Goodridge, to ensure owners adhered to our bylaws and Robert's Rules of Order. The Special Meeting resulted in fifty-six (56) owner units being present either in person, via zoom, or via proxy to ensure we reached a quorum of at least forty-eight owners. The vote to remove directors/officers was fifty-five (55) votes to remove, one (1) nonvote, and zero (0) votes to not remove. The vote to elect new directors was fifty-five (55) votes to elect, one (1) nonvote, and zero (0) votes against. The entire Special Meeting and election were also confirmed by audit.

The new, duly elected Board of Directors of the Association of St. C Condominium Owners Inc. are **Darin Bokeno Unit # 223 (President), Valerie Stiles Unit #126 (Vice-President), Willis Gaffney Unit #132 (Secretary), Michael Joe Darrah Unit#333 (Treasurer), Paul Hartline Unit #122, Jeff Lindback Unit #135, Martin Levy Unit #236, and Corrie Warm Unit #222.**

- **Exhibit “13”** (emphasis added). Bokeno informed the Association members that, despite the clear language of the TRO, he and Joe Estes presided over the “Special Meeting”, that the meeting was recorded by Debbie Hennings, witnessed and guided by Cheryl Goodridge, and was attended by 56 unit owners. *Id.* Although, he did not identify the unit owners in attendance, he announced that the following individuals participated and were elected as follows: Darin Bokeno (President);

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- Valerie Stiles (Vice-President); Willis Gaffney (Secretary); Michael Joe Darrah (Treasurer); Paul Hartline, Jeff Lindback, Martin Lecy, and Corrie Warm. *Id.*
- On May 6, 2024, Bokeno sent both the undersigned and counsel for the Association, Stucki, letters demanding their attorney work product although neither attorney has ever represented Bokeno or any of the other Defense Parties, **Exhibit “19”**, Email transmittal of demand letter from Bokeno to undersigned dated May 6, 2024; **Exhibit “19a”**, Demand letter signed by Bokeno and dated May 5, 2024; **Exhibit “20”**, Email transmittal of demand letter from Bokeno to Stucki dated May 6, 2024 and **Exhibit “20a”**, Demand letter signed by Bokeno and dated May 5, 2024.
 - Defense Parties have also subjected the employees and contractors of the Association to daily verbal and physically threatening harassment both at the St. C property and in public. On May 4, 2024, Stiles warned the Operations and Security Manager in downtown Christiansted that he would suffer because “they”, presumably the fraudulently elected Board, will freeze all bank accounts next week. **Exhibit “21”**, Email narrative of encounter with Stiles by Patrick Nugent and dated May 6, 2024.
 - Bokeno began harassing the Association’s General Manager on May 3, 2024 and during one encounter threatened General Manager by stating he was the incoming Board President, that both attorneys for the Association had been terminated, and that “I need to know where your loyalties lie as it will affect your

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- future employment”, **Exhibit “22”**, Email from Jason May dated May 6, 2024, documenting harassment from Bokeno from May 3, 2024 through May 5, 2024.
- On the evening of May 5, 2023, Bokeno attempted to access the Association’s office resulting in the Association calling the Virgin Islands Police Department for assistance. **Exhibit “23”**, Email from Board President, Christine Merna to the Board dated May 6, 2024. In fact, Bokeno attempted to place a new lock on the gate to the office. **Exhibit “24”**, Email summary from Nugent dated May 6, 2024, detailing Bokeno’s attempts to place a new lock on the gate to the office; **Exhibit “25”**, Video of Bokeno’s interaction with security in his attempts to replace the lock; and **Exhibit “26”**, Continuance of video of Bokeno’s interaction with security in his attempts to replace the lock. Bokeno, Stiles, Levy, and another one of the Defense Parties then sat out in the lobby after accosting Merna who was in the office. *See* **Exhibit “23”**. Again, VIPD was called for assistance. *Id.*; *see also*, **Exhibit “27”**, Video of Defense Parties accosting Merna; **Exhibit “28”**, Bokeno pacing in the lobby and stating “I can sit here all day”; and **Exhibit “29”**, Video of conversation between Bokeno and Nugent regarding locking of the gates.
 - On May 7, 2024, Bokeno emailed the Association membership with a copy to his counsel D’Amour and Koockogey-LaJoie falsely reporting that the current Board had been ousted legally, **Exhibit “30”**, Email from Bokeno to the Association and Defense Parties dated May 7, 2024.
 - Bokeno continues to harass employees with multiple and repetitive emails,

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- Exhibit “31”**, Email from Bokeno to Nugent dated May 8, 2024, and **Exhibit “32”**, Email from Bokeno to May dated May 8, 2024.
- The ongoing harassment has caused fear among employees. **Exhibit “33”**, Email from May to Merna dated May 3, 2024, stating “Patrick and I are both very much on edge right now.”; **Exhibit “34”**, Email from May to Merna and others complaining of a hostile work environment.
 - As a result of the threats, and harassment, and in an effort to protect themselves and the employees and others, the Board approved a new security plan with additional security until the Court makes a decision regarding the motion for preliminary injunction and the instant motion for contempt. **Exhibit “35”**, Email from Nugent to Merna and others dated May 6, 2024; **Exhibit “36”**, Amended Security Officer Schedule; **Exhibit “37”**, Security Costs through May 12, 2024, in the amount of \$7,388.23; and **Exhibit “38”**, Invoice for lock change to protect the Association’s office in the amount of \$2,100.

In light of the efforts of the Defense Parties to take control of the Board and Association by force in furtherance of their continued violation of this Court’s TRO, the Association requests all Defense Parties be held in contempt and the Court issue the appropriate sanctions.

ANALYSIS

The TRO was issued in accordance with Rule 65(d) and binds “the parties; the parties’ officers, agents, servants, employees, and attorneys; and other persons who are

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in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B)”, provided such individuals “receive actual notice of it by personal service or otherwise.” V.I. R. CIV. P. 65(d)(2); *see also*, Temporary Restraining Order dated April 25, 2023 (stating, “[a]s such, the Court will enjoin Defendants, their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them (hereinafter “Defense Parties”) from calling or conducting any meeting or special meeting under the name of the Association of St. C Condominium Owners, Inc. for the removal of Board members on Thursday, April 25, 2024 or any other day.”) Despite the clear and unambiguous language of the Order, D’Amour willfully advised his clients to violate the Court’s Order and guided and instructed them in conducting a special meeting under the name of the Association for the purposes of removing the current Board. Those clients who, at all times were acting in concert with each other and upon the advice of their joint and shared counsel, willfully and flagrantly violated the Court’s order thus exposing themselves to **both** civil and criminal contempt proceedings and sanctions. *See, Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 833 (2d Cir. 1930)(“[A] person who knowingly assists a defendant in violating an injunction subjects himself to civil as well as criminal proceedings for contempt. This is well-settled law.”)

The distinction between civil and criminal contempt is found in the Court’s purpose in exercising its contempt power. Civil contempt proceedings are intended to enforce the rights of parties, to compel obedience to orders, to compensate a party, or to provide any other remedy the Court deems equitable. *See, In re Najawicz*, 52 V.I. 311,

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339 (V.I. 2009); *see also*, *In re Kerry Drue*, 57 V.I. 517, 527 (V.I. 2012). Meanwhile, the purpose of a criminal contempt proceeding is to vindicate its own authority through punishment. *In re Kerry Drue*, at 527. In this instance, both forms of contempt apply to the Defense Parties' willful violation of the Court's unambiguous and detailed TRO.

I. Defense Parties Must Be Held in Civil Contempt.

This Court has the inherent power to enforce compliance with its order through civil contempt. *V.I. Taxi Ass'n v. V.I. Port Authority*, Civ. No. 117/1997, 2006 V.I. LEXIS 49, at *3 (Super. Ct. June 13, 2006). "Civil contempt is often a 'remedial device imposed to coerce compliance with a court order" *Government Guarantee Fund of Finland v. Hyatt Corp.*, 182 F.R.D. 182, 184 (D.V.I. 1998)(*cited in V.I. Taxi Ass'n v. V.I. Port Authority*, Civ. No. 117/1997, 2006 V.I. LEXIS 49, at *3 (Super. Ct. June 13, 2006)). To hold a party or, in this instance the Defense Parties who are acting in concert with each other, in civil contempt, the Court must find by clear and convincing evidence that: 1. the order the contemnor failed to comply with is clear and unambiguous; 2. the proof of noncompliance is clear and convincing; and 3. the contemnor has not diligently attempted to comply in a reasonable manner. *Bryan v. Fawkes*, Case No. SX-14-CV-144, 2017 V.I. LEXIS 62, at *8 (Super. Ct. April 21, 2017)(citing *In re Burke*, 50 V.I. 346, 352 (V.I. 2008)). Unlike with criminal contempt, the violation need not be willful. *Id.* All three factors are present here.

First, the Court's order enjoining the Defense Parties from proceeding with a "Special Meeting" is neither confusing nor unambiguous as the Court made clear its intent to

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maintain the status quo. That Defense Parties without awaiting the Court's hearing sought to access the Association's office by force, threatened the Association's employees to force them to give into their demands, attempted to fire counsel for the Association, and otherwise attempted to take over the Board before the Court conducts its hearing strongly suggest that they know their "Special Meeting" violated the Court's order. Otherwise, why attempt to fire the Association's counsel before they can appear at the hearing the Court stated it intends to conduct? The proof of noncompliance with the Court's order is clear and convincing as the Defense Parties, including their counsel, have announced their willful noncompliance in writing multiple times, as well as through their actions. **Exhibits "13" – "34"**. Finally, Defense Parties have made no attempt to comply with the Court's Order bolding announcing after receipt of the Order: **"CONFIRMED BY OUR LAWYERS. WE ARE A GO."**

Upon finding the Defendant Parties in civil contempt, the Court has great discretion to fashion an appropriate sanction. *V.I. Taxi Ass'n*, at *4 (citing *Carty v. Schneider*, 986 F.Supp. 933, 939 (D.V.I. 1997)) and *Spallone v. United States*, 493 U.S. 265, 276 (1990)). In fact, the "Court has many and varied tools at its disposal to aid it in constructing a civil sanction." *V.I. Taxi Ass'n*, at *28. The remedy for civil contempt includes compensation to Plaintiff for actual loss, a daily fine for each day of non-compliance, and other relief tailored to the violation. *Id.*, at 28-29; *see also, Bryan*, at *8 and *In re Kerry Drue*, at 527 ("The Superior Court fined Attorney Drue \$100 per day for every day of noncompliance in an attempt to coerce her into following the court's order"). The

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sanction may be retroactive. *V.I. Taxi Ass’n*, at *29. In this instance, the Association seeks a monetary sanction of \$9,488.23 to compensate the Association for actual loss suffered to date, plus attorney fees and costs associated with filing and prosecuting the instant motion for contempt, a daily fine of \$500.00 for each Defendant Party to coerce compliance with the temporary restraining order, and an order from the Court declaring the actions and votes taken at the illegal April 25, 2024 meeting null and void *ab initio*. The Association continues to incur costs such that the loss of \$9,488.23 increases daily.

II. Defense Parties Should Also Be Held in Criminal Contempt.

“A Court may hold an individual in criminal contempt for ‘disobedience or resistance to its lawful writ, process, order, rule, decree, or command.’ 14 V.I.C. § 581(3). The Supreme Court made clear that:

to be held in criminal contempt for violating a court order, it must be established, beyond a reasonable doubt, that the contemnor willfully disobeyed the order. To prove willfulness, the contemnor must know or should reasonably be aware that his conduct is wrongful. Criminal contempt of court that obstructs the administration of justice has generally been defined as any willful misconduct which embarrasses, hinders, or obstructs a court in its administration of justice or derogates the court’s authority or dignity, thereby bringing the administration of law into disrepute. Obstruction of the administration of justice should not be confused with obstruction of justice. Justice may be obstructed by mere inaction, but obstruction of the administration of justice requires something more – some act that will interrupt the orderly process of the administration of justice, or thwart the judicial process. Because criminal contempt is one of the most severe sanctions a court may impose, the effect on the proceedings must be serious, rather than merely a momentary disruption.

Bryan v. Fawkes, Case No. SX-14-CV-144, 2017 V.I. LEXIS 62, at *7-8 (Super. Ct. April 21, 2017)(citing *People of the V.I. in re MR*, 64 V.I. 333 (V.I. 2016)).

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As argued above, there is no doubt the Defense Parties willfully disobeyed the order. In doing so, Defense Parties have attempted to disrupt the Court order, which sought to maintain the status quo. Further, by attempting to terminate the Association's counsel and demand their work product of an opposing party, the Defense Parties seek to obstruct the administration of justice. That the Defense Parties seek to do this ahead of the Court's hearing is further proof of their attempt to "derogate the Court's authority or dignity, thereby bringing the administration of law into disrepute." The Defense Parties' efforts to thwart the administration of justice should be met with swift and severe criminal sanctions.

III. Defense Parties, Including Their Joint and Shared Counsel Are Acting in Concert With Each Other Such That They Are All Liable for Sanctions.

D'Amour as counsel for the Defense Parties is bound by the Court's TRO. V.I. R. CIV. P. 65(d)(2)(B). Further and in accordance with Rule 65(d)(2)(C), the Defense Parties are also bound by the Court's TRO. *See generally, Jackson Hewitt, Inc. v. H.E.A.T. Enters., LLC*, Consolidated Case No. 10-cv-5108, 2011 U.S. Dist. LEXIS 144759, at *9 (D.N.J. December 15, 2011)(reasoning, ". . . the Court also finds the legal principles underlying who can be held in contempt for violating a preliminary injunction instructive here. '[T]he extent to which a federal injunction applies to non-parties is governed by Federal Rule of Civil Procedure 65(d).")

In *Marshak v. Treadwell*, the Third Circuit Court of Appeals interpreted Federal Rule of Civil Procedure 65(d) to resolve the threshold issue of whether a non-party to an

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injunction may be held in contempt of that injunction. 595 F.3d 478, 486 (3d Cir. July 2, 2009). In doing so, the Third Circuit Court explained:

Rule 65(d) ‘is derived from the common law doctrine that a decree of injunction **not only binds the parties but also those identified with them in interest**, in ‘privity’ with them, represented by them, or subject to their control.’ *Golden State Bottling Co. v. N.L.R.B.*, 414 U.S. 168, 180, 94 S. Ct. 414, 38 L. Ed. 2d 388 (1973)(quoting *Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 14, 65 S. Ct. 478, 89 L. Ed. 661 (1945)); *see also*, *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 833 (2d Cir. 1930)(noting that a non-party may be punished for violating an injunction if that non-party is ‘legally identified’ with the enjoined party). Courts, however, have admitted a significant exception to the general maxim that only parties and their privies may be bound by an injunction: specifically, **non-parties ‘guilty of aiding or abetting or acting in concert with a named defendant or his privy in violating the injunction . . . may be held in contempt.’** *Savarese v. Agriss*, 883 F.2d 1194, 1209 (3d Cir. 1989); *Max’s Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 674 (3d Cir. 1999)(“One with knowledge of a court order who abets another in violating the order is surely in contempt.”); *Operation Rescue*, 919 F.2d at 871 (“[T]hose who have knowledge of a valid court order and abet others in violating it are subject to the court’s contempt powers.”); *Alemite*, 42 F.2d at 832 (**“[A] person who knowingly assists a defendant in violating an injunction subjects himself to civil as well as criminal proceedings for contempt. This is well-settled law.”** (citing *Ex Parte Lennon*, 166 U.S. 548, 17 S. Ct. 658, 41 L. Ed. 1110 (1897))). Without such an exception, defendants might ‘nullify a decree by carrying out prohibited acts through aiders and abettors, although there were not parties to the original proceeding.’ *Regal Knitwear*, 324 U.S. at 14; *Max’s Seafood Café*, 176 F.3d at 674 (“The law does not permit the instigator of contemptuous conduct to absolve himself of contempt liability by leaving the physical performance of the forbidden conduct to others.”)

(emphasis added); *see also*, *Max’s Seafood Café by Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 674 (3d Cir. 1999)(“One with knowledge of a court order who abets another in violating the order is surely in contempt. As we have stated: ‘The law does not permit the instigator of contemptuous conduct to absolve himself of contempt liability by leaving the physical performance of the forbidden conduct to others.’”). The Third Circuit’s

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analysis is persuasive here as the Federal Rule of Civil Procedure 65(d) and the Virgin Islands Rule of Civil Procedure 65(d) are identical. *King v. Appleton*, 61 V.I. 339, at ftnt. 3 (V.I. October 6, 2014)(“As we recently explained, ‘the entry of default in the Superior Court is governed exclusively by Superior Court Rule 47, and not Federal Rule of Civil Procedure 55(a), [but] because these rules are nearly identical we may look to federal decisions interpreting Rule 55(a) for persuasive authority.”); *see also, Great St. Jim, LLC v. ProSolar Systems, LLC*, Case No. ST-19-CV-57, 2020 V.I. LEXIS 48, at ftnt. 8 (Super. Ct. February 13, 2020)(“Fed. R. Civ. P. 9(b) is identical to V.I. R. Civ. P. 9(b) therefore case law interpreting Fed. R. Civ. P. 9(b) is persuasive.”)

In this instance. D’Amour, in his correspondence of February 15, 2024, made clear that he represents the Defense Parties, who “will take steps to call a special meeting for the removal of certain Board members that fail to adhere to the legitimate requests of our clients”. *See Exhibit “1”*. Two months later, he informed the Court that “the interests of the Bokeno Plaintiffs are aligned and will continue to be aligned, with the interests of the Defendants in this matter i.e. removal of the current Board of the Association.” Consistent with D’Amour’s representations, Defense Parties have issued countless emails and announcements regarding its intent to remove the current Board and have stated that it violated the Court’s TRO upon the advice of their counsel, D’Amour. The records here establish the Defense Parties have acted in concert for well over a year to remove the Board and have continued efforts to do so despite the clear and unambiguous language contained in the TRO.

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CONCLUSION

Defense Parties, namely Defendants, Darin Bokeno, Valerie Stiles, Willis Gaffney, Michael Joe Darrah, Paul Hartline, Jeff Landback, Martin Levy, Corrie Warm², Joe Estes, Debbie Hennings, and Cheryl Goodridge (collectively, “Defense Parties”) and their counsel, D’Amour, must be held in civil and criminal contempt for their flagrant violation of the Court’s April 25, 2024, Temporary Restraining Order.

WHEREFORE, and for the foregoing reasons, the Association of St. C Condominium Owners’ Motion to Show Cause Why Defendants, Their Counsel, and Others Acting in Concert with Defendants Should Not Be Held in Contempt of Court for Violating the April 25, 2024, Temporary Restraining Order must be **GRANTED**.

Respectfully Submitted,

WALKER LEGAL

*Attorney for Plaintiff Association of St. C
Condominium Owners, Inc.*

DATED: May 13, 2024

BY: /s/ Kye Walker, Esq

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² “Warm” is also referred to as “Warrum” in the Exhibits. Any reference to “Warm” also includes “Warrum” for purposes of this motion.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 13, 2024, I electronically filed the foregoing with the Clerk of the Court using the Virgin Islands Judiciary Branch C-Track E-filing System, which will send a notification of such filing (NEF) to all parties and/or their counsel of record as follows:

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This document complies with the page or word limitation set forth in Rule 6-1(e).

BY: */s/ Kye Walker, Esq.*