# In The
# Supreme Court of Virginia

**RECORD NO. 140983**

## MITCHELL KAMBIS, ET AL.,
*Appellants,*

**v.**

## APRIL CONSIDINE, ET AL.,
*Appellees.*

## REPLY BRIEF OF APPELLANT MITCHELL KAMBIS

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## ARGUMENT IN REPLY RE SANCTIONS

In the case below, the Considine Parties sought sanctions against Mr. Kambis (especially in connection with his fraud count against Ms. Considine that was dismissed at trial) and against his initial counsel, the Zobrist Law Group. And the trial court imposed sanctions.

As to the Zobrist Law Group, PLLC, the trial court found that the derivative claims set forth in the Second Amended Complaint and the premature appeal to the Supreme Court were sanctionable against the law firm, but not as to Mr. Kambis.

As to Mr. Kambis, the trial court found there had been "a certain level of intent to intimidate Ms. Considine in this particular case, and that Mr. Kambis was aware of the extent of the litigation." Then, the trial court also found that "[Mr. Kambis] was responsible for the costs of the trial and going forward," noting that although he was not represented by counsel at that time, "that that was a great deal because of his own making." (Appendix 608-609).

All the Kambis Parties' claims at trial were eventually nonsuited, except that his fraud count against Ms. Considine was dismissed due to a counterclaim. Recall that prior to trial, that fraud count had survived demurrers and summary judgment.

At no time in her ruling on sanctions, and, in fact, at no time during the entire case, did the trial court ever find that Mr. Kambis' claims he brought to trial (including fraud) were not well grounded in fact or not warranted by existing law. Furthermore, the trial court never found that Mr. Kambis interposed any of the claims he brought to trial (including fraud) for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. Nonetheless, the trial court sanctioned him "for the costs of the trial and going forward." This was an abuse of the trial court's discretion to impose sanctions.

Accordingly, Mr. Kambis, by counsel, respectfully requests this Court to set aside and vacate that portion of the March 24, 2014, Order awarding sanctions against him in the amount of $84,541.62.

## ARGUMENT IN REPLY RE CROSS ERROR

Va. Code § 8.01-269 authorizes a court to order a *lis pendens* to be released in appropriate circumstances. The statute further provides that the clerk of the court is to record said order which should reference the deed book where the *lis pendens* was recorded. However, the statute also provides that "the clerk shall not record the order or make the entry until after the expiration of the time in which such appeal or writ of error may be

applied for, or if applied for after refusal thereof, or if granted, after final judgment or decree is entered by the appellate court."

In the case below, the clerk of the court erroneously recorded the trial court's order vacating the *lis pendens* without waiting for the expiration of the time in which appeal could be made. The trial court's order entered February 18, 2014, effectively corrected that error.

Accordingly, Mr. Kambis, by counsel, respectfully requests this Court to dismiss the cross-appeal.

Respectfully submitted,

MITCHELL KAMBIS

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## CERTIFICATE REQUIRED BY RULE 5:26(h)

(1) The appellant, Mitchell Kambis, is represented by Mark H. Schmidt, Esq., VSB # 44521, Ayers & Stolte, P.C., 710 North Hamilton Street, Richmond, Virginia 23221. (Telephone: (804) 358-4731; Facsimile: (804) 864-0895; Email: mschmidt@ayerslaw.com).

(2) The appellees, April Considine, Patricia G. Wolfe, and Villa Deste, LLC, are represented by John K. Burke, Esq., VSB # 16798, Setliff & Holland, P.C., 4940 Dominion Boulevard, Richmond, Virginia, 23060. (Telephone (804) 377-1263; Facsimile: (804) 377-1283; Email: jburke@setliffholland.com).

(3) On July 20, 2015, a PDF version of this Reply Brief of Appellant was filed with the Clerk of Court via VACES, and served on opposing counsel via e-mail, and ten (10) printed copies of the Reply Brief were filed with the Clerk of Court, by hand.

(4) The word count of this Reply Brief of Appellant is 715.

(5) The appellant, Mitchell Kambis, by counsel, certifies that it has complied with Rule 5:26.

By: /s/ Mark H. Schmidt
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