



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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CROSS COMPLAINT

CITY AND COUNTY OF SAN FRANCISCO, ACTING VS. CURTIS LIND et al

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Curt Lind

FILED
San Francisco County Superior Court

NOV 01 2012

CLERK OF THE COURT

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1 SUPERIOR COURT OF CALIFORNIA
2 COUNTY OF SAN FRANCISCO
3 UNLIMITED JURISDICTION

CITY OF SAN FRANCISCO,

Plaintiff,

v.

CURTIS LIND, et.al

Defendants.

Case No. CGC-12-518382

UNLIMITED JURISDICTION

CROSS-COMPLAINT FOR DAMAGES

[Breach of written contract, Interference with
business advantage, Inverse condemnation]

4 CURT LIND,

5 Cross-Complainant and Defendant

6 v.

7 CITY AND COUNTY OF SAN FRANCISCO, Does 26-50

8 Cross-Defendant and Plaintiff

9

10 Come now Defendant and Cross-Complainant Curt Lind, an individual, and alleges by way of

1 Cross-Complaint the following:

2 **PARTIES AND JURISDICTION**

3 1. At all material times as regards this lawsuit, Plaintiff and Cross-Defendant City and County of
4 San Francisco [hereinafter "City"] has been a public entity located in San Francisco, California.

5 At all material times as regards this lawsuit, the City operates by and through the San Francisco
6 Port Commission [hereinafter "Port"], which is an instrumentality of City. City has filed a
7 lawsuit in San Francisco Superior Court, No. CGC-12-518382, against Cross-Complaint Curt
8 Lind ["Lind"] as a defendant, among others.

9 2. Since suit has been filed in this Court and the parties do not object to this Court having
10 jurisdiction over the matter, the Superior Court of California, County of San Francisco has
11 jurisdiction over the entire lawsuit. Also, the real property is within this Court's physical
12 jurisdiction and all contracts were to be performed here.

13 3. No claim need be filed against a public entity for breach of contract or inverse condemnation,
14 but on Lind filed a complete, proper Claim with City against Cross-Defendant City. Since City
15 has not responded to the Claim within six months of filing it, it can be deemed rejected by
16 operation of law.

17 4. Cross-Complainant is ignorant of the true names and capacities of Cross-Defendants sued
18 herein as Does 26-50, inclusive, and therefore sues them by such fictitious names. Cross-
19 Complainant will amend this Cross-Complaint to allege their true names and capacities when
20 ascertained.

21 5. Cross-Complainant is informed and believe and based thereon allege that at all times herein
22 mentioned, each of the Cross-Defendants sued herein was the agent and/or employee of the
23 remaining Cross-Defendants and at all times was acting within the purpose and scope of such
24 agency and employment.

1 superimposed upon a photograph of the area in question appears to show that all of the subject
2 vessel is not on the land controlled by Port. In a Port Commission report of October 20, 2011,
3 item 7B, there is an indication that the California Department of Boating and Waterways retains
4 lease rights in the lease between Ernst and Port.

5 11. Representatives of the Pier required further work to be done on the Pier, which was
6 accomplished. Lind was told that his vessel would be berthed at the Pier.

7 12. In or about 2010, The Fir was brought to and docked at the end of Pier 38. City and Port
8 were fully aware of the berthing.

9 13. For approximately one year nothing was heard from the Port or City. On July 6, 2011, an
10 unlawful detainer suit against Ernst by the Port was won by Port and Ernst vacated the pier area
11 around July 31, 2011; in the lawsuit the City did not ask for the lease to be forfeited. Cross-
12 Complaint thought that meant the master lease was still in effect and that he could remain there
13 under the sub-lease. The Court decision is on appeal.

14 14. On or about July 17, 2011, Port posted the Pier area as unsafe and ordered everyone to leave
15 within three days. No provision was made as to repairing the premises; no claim was made that
16 any tenant had caused the damages or lack of safety. None of the three vessels that are the
17 subject of this lawsuit could be legally moved as Coast Guard approval had to be first obtained.
18 Not all of the dock area was declared unsafe. The vessel owners disagreed as to the lack of
19 safety for the areas they had to traverse. They did not invite members of the public to come into
20 the area but tried to have their crew members be allowed to work on the ships so that they could
21 be moved. No attempts were made to exercise sole possession or right of access to any part of
22 the Pier.

23 15. On or about October 31, 2011, Port asked the ship owners to sign a general release so that
24 they could stay for an indefinite time [subject to revocation at any time], but the owners refused

1 to sign because they felt it was too one sided. Port offered to move the ships to Pier 96, but there
2 was no security set up there so parts of the ships could be stolen if docked there.

3 16. Port never presented any proof that it owned or had the legal right to control the parts of the
4 Pier or surrounding areas in question.

5 17. On or about August 12, 2011, Port again posted the Pier areas with warning notices; the
6 owners of the ships in issue again stated they could not be moved within that period of time and
7 needed more access to their ships to repair and prepare them to leave. They were told that all
8 electrical power would be shut off after the 72 hour period, which did occur later.

9 18. Due to lack of repair crew members and access, the ship has deteriorated physically. Some
10 thefts have also occurred.

11 FIRST CAUSE OF ACTION

12 BREACH OF CONTRACT

13 19. Cross-Complainant hereby re-alleges and incorporates paragraphs 1 through 18, inclusive, as
14 though fully set forth herein.

15 20. In 1996, Ernst entered into a long term lease agreement with Port; a few years later Cross-
16 Complaint entered into a 20 year lease with Ernst for the rental of space at Pier 38. Neither lease
17 has been forfeited. Cross-Complaint has carried out all the material terms of the lease possible
18 and has done nothing to breach said lease, including causing any damage to the Pier or prevent
19 any access to any portion of the Pier.

20 21. When Port obtained a judgment against Ernst in the unlawful detainer action, which
21 judgment is still on appeal, it did not seek or obtain a forfeiture of the lease, so the sub-lease with
22 Ernst is still valid, as is his lease with Port, contrary to the statement in the letter of September 6,
23 2011, from Susan Reynolds of Port justifying the eviction as a sub-tenant on the basis that the

1 sub-leases had been terminating by court action. Not being a party to the unlawful detainer suit,
2 the ship owners could not have their sub-leases affected by the lawsuit.

3 22. City was well aware of the sub-lease and Cross-Complaint's intent to berth his ship at the
4 Pier. Port officials invited him to do so and made no objection for almost one year to the
5 berthing of the ship at Pier 38. The ship would not have been moved to the Pier unless the City
6 had approved of the move and docking; the ship's owner reasonably relied upon the actions and
7 inactions of City and Port to infer and conclude that he had approval to dock and permanently
8 stay at Pier 38. Port was also aware of the general physical condition of the ship and that it
9 would have to remain docked at that berth for some time before it could be moved any
10 significant distance from the Pier.

11 23. According to a City map of the Pier and surrounding lands, and the agreements between
12 BCDC and State Boating and Waterways, it appears that all of the ship is on surface water not
13 owned by the Port or held in trust by it.

14 24. The condition of the Pier apparently was such that it would not be necessary to bar access by
15 the owners and crews of the ships; the Port's allowing such access for over two months implies
16 that such access was not dangerous to the owners or crews and that they had not created any
17 damage to the Pier. No claim was made that they created any damage until the subject lawsuit
18 against the owners was filed. All such damage appears to have existed before the ships were
19 allowed to dock; before they docked, Port deemed the conditions to be such that it was safe for
20 the ships to be berthed at that location, suggesting the safety of the area was not the reason for
21 ordering the ships to be removed. Moreover, most if not all of the areas deemed unsafe were
22 either not related to the area of the berthing or could be repaired by the ships owners, who had
23 volunteered to do so.

24 25. As a lawful tenant of the Port, Cross-Complaint was entitled, to a valid three day notice to
25 vacate, which was not served on nor filed against him. He also suffered an illegal partial

1 eviction.

2 26. Denial of access to and to ready his ship to leave the Pier has resulted in Cross-Complaint
3 suffering general and special damage, both present and future loss of use of, and diminished
4 value of and to his real and personal property.

5 SECOND CAUSE OF ACTION

6 INTENTIONAL INTERFERENCE WITH PROSPECTIVE

7 ECONOMIC ADVANTAGE

8 27. Cross-complaint hereby re-alleges and incorporates each and every preceding paragraph, 1
9 through 26, inclusive, as though restated herein.

10 28. Cross-Complaint had arranged for the repair of The Fir, its towing to Pier 38, and further
11 repairs so that it could be used as an entertainment venue, among other commercial uses. Cross-
12 Complaint had also obtained investment funds from several people to help pay for the large costs
13 of such repairs and turning the ship into commercial usage.

14 29. It was planned that the ship would be successful [profitable] as a commercial venture. There
15 would be no need, nor was there any request of or from the Port or City for any money or actions
16 to result in such economic success. Neither Port nor City were, directly or indirectly, investors
17 or business partners in such economic operation. By ordering on very short notice that The
18 Aurora leave the Port, but knowing that it was not in a condition to do so for some time, shutting
19 down the utilities, which would greatly interfere with any repairs, barring access to the ship and
20 surrounding areas, including vehicle access and garbage/waste removal, threatening action if any
21 owner or crew member came onto the Pier area—Port made it basically impossible to finish the
22 needed repairs to the vessel and directly interfered with the future business advantage of the
23 project planned for the ship.

1 30. Port did not have to interfere with the business plan by attempting to and in effect closing
2 the Pier down. Before giving The Fir permission to dock, Port was aware or reasonably should
3 have been aware of certain defects and inadequacies in the Pier, but none the less felt these
4 defects were not sufficient enough to prevent the berthing of the ship for some time. Port was
5 aware that Lind planned to spend at least several months to make extensive repairs to the ship
6 and then to have it for several decades tied up to the Pier or its dock.

7 31. Port intentionally acted to stymie the repairs of The Fir and to force it to be moved from Pier
8 38 when it was not necessary to do so and it had already acted to encourage the making of such
9 repairs and business plan. Port demanded the removal of The Fir from an area that in fact
10 appears not to be under Port's control or ownership, although it acted as though that area was so.

11 32. Such action by the Port caused Cross-Complaint to lose the costs incurred for repairs and
12 transportation of The Fir, the revenues that would have been earned over a twenty year
13 renewable lease, the investments made in the plan, and various incidental costs, expenses, and
14 profits of the business plan.

15 THIRD CAUSE OF ACTION

16 NEGLIGENT INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE

17 33. Cross-Complaint hereby re-alleges and incorporates paragraphs 1 through 32, inclusive, as
18 though fully set forth herein.

19 34. Cross-Defendant negligently interfered with the future economic business advantage of
20 Cross-Complaint in that it failed to act as a reasonable party would have under the circumstances
21 and did various acts and inactions, as indicted above, that resulted in a substantial interference
22 with Cross-Complaint's prospective economic advantage.

23 35. Such action and inaction by the Port caused Cross-Complaint to lose the costs incurred for

1 repairs and transportation of The Fir, the revenues that would have been earned over a twenty
2 year renewable lease, the investments made in the plan, and various incidental costs, expenses,
3 and profits of the business plan.

4 FOURTH CAUSE OF ACTION

5 INVERSE CONDEMNATION

6 36. Cross-complaint re-alleges and incorporates paragraphs 1 through 35, inclusive, as though
7 fully set forth herein.

8 37. Before docking at Pier 38, Cross-Complainant entered into a valid lease agreement with
9 Ernst, who had a master lease with Port over the area, both land and surface water, that it owned
10 or controlled, for berthing, for twenty years, his boat at that location at Pier 38. Port was aware
11 of that lease and the presence of Cross-Complaint's ship. Not until Port won an unlawful
12 detainer action as to Ernst being in possession of the Pier or relevant portions of it, but not a
13 forfeiture of the lease, some one year after the ship docked at the Pier, did Cross-Defendant
14 allege Cross-Complaint had no right to be at the Pier, claiming at that time that the sub-lease had
15 also been forfeited even though Cross-Complaint was not a named party in the unlawful detainer
16 suit.

17 38. According to City's Building Department records, the surface waters in which the ships
18 rested surrounding the Pier are not owned by the City. Since it is dangerous to enter the ships
19 from the water side and not physically possible to bring certain supplies or needed equipment for
20 repair and maintenance of the ships from the water side, Cross-Complaint had an easement of
21 necessity across the Pier to his ship. Under the sub-lease, there also was the right to access the
22 ships from the land side using portions of the Pier.

23 39. On or about July 2011, Port posted the Pier as unsafe and informed Cross-Complaint that he
24 would have to move his ship within three days from the Pier and would not be allowed access

1 from the Pier to his vessel. Approximately two months later, Port again stated that there would
2 be no access and the ship would have to be moved within three days.

3 40. Port was well aware that in order for the ship to be moved it would have to be seaworthy and
4 receive Coast Guard approval; the ship clearly was not fit to be moved by water and it would
5 take months for it to be so able to be moved. Coast Guard approval would take several weeks if
6 not longer to obtain.

7 41. Port closed off land access to the ship, knowing that doing so would prevent any substantial
8 work on the ship to repair it or provide adequate maintenance to it.

9 42. The action taken by Port was claimed to be for the public good. It placed a much more
10 severe burden on Cross-Complainant than on the public. Prior access to the ships had been
11 sufficient and they were being fixed for commercial usage. The action of Port was a taking of
12 the ships and the real property interest in them. If land access is not allowed [Cross-Complaint is
13 willing to waive injury from physical defects in Pier and to repair the needed parts of the Pier,
14 but his offer has been rejected], the ship will suffer major and probably irreparable harm. An
15 actual, substantial invasion of property rights has occurred. The actual defects in the Pier, none
16 of which has been repairs for over 14 months, are not an impending peril.

17 43. Cross-Complaint has suffered, therefore, a substantial invasion of his property rights, a loss
18 in the fair market rental value of the vessel for the present and for the remaining period of his
19 lease and any renewal part, the costs and expenses incurred in trying to repair the vessel, develop
20 the commercial plan for its use, and other direct and incidental damages.

21 PRAYER

22 1. For general and special damages to be proven at trial, but in no event less than the minimum
23 jurisdictional amount of this Court;

- 1 2. For general and special future damages to be proven at trial but in no event less than the
- 2 minimum jurisdictional amount of this Court;
- 3 3. For recoverable costs of suit;
- 4 4. For attorney fees;
- 5 5. For such other and further relief as the ourt may deem proper.

6 Date: 10/3/12

Law Offices of George H. Shers

7 By: George H. Shers

8 George H. Shers, Attorney for Cross-Complaint and Defendant

9 Curt Lind

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