

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
CHARLESTON HARBOR)
RESORT & MARINA,)
)
Plaintiff,)
)
vs.)
)
PAUL DAVIS,)
)
Defendant.)
_____)

IN THE SMALL CLAIMS COURT
CASE NO. 09-JG-10-685

FILED
2013 AUG 19 PM 2:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT**

The Plaintiff, Charleston Harbor Resort and Marina (hereinafter "Marina"), submits this Memorandum and attached documents in opposition to the Defendant's Motion for Relief from Judgment. The Defendant contends that the judgment is void because he was not properly served. The Defendant's Motion should be denied for the following reasons:

1. The Motion is untimely. Mr. Davis knew about the judgment by at least June 11, 2012; thus, over a year passed before the Motion for Relief from Judgment was filed on June 14, 2013.
2. The Plaintiff served the only entity that it could, based on false and misleading information provided by the Defendant, Paul Davis.
3. There is no evidence that Mr. Davis did not know about the Complaint or the Judgment.
4. There is no meritorious defense. Davis does not contest that the debt is owed or that the amount is incorrect.
5. This is really an untimely appeal of a Judgment from the Small Claims Court and should be denied.
6. If granted the case must be remanded to the Small Claims Court and Mr. Davis will incur a greater judgment against him. Based on the License Agreement, Mr. Davis would be

subject to additional attorney's fees, costs, and prejudgment interest at a higher rate than post judgment interest now accruing.

FACTS

1. May 26, 2005: Vessel purchased by Chesapeake Venture Corp., Official Number 1056595. (Exhibit 1, USCG General Abstract of Title).
2. June 30, 2006: Documentation expires. At that time, the owner was listed at Chesapeake Venture Corp., 101 North Fairfield Drive, Dover, DE 19901. (Exhibit 2, Documentation).
3. April 19, 2007: Paul Davis enters into License Agreement for Dockage with Charleston Harbor Resort and Marina. Paul Davis is listed as "Owner," with the address of 101 North Fairfield Drive, Dover, DE 19901-5720. (Exhibit 3).
4. March 1, 2008: Chesapeake Venture Corp. charter revoked for non-payment of taxes and/or failure to file a complete annual report. (Exhibit 4).
5. May 2008: The Vessel leaves the Marina.
6. May 27, 2008: Paul Davis enters into Dockage Agreement with Sunset Cay Marina, Folly Beach. Address is listed as 14639 O.R. Koon Hwy, Newberry, SC 29108. (Exhibit 5).
7. January 16, 2009: Marina files Complaint in Small Claims Court for unpaid dockage. (Exhibit 6).
8. January 28, 2009: Complaint sent via US Mail to Paul Davis at 101 North Fairfield Drive, Dover, DE 19901. The letter is not returned by the US Mail. (Exhibit 6).
9. February 4, 2009: Process server files Complaint on CT Corp. as Registered Agent for Paul Davis. (Exhibit 7).
10. April 3, 2009: Judgment entered against Paul Davis by Small Claims Court in the amount of \$5,286.56. (Exhibit 8).
11. April 28, 2009: Transcript of Judgment filed in Circuit Court. (Exhibit 9).
12. March 12, 2012: Sunset Cay Marina files Complaint in Small Claims Court against Paul Davis for failure to pay dockage. Paragraph 2 alleged Paul Davis was a resident of Newberry, South Carolina, and the owner of the Vessel. (Exhibit 10).

13. June 5, 2012: Davis files an Answer and Counterclaim and admits that he is the owner of the Vessel. (Exhibit 11).
14. June 8, 2012: Attorneys for Sunset Cay Marina send a Settlement Proposal to the attorney for Paul Davis, Wendy Keefer, and state, "There is an existing Judgment against Mr. Davis in favor of Charleston Harbor Resort and Marina for \$5,286.56" (Exhibit 12).
15. June 11, 2012: Ms. Keefer sends the letter to Mr. Davis. (Exhibit 13).
16. September 24, 2012: Sunset Cay Marina files Complaint in Circuit Court after Small Claims Court Case is dismissed without prejudice. Paragraph 2 of the Complaint alleges: Upon information and belief, the Defendant, Paul A. Davis (hereinafter "Davis"), is a resident of Newberry, South Carolina, and claims to be the owner of the Vessel, "Grand Cru," but the applicable vessel registration or documentation does not show Davis as the true owner of the Vessel. (Exhibit 14).
17. November 20, 2012: Davis files an Answer and Counterclaim and answers Plaintiff's Paragraph 2, stating: "an entity owned solely by Davis is the registered owner of the vessel but that entity no longer exists or operates and that its property is now the property of Davis." (Exhibit 15).
18. June 18, 2013: Davis and Chesapeake Venture Corp. file a Complaint in federal Court against Gary Schwab d/b/a Sunset Cay Marina and allege that Paul Davis is not the owner but that Chesapeake Venture Corp. is the owner of the Vessel. (Exhibit 16). CT Corp. is the Registered Agent for Chesapeake Venture Corp.; therefore, service was proper.

Based on the undisputed facts as set forth above and the law, the Plaintiff requests the Court deny the Motion for Relief from Judgment by Paul Davis.

Respectfully submitted,

ROGERS TOWNSEND & THOMAS, PC



William A. Scott
775 St. Andrews Blvd.
Charleston, South Carolina 29407
(843) 556-5656
Fax: (843) 556-5635
bscott@rtt-law.com
ATTORNEYS FOR PLAINTIFF

Dated this 19th day of August, 2013.

GENERAL INDEX OR ABSTRACT OF TITLE

VESSEL BUILT AT ALACHUA, FL 1056595
(OFFICIAL NUMBER)
 (AND) _____ IN 1997 HUN45124B797
(HULL ID NUMBER)
 BY HUNTER MARINE CORPORATION
 FOR TIDEWATER/HAVRE DE GRACE, INC.
 BUILDER'S CERTIFICATE DATED MARCH 24, 1997
 TITLE ASSIGNED TO _____

(6) _____
 (4) _____
 (3) _____
 (2) _____
 (1) GRAND CRU
 NAME OF VESSEL

INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE
BS	100	04 21 97	\$1.00	97-69	232

FILED PORT _____ DATE _____ TIME _____ DATE TERMINATED _____
 NVDC _____ 07 10 97 _____ 10 00 AM _____ - - -
 GRANTOR
TIDEWATER/HAVRE DE GRACE, INC.

GRANTEE
DON M. & GAYLE M. CANADA, TENANTS BY THE ENTIRETY

INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE
PM	100	04 21 97	\$200,000.00	97-69	233

FILED PORT _____ DATE _____ TIME _____ DATE TERMINATED _____
 NVDC _____ 07 10 97 _____ 10 00 AM _____ - - -
 GRANTOR
DON M. CANADA & GAYLE M. CANADA, TENANTS BY THE ENTIRETY

GRANTEE
PROVIDENT BANK OF MARYLAND
7210 AMBASSADOR ROAD
BALTIMORE, MD 21244

INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE
SMTG	100	01 07 02	\$200,000.00	02-32	395

FILED PORT _____ DATE _____ TIME _____ DATE TERMINATED _____
 NVDC _____ 01 25 02 _____ 08 20 AM _____ - - -

GRANTOR
REFERS TO BOOK 97-69 PAGE 233
PROVIDENT BANK OF MARYLAND

GRANTEE
DON M. CANADA
CAYLE M. CANADA

ISSUED AS AN ABSTRACT OF TITLE ISSUED FOR CHANGE OF PORT OF RECORD

DATE: _____ TIME: _____

PAGE: _____ OF _____ PORT: _____

PREVIOUS EDITION MAY BE USED _____ DOCUMENTATION OFFICER _____

PREVIOUS EDITION MAY BE USED _____ Page 1 of 4



INSTRUMENT PM	% CONVEYED 100	DATE 12 07 01	AMOUNT \$163,343.51	BOOK 02-32	PAGE 396
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FILED PORT NVDC	DATE 01 25 02	TIME 08 20 AM	DATE TERMINATED - - -
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GRANTOR
 DON M CANADA
 GAYLE M CANADA

GRANTEE
 SUNTRUST
 147 OLD SOLOMONS ISLAND ROAD 5TH FLOOR ANNAPOLIS MD 21401

INSTRUMENT SMTG	% CONVEYED 100	DATE 07 16 03	AMOUNT \$163,343.51	BOOK 03-100	PAGE 611
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FILED PORT NVDC	DATE 07 28 03	TIME 8 00 AM	DATE TERMINATED - - -
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GRANTOR
 REFERS TO BOOK 02-32 PAGE 396
 SUNTRUST BANK

GRANTEE
 DON M CANADA
 GAYLE M CANADA

INSTRUMENT PM	% CONVEYED 100	DATE 07 08 03	AMOUNT \$147,283.87	BOOK 03-100	PAGE 612
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FILED PORT NVDC	DATE 07 28 03	TIME 8 00 AM	DATE TERMINATED - - -
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GRANTOR
 DON M CANADA
 GAYLE M CANADA

GRANTEE
 SUNTRUST
 147 OLD SOLOMONS ISLAND ROAD 5TH FLOOR
 ANNAPOLIS MD 21401

INSTRUMENT	% CONVEYED	DATE	AMOUNT	BOOK	PAGE
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FILED PORT	DATE	TIME	DATE TERMINATED
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GRANTOR

GRANTEE

ISSUED AS AN ABSTRACT OF TITLE
 ISSUED FOR CHANGE OF PORT OF RECORD

DATE: _____ TIME: _____
 PAGE: _____ OF _____ PORT: _____

DOCUMENTATION OFFICER _____

GENERAL INDEX OR ABSTRACT OF TITLE
Continuation Sheet No. 2

SATISFACTION MORTGAGE

Refers To: BOOK 03-100 PAGE 612

% CONVEYED	DATE	AMOUNT	BATCH	DOC ID
100	March 23, 2004	\$147,283.87	BK 04-51	522
DATE FILED	TIME FILED	STATUS		
March 26, 2004	08:35 AM	RECORDED		

GRANTOR:
SUNTRUST BANK

GRANTEE:
DON M CANADA AND GAYLE M CANADA

BILL OF SALE

% CONVEYED	DATE	AMOUNT	BATCH	DOC ID
100	October 12, 2003	\$10.00	BK 04-21	185
DATE FILED	TIME FILED	STATUS		
November 10, 2003	10:28 AM	RECORDED		

SELLER:
DON M CANADA
GAYLE M CANADA

BUYER:
JOHN ARMSTRONG
LINDA ARMSTRONG, JTRS

DISCHARGED
YES

PREFERRED MORTGAGE

% CONVEYED	DATE	AMOUNT	BATCH	DOC ID
100	October 10, 2003	\$153,000.00	BK 04-21	186
DATE FILED	TIME FILED	STATUS		
November 10, 2003	10:28 AM	RECORDED		

MORTGAGOR:
JOHN ARMSTRONG AND LINDA ARMSTRONG

MORTGAGEE:
SUSQUEHANNA BANK
100 WEST ROAD
BALTIMORE, MD 21204

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DEPARTMENT OF HOMELAND SECURITY U.S. COAST GUARD CG - 1332		GENERAL INDEX OR ABSTRACT OF TITLE Continuation Sheet No. 3			Official No. 1056595	
BILL OF SALE						
% CONVEYED 100		DATE May 26, 2005		AMOUNT \$1.00		BATCH BK 05-38
DATE FILED June 02, 2005		TIME FILED 11:30 AM		STATUS RECORDED		
SELLER: JOHN ARMSTRONG AND LINDA ARMSTRONG						
BUYER: CHESAPEAKE VENTURE CORP						
SATISFACTION MORTGAGE				Refers To: Document: 186		
% CONVEYED 100		DATE May 27, 2005		AMOUNT \$153,000.00		BATCH 379170
DATE FILED June 14, 2005		TIME FILED 08:20 AM		STATUS RECORDED		
GRANTOR: SUSQUEHANNA BANK						
GRANTEE: JOHN ARMSTRONG AND LINDA ARMSTRONG						
ISSUED AS AN ABSTRACT OF TITLE AS OF				<u>KATHY LAING</u> NATIONAL VESSEL DOCUMENTATION CENTER		
DATE: October 13, 2011		TIME: 09:07 AM				

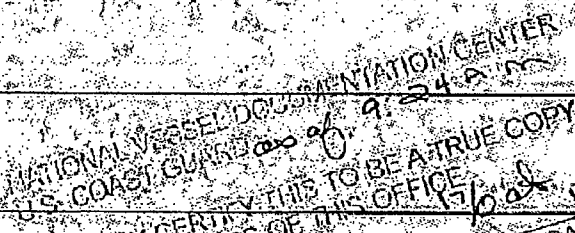




UNITED STATES OF AMERICA

DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

NATIONAL VESSEL DOCUMENTATION CENTER

CERTIFICATE OF DOCUMENTATION

VESSEL NAME GRAND CRU		OFFICIAL NUMBER 1056595	IMO OR OTHER NUMBER HUN45124B797	YEAR COMPLETED 1997
HAILING PORT ANNAPOLIS, MD		HULL MATERIAL FRP (FIBERGLASS)		MECHANICAL PROPULSION YES
GROSS TONNAGE 21 GRT	NET TONNAGE 19 NRT	LENGTH 44.5	BREADTH 14.0	DEPTH 6.8
PLACE BUILT ALACHUA, FL				
OWNERS CHESAPEAKE VENTURE CORP		OPERATIONAL ENDORSEMENTS RECREATION		
MANAGING OWNER CHESAPEAKE VENTURE CORP 101 NORTH FAIRFIELD DRIVE DOVER, DE 19901				
RESTRICTIONS NONE				
ENTITLEMENTS NONE				
REMARKS NONE				
<p style="text-align: right;">  NATIONAL VESSEL DOCUMENTATION CENTER U.S. COAST GUARD I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE RECORDS OF THIS OFFICE DOCUMENTATION OFFICER DATE 17/02/05 </p>				
ISSUE DATE JUNE 28, 2005				
THIS CERTIFICATE EXPIRES JUNE 30, 2008				
				
 DIRECTOR, NATIONAL VESSEL DOCUMENTATION CENTER				

Blumberg No. 5110
EXHIBIT
2

Customer # 705

Boat# 703 RECEIVED SEP 23 2009

Date: 4/19/07

CHARLESTON HARBOR RESORT & MARINA LICENSE AGREEMENT FOR DOCKAGE

Owner's Name: Paul Davis Phone: 803-321-7414
 Address: 101 N. Fairfield Dr. Dover De 19901-5720
 Email: _____ Vehicle License Tags: _____
 Business: _____ Position: _____ Phone: _____
 Boat Name: Grand Cru Reg/Doc No.: _____ State: _____
 Boat Info: Power Sail Make: Hunter Year: 97 Length: 45' Beam: 14
 Boat Insurance Carrier: _____ Policy No.: _____ Valid Thru: _____
 Drivers License: _____ Credit Card: _____
 State Number _____ Type Number _____ Exp. _____
 Name on Credit Card (please print): _____ Signature: _____
 Mailing Address: 1225 Calhoun St. Newberry SC 29108
 Street City State Zip

This license agreement made as of the 19 day of April, 2007 by and between Charleston Harbor Resort & Marina, Mount Pleasant, South Carolina herein referred to as "Marina" and _____, Telephone Number 803 321-7414 state of _____, herein referred to as "Boat Owner". Marina agrees to provide dockage to Boat Owner and Boat Owner hereby agrees to accept from Marina, dockage space at a slip to be assigned by Marina, hereinafter referred to as "the space", for the vessel described above, all upon the terms and subject to the conditions set forth below.

This contract covers a license for the use of the space # B-48, or the equivalent at the Charleston Harbor Resort & Marina.

1. Governing Law

That this is an Admiralty and Maritime Slip/Space license agreement under the General Maritime Laws, Statutes, and Code of the United States of America. Further, that this agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to the principles of conflicts of law thereof. Venue shall be in Charleston, South Carolina.

2. License Fees and Other Charges

Boat Owner agrees to pay as consideration for dockage at the assigned space the rate of \$13.00 per foot, which includes a 5% surcharge to the Patriot's Point Development Authority, times the length of the vessel 40ft., or dock 50ft, which ever is greater, plus the applicable sales tax due per month (the "License Fee" which amount is \$ 7,800.00). In addition to the dockage, Boat Owner agrees to pay a five dollar (\$5.00) per month environmental fee which is used to help recover fees associated with waste and Boat Owner shall pay \$25.00 minimum Metered per month for electricity and water. Marina may increase the license fees and other charges at any time after the initial term of this Agreement with thirty (30) days written notice.

The License ~~fee and other charges shall~~ be paid (choose one (1) option) either;
 ___ (a) by prepayment in advance for the entire original Term of this License Agreement (as such original term is set forth in Paragraph 3 below), in which event there is a discount for said payment option of five percent (5%) and the discounted license fee is \$ 7,410.00, or
 (b) in advance without demand or notice, in 12 equal monthly installments of \$650.00.00, on the first day of each and every calendar month during the term hereof, whether or not the space is occupied by the Boat Owner's vessel.

Fuel cannot be carried on Account and must be paid for at time of purchase. The License Fee and all Other Charges, including charges incurred for necessities, materials and services provided for the Boat Owner, utilities, and marine store shall bear interest from the due date thereof until paid at the annual rate of 18%. Boat Owner agrees that the License Fee is subject to change upon thirty- (30) day's notice after the initial term of the license agreement. Prepaid License Fees are not



refundable except in the event this license agreement is terminated by Marina without cause. Boat Owner must provide a valid credit card and authorization for License Fees due under this license agreement.

3. Term

Unless terminated earlier pursuant to the terms hereof, the Terms of this agreement shall commence on April 01, 2007, and shall continue until March 31, 2008. Upon expiration of the original Term of the agreement, the agreement shall continue in effect from month to month subject to termination upon thirty (30) days written notice by either party and as set forth in paragraph 18.

4. Security Deposit

Marina acknowledges the receipt of the sum of \$ 650.00 as a security deposit for full and faithful performance of the terms of the agreement. Upon Boat Owner's compliance with the covenants and conditions contained in this agreement, Marina will return the security deposit to the Boat Owner at the end of the Term. Boat Owner may not use any portion of the security deposit as payment of Boat Owner's License Fees, including the last month. Marina may, at its sole option, claim such amounts of the security deposit as are reasonable and necessary in Marina's sole judgment to remedy defaults in the payment of License Fees and Other Charges hereunder, to repair damages to the Marina caused by the Boat Owner, and to pay any reasonable attorney's fee incurred by Marina in connection with any default or breach hereof by Boat Owner. Use of the deposit by Marina for such purpose shall not relieve Boat Owner of responsibility for such additional charges or fees as are not covered by the deposit amount. In the event that the security deposit, or any portion thereof, shall be applied as provided herein, Boat Owner agrees to deposit with Marina, upon delivery of written demand by Marina, an amount sufficient to pay any excess charges, fees or damages and to restore such security deposit to its original amount. Failure to do so, upon three (3) days notice shall excuse Marina from further performance of this agreement.

5. License

The intention of the parties is to create a license for the non-commercial use of the space only, with Marina as licensor and Boat Owner as licensee. This agreement confers no leasehold interest upon Boat Owner. No signs may be displayed or any commercial business activities conducted without prior written permission of the Marina. This agreement is only for use by a pleasure yacht or boat used for recreational purposes and absolutely no commercial use may be conducted by Boat Owner without a separate specific written and executed agreement with Marina. The Marina may terminate this agreement for such violations. Upon such termination, the Boat Owner shall immediately remove the boat from the space, and, upon failure to do so, the Marina may at its sole option remove the vessel at Boat Owner's risk and expense. In any event, Boat Owner shall be liable to the Marina for all damages and expenses the Marina may suffer as a result of the Boat Owner's default. Boat Owner shall continue to be liable for all License Fee(s) and Other Charges after the vessel is removed, until the expiration of the Term, and for all reasonable costs incurred by Marina in removing and relocating the vessel.

6. Security of the Vessel

The space is to be used at the sole risk of the Boat Owner. The Marina shall not be liable for the care or protection of the vessel, including her gear equipment and contents, or for any loss or damage of whatever kind or matter, including but not limited to, acts of vandalism or theft by land or water, to the vessel, her contents, gear or equipment. Marina expects Boat Owner to make suitable arrangements for safe, sheltered moorage during severe weather conditions, including, but not limited to tropical storms and hurricanes. Boat Owner may not assume Marina to be safe, sheltered moorage during such periods.

7. Condition of Vessel

Boat Owner warrants and represents that at all times during the entire term of this agreement, the vessel shall be maintained in safe and seaworthy condition by Boat Owner and shall be operated in a safe and careful manner so as not to cause damage to Marina's facilities, or to any other property, vessels or persons. In the event that Boat Owner or other authorized person is unavailable, or is available but refuses to act, and if the vessel is in danger of sinking, causing any hazard to navigation, becoming a fire, explosion or pollution hazard, or causing damage to Marina's facilities or to any other property or person by reason of any unsafe or any un-seaworthy condition of the vessel or otherwise, the Boat Owner authorizes Marina to take such appropriate actions as Marina shall determine in its sole discretion and at Boat Owner's sole risk and expense, to abate, mitigate, and otherwise deal with the apparent danger and hazards. Boat Owner agrees to be bound by Marina's action and to be fully and solely responsible for all expenses and liability incurred thereby. Owner agrees further that Marina shall have the authority, pursuant to this paragraph, to do all things and to take all steps necessary to reduce the hazards and dangers that in Marina's judgment appear to be present, eminent, or foreseeable. Notwithstanding the above, nothing herein shall be construed to create any duty, obligation or responsibility on the part of Marina to act under such circumstances and nothing herein shall be construed to create any liability on the part of the Marina for failing to act in such circumstances.

8. Insurance

Boat Owner agrees to list CHRM as additionally insured and to maintain in force during the entire term of this agreement including any extension or hold-over, whether by permission or not, adequate Hull Protection and Indemnity insurance covering the boat, protecting Boat Owner and Marina against damages, claims, demands, suits and judgments in said policy amounts for claims arising within the coverage of said policies. Copies of said insurance policies shall be provided to the Marina. Said insurance policies shall provide that Marina shall be entitled to at least thirty- (30) day's notice prior to cancellation thereof. All insurance covering the vessel shall contain provisions, which deny to the insurer any rights to subrogation against the Marina. Marian may terminate this agreement immediately, at its option, if coverage is deemed to be inadequate, in Marina's sole discretion, or coverage lapses.

9. Liens

"Default by Owner"

In the event of any breach hereunder, including but not limited to recovery in whole or in part for services or slip/space rental charges, in a Court either in rem or in personam, the Boat Owner hereby agrees to pay all court costs together with attorney's fees and interest and further that said vessel be responsible for such costs, fees and interest. Should a suit result against the vessel in rem, the Boat Owner agrees and consents to have Marina appointed as substitute custodian who may be responsible to secure removable items, with the consent of the United States Marshall and the Marina facility, including removing the vessel in custodia legis from its normal slip/space to another slip/space as the United States Marshall may allow and direct. In the event of legal proceedings, the Boat Owner hereby waives a jury trial.

In the event Boat Owner fails to pay rent as required by this Agreement and such rent remains unpaid for a period of (60) days from the due date as provided herein, any vessel left at the Marina pursuant to this contract, where tied to a slip or stored on land, and whether belonging to Boat Owner or a third-party, shall be deemed abandoned for purposes of applicable South Carolina law, including S.S.Code Ann. 50-23-135. Boat Owner hereby acknowledges that South Carolina law provides for the Marina to acquire a lien against a vessel for unpaid storage charges and, in the event of an abandoned vessel, to obtain title to sell the vessel, or to forfeit same to the SC Department of Natural Resources for disposal. Boat Owner further agrees that the marina may apply for a title to the vessel and sell the vessel to cover the outstanding rent, costs, and attorneys' fees, and Boat Owner expressly waives any and all claims it has against the Marina relating to the sale or disposal of such vessel.

10. Apparent Authority

Boat Owner agrees that, unless Marina is otherwise notified in advance in writing, anyone in possession or apparent charge of the vessel shall be deemed to have the authority and Marian may act in reliance upon orders or requests by such persons for services, supplies, work purchases, labor and other materials of any kind for the benefit of the vessel.

11. Space Designation

Marian reserves the right from time to time to reassign the vessel to such specified space as Marina shall designate. Such re-assignment shall become effective upon the giving of notice by Marina of such re-assignment in accordance with the provisions hereof. Boat Owner agrees to reasonably cooperate with Marina as to temporary or permanent re-assignment of slip space to permit Marina to accommodate visiting boats for special events or projects. ~~In the event of a re-assignment Boat Owner will be provided notice and a ten (10) day period to move the boat, or Marina may move the boat and Boat Owner waives any claims of any type whatsoever relating to Marina's movement of the boat.~~ Marina may move any vessel without notice in the event of an emergency condition, but shall have no obligation to do so.

12. Notices

Notices to Boat Owner shall be deemed to be served properly if posted in writing addressed to Boat Owner at a place and in a manner on the vessel which is reasonably susceptible of giving notice to anyone lawfully boarding the vessel and by mailing written notice to Boat Owner by mail, postage prepaid at the address set forth in this License Agreement for Boat Owner or to such other address as Boat Owner shall have last designated by written notice to Marina. Notices to Marina shall be deemed served only if given in writing and delivered personally or mailed by registered mail or certified mail, postage prepaid, return receipt requested, to Marina's office at the address shown below.

13. Marina Rules and Regulations

Boat Owner agrees that he and all agents, guests, invitees and employees, will comply with all posted rules and regulations attached hereto and marked "Exhibit A" as fully as though they were set herein, and should breach of the agreement or violation of posted rules and regulations occur, this license agreement shall terminate immediately at the option of Marina. Boat Owner agrees that upon such violation Marian may remove the boat at Boat Owner's risk and expense to retake possession of the space. Exhibit A may be amended from time to time by Marina and such amendment(s) shall be binding on Boat Owner upon notice as provided herein.

14. Indemnity

Boat Owner covenants to exercise due care in occupation of the dock space and to vacate the same in good condition, wear and tear occasioned by normal use only excepted. Boat Owner shall indemnify Marina against all claims, actions,

proceedings, damages, liabilities, including attorney's fees, arising from or connected with Boat Owner's possession and use of the space that may be asserted by anyone due to:

- (a) Property loss of any type, property damage due to fire, theft, collision, or property loss from any other cause to said Boat Owner's vessel, motors, sails, furniture, equipment, tackle or appurtenances, or to any other property contained in or on Boat Owner's vessel, or on the premises of the Marina or to personal property of others on the vessel or Marina Premises; and
- (b) Any personal injury, death or illness arising from occupancy of use of the Marina Premises or facilities, where such injury or damage is caused, in any part, regardless of how slight, by the acts or omissions of the Boat Owner, its agent, servants, invitees or employees; and
- (c) Any alleged damage, or loss to marine property, non-marine property, or personal injury caused in part, regardless of how slight, by Boat Owner, its agents, servants, invitees or employees.

15. Liability

The Marina's liability is limited to supervision and maintenance of waterfront area. Marina's employees will make reasonable efforts to contact Boat Owner and notify him of dangerous conditions requiring his attention, but Marina assumes no responsibility for tending mooring lines, moving boats from the spaces to which they are assigned, or informing Boat Owner of any dangerous conditions. It is the full responsibility of the Boat Owner to make arrangements for the safety and protection of his boat and appurtenances.

16. Assignment and Waivers

This document with Exhibit "A" attached hereto constitutes the entire agreement between the parties. There can be no assignment of this License Agreement by Boat Owner. Should there be a Waiver of any conditions by the Marina, this shall not be deemed to be a continuing Waiver. No course of dealing nor any failure or delay with respect to exercising any right, power or privilege under this agreement shall operate as a Waiver thereof or hereof, and any single or partial exercise of any such right, power or privilege shall not preclude any later exercise thereof or any exercise of any right, power or privilege thereunder or hereunder.

17. Severability

The parties hereto agree that if any provision, sentence, phrase or word of this document shall be deemed or declared unenforceable by any administrative agency or any federal or state court of law, then the remainder of this document shall remain in full force and effect and be binding on the parties hereto as if the unenforceable provision, sentence, phrase or word were not a part of this document.

18. Termination

This agreement shall be in full force and effect, unless terminated under anyone of the following conditions:

- (a) By destruction of the space facilities by fire, storm, acts of God, acts of the Government, acts of third parties, or other calamity.
- (b) In the event that the Boat Owner shall make a bona fide sale of the boat listed in the agreement and remove the boat to another location after proper notification to Marina and payment of all License Fee(s) and other charges.
- (c) By breach or default of the terms of the Rules and Regulations, as provided in Exhibit "A", or subsequent amendments, and as solely determined by the Marina.
- (d) By breach of any of the warranties or agreements contained herein, said breach to be solely determined by the Marina.
- (e) After the initial term Marina may terminate this Agreement for any reason at its sole discretion with thirty (30) days written notice to Boat Owner.

~~Upon termination for any reason Boat Owner must remove the boat from the Marina by the termination date.~~

19. THERE IS NO WARRANTY, EXPRESS OR IMPLIED, ON THE PART OF THE MARINA AS TO THE CONDITION OF THE PIERS, WALKS, GANGWAYS, RAMPS OR MOORING GEAR, AND THE MARINA ASSUMES NO RESPONSIBILITY TO PERSONS OR PROPERTY THEREON.

20.) "Risk of Loss:"

The slip leased hereunder shall be used at the sole risk of said Boat Owner, and the Marina assumes no responsibility for the care or protection of the above described Boat, including her gear, equipment and contents, or for any loss or damage to said Boat, her gear, equipment and contents.

21.) "Hurricanes/Severe Weather"

In the event of a storm or hurricane, the Marina may at its sole discretion require the Boat owner remove the vessel from the Marina by providing the Boat owner with 24-hour notice, which notice may be by telephone, fax, federal express or other means deemed appropriate by Marina, and the Owner agrees to remove the vessel from the Marina. IF the owner does not

move the vessel from the Marina, the Marina may remove the vessel and move it using the tackle onboard the vessel, in which case, the Boat Owner assumes full and complete responsibility for the vessel and waives any and all claims against the marina for damages arising from the Marina's movement and/or mooring of the vessel.

The person who has signed this agreement as Boat Owner hereby represents and warrants that he is in fact and in law the true owner of the vessel, and that he has full power and right to enter into this agreement for himself and for the vessel, and that there are no restrictions of any kind upon him or the vessel which limit or restrict his right and power to bind himself and the vessel to each and every term and condition of this agreement.

Boat Owner hereby acknowledges that owner has read and fully understands that this Marina License Agreement, as well as the rules, policies and regulations currently governing the use of space at Marina's premises.

In witness whereof, this agreement has been executed by Marina and Boat Owner as of the day and year first written above, or otherwise specified.

Marina: Charleston Harbor Resort & Marina
24 Patriot's Point Road
Mount Pleasant, SC 29464
(843) 856-9096
(843) 856-8540 (fax)

Boat Owner:

Paul A. Davis
(Print Name)

(Signature)

(Day Time)

(Evenings/Weekends)

(Facsimile)

(Mobile)

(Date)

By: [Signature]
Marina Representative

Date: 09/19/07

Please sign if you wish to have your account
Automatically paid with credit card at time of billing.

STATE OF DELAWARE
CERTIFICATE FOR RENEWAL
AND REVIVAL OF CHARTER

The corporation organized under the laws of the State of Delaware, the charter of which was voided for non-payment of taxes and/or for failure to file a complete annual report, now desires to procure a restoration, renewal and revival of its charter pursuant to Section 312 of the General Corporation Law of the State of Delaware, and hereby certifies as follows:

1. The name of the corporation is CHESAPEAKE VENTURE CORP.
2. Its registered agent and registered office in the State of Delaware is:
CORPORATE SYSTEMS INC
505 Brookfield Dr.
Dover DE 19901-6534 Kent County
3. The date of filing of the Corporation's original Certificate of Incorporation in Delaware was May 25, 2005.
4. The renewal and revival of the charter of this corporation is to be perpetual.
5. The corporation was duly organized and carried on the business authorized by its charter until March 1, 2008 at which time its charter became inoperative and void for non-payment of taxes and/or failure to file a complete annual report and the certificate for renewal and revival is filed by authority of the duly elected directors of the corporation in accordance with the laws of the State of Delaware.

DATED: April 17, 2013

BY: /s/ Paul A. Davis

Paul A. Davis, President



D-4

SCANNED

SUNSET CAY MARINA
VISITOR DOCKAGE AGREEMENT

Date: 5/27/08
 Vessel Type: Sail Power Gas Diesel Vessel Name: B Mann Cru
 Registration or Documentation # _____
 LOA: 45 Beam 14 Draft 5.6
 Name: Paul Davis Ph: 803-276-4777 Cell 803-321-7414
 Mailing Address: 14639 C.R. Kook Hwy
 City Newberry State SC Zip 29108
 Email: DAVIS1979@B-yach.com
 Alternate Emergency contact: Lynn Davis
 Phone Number 803-321-7665
 Arrival Date: 5/27/08 Departure Date: _____
 Rental Plan Daily Weekly Monthly
 Rental Rate 427.50
 Electric surcharge: \$25 --- 30 amp service \$50 --- 50 service
 Insurance Documents _____ (Initial and attach copy to form)
 Vessel Documents or Registration _____ (Initial and attach copy to form)

Summary of Marina Policies

1. This agreement is for dock space only. Such space is used at the sole risk of the vessel, its owner, captain, or agent, and guests of vessel. The Marina shall NOT be responsible for personal injury, vessel damage, or damage to any other property or persons whether real or alleged in any way related to the use of the marina and its facilities by any person aboard the vessel or by the vessels presence in the Marina.
2. Dockage rates for standard slips are based on the entire measured length of the vessel, with a minimum of 25'feet.
3. All owners, captains, crew and guest are required in such a manner as to not disturb the quite enjoyment of the facility or other boaters docked in the facility.
4. All garbage, trash and other refuse shall be placed in secured garbage bags and then placed in one of the trash containers provided on the docks.
5. Failure to abide by this agreement may result in your removal from the marina property.
6. There are no refunds on visitor dockage payments.
7. No live-a-boards (defined as over 3-5 consecutive days)
8. All slips are for sale and rental term may be cancelled after 30 days.
9. Please park all motor vehicles in "Marina" parking lot. No trailers allowed.
10. I, the under signed, have read and agree to abide by Sunset Cay Marina Policies, rules and regulations (attached) and have provided proof of liability Insurance.

Signature: Paul A. Davis Date: 5-28-08

Sunset Cay Acceptance: PA Date 5/27/08

~~BE~~
D-4 427.50 & DS

Gary ~~Schuch~~ owner slip
Schuch

843-813-5031

955 Kings st
char. SC



PEDERSEN & SCOTT, P.C.
Attorneys at Law
775 St. Andrews Blvd.
Charleston, South Carolina 29407
Phone (843) 556-5656 Fax (843) 556-5635

January 28, 2009

Paul Davis
101 N. Fairfield Drive
Dover, DE 19901

RE: Charleston Harbor Resort and Marina v. Paul Davis
Case No. 09-SC-86-0110

Dear Mr. Davis:

Please find enclosed for service upon you the Civil Cover Sheet, Summons and Complaint in connection with the above-referenced case. Pursuant to the Summons, you are required to file and serve an Answer or other responsive pleading to the Complaint within thirty (30) days of service hereof.

If you have any questions, please contact me directly.

With regards,



William A. Scott

WAS/ab
Enclosure

cc: Jason Poe



CHARLESTON COUNTY SMALL CLAIMS COURT INSTRUCTION SHEET

ADDRESS: POST OFFICE BOX 941, 29402 995 MORRISON DRIVE, CHARLESTON, SC 29403

PHONE: SMALL CLAIMS COURT DOWNTOWN CALL (843) 724-6720

HOURS: 8:30 AM - 5:00 PM Monday through Thursday 8:30 AM - 1:00 PM Friday

FILING: The filing and service of process fee is \$80.00. There is an additional \$10.00 charge for each additional defendant with a different address. The complaint and any attachments must be filed in DUPLICATE. The defendant must be a resident of Charleston County. Please provide the court with a clear and accurate legal name and street address for the defendant, so that the summons and complaint can be served without delay. Route and box numbers are not acceptable. If filing against a business, determine whether or not the business is incorporated or privately owned. If privately owned, list owner's full legal name. If incorporated, list agent's name and address for service of process. If filing to collect an account or note, include duplicate copies of the statement of account, invoices, or note to verify the amount due and have your signature notarized. The jurisdictional limit in this court is \$7,500.00.

SUMMONS: The Small Claims Court issues a summons when the complaint is filed and the summons requires the defendant to answer the complaint within thirty (30) days after the date of service. The defendant must answer in writing and a clerk is available at the Small Claims Office to assist a party if needed.

If the defendant has a claim against the plaintiff arising from the same facts, the defendant may file a counterclaim in writing with the court at the same time the answer is filed.

DEFAULT: If the defendant does not answer within thirty (30) days after service of the summons and complaint, a judgment by default may be entered against the defendant.

HEARING: The Court will schedule a hearing at the time the defendant files an answer. The parties must appear with any witnesses and evidence that are necessary to prove their cases. A WRITTEN, NOTARIZED, OUT OF COURT STATEMENT FROM A WITNESS CANNOT BE USED AS EVIDENCE. A WITNESS MUST APPEAR IN PERSON IN COURT TO TESTIFY. There is a charge of \$8.00 per subpoena if issued by the court.

JURY TRIAL: Either party has the right to request a jury trial and it must be submitted in writing at least five (5) working days prior to the date of the hearing.

JUDGMENTS: A Transcript of Judgment will be issued with specific instructions about the enforcement of the Judgment. It may be recorded immediately at the Clerk of Court's Office. The Execution Against Property Order may be filed with the Charleston County Sheriffs Office thirty (30) days after notice of judgment. The recorded judgment will remain valid and enforceable for a period of ten (10) years and accrues interest at the rate of 12% from the date of judgment. When the judgment is satisfied, the plaintiff must notify the Clerk of Court's Office so that the judgment will be recorded as satisfied.

POST TRIAL: A Motion for a New Trial must be received by this court in writing within five (5) days after notice of the judgment.

APPEALS: An appeal must be filed in writing within thirty (30) days from the notification of the judgment date. There is a \$150.00 filing fee and it must be filed with the Court of Common Pleas. The notice of appeal must be personally served on this court and on the opposing party within the same thirty (30) days.

Case No: 2009-SC-86-0110
Filed: 1-16-09
Served:
Default:
Hearing:

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**995 MORRISON DRIVE
CHARLESTON, SC 29403**

CHARLESTON HARBOR
RESORT & MARINA
c/o WILLIAM A. SCOTT, ESQ.

vs. PAUL DAVIS

Plaintiff

Defendant

775 ST. ANDREWS BLVD.

Street Address

Street Address

CHARLESTON, S.C. 29407

City State Zip

City State Zip

(843) 556-5656

Phone

Phone

**SMALL CLAIMS COURT
SUMMONS**

DATE: JANUARY 16, 2009

TO: PAUL DAVIS, Defendant

You are hereby notified that the Plaintiff has filed a claim and is asking for judgment against you as stated in the complaint.

You must present an answer to this complaint within thirty (30) days after service of this complaint upon you. If you do not answer, judgment by default may be entered against you. Your answer must be filed in writing to the Small Claims Court prior to the expiration of the 30 days. A clerk is available to assist you at the Small Claims Court from 8:30 a.m. to 4:30 p.m., Monday through Friday.

The Court will schedule a hearing on this claim at the time your answer is filed. If you have witnesses, books, receipts or other writings bearing on this claim, you must bring them with you at the time of the hearing or they will not be considered. If you wish to have witnesses called to court, see the Clerk of the Small Claims Court for assistance.

If you have a claim against the Plaintiff arising out of the same matter, you must file it with the Court at the time you file your answer.

MAGISTRATE, SMALL CLAIMS COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
CHARLESTON HARBOR)
RESORT & MARINA,)
)
Plaintiff,)
)
vs.)
)
PAUL DAVIS,)
)
Defendant.)
_____)

IN THE SMALL CLAIMS COURT
CASE NO. 09-SC-86-0110

COMPLAINT
(Non-Jury)
(Breach of Contract)



The Plaintiff herein complaining of the Defendant herein would allege and show as follows:

1. The Plaintiff, Charleston Harbor Resort & Marina, is a corporation organized and existing under the laws of the State of South Carolina and is in the business of renting dock space to boats at the Charleston Harbor Marina.
2. Upon information, the Defendant, Paul Davis, is a citizen of the State of South Carolina is the owner of a Vessel named "*Grand Cru*."
3. On or around April 19, 2007 the Plaintiff and the Defendant, Paul Davis, entered into a written license agreement for dockage (hereinafter the "Contract") of the Vessel in Charleston County that required the Defendant to pay the Plaintiff on a monthly basis, and provided that in the event the Plaintiff had to resort to legal action, the Plaintiff was entitled to recover attorney's fees, costs and interest.
4. The Defendant breached the Contract by failing to pay the monthly rental as agreed, and is indebted to the Plaintiff in the amount of \$4,146.56.
5. As a direct and proximate result of the aforesaid breach of contract, the Plaintiff is entitled to

payment of \$4,146.56 plus attorney's fees as provided for in the Contract, costs and interest.

WHEREFORE, the Plaintiff prays for judgment against the Defendant in the amount of 4,146.56 plus attorney's fees as provided for in the Contract, costs, interest, and for such other and further relief as this Court deems just and proper not to exceed the jurisdictional limits of this Court.

PEDERSEN & SCOTT, P.C.



William A. Scott
775 St. Andrews Blvd.
Charleston, South Carolina 29407
(843) 556-5656
Fax: (843) 556-5635
ATTORNEYS FOR PLAINTIFF

Dated this 14th day of January 2009.

Charleston Harbor Resort & Marina
Charleston Small Claims Court

Plaintiff

VS

PAUL DAVIS

Defendant

2009-SC-86-0110

Case No:

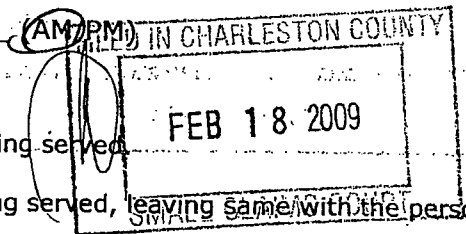
Return of Private Process Server

I Declare, that I am a citizen of the United States, over the age of eighteen (18) years and not a party to this action and within the boundaries of the State where service was affected. I was authorized by law to perform said service.

I served CORPORATE SYSTEMS, INC. - JOYCE LOCKART - REGISTERED AGENT with the **SUMMONDS, COMPLAINT, AFFIDAVIT, NOTICE TO PLEAD AND THE MOTION FOR SUMMARY JUDGMENT, SUBPOENA, INTERROGATORIES, AND/OR:**

Address: 505 Brookfield Dr, Dover, DE 19901

Date: 2/4/09 Time: 10:45



Manner of Service

- By personally delivering copies to the person authorized agent or entity being served.
- By leaving during office hours, copies at the office of the person/entity being served, leaving same with the person apparently in charge thereof.
- By leaving copies the dwelling house or usual place of abode of the person being served, with a member of the household 18 years or older and explaining the general nature of the papers.
- Copies of the document were mailed prepaid, first-class on _____ From: _____

Description - JOYCE LOCKART

- | | | | | | |
|--|--|--|---|---|--|
| <input type="checkbox"/> Male | <input checked="" type="checkbox"/> White Skin | <input type="checkbox"/> Black Hair | <input type="checkbox"/> 14-20 Yrs | <input type="checkbox"/> Under 5' | <input type="checkbox"/> Under 100# |
| <input checked="" type="checkbox"/> Female | <input type="checkbox"/> Black Skin | <input checked="" type="checkbox"/> Brown Hair | <input type="checkbox"/> 21-35 Yrs | <input checked="" type="checkbox"/> 5'0" - 5'3" | <input checked="" type="checkbox"/> 100-130# |
| | <input type="checkbox"/> Yellow Skin | <input type="checkbox"/> Blond Hair | <input type="checkbox"/> 36-50 Yrs | <input type="checkbox"/> 5'4" - 5'8" | <input type="checkbox"/> 131-160# |
| | <input type="checkbox"/> Brown Skin | <input type="checkbox"/> Gray Hair | <input checked="" type="checkbox"/> 51-65 Yrs | <input type="checkbox"/> 5'9" - 6'0" | <input type="checkbox"/> 161-200# |
| | <input type="checkbox"/> Red Skin | <input type="checkbox"/> Red Hair | <input type="checkbox"/> 65 + Yrs | <input type="checkbox"/> Over 6' | <input type="checkbox"/> Over 200# |

NON-SERVICE: Evading _____ Unknown at address _____ Moved _____ No Forwarding Address _____
Address does not exist _____ Service Canceled by Litigant _____ Other _____

I Declare under penalties of perjury the information contained herein is true and correct, and this affidavit was executed on: 2/4/09 (Date)

Sheila F Cohen, Inc.
SHEILA F. COHEN
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires June 5, 2010

Daniel F. Delcollo
Signature of Server
DANIEL F. DELCOLLO
Print



STATE OF SOUTH CAROLINA)

MAGISTRATES COURT


COUNTY OF CHARLESTON)

TRANSCRIPT OF JUDGMENT

FILED
2009 APR 28 PM 12:16
CLERK OF COMMON PLEAS COURT

JUDGMENT AGAINST		ATTORNEY	
NAME: PAUL DAVIS ADDRESS: 505 BROOKFIELD DRIVE DOVER, DE 19901			
JUDGMENT IN FAVOR OF			
NAME: CHARLESTON HARBOR RESORT & MARINA ADDRESS:		WILLIAM A. SCOTT, ESQ 775 ST. ANDREWS BLVD CHARLESTON, SC 29407	
DAMAGES AND COST			

AMOUNT OF JUDGMENT	\$ 4,146.56
INTEREST	\$
ATTORNEY FEES	\$ 1,000.00
COST	\$ 140.00
TOTAL	\$ 5,286.56

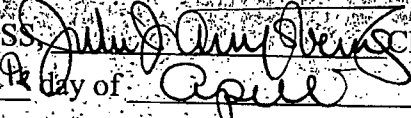
JUDGMENT RENDERED April 3, 2009

 MAGISTRATE

EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF CHARLESTON COUNTY:

The above judgment was docketed in the office of the Clerk of the Court of Common Pleas, County of Charleston, the 28th day of April, 2009.

THEREFORE, WE REQUEST YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your County, or if sufficient personal property cannot be found, that out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands soever the same may be, and duly return this execution, according to law, to the Clerk of the Court of Common Pleas for the County of Charleston.

WITNESS  Clerk of the Court of Common Pleas of Charleston County, this 28th day of April, 2009.

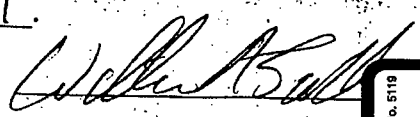

Plaintiff or Plaintiff's At

EXHIBIT
8
Blumberg No. 5119

09-6958

PEDERSEN & SCOTT, P.C.
Attorneys at Law
775 St. Andrews Blvd.
Charleston, South Carolina 29407
Phone (843) 556-5656 Fax (843) 556-5635

April 27, 2009

The Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

**RE: Charleston Harbor Resort & Marina v. Paul Davis
Case No. 09-SC-86-110**

Dear Ms. Armstrong:

Please find enclosed for filing the original and one (1) copy of the Transcript of Judgment in connection with the above-referenced case along with a check in the amount of \$10.00. Please file the original and return a stamped-in copy of the Transcript of Judgment in the enclosed envelope.

Please contact me if you have any questions.

With regards,



William A. Scott

WAS^{pb}
Enclosures

cc: Jason Poe



STATE OF SOUTH CAROLINA)

MAGISTRATES COURT

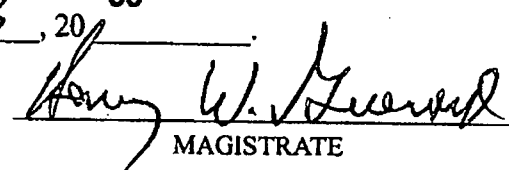
COUNTY OF CHARLESTON)

TRANSCRIPT OF JUDGMENT

2009-JG-10-685

JUDGMENT AGAINST	ATTORNEY
NAME: PAUL DAVIS 505 BROOKFIELD DRIVE ADDRESS: DOVER, DE 19901	BY _____ JULIE CLERK OF COURT 2009 APR 28 PM 12:15 FILED
JUDGMENT IN FAVOR OF	
NAME: CHARLESTON HARBOR RESORT & MARINA ADDRESS:	WILLIAM A. SCOTT, ESQ. 775 ST. ANDREWS BLVD CHARLESTON, SC 29407
DAMAGES AND COST	

AMOUNT OF JUDGMENT	\$ 4,146.56
INTEREST	\$ _____
ATTORNEY FEES	\$ 1,000.00
COST	\$ 140.00
TOTAL	\$ 5,286.56

JUDGMENT RENDERED April 3, 20⁰⁹

MAGISTRATE

09-10958

EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF CHARLESTON COUNTY:

The above judgment was docketed in the office of the Clerk of the Court of Common Pleas, County of Charleston, the _____ day of _____, 20 _____.

THEREFORE, WE REQUEST YOU, that you satisfy the said judgment out of the personal property of the said judgment debtor within your County, or if sufficient personal property cannot be found, that out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands soever the same may be, and duly return this execution, according to law, to the Clerk of the Court of Common Pleas for the County of Charleston.

WITNESS, _____ Clerk of the Court of Common Pleas of Charleston County, this _____ day of _____, 20 _____.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
SUNSET CAY MARINA,)
)
Plaintiff,)
)
vs.)
)
PAUL A. DAVIS and the)
VESSEL named "GRAND CRU,")
in personam,)
)
Defendants.)
_____)

IN THE SMALL CLAIMS COURT

CASE NO. ~~12-SC-86~~
2012 CV 1010600380

COMPLAINT
(JURY)
(Breach of Contract)

FILED IN CHARLESTON COUNTY

MAR 12 2012

CITY SMALL CLAIMS COURT

The Plaintiff herein complaining of the Defendants herein would allege and show as follows:

1. The Plaintiff, Sunset Cay Marina, is a marina located on Folly Beach, South Carolina, and is in the business of renting dock space to boats at the marina.
2. Upon information and belief, the Defendant, Paul A. Davis, is a resident of Newberry, South Carolina, and is owner of the Vessel, "Grand Cru."
3. The Defendant, Vessel, "Grand Cru," bearing Official No. 1056595 is a 1997 45' Hunter sailboat kept and maintained in Charleston County (hereinafter the "Vessel").
4. On or around May 27, 2008, the Plaintiff and the Defendant, Paul A. Davis, entered into a written license dockage agreement (hereinafter the "Contract" a copy of which is attached hereto) for the Vessel.
5. The Plaintiff has provided dockage for the Vessel as required by the Contract.
6. The Defendant, Paul A. Davis, breached the Contract by failing to pay the monthly rental as agreed, and is indebted to the Plaintiff in the amount in excess of \$11,500.00.
7. As a direct and proximate result of the aforesaid breach of contract, the Plaintiff has incurred damages actual damages in excess of \$11,500.00, and is continuing to be damaged by the



Defendant's continued failure to pay dockage while refusing to remove the vessel from Sunset Cay Marina.

8. The Vessel is responsible for the dockage costs in the event that Davis does not pay the dockages required by the Contract.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for \$7,500.00 (the jurisdictional limits of this Court), plus prejudgment interest, the cost of this action, attorney's fees as may be allowed at law and for such other and further relief as this Court deems just and proper not to exceed the jurisdictional limits of this Court.

ROGERS TOWNSEND & THOMAS, P.C.



William A. Scott (SC Bar # 15148)
Francis M. Ervin, II (SC Bar # 70900)
775 St. Andrews Blvd.
Charleston, South Carolina 29407
(843) 556-5656
Fax: (843) 556-5635
ATTORNEYS FOR PLAINTIFF

Dated this 6th day of March, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Sunset Cay Marina,

Plaintiff,

v.

Paul A. Davis and the Vessel named
"Grand Cru," *in personam*,

Defendants.

IN THE MAGISTRATE'S COURT

CASE NO.: 2012-cv-1010600380

D
JUN } 25 2012

**DEFENDANTS'
ANSWER AND COUNTERCLAIM**

JURY TRIAL DEMANDED

Defendants, Paul A. Davis and the Vessel named "Grand Cru" (collectively "Defendants" or "Davis"), by and through their undersigned counsel, do hereby answer the Plaintiff's Complaint by denying each and every allegation not herein expressly admitted, and reserving all rights to amend this Answer and Counterclaim pursuant to court rules, and by responding to Plaintiff's allegations as follows:

1. Upon information and belief, Defendants admit the allegations of Paragraph 1 of Plaintiff's Complaint.
2. Defendants admit the allegations of Paragraph 2 of Plaintiff's Complaint.
3. Answering the allegations in Paragraph 3 of Plaintiff's Complaint, Defendants crave reference to the actual specifications of the relevant vessel, but upon information and belief admit those allegations.
4. Answering the allegations of Paragraph 4 of Plaintiff's Complaint, Defendants crave reference to the actual Visitor Dockage Agreement for the terms thereof.
5. Answering the allegations of Paragraph 5 of Plaintiff's Complaint, Defendants admit that dockage was provided for the Vessel but deny that



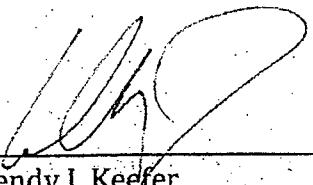
such dockage was provided as required by the Visitor Dockage Agreement to the extent that damage was inflicted to the Vessel as a result of Plaintiff's intentional acts.

6. Answering the allegations of Paragraphs 6 and 7 of Plaintiff's Complaint, Defendants admit that they failed to pay all dockage fees due but have insufficient information and knowledge at this time to know the amount due for such dockage and deny that dockage fees are due for the period of time Defendants were prohibited by Plaintiff from moving the Vessel from the Plaintiff's marina.
7. The allegations of Paragraph 7 of Plaintiff's Complaint state conclusions of law, which conclusions Defendants are required neither to admit nor deny.
8. Further answering the Complaint and as a **COUNTERCLAIM** against Plaintiff, Defendants assert and allege that actions taken by Plaintiff, due either to the intentional acts or negligence of Plaintiff, resulted in damages to the Vessel, which property damages are in excess of the \$7,500 sought by Plaintiff in this matter. Therefore, Defendants are entitled to payment by Plaintiff for the damages caused to the vessel. Waiving any excess over this Court's jurisdictional limit, Defendants hereby assert they are entitled to judgment in their favor for \$7,500.

WHEREFORE, Defendants have fully responded to Plaintiff's Complaint and asserted counterclaims against Plaintiff, Defendants respectfully request this Honorable Court enter judgment in their favor, dismissing any and all claims of

Plaintiff, and awarding them damages, attorneys' fees and costs as the Court deems appropriate.

June 12, 2012



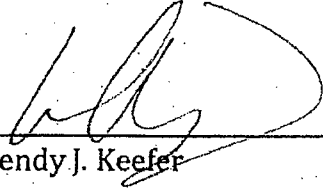
Wendy J. Keefer
Keefer & Keefer, LLC
1643B Savannah Hwy., Suite 226
Charleston, South Carolina 29407
(843) 801-2414 (direct dial)
(843) 225-7635 (facsimile)
wendy@keeferandkeefer.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Defendants' Answer and Counterclaim was served on Plaintiff, via email and U.S. Mail postage prepaid, on June 12, 2012, at the address below:

William A. Scott
Francis M. Ervin, II
775 St. Andrews Blvd.
Charleston, SC 29407



Wendy J. Keefer

ROGERS TOWNSEND & THOMAS, PC
775 ST. ANDREWS BOULEVARD
CHARLESTON, SOUTH CAROLINA 29407
P 843.556.5656 F 843.556.5635
W RTT-LAW.COM

WILLIAM A. SCOTT
BSCOTT@RTT-LAW.COM

FRANCIS M. ERVIN II
FRANCIS.ERVIN@RTT-LAW.COM
SC, MA



June 8, 2012

Wendy J. Keefer, Esquire
Keefer & Keefer, LLC
1643-B Savannah Highway, Suite 226
Charleston, SC 29407

**RE: Sunset Cay Marina v. Paul A. Davis and the Vessel names "Grand Cru"
Case No.: 2012-CV-1010600380**

FOR SETTLEMENT PURPOSES ONLY

Dear Wendy:

I am in receipt of your letter dated June 6, 2012 and provide the following response on behalf of Sunset Cay Marina. Mr. Davis currently owes \$16,291.00 for past due slip fees. Sunset Cay Marina will agree to settle this case by payment of \$7,500.00 provided payment is received within ten (10) days and the vessel is removed from the Marina at the time of payment. Payment must be by certified funds.

With regards to the alleged damage to the vessel, the lease agreement provides that the Marina is not liable for any damage to the vessel. Further, the only damage the Marina could possibly be responsible for is the repair to the gel-coat for \$835.00. The other work identified in the estimate is necessary for the normal care and maintenance of the vessel. The vessel has not been maintained properly and is in poor condition.

With regard to taking the vessel, the Marina has a possessory lien on the vessel under Admiralty law and State law, Section 29-15-10, lien for repairs or storage, sale of articles.

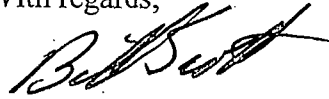
If a counterclaim is filed, and the case removed to Circuit Court, an amended Complaint will be filed for the full amount owed for the past due slip fees, attorney's fees and costs, and to foreclose and sell the vessel under Admiralty law and South Carolina law, Section 29-9-10.

Mr. Davis has a history of failing to pay slip rental fees for the vessel. There is an existing judgment against Mr. Davis in favor of Charleston Harbor Resort and Marina for \$5,286.56 for failure to pay slip rental while the vessel was at that marina. Mr. Davis' contention that he is not liable for slip rental fees to Sunset Cay Marina and that the Marina is responsible for any damage is simply unfounded.



Please contact me if you have any questions or would like to discuss this matter.

With regards,

A handwritten signature in black ink, appearing to read "Bill Scott", written in a cursive style.

William A. Scott

WAS/ib

cc: Sunset Cay Marina



lynn davis <davis979@gmail.com>

Fw: Sunset Cay Marina v. Paul Davis, et al.

Wendy Keefer <wendykeefer@yahoo.com>
Reply-To: Wendy Keefer <wendykeefer@yahoo.com>
To: lynn davis <davis979@gmail.com>

Mon, Jun 11, 2012 at 12:00 PM

Please see attached letter in response to the one I sent last week. Also see the email below. Though I think filing a counterclaim for the full amount of the repairs and removing this matter to circuit court might put more pressure on the other side to consider resolving this matter, it will also expose you to much more potential liability. For that reason, I think the best course of action is likely to file a counterclaim for the \$7,500 magistrate's court limit and seek to offset any amounts owed. Please note also that they are not willing to permit the vessel to be moved as I suspect if a verdict for the \$7,500 sought in magistrate's court is obtained and a jury fails to find the marina owes you for the boat damage they will use the lien on the vessel to collect that debt. Let me know what you think.

It is clear they believe they are not responsible for the damage; I, however, read the agreement as their not being responsible to damage that merely occurs while there. It certainly does not alleviate their responsibility for their own actions causing damage to the vessel. If this matter is tried in the magistrate's court we will likely want someone, perhaps from Detyens, to be able to testify to the likely source of the damage (i.e., that the damages for which repair is sought are not due to wear and tear and poor maintenance).

Sincerely,

Wendy J. Keefer
Keefer & Keefer, LLC
1643B Savannah Hwy, Suite 226
Charleston, SC 29407
(843) 801-2414 (direct dial)
(843) 860-1534 (mobile)
wendy@keeferlandkeefer.com
wendykeefer@yahoo.com

The communications contained in this email are or may be attorney-client privileged or protected by the attorney work product privilege. If you receive this email in error, please delete it and notify the sender immediately. Thank you.

— Forwarded Message —

From: Bill Scott <Bill.Scott@rtt-law.com>
To: 'Wendy Keefer' <wendykeefer@yahoo.com>
Sent: Monday, June 11, 2012 11:40 AM
Subject: RE: Sunset Cay Marina v. Paul Davis, et al.

Wendy:

Please see the attached letter mailed last week. I would like to think this is a matter that could and should be resolved, however, I don't expect that it will be unless Mr. Davis agrees to pay his debts.

Please call me if you would like to discuss this matter.

Thanks. Bill Scott



Bill Scott

Direct 843.556.5656
Fax 843.556.5635

<https://mail.google.com/mail/h/111hls31610a7/?&v=pt&msg=137dc47b79c25c6d>

6/11/2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

SUNSET CAY MARINA,

Plaintiff(s)

CIVIL ACTION COVERSHEET

12-CP - 10- 0204

vs.

PAUL A. DAVIS and the VESSEL named "GRAND CRU," in personam,

Defendant(s)

(Please Print)

Submitted By: WILLIAM A. SCOTT
Address: ROGERS TOWNSEND & THOMAS, P.C.
775 ST. ANDREWS BLVD., CHARLESTON, SC 29407

SC Bar #: 15148
Telephone #: 843-556-5656
Fax #: 843-556-5635
Other: -
E-mail: bill.scott@rtt-law.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

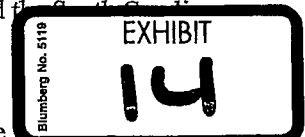
- Contracts: Breach of Contract (140)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Sexual Predator (510), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture (840), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Administrative Law Judge (980), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650)

Submitting Party Signature:

[Handwritten Signature]

Date: September 21, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SUNSET CAY MARINA,)
)
Plaintiff,)
)
vs.)
)
PAUL A. DAVIS and the)
VESSEL named "GRAND CRU,")
in personam,)
)
Defendants.)
_____)

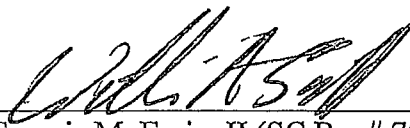
IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-10-

SUMMONS
(JURY TRIAL DEMAND)
(Breach of Contract – Foreclosure on Vessel)

FILED
2012 SEP 24 PM 4:19
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to file with the Clerk of Court an answer to the Complaint in the above-captioned case, a copy of which is herewith served upon you, and to serve a copy of your Answer to the subscriber at the office of ROGERS TOWNSEND & THOMAS, P.C., 775 St. Andrews Blvd., Charleston, South Carolina 29407, within thirty (30) days after the service hereof, exclusive of the day of service. If you fail to answer or otherwise plead within the time aforesaid, the Plaintiff herein will apply to the Court for the relief demanded in the Verified Complaint.



Francis M. Ervin, II (SC Bar # 70900)
William A. Scott (SC Bar # 15148)
Rogers Townsend & Thomas, P.C.
775 St. Andrews Blvd.
Charleston, SC 29407
(843) 556-5656
ATTORNEY FOR PLAINTIFF

Dated this 21st day of September, 2012.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
SUNSET CAY MARINA,)
)
Plaintiff,)
)
vs.)
)
PAUL A. DAVIS and the)
VESSEL named "GRAND CRU,")
in personam,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-10-

COMPLAINT
(JURY TRIAL DEMAND)
(Breach of Contract – Foreclosure on Vessel)

FILED
2012 SEP 24 PM 4:19
JUSTICE J. ARMSTRONG
CLERK OF COURT

The Plaintiff herein, complaining of the Defendants herein, would allege and show as follows:

1. The Plaintiff, Sunset Cay Marina (hereinafter "Plaintiff"), is a marina located on Folly Beach, South Carolina, and is in the business of renting dock space to boats at the marina.
2. Upon information and belief, the Defendant, Paul A. Davis (hereinafter "Davis"), is a resident of Newberry, South Carolina, and claims to be the owner of the Vessel, "Grand Cru," but the applicable vessel registration or documentation does not show Davis as the true owner of the Vessel.
3. The Defendant, Vessel "Grand Cru," bearing Official No. 1056595, is a 1997 45' Hunter sailboat kept and maintained in Charleston County (hereinafter the "Vessel").
4. On or around May 27, 2008, the Plaintiff and the Defendant, Paul A. Davis, entered into a written license dockage agreement (Exhibit A attached hereto) for the Vessel.
5. The Plaintiff has provided dockage for the Vessel as required by the Contract.
6. Davis breached the Contract by failing to pay the monthly rental as agreed and is indebted to the Plaintiff in the amount in excess of \$16,219.00, plus attorneys' fees and costs as may be allowed at law.

7. The Plaintiff duly filed and served its Statement for Lien on a Vessel, with such lien being filed in Book O261 Page 459 at the RMC Office for Charleston County, with said Statement For Lien on a Vessel attached hereto as Exhibit "B."
8. As a direct and proximate result of the aforesaid breach of contract, the Plaintiff has incurred actual damages in excess of \$16,291.00 and is continuing to be damaged by Davis' continued failure to pay dockage while refusing to remove the Vessel from Sunset Cay Marina.
9. The Vessel is responsible for the dockage costs in the event that Davis does not pay the dockage required by the Contract, and the Plaintiff is entitled to have the Vessel auctioned off by the Court to pay the debt pursuant to Section 29-9-10, *et seq.*

WHEREFORE, Plaintiff prays that Defendants' Counterclaim be dismissed with prejudice, and the Plaintiff prays for judgment against the Defendants for \$16,291.00, plus prejudgment interest, the cost of this action, attorney's fees as may be allowed at law, and for such other and further relief as this Court deems just and proper, including an Order requiring the Vessel be sold by the Court to satisfy the debt owed to the Plaintiff.

ROGERS TOWNSEND & THOMAS, P.C.



William A. Scott (SC Bar # 15148)
Francis M. Ervin, II (SC Bar # 70900)
775 St. Andrews Blvd.
Charleston, South Carolina 29407
(843) 556-5656
Fax: (843) 556-5635
ATTORNEYS FOR PLAINTIFF

Dated this 21st day of September, 2012.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 SUNSET CAY MARINA,)
)
 Plaintiff,)
)
 v.)
)
 PAUL A. DAVIS and the VESSEL)
 named "GRAND CRU," *in personam*,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2012-CP-10-6204

DEFENDANTS' ANSWER AND
 COUNTERCLAIM
 JURY TRIAL DEMANDED

BY _____
 JULIE J. ARMSTRONG
 CLERK OF COURT
 2012 NOV 20 PM 2:30

FILED

Defendants, Paul A. Davis and the Vessel named "Grand Cru" (collectively "Defendants" or "Davis"), do hereby answer the Plaintiff's Complaint by denying each and every allegation not herein expressly admitted, and reserving all rights to amend this Answer and Counterclaim pursuant to court rules, and by responding to Plaintiff's allegations as follows:

1. Upon information and belief, Defendants admit the allegations of Paragraph 1 of Plaintiff's Complaint.
2. Answering the allegations of Paragraph 2 of Plaintiff's Complaint, Defendants admit that Davis is a resident of Newberry and answers and asserts that an entity owned solely by Davis is the registered owner of the vessel but that the entity no longer exists or operates and that its property is now the property of Davis.
3. Answering the allegations of Paragraph 3 of Plaintiff's Complaint, Defendants crave reference to the actual vessel specifications but, upon information and belief, answer the allegations of paragraph 3.

Blumberg No. 5118
 EXHIBIT
 15

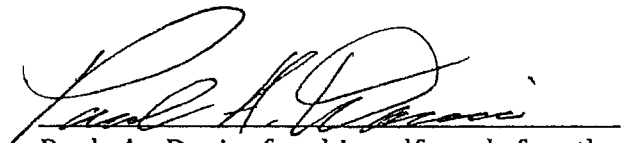
4. Answering the allegations of Paragraph 4 of Plaintiff's Complaint, Defendants crave references to the actual documents described in that paragraph for the date and terms, but admit that Exhibit A to the Plaintiff's Complaint appears to be a copy of said document.
5. Answering the allegations of Paragraph 5 of Plaintiff's Complaint, Defendants admit that dockage has been provided but further assert that damages to the vessel Grand Cru occurred as a direct result of actions by Plaintiff.
6. Answering the allegations of Paragraph 6 of Plaintiff's Complaint, Defendants admit that due to financial difficulties payments did get behind as relates to the vessel's dockage at Plaintiff's facility, but has insufficient information at this point as to the amount currently owed. Defendants further deny that Plaintiff is entitled by law or by contract to any attorneys' fees or costs.
7. Answering the allegations of Paragraph 7 of Plaintiff's Complaint, Defendants crave reference to the document referenced for the terms and validity of said document.
8. Answering the allegations of Paragraph 8 of Plaintiff's Complaint, Defendants again admit that payments were missed in connection with the dockage of the vessel Grand Cru at Plaintiff's facility, but deny that any continuing fees are the result of Defendants' action or inaction, as Defendant Davis has offered and requested the ability to remove the vessel from Plaintiff's facility in order to avoid further dockage fees and damages to Plaintiff.

9. The allegations of Paragraph 9 of Plaintiff's Complaint state conclusions of law that Defendants are required neither to admit nor deny.

10. Further answering the Complaint and as a **COUNTERCLAIM** against Plaintiff, Defendants assert and allege that actions taken by Plaintiff, due either to the intentional acts or negligence of Plaintiff, resulted in damages to the Vessel Grand Cru, which property damages are in excess of the damages sought by Plaintiff in this matter. Therefore, Defendants are entitled to payment by Plaintiff for the damages caused to the vessel and are entitled to a set off of any damages to which Defendants may be entitled in this action.

WHEREFORE, Defendants have fully responded to Plaintiff's Complaint and asserted counterclaims against Plaintiff, Defendants respectfully request this Honorable Court enter judgment in their favor, dismissing any and all claims of Plaintiff, and awarding them damages, attorneys' fees and costs as the Court deems appropriate.

November 20, 2012


Paul A. Davis for himself and for the
Vessel Grand Cru
14639 C.R. Koon HWY
Newberry, SC 29108
803.321.7414
davis979@gmail.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION.
IN ADMIRALTY

CHESAPEAKE VENTURE CORP.,)	
And PAUL A. DAVIS,)	
)	
Plaintiffs,)	
)	
v.)	2:13-cv- 01657 - DCN
)	
SUNSET CAY MARINA, SUNSET)	
CAY COMMERCIAL, LLC, and)	
GARY SCHWAB,)	
)	
Defendants.)	
)	(Non Jury)

PLAINTIFFS' ORIGINAL COMPLAINT

COME NOW Chesapeake Venture Corp. and Paul A. Davis, Plaintiffs in the above captioned action, and, complaining of Defendants, show this Honorable Court as follows:

1. This is an action for conversion of and damage to a vessel afloat upon the navigable waters near Folly Beach, Charleston County, South Carolina and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure; Plaintiffs invoke the original admiralty jurisdiction of this Honorable Court pursuant to 28 U.S.C. § 1333(1).

2. This case is governed by the General Maritime Law of the United States, and laws supplemental thereto and amendatory thereof.



3. At all times material hereto, Chesapeake Venture Corp. ("Chesapeake") was and is a business corporation formed under and existing by virtue of the laws of Delaware.

4. At all times material hereto, Chesapeake was owner of record of the U.S. Flag sailing vessel GRAND CRU (Official Number 1056595) ("the vessel").

5. On or about May 26, 2005 Chesapeake chartered the vessel to Paul A. Davis ("Davis"), a citizen of South Carolina, who has operated the vessel since that time.

6. On information and belief at all times material, Defendant Sunset Cay Marina was and is a business entity with a place of business at 66 West 9th Street Extension, Folly Beach, South Carolina 29439.

7. On information and belief at all times material hereto, Defendant Sunset Cay Commercial, LLC ("Commercial") was and is a domestic limited liability company with a principal place of business at 66 West 9th Street Extension, Folly Beach, South Carolina 29439.

8. On information and belief at all times material hereto, Commercial was and is the owner and operator of Sunset Cay Marina. Alternatively, another entity was and is the owner and operator of Sunset Cay Marina.

9. On information and belief at all times material hereto, Defendants have been doing business as Sunset Cay Marina

("Marina").

10. On information and belief at all times material, Chris Kleinhans ("Kleinhans") was and is employed as manager of Marina.

11. On information and belief at all times material hereto, Defendant Gary Schwab ("Schwab") was and is deeded owner of Slip D-4, Sunset Cay Marina Horizontal Property Regime ("Slip D-4").

12. On information and belief at all times material hereto, Schwab contracted with Marina for Marina to act as Schwab's agent to collect dockage for Schwab for use of Slip D-4 by one or more vessels in navigation.

13. On information and belief at all times material hereto, Marina agreed to receive and did in fact receive dockage payments for Schwab for use of Slip D-4.

14. On or about May 27, 2008 Davis entered into a maritime contract with Marina, as agent for Schwab, for dockage for the vessel at Slip D-4.

15. The contract between Davis and Marina did not provide a security agreement or other contractual provision allowing Marina to maintain possession of the vessel in case of Davis' nonpayment of dockage.

16. The contract between Davis and Marina did not contain a choice of law provision.

17. Davis paid dockage of \$427.50 per month for the months

of June through December, 2008 and for the months of January through March, 2009.

18. At Marina's direction, Davis made his checks for dockage payable to "Gary Schwab."

19. On information and belief Davis' checks for dockage were negotiated by Schwab.

20. In or about May 2009, Davis began to get behind with his agreed dockage payments.

21. On or about May 3, 2010, Defendants, by and through their agent Diana Clark, agreed to reduce the monthly dockage for Slip D-4 to \$400.00 per month.

22. In or about July, 2010, without permission from Plaintiffs, Defendants chained the vessel to the dock at Slip D-4 with a rusty chain.

23. From July, 2010 through the present, Defendants have refused to allow Davis to remove the vessel for repairs, to avoid additional dockage charges, or for any purpose.

24. Due to Defendants' negligence in chaining the vessel to the dock with a rusty chain, the vessel sustained damage, including to the gelcoat and fiberglass of the hull in several areas.

25. On or about March 20, 2011, Defendants removed the rusty chain from the vessel.

26. Although Defendants removed the rusty chain from the vessel on or about March 20, 2011, Defendants have continued to refuse to allow Davis or Chesapeake to remove the vessel for any purpose.

27. On or about March 12, 2012, Defendants commenced litigation ("collection action") against Davis in the Magistrate's Court for collection of unpaid dockage.

28. On or about September 24, 2012 the collection action was moved to the Court of Common Pleas.

29. Defendants continue to refuse Plaintiffs and their agents access to the vessel for maintenance and repairs.

FOR A FIRST CAUSE OF ACTION
(Conversion)

30. Plaintiffs repeat the above allegations as fully as if set forth herein verbatim.

31. By July, 2010 Davis was behind with his agreed dockage payments.

32. In or about July, 2010, Chesapeake was owner of record of the vessel and Davis was charterer of the vessel.

33. At that time, Plaintiffs were entitled to possession of the vessel, Chesapeake by virtue of its title and Davis by virtue of his charter.

34. In or about July, 2010, Defendants chained the vessel to the dock at Slip D-4.

35. At that time, no contract, statute, or case law gave Defendants the legal right to chain the vessel to the dock.

36. Defendants failed to follow proper procedure to enforce their maritime lien for dockage.

37. From July, 2010 through March 20, 2011, Defendants kept the vessel chained to the dock.

38. From July, 2010 through the present, Defendants have maintained exclusive possession of and control over the vessel.

39. Multiple times since July, 2010, Plaintiffs, through counsel, have demanded possession of the vessel.

40. From July, 2010 through the present, Defendants have refused Plaintiffs' demands for possession of the vessel.

41. From July, 2010 through the present, Defendants have detained the vessel and refused to allow Plaintiffs to remove the vessel for repairs, to avoid additional dockage charges, or for any purpose.

42. From July, 2010 through the present, Defendants have exercised unauthorized control over the vessel and have converted the vessel to their own use.

43. From July, 2010 through the present, Defendants have refused Plaintiffs and their agents access to the vessel for maintenance and repairs.

44. Defendants' said control and use of the vessel were without Plaintiffs' permission.

45. Defendants' conversion of Plaintiffs' vessel has proximately caused damages to Plaintiffs measured by the value of the vessel (estimated to be \$175,000.00) with interest at the legal rate.

46. Because Defendants' actions in converting Plaintiffs' vessel was in reckless indifference to the Plaintiffs' rights, Plaintiffs are entitled to punitive damages in an amount considered by the Court sufficient to punish Defendants and to deter Defendants and others similarly situated from engaging in such conduct in the future.

FOR A SECOND CAUSE OF ACTION
(Negligence - Property Damage)

47. Plaintiffs repeat the above allegations as fully as if set forth herein verbatim.

48. Defendants owed Davis and Chesapeake a duty to use reasonable care not to damage the vessel.

49. In or about July, 2010, Defendants breached their duty of care to Plaintiffs in the following respects:

a. Defendants failed to properly secure the vessel to the dock without damage;

b. Defendants failed to use a proper vinyl coated chain or cable to secure the vessel to the dock without damage;

c. Defendants failed to protect the hull, gel coat, and fiberglass of the vessel from damage;

d. Defendants negligently used a rusty chain to secure the vessel;

e. Defendants failed to prevent abrasion to and rust staining of the vessel's hull;

f. Defendants failed to select knowledgeable and competent employees to secure the vessel;

g. Defendants failed to use proper protective layers and devices to avoid damage and rust staining of the vessel;

h. Defendants, having damaged and stained the hull of the vessel with a rusty chain, failed to use reasonable care to repair the damage;

i. Defendants failed to be careful to avoid damage to the vessel;

j. Defendants failed to exercise due care for the structural integrity of the vessel while chaining the vessel to the dock;

k. Defendants failed to maintain and repair the vessel;

l. Defendants failed to allow Plaintiffs and their agents to maintain and repair the vessel; and

m. Such other and further negligence and recklessness as may come to light in discovery or may be proved upon the trial of this action.

50. Defendants' said negligence has directly and proximately caused damages to the vessel.

51. As a direct and proximate result of Defendants' negligence Plaintiffs have suffered and will in the future suffer damages measured by the fair and reasonable costs to repair the vessel, including:

a. from chaining the vessel to the dock with a rusty chain, abrasion and rust staining of the gelcoat and fiberglass of the hull in several areas, repair costs for which have been estimated by Ross Marine, LLC to be approximately \$45,000.00;

b. possible damage to the structural integrity of the vessel, repair costs unknown;

c. possible additional damages unknown to Plaintiffs at this time, repair costs unknown;

d. maintenance and routine repairs prevented by Defendants, repair costs unknown.

52. Because Defendants' reckless conduct proximately caused damage to the vessel in the above respects, Plaintiffs are entitled to an award of punitive damages in an amount considered by the Court sufficient to punish Defendants and to deter Defendants and others similarly situated from engaging in such conduct in the future.

FOR A THIRD CAUSE OF ACTION

(Davis' Claim Against Sunset Cay Investment Co., LLC for Violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1601, et seq.)

53. Plaintiffs repeat the above allegations as fully as if set forth herein verbatim.

54. At all times material hereto, Davis was and is a consumer within the meaning of the Fair Debt Collection Practices Act, 15 U.S.C. § 1601, et seq. ("the Act").

55. At all times material hereto, Investment Co., LLC was and is acting as a debt collector within the meaning of the Act, by attempting to collect, inter alia, a debt due to another ("subject debt").

56. Defendants had no right under contract, statute, or case law to enforce a possessory lien against the vessel, a U.S. Flag vessel on navigable waters.

Dispossession or Disablement - no security interest

57. For the past year, Investment Co., LLC has violated § 1692f(6)(A) of the Act, by using unfair or unconscionable means to collect or attempt to collect the subject debt, specifically, by taking or threatening to take nonjudicial action to effect dispossession or disablement of the vessel, where Defendants have no present right to possession of the vessel claimed as collateral through an enforceable security interest.

Dispossession or Disablement - property exempt by law

58. For the past year, Investment Co., LLC has violated § 1692f(6)(C) of the Act, by using unfair or unconscionable means to collect or attempt to collect the subject debt, specifically, by taking or threatening to take nonjudicial action to effect dispossession or disablement of the vessel, where the vessel is exempt by law from such dispossession or disablement. *The GLIDE*, 167 U.S. 606 (1897) (finding a Massachusetts state vessel lien statute nearly identical to S.C. Code Ann. § 29-9-10 et seq. enforceable only in federal court).

59. On information and belief at all times material hereto, Defendants maintained regular books and records, the entries in said books and records being made in the ordinary course of business, and that said books and records showed Davis' account accurately and in detailed fashion setting forth each charge on said account and setting forth each payment on said account.

False Representation - payment history

60. On or about May 21, 2013, Investment Co., LLC violated § 1692e(8) and (10) of the Act, by communicating into the public record credit information which was known by Defendants to be false, and by using a false representation and deceptive means to collect or attempt to collect any debt, when, in support of Defendants' position in the collection action, Defendants filed in the Court of Common Pleas an Affidavit of Chris Kleinhans.

61. The Affidavit of Chris Kleinhans falsely states, "Mr. Davis has failed to pay the required dockage fee since late 2008. . . ."

62. In fact Davis had made a dozen or more payments since 2008.

63. On information and belief, Defendants' books and records showed that Davis had made a dozen or more payments since 2008.

64. The said statement in the Affidavit of Chris Kleinhans is a false or misleading representation and constitutes credit information which is known to be false within the meaning of the statute.

65. The said false Affidavit remains filed in the public record.

66. Because of Investment Co., LLC's said violations of the Act, Davis has suffered humiliation, embarrassment, and mental anguish, and emotional distress and is entitled to all actual damages proved, additional damages of \$1,000.00, and an award of reasonable attorneys' fees and costs.

Prayer

WHEREFORE Plaintiffs pray for judgment against Defendants and in favor of Plaintiffs for all actual damages, special damages, general damages, presumed damages, statutory damages, additional damages, prejudgment interest, and punitive damages

allowed by the maritime law in an amount not less than \$220,000.00, and for judgment against Sunset Cay Investment Co., LLC and in favor of Paul A. Davis for all actual damages, additional damages, and reasonable attorneys' fees allowed by the Fair Debt Collection Practices Act, for declaratory relief declaring Plaintiffs' rights to immediate possession of the vessel, and for such other or further relief as may be in the interests of justice.

RESPECTFULLY SUBMITTED:

JOHN HUGHES COOPER, P.C.

By: /s/John Hughes Cooper
JOHN HUGHES COOPER, ESQUIRE
Federal Court ID 298
South Carolina Bar 1387
State Bar of Georgia 185986
shiplaw@jhcooper.com
JOHN TOWNSEND COOPER, ESQUIRE
Federal Court ID 10172
South Carolina Bar 76087
jtc@jhcooper.com
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ATTORNEYS FOR PLAINTIFFS,
CHESAPEAKE VENTURE CORP. and
PAUL A. DAVIS

June 5, 2013
Mt. Pleasant, South Carolina

V E R I F I C A T I O N


PERSONALLY APPEARED Paul A. Davis, who, under penalty of perjury, deposes and says:

a) My name is Paul A. Davis and I am one of the Plaintiffs in the instant action. I am over 18, of sound mind, and a resident of South Carolina.

b) I have read the foregoing PLAINTIFF'S ORIGINAL COMPLAINT and know the contents thereof and the same are true and correct to the best of my knowledge, except as to the matters therein stated to be on information and belief, and as to those matters I believe them to be true.

c) The sources of my information and the grounds of my belief are, my personal knowledge, and documents in my possession.

d) The above statements are true and correct under penalty of perjury.


Paul A. Davis

06/05/13
Date