

SIMPLIFIED ACTION

COURT FILE NO.

**FEDERAL COURT
ACTION *IN REM* AGAINST THE SV "ACOR"
AND *IN PERSONAM* AGAINST
THE OWNER OF THE SV "ACOR"**

BETWEEN:

CAMPBELL RIVER HARBOUR AUTHORITY

PLAINTIFF

AND:

THE OWNERS AND ALL OTHERS INTERESTED
IN THE SV "ACOR", THE SV "ACOR",
CAPT. E.G. DA COSTA DUARTE, aka
EMANUEL DUARTE

DEFENDANTS

AFFIDAVIT

I, Phyllis Titus, of 705 Island Highway, Campbell River, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am the harbour manager for the Campbell River Harbour Authority ("CRHA") and as such have personal knowledge of the facts and matters hereinafter deposed to save and except where the same are stated to be based on information and belief and where so stated I verily believe them to be true.
2. The CRHA is a non-profit federal incorporation with a volunteer elected Board of Directors consisting of fisherman and community representatives and 3 paid staff members which operates the former Federal government small craft harbour at Campbell River, BC (the "Harbour") pursuant to a head lease with the Ministry of Fisheries. The purpose of the organization is to maintain berthage at Campbell

River for commercial fishing vessels. Pleasure craft may be allowed to berth in the Harbour, but only as a supplement to the commercial fishing fleet. Now produced and shown to me and marked collectively as Exhibits "A" and "B" to this my Affidavit are copies of 2 pages from the Fisheries and Oceans Canada website outlining the small craft harbour program.

3. In May 2008 Mr. E.G. da Costa Duarte berthed his pleasure craft, a sailing vessel, the "Acor", at one of the CRHA docks. Mr. Duarte advised me that he was in Campbell River to help a friend work on the friend's tug and asked to pay berthage calculated at our pleasure craft monthly rate.
4. On 28 May 2008 Mr. Duarte signed a CRHA berthage agreement. When signing the agreement, Mr. Duarte did not say how long he would be in Campbell River but provided an address in New Westminster, BC as his residence. Now produced and shown to me and marked Exhibit "C" to this my Affidavit is a copy of the Campbell River Harbour Berthage Agreement ("Berthage Agreement") dated 28 May 2008 signed by Mr. E.G. da Costa Duarte and by me on behalf of the CRHA.
5. Clause 4(e) of Appendix "A" of the Berthage Agreement which was initialled by Mr. Duarte only allows vessels to be used to "live aboard" with the written permission of the CRHA and reads as follows:

"(e) THE OWNER/USER AGREES THAT THE VESSEL SHALL NOT BE USED TO LIVE ABOARD OR AS A PLACE OF RESIDENCE WHILE IT IS BERTHED AT THE HARBOUR UNLESS THE OWNER/USER HAS WRITTEN PERMISSION FROM THE AUTHORITY."
6. The address, 800 Boyd Street, New Westminster, BC provided by Mr. Duarte, is not, I now understand, in fact, a residence but the address of Queensborough Mini Storage, a warehouse facility. The Berthage Agreement has a notation on it "Queensborough Mini Storage" which I handwrote on the document in

approximately September 2008 when I became aware that Mr. Duarte was living on his vessel and checked the address which he had provided.

7. In July 2008, Mr. Duarte came into the office and said that he wanted to keep his boat in Campbell River and would like to pay berthage on an annual basis.
8. The same berthage agreement applies whether vessel owners pay berthage on a daily, monthly or yearly basis.
9. I agreed that Mr. Duarte could begin paying berthage at the annual rate from 31 July 2008 through 31 July 2009 but his Berthage Agreement remained the same one he signed on 28 May 2008.
10. In both May and again in July 2008, Mr. Duarte advised me that his address was 800 Boyd Street, New Westminster, BC and he confirmed to me that he was not living aboard his vessel.
11. In October 2008, Mr. Duarte admitted to me that he was in fact living aboard his vessel.
12. By e-mail dated 30 October 2008, Mr. Duarte wrote to the CRHA stating that while his residence was still at the address located in New Westminster, BC, he was applying for "live-a-board" status on the basis that the vessel served as his home away from home. Now produced and shown to me and marked as Exhibit "D" to this my Affidavit is a copy of Mr. Duarte's e-mail of 30 October 2008.
13. Mr. Duarte's application for live aboard status for the "Acor" was presented at the CRHA Board Meeting on 30 October 2008 and his application was granted retroactively for a one year term to conclude with the anniversary date of the "Acor"'s annual berthage payment, or 31 July 2009, at which time Mr. Duarte was advised it would be subject to review. Now produced and shown to me and marked as Exhibit "E" to this my Affidavit is a copy of Tom Forge's letter to Mr. Duarte dated 3 November 2008 confirming his live aboard status and that it would be subject to review on 31 July 2009.

14. When Mr. Duarte began paying berthage on an annual basis, he was charged a rate based on his representation that the "Acor" was 38 feet in length. However, a subsequent measurement of the vessel determined that the vessel was in fact 46 feet in length.
15. On 6 November 2008, the CRHA wrote to Mr. Duarte advising him of the recalculation and advising that there was a shortfall in his annual berthage payment of \$181.44. Mr. Duarte disputed that amount and refused to pay it. The amount was subsequently paid on Mr. Duarte's behalf by Art Beaulieu, the owner of a local tug boat company for whom, I believe, Mr. Duarte may have been doing some work. Now produced and shown to me and marked as Exhibit "F" to this my Affidavit is a copy of the CRHA letter of 6 November 2008 to Mr. Duarte.
16. When Mr. Duarte's annual payment under the Berthage Agreement ended on 31 July 2009, he and his vessel the "Acor" departed the Harbour on 1 August 2009.
17. On 6 September 2009, Mr. Duarte and the "Acor" returned to the Harbour.
18. When the "Acor" returned to the Harbour in September 2009, Mr. Duarte did not say how long he would be here, but because he had been here previously I charged him berthage on the monthly basis, rather than a daily basis and he paid 3 months berthage in advance.
19. I am advised by Dave Ostler, one of our full-time employees, that when Mr. Duarte and the "Acor" arrived back in the Harbour on 6 September 2009 he advised Mr. Duarte that one of our summer student staff members had measured his boat at 43 feet and the monthly berthage was calculated on that basis. However, the vessel was again re-measured at 46 feet.
20. On 11 September 2009 the CRHA wrote to Mr. Duarte advising him of the re-measurement of the "Acor" and advising that berthage had accordingly been recalculated and that there was a shortfall of \$27.02 for the three months of monthly berthage which Mr. Duarte had paid in advance. Now produced and

shown to me and marked "Exhibit "G" to this my Affidavit is a copy of the CRHA letter of 11 September 2009 to Mr. Duarte.

21. In the letter of 11 September 2009, Mr. Duarte was asked to provide a current residence address as the addresses he had previously provided was not valid.
22. Upon being requested to provide a new residence address, Mr. Duarte provided an address in Campbell River, BC which I happen to know is the address of the residence of Art Beaulieu.
23. The CRHA Board has defined a live aboard as "someone who lives onboard more than 15 days per month for 4 consecutive months or a total of six months in any year".
24. In September 2009, the CRHA Board approved the form of application to be completed by anyone who wished to maintain live aboard status for their vessel while moored in the CRHA Harbour and, if requested, the requirement to supply proof of insurance. The application was delivered to all vessels including Mr. Duarte's sailboat, the "Acor". However, to date, although a request has been made, no application or proof of insurance has been submitted by Mr. Duarte.
25. On 17 February 2010 I was undertaking our routine daily vessel count when I noticed that a skiff from one of the vessels moored in the Harbour was partially sunken and I notified the owner of the skiff. I was continuing with the vessel count when I was approached by Mr. Duarte demanding a pump and swearing at me and calling me names. He was so aggressive that I, along with Tom Thompson to whom I was speaking when Mr. Duarte approached, both thought that he was going strike me. Now produced and shown to me and marked as Exhibit "H" to this my Affidavit is the CRHA Incident / Occurrence Report which I completed following my encounter with Mr. Duarte.
26. As a result of the incident on 17 February 2010 and his failure to provide proof of liability insurance, on 18 February 2010 Tom Forge, the CRHA president, sent Mr. Duarte a letter advising that he would have to make alternate berthing

- arrangements for his vessel by 28 February 2010. Now produced and shown to me and marked Exhibit "I" to this my Affidavit is a copy of Mr. Forge's letter dated 18 February 2010.
27. On 18 February 2010, Mr. Duarte attended at the CRHA office and hand delivered to me a letter addressed to the Board of Directors of the CRHA. Now produced and shown to me and marked Exhibit "J" to this my Affidavit is a copy of Mr. Duarte's letter of 18 February 2010 to the CRHA Board of Directors.
 28. I am advised by Dave Ostler that Mr. Duarte delivered to him at the CRHA office an Information, on 23 February 2010 swore against the CRHA president, Tom Forge on 23 February 2010.
 29. From my review of the "Information" sworn by Mr. Duarte on 23 February 2010 he alleges that Tom Forge contravened 4 sections of the Criminal Code with respect to a written statement apparently produced on 18 February 2010 by which I believe that Mr. Duarte means Mr. Forge's letter of 18 February 2010 (Exhibit "I" herein). Now produced and shown to me and marked as Exhibit "K" to this my Affidavit is a copy of the Information sworn by Mr. Duarte on 23 February 2010.
 30. On 1 March 2010, the CRHA president, Tom Forge, and the CRHA Treasurer, Tim Hobbs, attempted to deliver a letter to Mr. Duarte confirming that he had been requested to remove his vessel, the "Acor", from the Harbour by 28 February 2010, that the CRHA was going to initiate a process to have the vessel removed from the Harbour and that from then on, 1 March 2010, if his vessel remained in the Harbour he would be charged the daily rate for berthage and electricity.
 31. I am advised by Mr. Forge that when they attempted to deliver the letter, Mr. Duarte tore it into pieces and advised them that he was going to call the RCMP. Now produced and shown to me and marked collectively as Exhibit "L" to this my Affidavit is a copy of my incident report of 1 March 2010 with attached report

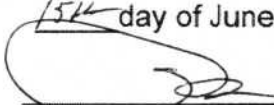
signed by Tom Forge and Tim Hobbs and a copy of the CRHA letter of March 1, 2010 to Mr. Duarte.

32. Because of Mr. Duarte's volatility the RCMP requested that the CRHA not deliver any further correspondence to Mr. Duarte on the "Acor".
33. On 4 March 2010 Tom Forge, on behalf of the Board of Directors, wrote to Mr. Duarte in response to his letter of 18 February 2010 at the address Mr. Duarte had provided in Campbell River, BC. Now produced and shown to me and marked Exhibit "M" to this my Affidavit is a copy of the CRHA letter to Mr. Duarte of 4 March 2010.
34. On 9 March 2010 Mr. Duarte attended at the Provincial Court in Campbell River, BC and swore a further private indictment Information against the entirety of the CRHA Board of Directors. Now produced and shown to me and marked Exhibit "N" to this my Affidavit is a copy of the Indictment sworn by Mr. Duarte on 9 March 2010.
35. So far as I am aware, although Mr. Duarte swore the two Informations of 23 February 2010 and 9 March 2010, no formal charges have been laid as a result.
36. The "Acor" remains moored to our dock and because his car remains in our parking lot and I see him on his vessel late at nights and again in the mornings, it appears to me that Mr. Duarte is living aboard the vessel. Mr. Duarte has not paid berthage since 1 March 2010 and he is in arrears on berthage at the daily rate in the amount of \$4,213.13 as at 15 June 2010.
37. In my dealings with Mr. Duarte, I found him to be generally aggressive and belligerent, but it was not until he confronted me on 17 February 2010 that I felt physically threatened. Since that date, and as requested by the RCMP, I have been going about my daily business trying to avoid any interaction with Mr. Duarte which makes doing my job, which involves attending regularly on the docks, difficult.

38. Although Mr. Duarte and the "Acor" were ordered to leave the Harbour by 28 February 2010, he has refused to leave and the "Acor" remains moored to our dock. It appears to me that Mr. Duarte is living aboard the vessel and he is generally present on the docks and in the Harbour area. The fact that Mr. Duarte has refused to leave has created the following difficulties:
- (a) his refusal to leave as directed by the CRHA Board sets an example of disrespect for the Board and the employees of the CRHA to other Harbour users and may encourage them to think they do not have to pay berthage or comply with the terms of their berthage agreements.
 - (b) his repeated recourse to file private criminal prosecutions against the Board and its volunteer members creates an untenable environment and makes conducting the normal everyday operations of the Harbour extremely difficult.
 - (c) Failure to pay berthage at the prescribed rate creates an ongoing shortfall in revenue as a result of the "Acor" taking up berthage space which might otherwise be rented to another vessel.
 - (d) If the "Acor" does not have the benefit of insurance it imperils the well being of the Harbour and its other users should a pollution fire, sinking, or other event emanating from the "Acor" occur.
 - (e) Mr. Duarte's refusal to supply proof of insurance and to complete the prescribed live aboard application sets an example of disrespect for the Harbour Authority, its Board and staff to other Harbour users and may encourage them to think they do not have to comply with the terms of the berthage agreements and Board requirements.


39. As Harbour Manager, I understand that the CRHA has an obligation to provide a safe and abuse free workplace environment for all of its employees and Mr. Duarte's presence at the Harbour compromises that ability.

SWORN (OR AFFIRMED) BEFORE)
ME at the City of Campbell River, in)
the Province of British Columbia this)
15th day of June 2010.)



A Commissioner for taking Affidavits)
for British Columbia)

D'Arcy J. Frankland
Notary Public
440 - 10th Avenue
Campbell River, B.C.
V9W 4E3



Phyllis Titus
BCOL # 455 4503 .

WITNESSED AS TO SIGNATURE ONLY.
NO ADVICE SOUGHT OR GIVEN

D'Arcy J. Frankland
Notary Public