



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

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Case Number: CPF-12-512277

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ORDER

SF MARINA HARBOR ASSOCIATION A NOT-FOR-PROFIT VS. CITY AND  
COUNTY OF SAN FRANCISCO A POLITICAL

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San Francisco County Superior Court  
JUL 26 2012  
CLERK OF THE COURT  
BY: M. Valle  
Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SAN FRANCISCO**

SF Marina Harbor Assn., et al.

Petitioners,

vs.

City and County of San Francisco, et al.

Respondents.

CASE NO: CPF-12-512277

Order Denying Motion for Preliminary  
Injunction

The captioned motion came on this date for a hearing. The parties appeared by counsel.

The Motion For An Order To Show Cause Re: Prelim Injunction is denied. Petitioners are not likely to prevail on the merits, and have not shown irreparable harm. While courts review both these factors, allowing for perhaps less evidence on one if there is very strong evidence on the other, some probability of success on the merits is nevertheless essential. *In re Quoc Thai Pham*, 195 Cal.App.4th 681, 685 (2011).

On the contract and implied covenant claims, it appears that defendants were authorized to approve the New Rules and that Petitioners-owners previously agreed and understood new rules (subsequent amendments) could be unilaterally imposed. At

argument Petitioners urged me to distinguish the analysis of these two claims, but I have doubts that the implied covenant can be used to create obligations contradicting the express terms of the agreement. *Nedlloyd Lines B.V. v. Superior Court*, 3 Cal.4th 459, 468 (1992). *See generally*, 1 B. Witkin, SUMMARY OF CALIFORNIA LAW (10<sup>th</sup> ed. 2005) Contracts § 797, p. 889. Perhaps Petitioners may be able to convince a fact finder that the 'patterns and practices' of the Respondents, alluded to at argument, are tantamount to some quasi-contractual right, but I do not find that likely on the present record.

No good demonstration of a fiduciary duty has been made out, at least not one that shows the Petitioners, rather than the public, is due such duties, for any trust beneficiaries would be the public. (Petitioners do not seem to disagree, Reply at 9 line 6, but thus it is difficult to know why Petitioners should be entitled to something that other California citizens do not have- i.e., berthing rights.)

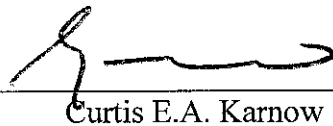
The violation of due process claims presumes an entitlement to property which in turn probably depends on the strength of the breach of contract claim, thus suggesting the due process claim is weak. Further, that claim assumes that Petitioners had such a perpetual interest in the berths that they could literally transfer these to heirs (Reply at 10), an interest which, at this stage of the case, appears improbable. There is substantial uncertainty at this stage regarding the length of time any extant berthing rights: The City argues month-to-month; and Petitioners argue an indefinite term, perhaps (suggesting this at argument) not more than four years, but without good evidence that the parties agreed on that period. As far as procedural due process is concerned, some such process was afforded, and it does not appear likely that this was so deficient that the Respondents' proposed new rules would be unlawful.

Turning to irreparable harm, there are two points to be made. An animating cause of the suit seems to be the complaint that Petitioners spent money on renovations with an expectation of future tenancy- if there was such an unwritten understanding, and it were enforceable, the return of money appears reasonably compensatory. Secondly, Petitioners claim that they are about to be in effect evicted: The evidence does not demonstrate that is currently threatened.

For all these reasons, the motion is denied.

The City's Request for Judicial Notice: Granted as unopposed.

Dated: July 25, 2012



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Curtis E.A. Karnow  
Judge of the Superior Court

Superior Court of California  
County of San Francisco

SF MARINA HARBOR ASSN, et al

Plaintiff(s)

Case Number: CGC-12-512277

vs.

CITY AND COUNTY OF SAN  
FRANCISCO; et al.

Defendant(s)

**CERTIFICATE OF MAILING**

I, Marta Vallejo, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On July 26, 2012, I served the attached ORDER REGARDING CREDIT ONE FINANCIAL RECORDS AFTER IN CAMERA REVIEW, addressed as follows:

CHARLES R. OLSON  
STEIN & LUBIN LLP  
600 Montgomery St., 14<sup>th</sup> Fl.  
San Francisco, CA 94111

THOMAS S. LAKRITZ  
WAYNE K. SNODGRASS  
Office of the City Attorney  
1390 Market St., 7<sup>th</sup> Fl.  
San Francisco, CA 94102

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: July 26, 2012

MICHAEL YUEN, Clerk

By:

  
MARTA VALLEJO

Deputy Clerk