

RECEIVED

FILED

DEC 16 2003

DEC 12 2003

MORISSET, SCHLOSSER,
JOZWIAK & McGAW
SEATTLE OFFICE VIA
 HAND MAIL EXPRESS FAXED

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA
By _____ *PT* Gen

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

TANADGUSIX CORPORATION, et al.,)
)
Plaintiffs,)

No. A02-0032 CV (RRB)

vs.

DIEDRE HUBER, et al.,)
Defendants.)
_____)

ORDER GRANTING MOTION
FOR DECLARATORY JUDGMENT
ON FAIR RENTAL VALUE

Before the Court are Defendants Huber, et al ("Defendants"), with a Motion for Declaratory Judgment on Fair Rental Value (Docket No 69 ¹ Plaintiffs Tanadgusix Corp., et al. ("Plaintiffs" oppose the same and argue the Court lacks the jurisdiction and/or authority to enforce its March 4, 2003, Order, whereby Defendants' Motion for Declaratory Judgment should be denied and the parties should be directed to "continue working

¹ Given the nature of the arguments presented, the Court notes Defendants' pleading, i.e., Clerk's Docket No. 69, could have been more appropriately captioned as a Motion to Enforce and/or Clarify the Court's March 4, 2003 Order.

towards sic an amicable rental value pending appeal."² Notwithstanding, the Court verifies that it has the authority to enforce, modify, or even lift its March 4, 2003, Order, so long as any and/or all changes preserve the status quo and do not materially alter the status of the case on appeal.

On March 4, 2003, the Court ordered plaintiffs to "pay the fair rental value for the Ex-Competent from December 5, 2002, until the appeal is decided," and to "keep the Ex-Competent properly maintained, repaired and moored while the appeal is pending."⁴ While the Court would have preferred that the parties negotiate in good faith to determine the "fair rental value" of the Ex-Competent, their current situation, i.e., a disparity of more than \$30,000, nine months following the Court's March 4, 2003, Order, reveals that they are incapable of doing so

Therefore, the Court hereby modifies its March 4, 2003 Order, and directs Plaintiffs to deposit \$10,000 per month into the previously established escrow account retroactive to December 1,

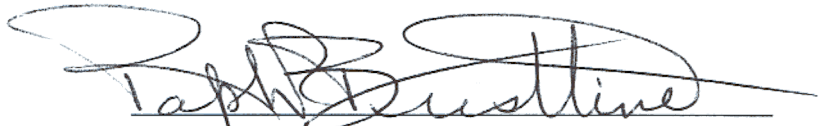
Clerk's Docket No. 70 at 16

³ Fed. R. Civ. P. 62(c). See also Natural Resources Defense Council, Inc. v. Southwest Marine Inc., 242 F.3d 1163 (9th Cir. 2001).

⁴ Clerk's Docket No. 69. In order to avoid further misinterpretation, the Court's March 4, 2003, Order instructs Plaintiffs to pay the "fair rental value" of the Ex-Competent, in addition to the costs of keeping the Ex-Competent maintained, repaired, and moored.

2003. Defendants may seek a judgment for underpaid rent between December 5, 2002, and December 1, 2003, in the event they prevail on appeal. The Court believes this rental value is reasonable given the nature of the case and the income generated by the Ex-Competent. Further, this amount represents the "fair rental value" of the Ex-Competent only, and is in addition to any and/or all costs associated with maintaining, repairing and/or mooring the dry-dock at issue.

ENTERED at Anchorage, Alaska, this 12 day of December 2003.


RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

A02-0032--CV (RRB)

H. VANDOR (AAG JUNEAU)
R. RANDALL (AUSA)
T. SCHLOSSER

MAILED ON 12/12/03

BY RD