

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 07-22176-CIV-KING
Magistrate Judge Garber

NCL (BAHAMAS) LTD.,

Plaintiff,

vs.

FINE ART OF CRUISING, LLC,
a Florida corporation,

Defendants.

**FAOC's ANSWER, DEFENSES,
AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

Defendant, The Fine Art of Cruising, LLC ("FAOC") hereby answers the complaint filed by NCL (Bahamas) Ltd. ("NCL") and asserts its counterclaim as follows:

ANSWER

1 -52. FAOC denies generally the allegations of paragraphs 1-52 of the complaint, including all subparts thereof, and demands strict proof thereof.

DEFENSES AND AFFIRMATIVE DEFENSES

1. The complaint fails to state a claim upon which relief can be granted.
2. NCL's claim in Count I is barred by its own breaches of the parties' agreement which superseded any purported breach by FAOC.
3. FAOC has fulfilled all of its obligations under the parties' Agreement and/or has been excused from complying with some of the terms of that Agreement.

LAW OFFICES

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4. NCL's claims are barred by the doctrines of waiver and estoppel in that, through its statements and conduct with FAOC, NCL knowingly and intentionally relieved FAOC from various provisions of the parties' Agreement, such as the requirement to post a letter of credit, which statements and conduct were relied upon by FAOC to its detriment.

5. NCL's claims are barred by its failure to comply with conditions precedent under the parties' agreement, including but not limited to performing a quarterly reconciliation and providing FAOC with proper notice and opportunity to cure any purported material breach.

6. NCL's claims are barred insofar as NCL has unclean hands in that it expected FAOC to generate revenues from art sales by any manner, including fake-bidding (as described in FAOC's counterclaim) and, when it became disappointed in FAOC it undertook to further harm FAOC and set it up to purportedly "breach" the parties' Agreement.

7. NCL's claims are barred because it fraudulently induced FAOC to enter in the art concession agreement.

8. Any recover by NCL must be off set by the amount of monies due FAOC and the amount of recovery by FAOC under any of the claims it asserts against NCL.

9. NCL's claims are barred because the parties, through their course of conduct and course of dealings, agreed not to require compliance with certain terms of their agreement.

10. NCL's claims are barred, or must be reduced, as a result of payments made by FAOC in the form of the monies improperly withheld from it by NCL.

11. NCL's claims are barred because, through its own conduct including NCL's repeated change in position on the letter of credit issue, NCL made it impossible for FAOC to perform under the parties' agreement.

12. NCL is not entitled to any equitable remedies sought in Counts II and III because, were it to prevail on its other legal claims, it has adequate remedies at law.

13. NCL's claim for tortious interference is barred by FAOC's right to compete with NCL and/or contact its own customers

14. NCL's claim for tortious interference is barred by the First Amendment to the U.S. Constitution in that FAOC has the right to communicate with its customers.

15. NCL's claim for tortious interference is barred in that NCL does not have standing or a contractual relationship with its passengers regarding artwork sold to those passengers by FAOC.

16. NCL's request for attorney's fees in Counts II, III, IV and V should be stricken because there is no basis under statute or contract for such an award.

COUNTERCLAIM

Pursuant to Rule 13, Fed. R.Civ. P., FAOC sues NCL and states:

Jurisdiction, Venue & Parties

1. The Court has jurisdiction over this claim pursuant to Rule 13, Fed.R.Civ.P.

2. Venue is proper in this Court in that the actions complained of herein were committed in this district and counter-defendant maintains its principal place of business there.

3. The Fine Art of Cruising, LLC (“FAOC”) is a Florida limited liability corporation conducting business in Broward County, Florida.

4. NCL (Bahamas) Ltd. (“NCL”) is a Bermuda company registered to, and in fact does, conduct business in Florida. NCL maintains offices in Miami-Dade County, Florida.

ALLEGATIONS COMMON TO ALL COUNTS

A. The Art World Aboard Cruise Ships

5. The selling of artwork aboard cruise ships through an auction process has blossomed into an industry easily exceeding \$200 million per year. Typically, these auctions are announced to the passengers in their daily schedule of events, along with the opportunity to preview the artwork to be auctioned.

6. These on board art auctions are another mechanism to boost NCL’s ship revenues. NCL not only takes a significant percentage of the *gross* revenues generated from the art sales, it puts considerable pressure on its art concessionaire to generate a substantial sum from such sales.

7. The art auction takes advantage of the circumstances under which passengers find themselves. For example, passengers are offered free drinks. While vacationing, they are likely to spend more money on artwork while aboard an NCL cruise ship than at home. In addition, the passengers have no real ability to research the value of the art object being auctioned while in the middle of the ocean.

8. NCL thus creates an environment where it can take advantage of passengers who are the ideal captive audience poised for an impulse buy. However, it is not enough that NCL has created such a favorable environment. It seeks to boost its

revenues even more by foisting upon its unwitting passengers an artificial bidding system.

9. This practice is known as “fake-bidding.” As the name implies, the fake-bidding takes place when the artwork is auctioned for sale. When a bid is placed by a passenger, if it is too low, the auctioneer acknowledges a different, higher “bid” from a non-existent bidder. This stratagem fuels the bidding frenzy and thereby drives up the prices of the art. If the artwork still does not generate a sufficiently high price from actual passengers, the auctioneer ultimately acknowledges a non-existent bidder to whom the piece is purportedly “sold.”

10. The best indicator of the inflated prices caused by fake-bidding is the fact that as the cruise ship continues on its journey, the prices of the artwork decreases. Typically, on the last days of the cruise there is a sale, without the auction-frenzy environment, in which the remaining art is sold at a substantial “discount,” ranging as high as eighty percent of its “value.”

11. The fake-bidding auction setting thus creates an artificial interest in, and an inflated value for, the artwork being “auctioned.”

12. FAOC refuses to engage in “fake bidding,” however. It subscribes to a “principled approach” business ethic that allows legitimate passenger auction process to dictate the ultimate sale price of each piece of artwork.

13. As FAOC would come to learn, its philosophy directly collided with the NCL corporate philosophy which is ultimately concerned with only bottom-line revenues, regardless of the effect on its unwitting passengers or its business partners.

B. NCL Terminates Its Prior Art Auctioneer

14. In or about August 2006, FAOC's principal, Hossam Antar ("Antar"), received a call from Colin Murphy ("Murphy") at NCL. Murphy was panicking. He told Antar that NCL was in dire straits and needed assistance. Its then art concessionaire had "suspended" onboard art sales as a result of a "blow-up" between the two companies. This blow-up had occurred because NCL had withheld monies from the art concessionaire and then had seized the on-board artwork.

15. Murphy stated that NCL needed a new artwork dealer; one that would also fulfill passenger orders placed with the former art concessionaire (the "FAC") and address all customer complaints.

16. Murphy was aware that Mr. Antar supplied artwork to FAC. He was also aware that Mr. Antar had been negotiating to purchase FAC. Murphy indicated that FAC wanted \$1 million from NCL to end the relationship and allow Mr. Antar to purchase the company and take over the onboard art sales. Murphy stated that, for these reasons, Mr. Antar was "the best solution for everyone." Murphy also explained that there was a considerable amount of money to be made.

17. Given the urgency of the situation explained by Murphy, Mr. Antar agreed to assist NCL and he immediately began making arrangements.

18. As FAOC took over the onboard art auctions, Murphy sought advice from Antar regarding FAC and even provided Antar with a copy of the contract with the FAC. Antar learned from Murphy that although the agreement with FAC required a letter of credit to be posted. FAC never did so and NCL had never pursued this matter.

19. Murphy also sought advice from Antar regarding the disposition monies that NCL had withheld from FAC. Murphy claimed that the monies had been withheld as

a source of funds to use for customer refunds and other customer problems. As FAOC began to resolve those problems, Antar recommended that NCL avoid further problems with FAC and return the monies since the customer problems were being successfully resolved by FAOC.

20. Murphy later told Antar that NCL's chief financial officer "was not releasing a dollar" to FAC. At the time, Antar never imagined that FAOC would fall victim to the same treatment by NCL.

21. Over the course of the next year, however, Antar would come to learn that instead of developing what he had been told would be a mutually-beneficial partnership with NCL, it was actually a parasitic relationship in which NCL was concerned only with bottom-line revenues from artwork sales despite promising a "partnership" with FAOC and that both parties would make a lot of money together.

22. In fact, when Antar later refused to acquiesce to various demands from NCL, including a request by a member of senior management to be hired by FAOC and handsomely compensated, NCL developed a plan to destroy FAOC and oust it from its cruise ships so that it could put an art concessionaire in place that would "play ball" with NCL by NCL's rules.

23. NCL's plan to harm FAOC culminated with FAOC auctioneers being thrown off cruise ships at various ports with no means of returning home. In the end, NCL successfully accomplished its goal to remove FAOC from its ships and injure FAOC, nearly driving FAOC out of business.

C. FAOC Substantially Invests in Its Partnership With NCL

24. In order to operate the art concession business aboard NCL ships, Mr. Antar formed a separate company – FAOC.

25. Mr. Antar then committed a skilled management team from his other business ventures to the NCL partnership. FAOC also hired auctioneers. It arranged a call center to handle passenger questions and complaints. It fulfilled artwork orders to disgruntled passengers. FAOC even issued refunds to passengers.

26. Throughout this process, FAOC’s primary goals were passenger satisfaction and preserving the reputation of NCL with its passengers.

27. NCL promised that it would reimburse FOAC for the expenses incurred relating to the FAC problems. NCL, in fact, reimbursed FAOC for the expenses incurred in calendar year 2006. It has not paid FAOC for the 2007 expenses.

28. Because of the urgency to NCL caused by the cancellation of the FAC agreement, FAOC began operations onboard the ships without a contract. It was enticed to do so by the promise that a contract would be signed and, more importantly, by the promise from NCL of the amount of money that FAOC would make in its “partnership” with NCL.

29. In fact, NCL shared with FAOC its self-proclaimed conservative estimates showing that FAOC would generate over \$30 million per year in artwork sales.

30. After operating expenses, FAOC would earn in excess of \$5 million per year. Moreover, NCL indicated that the figures provided to FAOC would substantially increase because of the new ships and routes that NCL would be activating over the course of the parties’ relationship.

D. NCL’s Bait and Switch: A Corporate Guarantee vs. A Letter of Credit

31. Based on their discussions, FAOC (through Antar) and NCL (through Murphy) began to negotiate a contract in or about late August 2006.

32. During the course of the negotiations, one of the terms discussed at length concerned the posting of a letter of credit required by NCL to secure certain amounts it expected would be come due to it under the contract. The letter of credit became an obstacle because, as explained to Murphy, the monies restricted in a letter of credit could be better used to purchase art for the ships and also to invest in working capital for the venture. It was also a considerable risk to FAOC given that NCL was seeking a substantial amount for the letter of credit and could draw upon it nearly at its whim.

1. FAOC's First Contract Negotiations With NCL

33. Antar revealed that he intended to partner with a significant art publishing company – Washington Green – that would serve as both art supplier and the source to post the letter of credit.

34. Murphy and NCL accepted this fact and the parties agreed that in lieu of a letter of credit a corporate guarantee could be provided. Murphy confirmed this fact by email dated August 7, 2006 in which he attached a term sheet for the proposed new art auction contract. See Exhibit A. Because FAOC had only recently been formed, NCL wanted the corporate guarantee from a “stronger” company. Washington Green agreed to provide the guarantee.

35. As the parties continued to negotiate the finer points of their relationship, the corporate guarantee remained acceptable to NCL. The negotiations instead focused on the amount of the guarantee. Washington Green sought to provide a guarantee in the

range of \$8.5 million; NCL sought a guarantee in the \$12 million range. See Exhibit B (email string discussing guarantee, dated August 8, 2006).

36. During their negotiations, the corporate guarantee nonetheless remained the acceptable vehicle for NCL. See Exhibit C (email from Colin Murphy attaching proposed term sheet, dated August 17, 2006).

37. Sometime in mid- to late August 2006, Antar, Aaron Young (a principal in Washington Green), Murphy and Colin Veitch (“Veitch”), President of NCL, met to discuss the art concession agreement. At this meeting, the parties discussed various issues including the corporate guarantee and the minimum revenue guarantees terms of the agreement.

38. Antar also explained that his philosophy for the onboard art auctions is a “principled approach” in which there will be no fake bidding tactics or artwork of questionable origin sold to passengers. It is a philosophy which Aaron Young stated that Washington Green also shares. In fact, Aaron Young tells Veitch that if he disagrees with this approach by FAOC and Washington Green, then they are not the companies for NCL.

39. Veitch purported to buy into this philosophy. He admitted that prior NCL art concessionaires were plagued by the fake-bidding problems described by Antar. Veitch made the remarkable admission that if “these companies [the prior NCL art concessionaires] had continued on our ships, someone in my organization would have gone to jail.”

40. Antar and Young were pleased with Veitch’s apparent endorsement of their approach to art auctions. Veitch then stated: “How soon can you get on our ships?”

Apparently, Veitch had not yet been told that FAOC was already aboard the NCL ships due to the problems with FAC.

41. As Antar and Young were leaving the meeting with Vietch, Murphy praised them for their approach. He stated that Young was “brilliant” in his willingness to walk away. Murphy even goes so far as to joke that in the future when he approaches Vietch about a salary raise he will use the same approach. He claims he will tell Vietch: “If you don’t believe I am worth this money, then perhaps I am not the employee for you.”

42. Despite Vietch’s statements, shortly after this meeting, NCL changed its position. Murphy advised Antar that NCL now required a letter of credit and not a corporate guarantee. Antar was given no explanation for the change.

43. When Antar advised the principals of Washington Green about this sudden change, Washington Green stated it was walking away from the deal. Given NCL’s conduct with the FAC, and its last minute turnaround on the guarantee issue, it was simply too risky to post a substantial letter of credit which NCL could draw upon almost at whim.

44. Antar relayed these concerns to Murphy but without success. NCL refused to change its position. With such a hard-nosed stance, Washington Green in fact walked away from the deal. Antar immediately began the search to replace Washington Green.

2. FAOC’s Second Contract Negotiations With NCL

45. Within a few weeks or so, Antar is introduced to a principal of Worldwide Galleries (“WWG”), another art supplier. WWG indicated that it was interested in

supplying art for the NCL concession and that it, or an investment group known by WWG, could provide the capital needed for the deal. Antar would later learn that this company was H.E. Capital (“HEC”).

46. For the next several months, while Antar negotiated the terms of his arrangement with WWG and HEC, he also negotiated the terms of the art concession agreement with NCL. HEC attended some of these negotiations.

47. Having claimed to understand the risks associated with a letter of credit, the parties instead were negotiating the terms of a corporate guarantee. In fact, based on NCL’s acceptance of such a guarantee instead of a letter of credit, in December 2006, HEC began investing monies in FAOC.

48. On December 14, 2006, NCL was provided with a draft corporate guarantee acceptable to HEC. See Exhibit D. NCL’s in-house lawyer, Fatima Kierski, instead drafted a guarantee which was expressly identified to be in a “form that would be acceptable for legal.” It was sent to Antar by Murphy the next day, on December 15. See Exhibit E.

49. After the parties had agreed on the corporate guarantee, Murphy became complimentary of Antar’s negotiation skills. He called Antar “clever” and stated: “I should work for you.”

50. Murphy continued to “drop more hints” with Antar. He stated that the NCL relationship would be a lucrative one. He also indicated that he had ideas about another venture with NCL that would be extremely profitable for everyone.

51. Murphy stated throughout these discussions that “he wants to make money.” He continued making statements suggesting that he expected to receive some form of substantial compensation.

52. Antar, FAOC, WWG and HEC set a deadline of January 31, 2007 to finalize various matters, including the NCL art concession contract. Antar advised Murphy of this deadline. Antar also revealed to Murphy that the plans with HEC including taking the company public.

53. Antar believed that Murphy’s cooperation and agreement to accept a corporate guarantee was due to the problems NCL had caused FAOC with Washington Green. NCL’s last minute change in rejecting a corporate guarantee and demanding a letter of credit had caused Washington Green to withdraw its interest in dealing with FAOC under the NCL agreement. Antar thus disclosed the details of his plans with HEC for two reasons. By having Murphy “in the loop” and apprised of the status of negotiations with HEC, Murphy would understand the seriousness of the commitment by FAOC and the importance of not having NCL again “change its mind” at the last minute. In addition, because Murphy had been putting pressure on Antar to finalize an agreement with NCL, providing such information to him demonstrated FAOC’s interest in moving forward with the art concession agreement.

54. Antar would eventually learn that Murphy in fact had no desire to prevent a repeat of the problems with Washington Green. He had a different agenda.

3. Murphy Reveals His Motives: Financial Gain

55. While the parties were still negotiating, Murphy continued making statements that he too deserved a pay day.

56. Antar attempted to avoid the topic given the insinuation behind the comments that FAOC should somehow “take care” of Murphy. Murphy continued to press the subject. Finally, he requested a dinner meeting with Antar and his group on Monday, January 29, 2007, just two days before the deadline between Antar and HEC.

57. Murphy then began to turn the heat on FAOC. On Wednesday, January 24, 2007, he used his personal, non-NCL email to send Antar a message specifically identifying his compensation demand. The email began with the following statement:

Hi Hossam,

Sending this from my personal mailbox for *obvious reasons*.
Hopefully no one reads your emails?

See Exhibit F, hereto (emphasis added).

58. In the email, Murphy referred to another group – which he never identified to Antar – that he contended was interested in working with him. Murphy also confirmed the difficulties in dealing with NCL, problems that Antar already had experienced during the Washington Green negotiations:

As discussed, I have a great job at NCL and could quite easily stay here for the remainder of my career. *However, I am increasingly frustrated at barriers the company puts up that stop me from getting things done.*

See Exhibit F.

59. Murphy stated in the email that their talks have been “pretty vague” and that it is now time “to get into the details.” *Id.* Murphy then described the “financial package” he sought. He asserted that he would “not be inexpensive” because he has “a very good package at NCL.” He finally revealed to Antar his expected compensation:

My cash compensation will be around \$250K including the usual bonus, plus a nice fully expensed car, 401K, MERP, SERP, free vacations, etc. etc.

See Exhibit F.

60. Over the next few days, Antar and his group discussed how best to handle Murphy's demand given the pending contract negotiations. They feared that mishandling the situation would jeopardize the art concession agreement with NCL.

61. On the morning of January 29, the same day as the planned dinner meeting, Murphy called Antar. He informed Antar that NCL rejected the corporate guarantee. When Antar inquired about the reasons that NCL once again was making such a last minute change, Murphy stated only that there was nothing he could do about it. He commented that his supervisor, William Hamlin, merely stated that "Fine Art is a bullshit company if it can't come up with the letter of credit."

62. Antar was surprised by the content and timing of Murphy's phone call given the history of negotiations with NCL. NCL had not required its prior concessionaire to post a letter of credit. The negotiations with Washington Green ended precisely because NCL had pulled a similar last minute switch. The impact of a letter of credit in any substantial amount had also been explained to Murphy. In addition, Murphy had been made aware of the January 31 deadline between Antar, FAOC and HEC. A change of this magnitude would take time to address and prepare the appropriate documentation.

63. Antar believed that Murphy's statements could be a pressure tactic. In fact, at various times during the past month or so, Murphy had made statements to Antar that the contract needed to be finalized. Murphy even told Antar to be careful not to

“make” NCL “go back” to the prior art concessionaire that had been in place even before the FAC. At the time, Antar had not believed Murphy’s warning because using any of the prior art concessionaires would be perilous for NCL given the statements concerning fake-bidding made by Colin Veitch during the meeting with Washington Green.

64. Antar nonetheless began to rethink his view of NCL. Looking back over the past few months of the relationship, he wondered about NCL’s motives. NCL had even criticized FAOC’s auctions as being “a bit flat” given that FAOC was not involved in fake bidding. See Exhibit G.

65. Antar decided to contact HEC to relay the message from Murphy. HEC is extremely displeased. After discussing the problem, particularly in light of Murphy’s compensation demands, HEC requested Antar to advise Murphy that it is prepared to post the letter of credit, but will require 90 days to do so. Antar so advised Murphy, who agreed to the request.

66. Murphy followed up the phone call to Antar with an email indicating that NCL required a \$3 million irrevocable letter of credit and confirming the 90 day period to post it. See Exhibit H. Murphy concluded his email with the statement: “We need toi[sic] get this wrapped up.” *Id.*

67. Despite the pressure Murphy and NCL were applying, Murphy also simultaneously continued to show interest in participating in a deal with Antar and HEC. A few hours after his email advising of the change to a letter of credit, Murphy requested Antar to provide him with the stock symbol for the company that Antar and HEC intended to use to go public. See Exhibit I. Given NCL’s ongoing turnaround on the

letter of credit issue, this request made Antar further question whether the latest letter of credit request was merely a pressure tactic such that it could be renegotiated with NCL.

68. Antar was wrong, however. The request for a letter of credit was part of a scheme by NCL to put FAOC in the untenable position of having to acquiesce to various financial demands or risk losing the art concession contract and the investment that FAOC had made for the past several months to rescue NCL from the problems with the FAC. Despite the fact that Antar and FAOC had immediately stepped in to resolve NCL's problems with FAC, NCL had no regard for the consequences that its actions would have on FAOC.

69. Given the possibility that NCL was merely pressuring FAOC, and in light of Murphy's second email where he again showed interest in FAOC's deal, Antar and Sal Russo (an investor in the deal) decided to meet Murphy for dinner as requested.

70. The dinner took place at Ortanique's, a restaurant in Coral Gables, Florida. That night, Murphy ran the conversation. He discussed how he could deliver the art concession agreement. However, Murphy modified the compensation he sought from that set forth in his email. He now wanted an additional \$250,000 in stock options.

71. Murphy apparently sought to "soften" the blow of this additional compensation by discussing another business opportunity available with NCL. He explained that NCL was building two "F3" class ships but that the ships had not yet been assigned to a port or geographic location. Murphy then revealed that he had been tasked with the responsibility to find locations for those ships. He indicated that the Dominican Republic was at the top of the list.

72. Murphy stated that, since one of FOAC's then-investors was from the Dominican Republic, a group should be put together to build the terminal for the new cruise ships. Murphy would then propose that NCL hire this group to run the operations.

73. Murphy explained that "with his contacts, NCL would give [the group] the contract." Given what he claimed that he could deliver, the art concession contract and the port contract, Murphy stated that he wanted to be hired by FAOC. He reiterated the compensation package identified in his email to Antar, along with the stock options in the public company.

74. Murphy again stated that another entity was interested in him. He then indicated that the parties needed to finalize the art concession contract and that he could join FAOC shortly after that date, sometime in July. He reaffirmed that he had valuable information about the F3 ships and that he would have sufficient influence with NCL even after joining FAOC and could still deliver the port contract for the new ships.

75. After listening to Murphy, Russo explained that they simply could not accept Murphy's proposal and guarantee him such lucrative compensation. If Murphy wanted to leave NCL, Russo advised Murphy that he could do so immediately but would have to take risks similar to those being taken by Antar and the investor group.

76. Murphy was visibly displeased with the response from Antar and Russo. He responded:

You are entrepreneurs. I presume that this is not the first deal for you. I can't afford to be an entrepreneur.

The dinner ended shortly thereafter.

77. Over the next month, FAOC continued to operate on board the NCL ships while Antar contemplated the situation with NCL. FAOC continued to provide the same

level of commitment to NCL and service to passengers that it had since taking over the onboard art concession, notwithstanding Murphy's conduct.

78. Even passengers noticed the quality delivered by FAOC. A passenger wrote a letter to NCL praising the manner in which FAOC and Antar had solved his problem. He committed to future purchases so long as FAOC was backing the art work. See Exhibit J.

79. Since the dinner meeting, Murphy's demeanor had clearly changed. He continued to insist that there was "nothing [he could] do" about the letter of credit issue. Murphy further pressured FAOC by telling Antar that if he did not sign the contract, NCL would return to Park West, another prior NCL art concessionaire, who Antar had been told had been involved in fake bidding on NCL ships. This statement was particularly revealing about the extent to which NCL would connive just to boost its ship revenues. Murphy went so far as to wave around in front of Antar a phone message slip with the name of a Park West representative.

80. Antar told Murphy that if that was the direction NCL wanted to pursue, then he should call Park West. Antar also attempted to persuade Murphy that NCL should reconsider this position. Murphy had been at the meeting with Colin Veitch and thus understood the risks to NCL in contracting with an art concessionaire that used fake-bidding. Antar also reminded Murphy that FAOC had been loyal to NCL from the outset of the relationship, with approximately \$3 million invested to the relationship, including monies used to bail out NCL from the debacle with its prior art concessionaire. He also told Murphy that the difficulty in resolving the contract issues were due to NCL's repeated last minute switch in position regarding the letter of credit issue.

81. NCL still refused to reconsider. Murphy told Antar that there was a lot of pressure being put on him to finalize the contract. He told Antar to “get it [the contract] signed and then we’ll deal with everything later.”

82. Then, in early March 2007, Murphy was suddenly transferred to another division within NCL. He advised Antar of this fact and also told Antar that William Hamlin and in-house counsel, Susan Bonner, were taking over the negotiations of the agreement.

E. NCL Misrepresents Its Passenger Information

83. When Antar met with Hamlin, the tenor of the negotiations changed. Hamlin stated that Murphy never had authority to negotiate or sign the art contract. At the time, this statement puzzled Antar because NCL had provided Antar with a copy of the FAC agreement and it showed that Murphy had signed it. Given that Antar was there for what he hoped would be an amicable and successful negotiation, he decided not to challenge Hamlin about Murphy’s authority.

84. Instead, as he had done with Murphy, Antar informed Hamlin of FAOC’s commitment and loyalty to NCL from the moment he had received the phone call from NCL in August 2006 requesting him to assist NCL with its problems.

85. Antar even showed Hamlin the passenger letter complimenting FAOC. Hamlin immediately fired back that he did “not hire a customer service company. [He] hired an art company.” The message from NCL was clear: Deliver substantial art revenues or get off the NCL ships.

86. After his discussion with Hamlin, Antar realized that he needed a different approach with NCL on the letter of credit issue. He decided to try to negotiate a lower

amount for the letter of credit and/or a lower guaranteed amount to NCL from the artwork revenues.

87. In this regard, in meetings held during March 2007, Antar questioned NCL about the NCL passenger figures and revenues being provided to him. Antar was concerned that NCL's calculations – which formed the basis for the minimum guarantees under the contract – were inaccurate.

88. In fact, when Antar was shown NCL's internal budgets by Susan Bonner, he pointed out that NCL's own figures did not reconcile with the guaranteed amounts that NCL sought from FAOC. The passenger figures pointed to a guaranteed amount of approximately \$2 million less per year than being contemplated by NCL. Bonner responded that their "budgets are there to be exceeded" and that NCL's passenger figures had been "low-balled."

89. Antar also inquired about onboard ship revenues. He believed that approximately five ships were generating the meaningful revenues on the entire NCL fleet that he was servicing. He expressed concern that the passenger profile now appeared different from past voyages and that this difference was likely due to deeply discounted fares that NCL had started to offer. Antar further stated that he had heard that revenues from other departments on each of the ships was also lower than expected.

90. Antar was concerned about these matters because the passenger profile information indicated that NCL was attracting a different class of passenger than in the past. This new class of passengers were less likely to spend money on artwork while on board the ship. If artwork sales were to diminish because of this change in the passenger

profile, then the minimum guarantees sought by NCL made no sense and FAOC could potentially suffer considerable losses in paying the guaranteed amounts.

91. Antar was reassured that that was not the case. He was told that while revenues could be off during any individual week, overall each department was meeting or exceeding expected revenues. In light of this representation, Antar then asked why NCL sought a considerably higher guaranteed amount from FAOC if NCL's budgets were just being met.

92. NCL never answered this question. Hamlin simply stated that every time he went upstairs to Colin Veitch and others to discuss passenger profiles he was simply told that he [Hamlin] was "full of shit" because "NCL's passenger profiles are as good as Princess and Royal Caribbean."

93. Hamlin and Bonner also attempted to blame FAOC for the concerns identified by Antar. They claimed that FAOC simply needed more inventory on the ships.

94. Antar explained to them that he had already made a considerable investment in the art contract. And, as he had on prior occasions, Antar also explained that the absence of a contract, NCL's negotiating tactics and NCL's conduct with FAC, made it too risky to put more artwork on the NCL ships or to post a substantial sum in a letter of credit. Yet, Antar also advised NCL that despite these obstacles – all caused by NCL – FAOC had continued to increase revenues from art sales.

95. These explanations fell on deaf ears at NCL. It remained steadfast in its position that it had accurately represented passenger profiles and department revenues. NCL knew that FAOC could either get off the ships – which NCL knew FAOC could not

afford to do given the investment it had already made to operate the artwork business on the ships – or FAOC could sign the contract. Based on NCL’s assurances about passenger profiles and department revenues, on April 2, 2007, Antar signed the art concession agreement (the “Agreement”) on behalf of FAOC.

96. Over the next several weeks, Antar attempted to finalize his dealings with HEC. NCL’s tactics had irreparably damaged the relationship with HEC, however. In fact, Antar and FAOC later became involved in litigation with HEC and others involved in the NCL deal.

F. Negotiations Continue With NCL for a New Contract

97. In or about early May 2007, Antar advised Hamlin that HEC would no longer be involved in the art concession deal. Antar also stated that he would look for a new partner.

98. By June 1, 2007, FAOC located a suitable replacement for HEC. The new company – Dreams, Inc. – is a publicly-traded company on the American Stock Exchange (“Dreams”). It is involved principally in selling sports memorabilia.

99. Antar arranged a telephone call with Hamlin to advise him of Dreams’ involvement. See Exhibit J. In the call, Antar advised Hamlin that Dreams was replacing HEC and that the parties were fully capable of posting the letter of credit but there were terms in the Agreement that needed to be modified. Antar suggested a face-to-face meeting to discuss these issues.

100. On June 18, Antar, Hamlin and Ross Tannebaum, the president of Dreams met for dinner. See Exhibit L. During the dinner, Antar explained to Hamlin the pressure that had been placed on him by Murphy to sign an agreement and the promise

that negotiations would continue regarding the agreement despite its signing. Antar again reminded Hamlin that FAOC has remained committed to NCL for nearly a year.

101. Antar also informed Hamlin that FAOC had operated with integrity and honor despite questionable conduct by NCL and, in particular, Murphy. Antar proceeded to explain to Hamlin the compensation requests made by Murphy. Hamlin simply listened without much comment.

102. After this discussion, Tannebaum explained the business of his company and how revenues could be increased for NCL under the concession agreement, but that various terms needed to be modified such as the letter of credit and the guaranteed amounts.

103. After listening to Tannebaum, Hamlin stated: "Let's negotiate a new agreement. I'm leery of moving backwards. But, I am definitely open to a new agreement."

104. For the next month or so, negotiations took place regarding the terms of the new contract. The parties negotiated the letter of credit and the minimum guarantee amounts sought by NCL. In early July, a meeting was arranged with Trevor Young, vice-president of ship building for NCL to discuss the layout of the sports memorabilia locations on board the ships. NCL later canceled the meeting.

105. The parties nonetheless continued negotiations. A redlined version of the new proposed concession contract was submitted to NCL. Despite promises to respond to the red-lined version, NCL never did. See Exhibit M.

106. Notably, at no time during these negotiations did NCL advise FAOC that it still expected compliance with the letter of credit terms of the agreement or the

minimum guarantee amounts of the Agreement. To the contrary, these exact terms – among others – were specifically under negotiation. And, the parties’ course of conduct confirmed this fact to Antar.

107. In fact, as part of NCL’s evaluation of these terms, Susan Bonner requested various financial projections relating to artwork and sports memorabilia that FAOC expected to sell on board NCL ships. This information was provided to her on July 10, 2007. See Exhibit N.

108. Antar also disclosed to NCL various proposed corporate structures being contemplated for the parties’ new agreement. Hamlin resisted any proposed change of the contract to a party other than FAOC. He was concerned that any change from FAOC could allow provisions of the concession contract to be circumvented. He repeatedly stated that that a change in party would not be considered.

109. As negotiations continued, on July 11, NCL sent a diagram of potential deck locations for the sports memorabilia stores. See Exhibit O.

110. During these negotiations, and to give NCL further comfort, NCL was even reassured that \$3 million in artwork would be put on its ships during the first thirty days of the new contract. NCL was told that it could even include this requirement in the parties’ re-negotiated agreement.

111. However, NCL still did not respond to the red-lined agreement that had been submitted to it.

G. NCL Sets Up FOAC So It Can Claim that FAOC is in “Default”

112. At or around this time in July 2007, Susan Bonner advised Antar that NCL intended sending FAOC a notice advising it that the letter of credit has not been posted.

113. When Antar questioned the reason for the letter, Bonner reassured Antar that it was only a “formality.” She told Mr. Antar:

Don't worry about the letter of credit. We know that we are in re-negotiations. But, just in case you or I get run-over by a bus, we are going to send a default notice. Just have your lawyer call and get more time to comply. It won't be a problem.

114. Bonner's statements comforted Antar. Those statements, along with the fact that Bonner continued to analyze financial information and request data, see Exhibit P (email dated July 18, 2007), caused Antar to believe that NCL was re-negotiating in good faith and that there was no need to post the letter of credit.

115. On July 19, 2007, NCL sent the letter described by Bonner. As Antar would learn, Bonner had lied to him. This letter was actually the next step in NCL's setup of FAOC. Having sent the letter, NCL then began to apply financial pressure on FAOC to force it off the ships and to try and force it out of business.

H. NCL Lies About Remitting Payment to FAOC

116. In the midst of re-negotiations, and before NCL provided FAOC with the letter purporting to claim a default under the Agreement, NCL crafted another means to pressure and harm FAOC. NCL began withhold the considerable sums of monies due to FAOC from onboard art sales.

117. NCL was aware that, pending contract negotiations, FAOC needed its monies to operate. When the payment from NCL was delayed, Antar immediately sought an explanation from NCL. On Friday, July 13, he was reassured by two separate individuals that the payment would be sent on Monday. See Exhibit Q. The payments were never sent.

118. These reassurances of payment and the fact that Susan Bonner was evaluating information, see Exhibit P, led Antar to believe that re-negotiations were still on track and that a revised agreement would be executed.

119. Antar learned later the next day, on July 19, that NCL had no real intention of releasing the monies it owed to FAOC despite the promises to do so. See Exhibit R. Ignoring Bonner's statements to Antar, NCL now took the position that FAOC's purported failure to post the letter of credit allowed it to withhold monies pursuant to paragraph 21 of the Agreement. *Id.*

120. As the drafter of the Agreement, NCL well knew that paragraph 21 would be triggered only in the event that any money was due to NCL. NCL knew in fact that no monies could be due to it for two reasons. FAOC still had unreimbursed out-of-pocket expenses it had incurred on NCL's behalf to takeover and operate the FAC debacle. In addition, no money could be due to NCL until the quarterly reconciliation took place between the parties pursuant to paragraph 6(D) of the Agreement.

121. Mr. Antar attempted to reach Susan Bonner to discuss NCL's interpretation of the Agreement but was unable to do so. Antar then contacted Hamlin who was unreceptive to Antar's position. Hamlin's only suggestion was for Antar to contact another NCL in-house lawyer, Fatima Kierski. Hamlin stated that Ms. Kierski had been the one who provided NCL's interpretation of paragraph 21.

122. Mr. Antar arranged a scheduled time to call Ms. Kierski and, in fact, did so. When confronted with FAOC's interpretation of the language in paragraph 21, Ms. Kierski backed off of NCL's position. She stated that she would advise her superiors of this fact and "recommend that the payment be released to FAOC." She also stated that

they could take up any remaining issues in the following month when the quarterly reconciliation was performed.

123. Despite the position of Ms. Kierski, NCL never released the monies due to FAOC. Moreover, as Ms. Kierski's statements make clear, the quarterly reconciliation had to be initiated by NCL for NCL to even assert that monies were due to it. Thus, at the time that NCL withheld payment to FAOC, it had no basis to do so and, certainly, had never articulated any such basis to FAOC.

124. Mr. Antar continued to inquire about the status of the payment. A few days later, he was finally told by Hamlin that it was "the finance department that ha[d] taken a different position. It [was] not releasing the payment until the letter of credit [was] posted."

125. Mr. Antar was stunned. He implored Hamlin to resolve this situation, particularly given all of the discussions that had transpired. Mr. Antar also reminded him of how he had come to the aid of NCL when it terminated the prior concessionaire. Antar also told Hamlin that FAOC had incurred a substantial amount of out-of-pocket costs that had not yet been reimbursed. Antar said that FAOC needed the monies due from NCL to prevent from jeopardizing its business relationships with suppliers and others.

126. Hamlin refused to budge. He insisted that the letter of credit had to be posted, notwithstanding the parties' re-negotiations and the (false) promises of payment made to Antar. Hamlin told Antar that the only "solution" was to post the letter of credit.

127. Antar then discussed Hamlin's position with Tannebaum. While they were capable of posting the letter of credit, Tannebaum expressed extreme concern about doing so given NCL's behavior.

128. Antar and Tannebaum came up with an alternative. In their last proposal, NCL had been offered \$40 million in guaranteed revenue over the five years of the contract. Antar and Tannebaum decided to increase this offer to \$50 million guaranteed over five years and reduce the letter of credit amount to \$500,000. They also proposed to create a fund that would grow over the life of the contract to \$4 million which would serve to protect NCL just like the letter of credit would have.

129. On July 22, Antar conveyed this offer to Hamlin. See Exhibit S. He also again implored Hamlin to resolve this “volatile” situation.

130. Antar then met with Hamlin. Hamlin made his point clear that NCL’s only interest was to maximize its financial position. He told Antar:

Hossam, I don’t give a fuck where the money comes from. *We have a number to make and, however it’s made, it has to be made.*

131. Hamlin further stated that he would not propose the new offer to upper management at NCL because had “no intention of framing sports memorabilia [for FAOC] in two weeks,” an apparent reference to the fact that he would be fired if he became an advocate for FAOC’s proposal. Antar was shocked by NCL’s derogatory insult about the nature of FAOC’s business and the callousness with which it was handling these problems.

132. Antar left and waited a few days for Hamlin to cool down. When Antar again contacted Hamlin he explained the soundness of FAOC’s latest proposal. After much discussion, Hamlin stated that if Antar increased the letter of credit from \$500,000 to \$1 million, that they would have a deal. Hamlin even suggested that Antar should

have Washington Green contribute \$500,000 and Dreams to provide the other \$500,000 for the letter of credit.

133. During this conversation, Hamlin never stated that he expected FAOC to post the letter of credit as set forth in the Agreement. To the contrary, Antar now believed that a deal was finally in place.

134. Antar immediately advised Tannebaum of this latest development. Given NCL's new agreement on the letter of credit issue, Tannebaum and FAOC agreed that they would post the entire \$1 million without the involvement of Washington Green.

135. On or about July 26, 2007, Hamlin met Antar to address how the parties moved forward. At this meeting, Antar advised Hamlin that the entire \$1 million letter of credit would be posted but without the involvement of Washington Green. To Antar's dismay, Hamlin informed Antar that NCL had once again disavowed its agreement.

136. Despite having been in re-negotiations for nearly two months, Hamlin now made the remarkable statement that the "people upstairs" had no intention of changing any terms of the Agreement. Hamlin told Antar that he "had his blessing to deal with Colin [Veitch] directly."

137. Antar left and immediately attempted to contact Colin Veitch several times. When Veitch did not respond, on July 30, 2007, Antar sent Veitch a letter declaring NCL in breach of the concession agreement. See Exhibit T. Nonetheless, Antar stated that he was willing, and in fact he still continued, to work toward a resolution of the parties' differences. *Id.*

138. Despite instructing Antar to deal with Veitch, Hamlin and not Vietch responded to Antar's letter. In his letter, Hamlin reacted as if the past two months of re-

negotiations with FAOC and Dreams had never taken place. Remarkably, he again reiterated NCL's unbelievable position that it had "not been [NCL's] intention to enter into renegotiations of the Agreement signed in good faith on April 10, 2007." See Exhibit U. This statement was entirely contrary to the considerable re-negotiations that had transpired cover the course of the prior two months and the agreement reached with Hamlin regarding the letter of credit issue.

139. Upon information and belief, NCL's conduct was motivated by a desire to harm FAOC in order to cause it to breach the Agreement and in order to present itself in a more profitable financial picture. At the time, it was rumored in the industry that NCL and Apollo Management, LP ("Apollo") were in discussions for Apollo to purchase an interest in NCL.

140. Antar specifically asked NCL if it was involved in any discussions with Apollo. NCL denied that it was. However, on August 17, 2007, in the midst of all the discussions, Apollo and NCL announced that Apollo was becoming a billion dollar shareholder in NCL.

141. With the Apollo deal in place, NCL certainly no longer needed FAOC. Despite the statements by Hamlin in his letter that if FAOC did not intend to comply with the Agreement, then the parties needed to discuss the orderly removal of artwork and cessation of operations on NCL's ships, NCL had no reason to cooperate with FAOC once the Apollo deal was secured.

I. NCL's Final Act of Deceitfulness Against FAOC

142. Over the next several weeks after Hamlin's letter, Antar attempted to discuss the orderly transition from the ships as well as the possibility of a business solution to their differences.

143. When a business solution no longer appeared viable, FAOC requested to remove its artwork from the NCL ships. However, NCL's counsel informed FAOC that NCL could not accommodate a "last minute" request to remove the art from the ships. See Exhibit V.

144. This statement was false and intended to lull FAOC into believing that the parties were going to discuss an orderly transition off the ships. Unknown to FAOC, however, at or about the same time that this letter was sent by NCL counsel, which was only two days after the announcement of the Apollo deal, NCL began seizing the FAOC artwork on board its ships and ousting all FAOC auctioneers from its ships at the port where the ships were docked.

145. NCL showed no regard for the safety of the auctioneers or their ability to return home. FAOC spent the weekend making arrangements to ensure the safe passage home of its auctioneers.

146. As for the artwork, NCL clearly took the same tactic it had with FAC by seizing the artwork despite knowing that it does not own any of it. As of the date of the filing of this counterclaim, NCL has failed to return the artwork to FAOC.

147. NCL's wrongful conduct towards FAOC was intentional, willful and without regards to the rights of NCL. Upon information and belief, NCL set up FAOC because NCL had been, or intended to, negotiate a new art concession agreement with an

auctioneer accused and involved in fake-bidding so that NCL could boost its revenues from artwork sales.

148. All conditions precedent to the filing of this claim have occurred, been satisfied or waived.

149. FAOC retained undersigned counsel and agreed to pay counsel a reasonable fee for their services.

**COUNT I
FRAUDULENT INDUCEMENT**

150. FAOC realleges and incorporates paragraph 1 through 149 above as if fully set forth herein.

151. As set forth above, NCL made material misrepresentations and omissions of fact to FAOC including:

(i) that NCL and FAOC would be “partners” in the art concession business aboard NCL ships when, in fact, NCL intended only to always put its interests ahead of those of FAOC;

(ii) that NCL and FAOC would make a lot of money with the art concession sales when, in fact, NCL sole interest was to ensure that it earned substantial revenues from art sales even if it had to enter into an agreement with art concessionaire that used fake-bidding;

(iii) that NCL intended to approach the art concession sales and the relationship with FAOC without the same honesty and integrity that FAOC brought to the art auction process when, in fact, NCL and others were motivated by greed as shown by the conduct of Murphy and NCL’s statements regarding the importance of it earning revenues regardless of how it obtained them;

(iv) that NCL would reimburse FAOC for expenses related to the FAC debacle but, in fact, has failed to do so;

(v) that an art concession Agreement needed to be signed only for the “people upstairs” and that NCL would continue to renegotiate various terms of that agreement such as the letter of credit amount when, in fact, NCL had no intention of doing so;

(vi) that NCL’s passenger profile and revenues figures were accurate when, in fact, NCL knew such information was not accurate;

(vii) that NCL would not require FAOC to post the letter of credit since the parties would be re-negotiating the Agreement when, in fact, NCL intended to use this issue as a part of its plan to cause FAOC to purportedly be in “default” under the Agreement;

152. NCL made these representations in order to induce FAOC to enter into the Agreement, to jeopardize FAOC’s relationships with suppliers and others and to lull FAOC into a purported “default” under the Agreement and to otherwise harm FAOC’s business.

153. The representations and omissions by NCL were false. At the time that they were made, NCL knew these representations to be false and NCL never intended to abide by its representations to FAOC.

154. NCL also omitted material facts, knowledge of which was necessary in order not to make other statements of NCL not misleading.

155. NCL misrepresented and omitted to disclose material facts with the intent that FAOC rely thereon.

156. FAOC did not know that the misrepresentations were false and justifiably relied on them and was unaware of the true facts omitted by NCL.

157. As a result of NCL's conduct, FAOC suffered damages in excess of \$30 million.

158. The conduct of NCL towards FAOC was intentional, malicious, willful and in conscious disregard of the rights of FAOC. As a result of this conduct, FAOC is entitled to punitive damages against NCL in an amount of not less than \$100 million.

WHEREFORE, FAOC demands judgment against NCL for compensatory damages, punitive damages, prejudgment interest, post-judgment interest and such other relief as the Court deems just and proper.

COUNT II EQUITABLE OR PROMISSORY ESTOPPEL

159. FAOC realleges and incorporates paragraph 1 through 149 above as if fully set forth herein.

160. As set forth above, NCL made representations of material fact to FAOC regarding the posting of a letter of credit and FAOC's purported "default" under the parties' agreements.

161. These representations include, but are not limited to, the fact:

(i) that the Agreement needed to be signed only for the "people upstairs" but that NCL would continue to renegotiate key terms of the Agreement;

(ii) that NCL was re-negotiating the Agreement and therefore did not require the letter of credit to be posted;

(iii) that the default letter to FAOC was only a “formality” but that NCL would not enforce default;

(iv) that NCL would accept a lower amount (\$1,000,000) to be posted in the letter of credit based on the parties’ re-negotiations; and

(v) that NCL would remit payment to FAOC for the monies it was withholding after agreeing with FAOC’s explanation of paragraph 21 of the parties’ Agreement.

162. Given the nature of the parties’ relationship, in which FAOC was told that the parties were “partners,” NCL reasonably expected that FAOC would rely on these representations and promises.

163. FAOC was induced to, and in fact did, detrimentally rely on NCL’s representations and continued re-negotiating the Agreement in good faith with NCL. In addition, FAOC issued payments to its suppliers based on NCL’s promise to release the monies that it was improperly withholding.

164. NCL later reneged on these promises and representations to FAOC. Had FAOC known NCL’s true intentions, it would not have issued payments to suppliers and it would have taken steps to resolve the letter of credit “default” that NCL now contends took place and relies upon as the basis for its claim.

165. As a result of NCL’s conduct, FAOC suffered damages.

166. Injustice to FAOC can only be avoided by the enforcement of the representations and promises made by NCL, particularly since NCL seeks approximately \$2 million in so-called “damages” from FAOC’s purported “default” under the Agreement.

WHEREFORE, FAOC demands judgment against NCL for compensatory damages, prejudgment interest, post-judgment interest and such other relief as the Court deems just and proper.

**COUNT III
BREACH OF CONTRACT**

167. FAOC realleges and incorporates paragraph 1 through 149 above as if fully set forth herein.

168. NCL breached the Agreement between the parties by failing, among other things, to pay FAOC monies due to it and to perform the quarterly reconciliation set forth in the Agreement.

169. NCL did these things, and others as set forth above, in an attempt to cause FAOC to be in default under the Agreement. However, NCL's default under the Agreement superseded any purported default by FAOC.

170. FAOC advised NCL of its default; however, NCL refused and failed to cure such default.

171. As a result of NCL's breach of the Agreement, FAOC suffered damages in the amount of at least \$30 million.

WHEREFORE, FAOC demands judgment against NCL for compensatory damages in excess of \$30 million, prejudgment interest, post-judgment interest, attorney's fees pursuant to ¶30(d) of the Agreement, and such other relief as the Court deems just and proper.

**COUNT IV
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

172. FAOC realleges and incorporates paragraph 1 through 149 above as if fully set forth herein.

173. NCL breached the Agreement between the parties by violating provisions including, but not limited to, the contractual requirement to pay certain monies to FAOC.

174. NCL did not perform these provisions in good faith as shown by its conduct in withholding monies from FAOC, promising to then release the monies once confronted with its improper interpretation, and then failing to release the monies.

175. As a result of NCL's conduct, FAOC has suffered damages.

WHEREFORE, FAOC demands judgment against NCL for compensatory damages, prejudgment interest, post-judgment interest, attorney's fees pursuant to ¶30(d) of the Agreement, and such other relief as the Court deems just and proper.

COUNT V CONVERSION

176. FAOC realleges and incorporates paragraph 1 through 149 above as if fully set forth herein.

177. On or about August 17, 2007, NCL converted to its own use artwork that FAOC had aboard the NCL ships to run its art concession business.

178. This artwork was owned and consigned artwork of FAOC with an approximate market value of \$1 million.

179. NCL has exercised control and authority over the artwork, inconsistent with the rights of FAOC, and has failed to return the artwork to FAOC despite demand therefor.

180. NCL's conduct was intentional, malicious and without regard to the rights of FAOC.

181. As a result of NCL's conduct, FAOC suffered damages, including damage to the artwork.

182. As a result of NCL's conduct, FAOC is also entitled to punitive damages against NCL in an amount of not less than \$3 million.

WHEREFORE, FAOC demands judgment against NCL for compensatory damages, punitive damages, prejudgment interest, post-judgment interest and such other relief as the Court deems just and proper.

**COUNT VI
ACCOUNT STATED**

183. FAOC realleges and incorporates paragraph 1 through 149 above as if fully set forth herein.

184. Before the commencement of this lawsuit, FAOC and NCL had business transactions between them regarding expenses incurred by FAOC to correct the problems caused by NCL's former art concessionaire ("FAC") prior to FAOC.

185. In their agreement about FAOC's role in the management of the FAC's problems, NCL agreed to pay FAOC for all of the management, costs and other expenses incurred by FAOC. In fact, NCL paid such items for calendar year 2006.

186. FAOC rendered a statement of these expenses to NCL for calendar year 2007 in the approximate amount of \$735,000. NCL did not object to this statement. Moreover, NCL's representative, Susan Bonner, indicated that she would have NCL pay this invoice.

187. NCL never paid this invoice and, accordingly, owes FAOC this amount, with interest, from the date of the invoice.

WHEREFORE, FAOC demands judgment against NCL for compensatory damages, prejudgment interest, post-judgment interest and such other relief as the Court deems just and proper.

**COUNT VI
OPEN ACCOUNT**

188. FAOC realleges and incorporates paragraph 1 through 149 above as if fully set forth herein.

189. FAOC rendered a statement to NCL for reimbursement of various expenses for the calendar year 2007 in the approximate amount of \$735,000. NCL did not object to this statement.

190. Moreover, NCL's representative, Susan Bonner, indicated that she would have NCL pay this invoice.

191. NCL never paid this invoice and, accordingly, owes FAOC this amount, with interest, from the date of the invoice.

WHEREFORE, FAOC demands judgment against NCL for compensatory damages, prejudgment interest, post-judgment interest and such other relief as the Court deems just and proper.

JURY TRIAL DEMAND

FAOC hereby requests a trial by jury on all defenses, affirmative defenses and claims so triable as a matter of right.

WHEREFORE, The Fine Art of Cruising requests the Court to dismiss the complaint filed by NCL and enter judgment in its favor and against NCL pursuant to the counterclaim asserted herein and award FAOC such other relief as the Court deems just and proper.

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

Counsel for The Fine Art of Cruising, LLC

DATED: October 31, 2007

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 31, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/Humberto H. Ocariz
Humberto H. Ocariz

SERVICE LIST

NCL (BAHAMAS) LTD. v. FINE ART OF CRUISING, LLC

USDC CASE NO.: 07-22176-CIV-KING

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VIA CM/ECF