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MEMORANDUM

TO: [REDACTED]

FROM: MAK

DATE: November 8, 2000

RE: [REDACTED] v. [REDACTED] Yacht Club; whether the Port Captain has the authority to require a slip assignment change

INTRODUCTION

[REDACTED] is a member of the [REDACTED] Yacht Club and is being instructed by the Port Captain to move his boat from his currently assigned slip to a less favorable slip. [REDACTED] is challenging the authority of the Port Captain to make this demand.

ISSUES

1. Whether the Port Captain has authority to require [REDACTED] to move his boat to a new slip against his wishes.
2. What [REDACTED]'s options are to contest the Port Captain's direction to move the boat both within the Yacht Club organization, and in court, if necessary.

FACTUAL SETTING

On October 27, 2000, Mr. [REDACTED], Port Captain for the [REDACTED] Yacht Club, dispatched a letter to [REDACTED], advising him that [REDACTED]'s continuing slip assignment was being changed from A 17 to B 01 effective immediately. The purported authority for this action was "Article VI, Section 8, (e) and House rule 2.1.1.1." The reasoning alleged for the decision was that the beam of [REDACTED]'s new boat is too wide for the slip assigned (A 17). He was advised that he must move his boat no later than November 15, 2000.

[REDACTED] responded by letter dated November 4th, outlining his dispute with the Port Captain's position, and indicating that he had requested a meeting with Commodore [REDACTED] to discuss, and hopefully resolve the situation.

A meeting between the Commodore, [REDACTED], and [REDACTED] has been scheduled for Thursday, November 9th.

The slip in question is a double slip, shared with Slip A 18.

### APPLICABLE PROVISIONS OF BYLAWS AND RULES<sup>1</sup>

Suspension or termination of a continuing slip assignment is governed by Article V, Section 11. Note that no appeal procedure is set out for a change of slip assignment.

#### Section 11. Suspension and Termination of Membership or Continuing Slip Assignment . . .

- (d) If a member . . . is notified that a member's' Continuing Slip Assignment may be suspended or terminated pursuant to Article 5, Section 3 (b)<sup>2</sup>; the procedure set forth below shall be followed:
- (1) Complaints to the Board must be made in writing and signed by a member of the Club.
  - (2) The Board shall investigate such complaints, but it shall not suspend or terminate a Member or continuing slip assignment without giving the accused an opportunity to appear and present witnesses and affidavits on his behalf.
  - (3) The Board shall set a date for a hearing giving at least fifteen (15) days prior notice, setting forth the reasons for the hearing. The hearing shall be closed, except to the accused and his witnesses, and members of the Board of Directors. Such hearing shall be scheduled for not less than five (5) days prior to the effective date of any suspension or termination.
  - (4) Any suspension or termination shall require a 3/4 vote of the Directors present at a Regular or Special Meeting of the Board of Directors.

*Bylaws, Article V, Section 11.*

The authority of the Port Captain is set forth in Article VII, and supplemented by definitions and parameters in the Dock Rules.

- (1) The Port Captain shall be a Director and shall supervise the docks, slips,

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<sup>1</sup> A review of applicable bylaws and rules has revealed a number of internal inconsistencies in references to section numbers. These inconsistencies are noted throughout, with reference to the probable correct reference whenever possible.

<sup>2</sup> Article 5, Section 3 (b) sets forth the requirements for Flag Membership, specifically including the necessity of personally owning a boat. There is no specific reference to suspension or termination of termination.

boats, hoist gear and handling, and dry storage facilities. He shall have full authority to preserve the safety of all Club property and all boats on the Club premises. He shall have the authority to board and inspect any boat on Club property, or its water area, at any time in the interest of safety. He shall have the authority to move or cause to be moved any boat found to be unsafe or creating a hazard. The cost thereof shall be borne by the owner and the Port Captain shall direct the Treasurer to bill the person accordingly.

- (2) The Port Captain shall be responsible to make slip assignments based upon the priority of application, and the most efficient utilization of space. He shall maintain permanent and up-to-date records in the Club office of requests for slips and slip assignments.

*Bylaws, Article VII, Section 8 (e) (underlining in original).*

DEFINITION: MOST EFFICIENT UTILIZATION OF SPACE

Most efficient utilization of space means that factors such as overall vessel size (length), beam, access, security and safety shall be weighed by the Port Captain when assigning a slip. The Port Captain shall use his discretion in the application of this criterion subject to the approval of Board of Directors.

*Dock Rules, 2.1.1.1.*

The Port Captain shall made all slip changes/assignments the last day of the month. Members shall be charged for assigned slip which has been accepted by the Member and approved by the Board from the first of the month following said assignment.

*Dock Rules, 2.1.1.9 (emphasis added).*

The Dock Rules provide more details about the conditions of slip assignments initially and on a continuing basis.

The Port Captain shall recommend all continuing slip assignments to the Board for approval. After Board approval, the Port Captain will cause the approved assignments to be posted. . . .The assignment of slip space is to be based upon the priority of application and the most efficient utilization of space. As a condition of eligibility for temporary or continuing slip assignment, a boat must maintain a current state registration and display a current decal and CF number or maintain current federal documentation and display the documented home port. . . . The Port Captain shall have the right to inspect and approve vessels prior to said vessels being berthed at Southwestern Yacht Club. Any Member's vessel which falls into a state of disrepair, or is operated in a manner unsafe or otherwise detrimental to the interest of the Club and it's Members, may be required to be removed from the Club premises by action of the Board of Directors . . .

*Dock Rules 2.1.1 (underlining in original).*

The length and beam measurements of boats is discussed in Dock Rules 2.1.1.1.

Overall vessel length shall not exceed five (5) feet over or three (3) feet under slip length except those slips which will accommodate a larger vessel as determined by the Port Captain and approved by the Board of Directors. In double slip assignments, the combined beam measurements of the two vessels taken at the point of maximum beam shall not exceed the actual slip width less 3'-10" to provide a reasonable distance between boats.

*Dock Rules, 2.1.1.1.*

No appeal procedure is set forth to contest actions taken by the Port Captain, nor is there any prohibition on a Member's possible right to resort to a court for adjudication of a dispute.

### **ANALYSIS OF THE PORT CAPTAIN'S LETTER AND POSITION**

The Port Captain cites the authority for his action as "Article VI, Section 8, (e) and House rule 2.1.1.1." Neither section exists, but probably can be construed as simply typographical errors. There is no Article VI, Section 8(e), but Article VII, Section 8(e) outlines the Port Captain's duties. Likewise, there is no House Rule 2.1.1.1, but Dock Rule 2.1.1.1 refers to overall vessel length. In any event, neither portion of the Bylaws or Rules support the Port Captain's position as it is set forth in his letter.

First, under Article VII, Section 8(e), he is only given authority to move, or cause to be moved, a boat found to be unsafe or creating a hazard. There is no mention in the letter of any safety or hazard issue. Any safety or hazard argument would also be difficult to support in light of the "temporary accommodat[ion]" cited in the letter.

Second, the Port Captain is to make slip assignments based upon only two criteria: (1) priority of application; and (2) most efficient utilization of space. No reference to either criteria is specifically mentioned in the letter as a basis of his position. Reference is made, however, to the beam width of Bill's boat and the Port Captain states "your boat is too wide for this shared slip configuration." Although length and beam are factors to be considered in determining "most efficient use of space," the rules also state that "in double slip assignments, the combined beam measurements of the two vessels . . . shall not exceed the actual slip width less 3'-10" . . ." In other words, the beam of a single vessel is not directly restricted, it simply must be considered together with the other vessel sharing the slip.

Neither the Bylaws nor Rules support a conclusion that the Port Captain can change slip assignments without approval of the Board. He is required to recommend all continuing slip assignments to the Board for approval, and then the member can continue his eligibility for that continuing slip assignment by maintaining current registration.

### **OPTIONS AVAILABLE TO [REDACTED]**

There are basically three viable options for dealing with this situation: (1) informal resolution

through the Club; (2) formal resolution through the Club; or (3) resort to the courts.

Informal resolution is always a preferable approach in the context of an association with which it is important to maintain good relations. It is less costly and often quicker. The meeting with the Commodore scheduled for Thursday will perhaps allow a means of moderating the Port Captain's position through political influence within the Club.

If informal resolution is not possible, an attempt at formal resolution through the procedure set forth in Article V, Section 11, should be attempted. Although the wording of the Section is vague and not clearly applicable to this situation, it can be argued that a unilateral slip reassignment, without consent of the Member (a procedure that is not supported either directly or indirectly by the Bylaws and Rules) is, in effect, a termination of ██████'s membership rights, thus triggering the Section 11 appeal process. This will require the Port Captain to re-evaluate his position, place the Board in a position of having to form a justification for the action (which it likely cannot do), and allow ██████ the opportunity to fully challenge the decision on its merits.

A resort to the courts should be the last possible option. Preliminary legal research reveals that courts usually refrain from interfering in the internal affairs of voluntary associations (such as this). Decisions of the association with respect to internal affairs will usually be upheld by the courts absent mistake, fraud, illegality, collusion, or arbitrariness. See 6 Am.Jur.2d *Associations and Clubs* §§ 28-32.

As to general parameters, courts may intervene if there is an invasion of property or pecuniary rights or interests. *Id.* Under common law, members of a voluntary association may be required to exhaust administrative remedies prior to resorting to the courts for relief. *Id.*

The California statutes governing this type of association — a California Nonprofit Mutual Benefit Corporation — do not contain any guidance regarding the scope of authority of association officers in situations such as this, nor does it specifically confer any rights or prohibitions to legal action to enforce rights under the bylaws. See, generally, *Corporation Code* §§ 7110, et seq.

An injunction, if one were sought in this case, would be governed by the *Code of Civil Procedure* §§ 525 et seq. CCP § 525 limits the cases in which an injunction is authorized.

(a) An injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuances of the act complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.

(3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in

violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.

(4) When pecuniary compensation would not afford adequate relief.

(5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.

(6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.

(7) Where the obligation arises from a trust. . . .

*Code of Civil Procedure § 526(a).*

Based on the preliminary legal research, █████ cannot yet file a lawsuit in any event. The present situation is that he has been told, by letter, to move his boat by a certain date. He has not been formally threatened with any adverse action if he does not move the boat by that date. Without more information, there is insufficient support for requesting the court to issue an injunction.

### CONCLUSION

Nothing in the Bylaws or Rules supports the Port Captain's request/demand for █████ to move his boat to a slip that he has neither accepted, nor has been approved by the Board.

However, due to the legal principles applicable to voluntary associations, resort to the courts for relief in this dispute is the least viable and most difficult alternative for resolution.

Informal attempts at negotiation, followed by formal attempts within the Bylaws, should be exhausted prior to filing of any legal action. Additionally, there would likely have to be further, more decisive action or threats from the Club to support a request for an injunction.