



KELLERHALS FERGUSON FLETCHER KROBLIN LLP

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June 6, 2012

VIA EMAIL: [REDACTED] AND CERTIFIED MAIL

Ms. Cheryl Boynes-Jackson
Boyson, Inc.
P.O. Box 165
Cruz Bay
St. John, USVI 00831

Re: L.S.J., LLC v. Boyson, Inc.

Dear Ms. Boynes-Jackson:

We represent L.S.J., LLC ("LSJ") and write you concerning a dispute between LSJ and Boyson, Inc. ("Boyson"). The dispute relates to a certain contract for services entered into between LSJ and Boyson, as described in correspondence from Mr. Darren Indyke dated March 5, 2012, a copy of which is attached for your reference. LSJ has been attempting to resolve this matter with Boyson informally and amicably, and Mr. Indyke's March 5, 2012 letter was LSJ's response to Boyson's refusal to honor its agreement with LSJ to charter the General at the \$175 per hour Auto Trans-It rate.

Boyson's breach of its agreement places LSJ in a particularly difficult position. On the one hand, Boyson has advised that it cannot repay the \$43,194 balance remaining on the \$70,619.20 LSJ advanced to it approximately five (5) years ago. On the other hand, Boyson refuses to honor its agreement to charter the General to LSJ at the \$175 Auto Trans-It Rate, even though Boyson has never been able to make the Auto Trans-It available to LSJ throughout that entire 5-year period, and by insisting that LSJ charter the General, a much larger vessel for which LSJ has no use, at a rate which is almost double the Auto Trans-It rate, Boyson would effectively reduce LSJ's \$43,000 credit balance by almost half. Given that Boyson has had the use of these funds for five (5) years without paying even one penny of interest, Boyson's refusal to honor its agreement is neither fair nor appropriate.

We have prepared the attached Complaint against Boyson for filing in the Virgin Islands Superior Court, but our client has instructed us to make every effort to resolve this matter amicably before filing the Complaint and commencing legal action against you. It is LSJ's sincere desire to resolve this without putting Boyson to the expense and inconvenience of formal legal proceedings. To that end, LSJ is once again requesting that the parties confirm in writing the agreement for Boyson to charter the General to LSJ at the rate of \$175 per hour until such time as LSJ's \$43,194 credit has been fully applied. Of course, should Boyson place the Auto Trans-It back in service while any amount of the credit remains outstanding, the \$175 per hour Auto Trans-It rate shall only apply to LSJ's use of the Auto Trans-It and the charter rate for the General shall return to the previous \$300 per hour rate. The parties would obviously work together to provide fair and reasonable terms including advance notice of any requested usage so as not to unduly interfere with Boyson's business. Alternatively, LSJ is willing to forego any interest on the amounts

advanced to Boyson over this 5-year period and will accept immediate repayment in full of the \$43,194 credit balance to resolve this matter and continue its working relationship with Boyson.

Please let me know within the next ten (10) days as to how you wish to proceed in this matter. If I do not hear from you within that time, my client will have no choice but to file the attached Complaint and move forward with legal proceedings. Once again, we sincerely wish to avoid litigation and hope you will accept this proposal.

This letter is for settlement purposes only and is without prejudice to any and all rights and claims of LSJ against Boyson, all which are hereby expressly reserved.

Sincerely,


Christopher Allen Kroblin

xc: Client

Attachments

DARREN K. INDYKE
DARREN K. INDYKE, PLLC
301 East 66th Street, 10B
New York, New York 10065
Telephone: [REDACTED]
Telecopier: [REDACTED]

WITHOUT PREJUDICE
FOR SETTLEMENT PURPOSES ONLY

March 5, 2012

VIA E-MAIL

Denise Francois, Esq.
Hodge & Francois
1340 Taarneberg
Charlotte Amalie
St. Thomas, USVI 00802

Re: Charter Agreement between L.S.J., LLC and Boyson, Inc.

Dear Denise:

As you know, L.S.J., LLC ("LSJ") and Boyson, Inc. ("Boyson") entered into a Charter Agreement in July 2007. In connection with that Agreement, LSJ advanced Boyson a total of \$70,619.20 to pay towards the cost of refurbishing the M/V Auto Trans-It (the "Auto Trans-It"), and it was agreed that Boyson would repay those funds by providing LSJ with a discounted hourly charter rate for the Auto Trans-It, and, when needed, the M/V General II (the "General II"). It was the intention of the parties that repayment of the advance would be primarily through use of the Auto Trans-It, while use of the M/V General II would be quite limited, particularly because LSJ had very little occasion to use such a large vessel and use of that vessel created certain logistical problems for LSJ.

Unfortunately, although LSJ paid over \$70,000 towards its refurbishment and had ample need for its use over the original term of the Charter Agreement, the Auto Trans-It never returned to service. As the original term of the Charter Agreement was scheduled to expire in July 2009, you and I began to discuss resolving the problem of the Auto Trans-It's continued unavailability, but there still was no date certain by which Boyson anticipated its return to service. At that time, I suggested a simple repayment of LSJ's advance, but you advised that this suggestion was rejected by your client because Boyson lacked the necessary funds to make such repayment. We then began discussing an extension of the Charter Agreement, but discussions were frustrated because, as you explained it, the Coast Guard repeatedly imposed additional refit and refurbishment requirements in order to return the Auto Trans-It to service. Thus, my notes reflect that as of October 2009, although you advised that your client then anticipated that Auto Trans-It would return to service in a month's time, you still could not be certain of when it would return to service. While we continued to struggle with this issue, you confirmed your client's agreement that the Charter Agreement would remain in effect until we executed a formal extension.

In February 2010, I emailed you that we have a substantial need for use of a barge, but the Auto Trans-It had still not returned to service. You emailed me in February 2010 to confirm that Boyson would allow LSJ to use the General II at the Auto Trans-It rate provided in the Charter agreement. Thus, until the Auto Trans-It returned to service, LSJ would be able to use the General II at the Auto Trans-It rate, at least until LSJ used up its credit. However, you advised that the General II was scheduled to go into mandatory U.S. Coast Guard drydock in April 2010 and was then currently in preparation for drydock. So, you requested that LSJ wait until after the General II's return to service from the April 2010 drydock to use the General II.

LSJ used the General II for 9 hours in July 2010. In addition, in conjunction with LSJ's use of Boyson's indirectly owned vessel, the Commander, to ship trees from Puerto Rico to St. Thomas, LSJ used the General II again for 10 hours in September 2010 to transfer those trees to Little St. James. Consistent with their agreement, Boyson charged LSJ at the Auto Trans-It rate for LSJ's use of the General II in July and September 2010.

In September 2011, without any notice that Boyson would dishonor its agreement that LSJ could use the General II at the Auto Trans-It rate while the Auto Trans-It continued to remain out of service, Boyson attempted to charge LSJ for the use of the General II at the higher \$300 per hour rate. This was the rate set forth in the Charter Agreement for use of the General II, but was contrary to Boyson's subsequent agreement to charge for the use of the General II at the \$175 per hour Auto Trans-It rate, as confirmed by your February 2010 email to me. In response to Boyson's attempt to charge LSJ in violation of Boyson's agreement, I requested that you intervene and you advised that your client could not afford to allow LSJ to use the General II at Auto Trans-It rates. I requested that you ask your client to propose a reasonable solution that I could bring to Mr. Epstein in order to avoid the necessity of bringing formal legal action to enforce LSJ's rights.

In response, in October 2011, you emailed me with your client's offer, which was essentially no accommodation at all; it was merely a reaffirmation of Boyson's intention to continue to charge LSJ for use of the General II at the higher \$300 per hour rate, even though the Auto Trans-It remained out of service, and Boyson had already agreed to charge LSJ for use of the General II at the lower Auto Trans-It rate. Since that time, I have advised you that this is unacceptable to Mr. Epstein and LSJ, and you have been unable to propose any reasonable alternative, advising me that Boyson has no money with which to repay the balance of LSJ's advance, and is not prepared to honor Boyson's agreement to charter the General II at the Auto Trans-It rate.

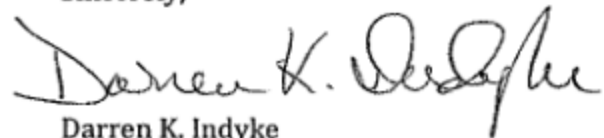
As of today's date, a period of well over four years, LSJ has been unable to recover \$43,194 of LSJ's \$70,619 advance to Boyson. In essence, Boyson has received an interest-free loan of these funds in exchange for an agreement with which Boyson has never been able to comply. For this entire 4-year period, the Auto Trans-It, for which LSJ advanced these funds, has continuously remained out of service and, as contemplated by the parties, LSJ's need for a vessel as large as the General II has been minimal.

As you have reaffirmed to me, Boyson has no idea of when or even whether the Auto Trans-It will return to service. Boyson's claim that it cannot afford to allow LSJ to continue to charter the General II at Auto Trans-It rate gives no account to the interest-free loan it has received from LSJ for more than 4 years, or LSJ's loss of the use of, or value for, the funds it advanced. That the General II costs more to operate should not be LSJ's burden, when LSJ advanced these funds to use the Auto Trans-It, and LSJ has been willing to accept payment in lieu of continuing to charter at the reduced rate. The charter arrangement is simply LSJ's attempt to work with Boyson to satisfy Boyson's obligations under what you have related to me are difficult circumstances. However, Boyson cannot have it both ways. If it cannot make payment to LSJ, then it should honor its original agreement to provide LSJ with the vessel contemplated by the parties and at the charter rate the parties intended would apply. If Boyson cannot provide that vessel, then it must find another solution (i.e., charter the vessel that it can provide at the rate of the vessel that was intended to be provided), if it desires to continue to receive the benefits of what has effectively been an interest-free loan for a much longer period of time than was contemplated by the parties.

Denise, as I have told you, Mr. Epstein and LSJ want to be fair. However, requiring LSJ to deplete its credit to charter a vessel of a size well in excess of LSJ's requirements at nearly twice the hourly rate than that of the vessel for which LSJ does have use effectively amounts to a forced reduction of almost 50% of LSJ's credit. This is completely unacceptable, particularly where LSJ would only be able to recover its credit through charter over time and it is receiving no credit for the time-value of its money.

Under the circumstances, at this point, it really makes sense for your client to reconsider its position and simply repay LSJ the balance of its credit, plus a reasonable amount to reflect the loss of use of these funds from the date of original payment. I would be willing to speak to Mr. Epstein about the continued application of LSJ's credit towards future charters of the General II, but that must be at the original \$175 Auto Trans-It rate agreed to by the parties when LSJ first advanced its funds. I believe we should be able to negotiate a reasonable duration of the term and other conditions to balance Boyson's ability to charter the General II to third parties at a higher rate, with LSJ's need to use the barge from time to time and its right to recover the outstanding \$43,194 credit remaining on its \$70,619 advance. Please speak to Boyson and let me know how Boyson wishes to proceed. I would really like to resolve this matter before it escalates.

Sincerely,



Darren K. Indyke

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN**

L.S.J., LLC,)	
)	
Plaintiff,)	
)	CASE NO. ST-12-CV- 21
-vs-)	
)	ACTION FOR
BOYSON, INC.)	BREACH OF CONTRACT
)	
<u>Defendant.</u>)	

VERIFIED COMPLAINT

COMES NOW that the Plaintiff L.S.J., LLC, by and through its undersigned counsel, KELLERHALS FERGUSON FLETCHER KROBLIN LLP, and for its Complaint against Boyson, Inc. states and alleges as follows:

1. The Plaintiff, L.S.J., LLC (“LSJ”), is a limited liability company organized under the laws of the State of Delaware, and at all times relevant herein LSJ was the owner of Little St. James Island located off the coast of St. Thomas, United States Virgin Islands and maintained its principal address in the United States Virgin Islands.
2. Defendant Boyson, Inc. (“Boyson”) is upon information and belief a U.S. Virgin Islands Corporation doing business principally in the U.S. Virgin Islands.
3. This Court has subject matter jurisdiction over this civil action pursuant to V.I. Code Ann. tit. 4, § 76(a).
4. Venue is proper in the judicial district of St. Thomas and St. John because the cause of action arose in the judicial district of St. Thomas and St. John and the Defendant can be properly served therein.

5. In July 2007, LSJ and Boyson entered into a Charter Agreement.
6. In connection with the Charter Agreement LSJ advanced Boyson a total of \$70,619.20 to pay towards the cost of refurbishing the M/V Auto Trans-It (the "Auto Transit").
7. It was agreed that Boyson would repay those funds by providing LSJ with a discounted hourly charter rate for the Auto Transit, and, when needed, the M/V General II (the "General II").
8. It was the intention of the parties that repayment of the advance would be primarily through use of the Auto Trans-It, while use of the General II would be quite limited.
9. Upon information and belief Boyson, in partial performance of its agreement, expended the advanced funds on refurbishing the Auto Transit as agreed.
10. Although LSJ paid over \$70,000 towards its refurbishment and had ample need for its use over the original two year term of the Charter Agreement, the Auto Transit never returned to service.
11. Owing to Boyson's inability to perform pursuant to the Charter Agreement, the parties engaged in negotiations and extended the term of the Charter Agreement while those negotiations continued.
12. Owing to a substantial need by LSJ to use a barge in or about the beginning of 2010, it was agreed in or about February 2010 that LSJ would be permitted to use the General II at the Auto Transit rate at least until LSJ used up its credit once the General II returned to service from its mandatory U.S. Coast Guard dry dock inspection in April 2010.

13. In July 2010, LSJ used the General II for a total of 9 hours and was charged the Auto Transit rate as agreed.
14. In September 2010, LSJ used the General II for 10 hours and was again charged the Auto Transit rate as agreed.
15. Despite the foregoing partial performance by Boyson, in September 2011, without any notice that Boyson would dishonor its agreement that LSJ could use the General II at the Auto Transit rate while the Auto Transit continued to remain out of service, Boyson attempted to charge LSJ for the use of the General II at the higher \$300 per hour rate. This was the rate set forth in the Charter Agreement for use of the General II, but was contrary to Boyson's subsequent agreement to charge for the use of the General II at the \$175 per hour Auto Transit rate.
16. LSJ objected to being charged a higher rate than was agreed and demanded the lower rate or that the balance of its advance refunded to it.
17. Boyson refused to honor the lower rate as agreed and refused to refund the balance of the advance given to it by LSJ, which balance stands at or about \$43,194.00.

COUNT I BREACH OF CONTRACT

18. Plaintiff incorporates the preceding allegations of this Complaint as if set forth in full herein.
19. In consideration of an advance of funds by LSJ in the amount of \$70,619, Boyson agreed to provide LSJ with discounted hourly charter rate for the Auto Transit, and, when needed, the General II pursuant to the parties' Charter Agreement.
20. Boyson expended funds as agreed but failed fully refurbish the Auto Transit and restore it to service, constituting a breach of the parties' Charter Agreement.

21. Despite Boyson's breach, and in consideration of LSJ's forbearance of its breach of contract claims, the parties further agreed in February 2010 to amend the Charter Agreement so that LSJ would be permitted to use the General II at the Auto Transit rate at least until LSJ used up its credit.
22. Despite partially performing pursuant to this amended Charter Agreement in July and September of 2010, in September of 2011 Boyson breached the amended Charter Agreement.
23. Boyson's breach of the Charter Agreement and Amended Charter Agreement have caused Plaintiff damages in an amount to be shown at trial.

COUNT II UNJUST ENRICHMENT

24. Plaintiff incorporates the preceding allegations of this Complaint as if set forth in full herein.
25. Boyson accepted a sum of money from LSJ in the amount of \$70,619.00.
26. \$43,194.00 of that amount was retained by Boyson without cause and despite demand by LSJ for its return.
27. Boyson has been unjustly enriched at the expense of LSJ in an amount to be shown at trial and LSJ is entitled to recover all such amounts from Boyson.

WHEREFORE, Plaintiff seeks all contractual, consequential, equitable, or other damages to which it is entitled, including pre-judgment and post judgment interest and all awardable costs and reasonable attorneys' fees.

Dated June_____, 2012

CHRISTOPHER ALLEN KROBLIN, ESQ.

VI Bar Association No. 966

KELLERHALS FERGUSON FLETCHER KROBLIN LLP

9100 Havensight

Port of Sale, Suite 15-16

St. Thomas, USVI 00802

Telephone: [REDACTED]

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Email: [REDACTED]

VERIFICATION

I, **Darren Indyke**, verify under the penalty of perjury under the laws of the United States of America and the United States Virgin Islands that the following is true and correct:

1. I am general counsel to L.S.J., LLC, the Plaintiff herein.
2. I have read the foregoing Complaint and know the contents therein to be true to my knowledge and belief.

DATED: _____

Darren Indyke