

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

BROWARD DIVISION

MARIN ASENOV,

Plaintiff,

vs.

SILVERSEA CRUISES, LTD.,

Defendant.

COMPLAINT AND
DEMAND FOR JURY TRIAL

COMES NOW, the Plaintiff, **MARIN ASENOV** (hereinafter "ASENOV"), by and through his undersigned counsel, and sues the Defendant **SILVERSEA CRUISES, LTD.**

(hereinafter "SILVERSEA"), and further states as follows:

GENERAL ALLEGATIONS

1. This is an action seeking damages in excess of the jurisdictional limits of the court and in excess of \$75,000.00.
2. This is a cause of action based on 46 U.S.C. 688 and is a maritime cause of action.
3. Defendant **SILVERSEA**, at all times material hereto, personally and through an agent:
 - (a) Operated, conducted, engaged in or carried on a business venture in this state and/or Broward County or had an office or agency in this state and/or Broward County;
 - (b) Was engaged in substantial activity within this state;

- (c) Operated vessels in the waters of this state;
- (d) Committed one or more of the acts stated in Florida Statutes, Sections 48.081, 48.181 or 48.193;
- (e) The acts of Defendant SILVERSEA set out in this Complaint occurred in whole or in part in Broward County and/or the state of Florida.

4. The causes of action asserted in this Complaint arise under the Jones Act, 46 U.S.C. §688, and the General Maritime Law of the United States.

5. At all times material hereto, Defendant SILVERSEA owned, operated, managed, maintained and/or controlled the cruise ship vessels M/V SILVER SPIRIT and M/V SILVER WIND. Plaintiff served aboard these vessels. These vessels call on U.S. ports from time to time.

6. Plaintiff's Complaint includes one (1) count for maintenance and cure, one (1) count for Jones Act negligence, one (1) count for compensatory damages caused by Defendant's unreasonable failure to provide maintenance and cure, one (1) count for unseaworthiness of the vessel, one (1) count for breach of contract and one (1) count for retaliatory discharge. Count I is brought by ASENOV for Jones Act negligence. Count II is brought by ASENOV for unseaworthiness under the General Maritime Law of the United States. Count III is brought by ASENOV for maintenance and cure. Count IV is brought by ASENOV for compensatory damages in tort under the federal statute known as the Jones Act, 46 U.S.C. §688 et. seq. Count V is brought by ASENOV for breach of contract. Count VI is brought by ASENOV for retaliatory discharge.

7. The doctrine of maintenance and cure is an ancient obligation which a ship employer owes to its sick or injured crew members. Maintenance is a subsistence payment intended to provide the seaman with food and lodging comparable to that which the seaman

received on the vessel. Cure is payment for medical expenses or provision for medical treatment.

8. The courts construe and interpret the maintenance and cure doctrine liberally to protect seamen who are wards of this Court. Maintenance and cure is an affirmative obligation on the part of the seaman's employer, much like that duty owed by a parent to his or her child, rare in the law.

9. Maintenance and cure payments are supposed to be promptly paid and are to continue until the seaman's treating physicians have unequivocally declared him to be at maximum medical improvement for all conditions arising in the service of the vessel. The sustenance payment is supposed to be able to provide food, in sufficient quantity and quality comparable to what was available on the vessel. Crewmembers eat the same food aboard the ship as guests, and as much as they want.

10. In addition to sustenance and a bed with a roof over one's head, maintenance also includes bedding, sheets and towels, laundry, dry cleaning, and utilities because these are benefits which the Defendant offered its seaman. Under the circumstances, maintenance also should include payments for life's basic necessities such as laundry and utilities.

11. A seaman is entitled to wages and provisions as soon as the seaman begins work or when specified in an employment agreement.

FACTS UPON WHICH CLAIMS ARE BASED

12. Plaintiff realleges, adopts and incorporates by reference the allegations in paragraphs 1-11 as though alleged originally herein.

13. Defendant SILVERSEA is one of the world's premiere cruise ship maritime operators with a crew list in excess of 1,600.

14. Defendant SILVERSEA arbitrarily withholds payment of full wages from its crewmembers, including Plaintiff. Instead of accounting for the full amount of hours worked, Defendant SILVERSEA summarily and arbitrarily pay its crewmembers for 40-hour work weeks. Although crewmembers' contracts include payment for overtime, it is not included in their weekly wages.

15. Defendant forces these seamen including Plaintiff to accept this payment with no recourse for dispute. When disputes have arisen, agents and/or employees of SILVERSEA have indicated that it was a problem with seamen improperly accounting for their hours, despite the fact that Defendant SILVERSEA make, and are in possession of, the schedule for the crew members.

16. Furthermore, when crewmembers properly account for their hours, they are given the same 40-hour wage payment. Crewmembers, such as Plaintiff, are forced to sign this document under duress and pressure from superiors with threats of potential discipline. On one occasion, Defendant asked ASENOV to accept a bribe payment of \$100 to assure his silence regarding the improper wage payment.

17. By withholding wage payments from its crewmembers such as Plaintiff, Defendant SILVERSEA is acting illegally, unreasonably, arbitrarily, and capriciously. The obligation is to pay wages promptly and completely, which Defendant intentionally has not done. The duty is not discharged by hiring third persons to handle payroll, over whom Defendant SILVERSEA has influence and control.

18. Defendant SILVERSEA either gives no information or give misleading information to its crew members about their rights under the General Maritime Law of the United States which applies to this Defendant.

19. On or about January 26, 2011, ASENOV left his native Bulgaria to begin employment with Defendant SILVERSEA by reporting to the SILVER WIND in the Seychelles Islands, where the vessel was located. Defendant employed ASENOV as a bartender at a monthly salary of approximately \$2,600, plus overtime.

20. In the employment contract signed by ASENOV with an agent of Defendant SILVERSEA acting on behalf of SILVERSEA on or about January 15, 2011, the overtime rate per hour aboard the SILVER WIND was listed at \$4.72 (See attached "Exhibit 1").

21. During ASENOV's length of his employment contract, the Defendant SILVERSEA was in fact calculating the overtime rate per hour at \$1.00.

22. Prior to the end of the payment period ending on February 28, 2011, ASENOV was presented with time sheets from the Head Bartender regarding his hours worked for that period of time. Those time sheets indicated that he worked 10-hour days, when his schedule indicates that he was scheduled for 11 to 11 1/2 hours of duty (See attached "Exhibit 2"). In actuality, ASENOV would sometimes work 12 to 14 hours at a time.

23. When ASENOV voiced displeasure about the problem with his hours, he was summarily told that it was his fault for not completing the time sheets correctly, he was ordered to sign or not get paid.

24. As a result of his hours improperly being logged, ASENOV recorded his hours that he worked and properly documented them in the time sheets every day.

25. At the end of the next pay month, after ASENOV had ensured that his time sheet had the correct number of hours he worked, the Head Bartender again brought him a timesheet to be signed that indicated that ASENOV had only worked 10-hour days. On this occasion, he refused to sign the time sheet.

26. A few days after this encounter, the Head Bartender informed ASENOV that he had a conversation with the Hotel Director and an email was sent to the head office regarding his overtime dispute.

27. ASENOV was offered \$100 cash to resolve the dispute and to ensure his silence regarding the matter.

COUNT I – JONES ACT NEGLIGENCE

28. Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs 1-5, as though alleged originally herein.

29. On or about August 31, 2010, Plaintiff was employed by Defendant SILVERSEA as a seaman and was a member of the crew aboard the M/V SILVER SPIRIT. The vessel was in navigable waters.

30. It was the duty of Defendant SILVERSEA to provide Plaintiff with a safe place to work.

31. On or about August 31, 2010, Plaintiff was injured due to the fault and negligence of Defendant and/or their agents, servants, and/or employees as follows:

- (a) Failure to use reasonable care to provide and maintain a safe place to work for Plaintiff, fit with proper and adequate machinery, crew and equipment;
- (b) Failure to use reasonable care to provide Plaintiff a safe place to work;
- (c) Failure to promulgate and enforce reasonable rules and regulations to ensure the safety and health of the employees and more particularly the Plaintiff, while engaged in the course of his employment on said vessel.
- (d) Failure to use reasonable care to provide Plaintiff a safe place to work due to: (1) Failed to provide adequate method for transporting champagne to the bar, and/or; (2) Failed to provide Plaintiff with adequate instruction

and training on how to properly transport champagne to the bar, and/or;

(3) Failed to provide Plaintiff, while carrying boxes, access through the fire screen door before the staircases without the need to use his elbow to open the door, and/or; (4) Failed to warn Plaintiff of the dangers of opening the fire screen door with his elbow while carrying boxes, and/or;

(5) Failed to properly train Plaintiff how to open the fire screen door safely. All of the foregoing caused or contributed to causing the Plaintiff to be injured when he tried to open the fire screen door with his elbow, since his hands were full carrying the boxes.

- (e) Failure to provide adequate instruction, and supervision to crewmembers and Plaintiff;
- (f) Failure to provide prompt and timely medical care which aggravated Plaintiff's injuries and caused him additional pain and disability;
- (g) Defendant failed to learn and apply the common and well-known principle of shipboard work that seamen should have one hand free while carrying anything on board the vessel;
- (h) Defendant used outmoded work methods and procedures and neglected modern material handling techniques;
- (i) Failure to follow sound management practices with the goal of providing Plaintiff a safe place to work;
- (j) Prior to Plaintiff's accident, Defendant failed to investigate the hazards to Plaintiff and then take the necessary steps to eliminate the hazards, minimize the hazard or warn the Plaintiff of the danger from the hazard.

32. Defendant knew of the foregoing conditions causing Plaintiff's injuries and did not correct them, or the conditions existed for a sufficient length of time so that Defendant, in the exercise of reasonable care, should have learned of them and corrected them.

33. At all times material hereto, Plaintiff had no prior knowledge or warning of the risks that the fire screen door, at the time of the incident, posed to his safety.

34. At all times material hereto, Plaintiff acted with due care for his own safety.

35. At all times material hereto, Defendant SILVERSEA was in direct control of the vessel where Plaintiff was injured.

36. As a result of the negligence of the Defendant as aforesaid, the Plaintiff was injured in and about his body and extremities, suffered physical pain, mental anguish, loss of enjoyment of life, disability, disfigurement, aggravation of any previously existing conditions therefrom, incurred medical expenses in the care and treatment of his injuries, suffered physical handicap, lost wages and his working ability has been impaired. The injuries are permanent or continuing in nature, and Plaintiff will continue to suffer the losses and impairments in the future.

WHEREFORE, Plaintiff demands judgment from Defendant for damages, costs and demands a trial by jury.

COUNT II – UNSEAWORTHINESS

37. Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs 1-5, 29, and 31(g)-(j) , as though alleged originally herein.

38. On or about the previously stated date, Plaintiff was a seaman and a member of the crew of Defendant's vessel M/V SILVER SPIRIT, which was in navigable waters.

39. At all times material hereto, the vessel was owned, managed, operated and/or controlled by Defendant SILVERSEA.

40. Defendant has the absolute nondelegable duty to provide Plaintiff with a seaworthy vessel.

41. On or about the previously stated date, the unseaworthiness of Defendant's vessel was a legal cause of injury and damage to Plaintiff by reasons of the following:

- (a) The vessel was unsafe and unfit due to the conditions by Defendant's conduct stated in paragraph 31(a)-(e) and (g)-(j) as herein alleged;
- (b) The vessel was not reasonably fit for its intended purpose;
- (c) The vessel's crew was not properly trained, instructed or supervised;
- (d) The vessel did not have a fit crew;
- (e) The vessel did not have a proper method and/or procedure to ensure a seaman have one free hand at all times while walking and carrying items aboard the vessel;
- (f) The vessel did not have adequate manpower for the tasks being performed;
- (g) The crew and Plaintiff were overworked to the point of being exhausted and not physically fit to carry out their duties.

42. As a result of the unseaworthiness of the vessel, the Plaintiff was injured in and about his body and extremities, suffered physical pain, mental anguish, loss of enjoyment of life, disability, disfigurement, aggravation of any previously existing conditions therefrom, incurred medical expenses in the care and treatment of his injuries, suffered physical handicap, lost wages and his working ability has been impaired. The injuries are permanent or continuing in nature, and Plaintiff will continue to suffer the losses and impairments in the future.

WHEREFORE, Plaintiff demands judgment from Defendant for damages, pre-judgment interest, costs and demands a trial by jury.

COUNT III – FAILURE TO PROVIDE MAINTENANCE AND CURE

43. Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs 1-2, and 7-11, as though alleged originally herein.

44. On or about the previously stated date, Plaintiff, while in the service of the vessel as a crewmember, was injured.

45. Under the General Maritime Law, Plaintiff, as a seaman, is entitled to recover maintenance and cure from Defendant, until he is declared to have reached maximum possible cure. This includes unearned wages (regular wages, overtime, vacation pay and trips), which are reasonably anticipated to the end of the contract or voyage, whichever is longer.

46. Defendant willfully and callously delayed, failed and refused to pay Plaintiff's entire maintenance and cure so that Plaintiff has become obligated to pay the undersigned a reasonable attorney's fee. Defendant intentionally failed to inform Plaintiff of his rights under the maritime law to maintenance and cure, and failed to pay or provide any maintenance or cure whatsoever, even though they knew that Plaintiff was signing off the vessel on medical leave due to an injury sustained in the service of the vessel.

47. Defendant's failure to pay or provide Plaintiff's entire maintenance and cure is willful, arbitrary, capricious, and in callous disregard for Plaintiff's rights as a seaman. As such, Plaintiff would be entitled to additional compensatory and exemplary punitive damages as well as attorney's fees under the General Maritime Law of the United States.

48. As a result of the failure to provide maintenance and cure, Plaintiff was forced to pay, from his own personal funds, for all accommodations, food and medical care and medical transportation which Defendant was legally obligated to do. Additionally, Plaintiff was forced to take out a bank loan to pay for living expenses and medical care and medical transportation, with said bank loan still accruing interest and potentially negatively impacting his credit.

WHEREFORE, Plaintiff demands judgment from Defendant for compensatory and punitive damages, pre-judgment interest, attorneys' fees, costs and demands a trial by jury.

COUNT IV – JONES ACT FAILURE TO TREAT

49. Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs 1-5, 29 and 31(f), as though alleged originally herein.

50. Defendant failed to provide Plaintiff with prompt, adequate and complete medical care. Defendant's failure contributed to Plaintiff suffering additional pain, disability and/or prolonged Plaintiff's recovery.

WHEREFORE, Plaintiff demands judgment from Defendant for damages, costs and demands a trial by jury.

COUNT V – BREACH OF CONTRACT

51. Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs 1-5, and 13-27, as if set forth herein.

52. Every maritime contract includes a duty of good faith and fair dealing implied by law, which requires a party to perform in a manner that will protect the other party's reasonable expectations under the contract.

53. Defendant did not perform its duties under the contract in accordance with the implied duty of good faith and fair dealing.

54. Under the contract, Defendant required Plaintiff to perform his duties as bartender. Plaintiff did perform his part of the contract.

55. Under the contract and in exchange for performance, Defendant was to pay Plaintiff his full earned wages, including, but not limited to, overtime wages at a specified hourly rate. Defendant knowingly, intentionally and willfully failed to pay Plaintiff's full earned wages, in breach of their employment agreement.

56. In fact, Defendant knowingly deducted the overtime hours worked by Plaintiff and only paid for a 40-hour week.

57. Defendant attempted to “pay off” the Plaintiff for inquiring about the failure to pay his overtime payments.

58. Plaintiff knew that if he continued to voice his concern he would be labeled as insubordinate and fired, which is exactly what happened to the Plaintiff.

59. Defendant knowingly and in bad faith forced Plaintiff to accept the time sheets that did not account for his overtime hours, forcing him to receive less than his full earned wages.

60. Additionally, in order to further evade its contractual obligations even further, Defendant knowingly and intentionally fired Plaintiff without just cause.

61. Defendant at all times material hereto, were aware of their unethical, fraudulent and illegal business practices.

62. Defendant failed to perform in accordance with the implied duty of good faith and fair dealing, when they knew Plaintiff was not receiving his full earned wages.

63. Defendant’s breaches of implied duty of good faith and fair dealing are the direct and legal causes of Plaintiff’s damages herein alleged in this count.

WHEREFORE, Plaintiff, demands judgment from Defendant for damages, costs, and demands a trial by jury.

COUNT VI – RETALIATORY DISCHARGE

64. Plaintiff realleges, adopts, and incorporates by reference the allegations in paragraphs 1-5, 19, 20-27, and 55-61 as though alleged originally herein.

65. At all times material hereto, Plaintiff was employed as a seaman in the service for the vessel M/V SILVER WIND.

66. While on the service of the ship, Plaintiff performed all the work required of him, and carried out the orders given by his superiors.

67. The drinks on board the vessel are included in the passengers' cruise on an all-inclusive basis, including, but not limited to, top-shelf spirits, French champagne, Perrier, wines and beer.

68. Defendant SILVERSEA holds itself out to the public as a premiere cruise line and charges correspondingly high fares to its cruise passengers in part because it represents to them that top-shelf spirits, premium wines and champagne are included in the cruise fare on an all-you-care-to-drink basis.

69. The bars aboard the ship, however, are on a limited budget. This fact is intentionally hidden from prospective passengers. As a result of the limited budgets, the bartenders are pushed by their supervisors to surreptitiously transfer cheap alcohol into the bottles of the expensive ones. For example, "Stolichnaya" vodka is placed in bottles of "Grey Goose", and the French champagne "Drapier" is turned into a blend of 50% "Drapier" and 50% "Prosecco", or just 100% "Prosecco" in the bottle of "Drapier," depending on supplies, which in turn is given to passengers without their knowledge. Prosecco is an inexpensive Italian sparkling wine. Only wine from the champagne district in France is legally allowed to be sold as "champagne." Selling or providing Italian sparkling wine as French champagne is a fraud.

70. As a professional bartender, with good references from previous employers, the Plaintiff voiced his displeasure with this practice and his unwillingness to engage in fraudulent behavior with the passengers, and the constant inability of the bar to maintain items necessary for some specialty drinks.

71. On one particular occasion, a guest asked for a glass of champagne, to which the Plaintiff replied that they had none. As a result of not simply supplying the customer with

“Prosecco” as he had been previously instructed to do by Defendant, and calling it champagne, he was disciplined for his actions. (See attached “Exhibit 3”). The Defendant informed the Plaintiff that he must be “more creative” and look for “solutions” by making false statements to the passengers regarding their drinks.

72. On or about April 1, 2011, Defendant, through its agent, contacted Plaintiff to inform him that they were cancelling his contract in his 90-day probationary period. This is contrary to his agreement for Hotel Crew which specifically does not include a probationary period.

73. The vessel was entering dry-dock a few days later. Defendant asked Plaintiff if he would like to stay and work at the dry dock, with the knowledge that if he declined, Defendant would not pay his ticket home.

74. Plaintiff began work at the dry dock and was assigned the job as Garbage Team Leader. No other person from the bar staff was on the Garbage Team. (See attached “Exhibit 4”).

75. Plaintiff was placed in harmful and dangerous, hazardous conditions, required to carry rusty pipes from the engine, clean the blood from the refrigerators in the storeroom, all of which aggravated his prior elbow injury, as punishment for voicing his unwillingness to go along with Defendant’s fraudulent business practices.

76. Additionally, Defendant gave the Plaintiff a bad employment evaluation which has affected the ability of Plaintiff to obtain additional employment. Prior to working for Defendant, Plaintiff had obtained excellent recommendations. As a direct result of the misconduct of Defendant, Plaintiff has suffered a loss of earnings in the past and will continue to do so in the future.

77. Defendant discharged and/or terminated Plaintiff from employment as retaliation against Plaintiff for:

- (a) Voicing displeasure about the inability of Defendant to maintain products for drinks, and/or;
- (b) Refusing to lie to customers regarding the contents of their drinks;
- (c) Objecting about the problems associated with his failure to receive proper hours and overtime wages;
- (d) Refusing to perpetrate a fraud on the passengers in regard to serving top-shelf spirits and wine;
- (e) Objecting to not being paid his full wages.

WHEREFORE, Plaintiff demands judgment from Defendant for damages, pre-judgment interest, costs and demands a trial by jury.

DATED this 2nd day of November, 2011.

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