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THE HONORABLE MARSHA J. PECHMAN

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

SUNTRUST BANKS, INC., a Georgia Corporation,

Plaintiff,

vs.

BE YACHTS, LLC, a Washington Limited Liability Company, along with its officers, shareholders, executives and directors, and EDWARD BALASSANIAN, individually.

Defendants.

IN ADMIRALTY

Case No.: 2:18-CV-00840

PRETRIAL ORDER

JURISDICTION

This is an admiralty and maritime claim within the meaning of Rule 9(h). This Court has original jurisdiction over this matter in accordance with the provisions of 46 U.S.C. §31325(c). Because Plaintiff and Defendants are all citizens or legal entities residing in different states, and the amount in controversy is in excess of \$75,000, this Court has diversity jurisdiction over this civil action under 28 U.S.C. §1332. This Court also subject matter jurisdiction over this admiralty action for breach of a First Preferred Ships Mortgage under 28 U.S.C. §1333.

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CLAIMS AND DEFENSES

The plaintiff will pursue at trial the following claims:

- 1. Breach of Contract

The plaintiff will assert at trial the following affirmative defenses:

- 1. Failure to state a claim for which relief can be granted;
- 2. Full performance of contractual and statutory duties.

The defendant will pursue the following affirmative defenses and/or counterclaims:.

Counterclaims

- 1. Failure to Hold a Commercially Reasonable Sale under RCW 62A.9A-610 and related statutes.
- 2. Damages and Rights Under RCW 62A.9A-625 and related law.

Affirmative Defenses

- 1. **Failure to Mitigate Damages.** Plaintiff has a duty to mitigate its damages, if any; to the extent it has not, its damages, if any, should be barred or reduced accordingly.
- 2. **Offset/Setoff.** Plaintiff’s claims are barred, in whole or in part, by the doctrine of offset or set-off.
- 3. **Unclean Hands.** Plaintiff’s claims fail, in whole or in part, based on the doctrine of clean hands.

ADMITTED FACTS

The following facts are admitted by the parties:

- 1. On January 29, 2013 Defendants executed a Marine Installment Note.

1. 2. Defendants agreed to repay \$1,800,000.00 to SunTrust for the funds it provided for
2. the purchase a 2012 Sunseeker International Manhattan 63 Motor Yacht.
3. 3. SunTrust paid \$1,800,000 to Rick Obey & Associates on behalf of Defendants to
4. fulfill their obligations under the purchase contract for the Vessel.
5. 4. The loan was also secured by a First Preferred Ship Mortgage which Defendants
6. executed.
7. 5. Defendant Balassanian also signed a Borrowing and Guaranty Resolution personally
8. guaranteeing the debt.
9. 6. The Marine Installment Note, First Preferred Ship Mortgage, and Borrowing and
10. Guaranty Resolution are all valid contracts.
11. 7. Defendants agreed to repay the \$1,800,000.00 they borrowed from SunTrust in 240
12. monthly installments of \$11,632.02 commencing on March 1, 2013.
13. 8. Defendants defaulted on their obligations in late 2014 and the Vessel was repossessed
14. on February 3, 2015.
15. 9. After Defendants redeemed their default in February of 2015, Defendants again began
16. to miss payments.
17. 10. Defendants defaulted under the terms of the Installment Note on November 16, 2015
18. and failed to correct the default.
19. 11. As a result of Defendants' default, SunTrust exercised its right to accelerate the loan.
20. 12. The vessel at issue ("Just Be") was repossessed on February 12, 2016.
21. 13. On or about February 17, 2016 SunTrust mailed a letter to Defendants which stated in
22. the subject line "Notice of Our Plan To Sell Property".
23. 14. SunTrust received a letter from Fred Robinson dated February 24, 2016.
24. 15. SunTrust or its agents commissioned Bill Evans of Blue Water Marine Surveyors to
25. perform a survey on the Just Be on or about February 23, 2016.
26. 16. SunTrust or its agents commissioned Charles Solarek of CWS Maritime Services to

PRETRIAL ORDER

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1. perform a survey on the Just Be on or about June 9, 2016.

2. 17. In January 2017, Dean Jones commissioned a pre-purchase condition and valuation
3. survey of the Just Be by Bill Evans of Blue Water Marine Surveyors.

4. 18. On or about March 24, 2017 SunTrust mailed a letter to Defendants which stated in
5. the subject line “Explanation of Calculation of Deficiency or (Surplus)”.

6. 19. Defendants did not pay the deficiency stated in the March 24, 2017 letter from
7. SunTrust.

8. 20. SunTrust Financed the loan for Dean Jones to buy the Just Be.

9. 21. Edward Balassanian used Just Be as a principal dwelling for a period of time.

10. 22. Rick Young is not licensed as a vessel dealer in Washington State.

11. 23. Rick Young has sold fewer than 5 boats in Washington State in 2016.

12.
13.
14. ISSUES OF LAW

15. The parties agree on the following issues of law:

16. 1. Whether SunTrust was damaged by Defendants’ breach of the installment note.
17. 2. Whether SunTrust mitigated its alleged damages.
18. 3. Whether SunTrust violated RCW 62A.9A-610, which mandates that every aspect of a
19. disposition of collateral, including the method, manner, time, place, and other terms, must
20. be commercially reasonable.
21. 4. Whether Balassanian is entitled to damages under RCW 62A.9A-625.
22. 5. Whether the Just Be was a “consumer good” as referenced in RCW 62A.9A-625

23.
24. Plaintiff contends that the following are additional issues of law to be determined by the
25. court:

26. 1. The issues relevant to whether SunTrust violated RCW 62A.9A-610 are:

PRETRIAL ORDER

Suntrust Banks, Inc. v. BE YACHTS LLC, et al.

1. a. Whether SunTrust made efforts to reach segments of the public reasonably
2. expected to have an interest in bidding on the vessel;
3. b. whether SunTrust engaged in an analysis to determine a fair market price for the
4. vessel.
5. c. whether the sale conformed to commercially reasonable standards; and
6. d. whether the means and methods of the disposition were overall reasonable under
7. the circumstances.
8. 2. Whether damages under 62A.9A-625(c)(2) are permissive.
9. 3. Whether the phrase “credit service charge” in RCW 62A.9A-625(c)(2) refers to the
10. estimated “Finance Charge” at time of loan origination or accrued interest at the time of
11. loan charge off.
12. 4. Whether Defendant’s counterclaims fail to state a claim for relief.

13.
14. Defendant contends that the following are the additional issues of law to be determined by
15. the court:

16. Defendant agrees that whether SunTrust made efforts to reach segments of the public
17. reasonably expected to have an interest in bidding on the vessel and whether SunTrust engaged in
18. an analysis to determine a fair market price for the vessel are part of the analysis, but are not in
19. isolation the only metrics to be considered in determining commercial reasonableness. Defendants
20. contend that additional issues of law to be determined by the Court are:

- 21.
22. 1. Whether SunTrust used its best efforts to sell the collateral for the highest price.
23. 2. Whether SunTrust acted like a fiduciary in its handling of the marketing and disposition of
24. the collateral.
25. 3. Whether SunTrust has rebutted the presumption that the value of the collateral is equal to
26. the outstanding debt.

PRETRIAL ORDER

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1. 4. Whether SunTrust has met its burden of proof.
2. 5. Whether SunTrust's conduct constitutes unclean hands and/or a basis for an equitable
3. offset.

4.

5. **EXPERT WITNESSES**

6. (a) Each party shall be limited to one expert witness (per LCR 43(j)) on the issues of

7. commercial reasonableness. Plaintiff contends that under the local rule, Defendants are limited to

8. one expert for trial on this entire issue. Defendants contend that they are entitled to present

9. expert testimony on the issue from the expertise of a vessel broker and from the expertise of a

10. marine surveyor.

11. (b) The name(s) and addresses of the expert witness(es) to be used by each party at the

12. trial and the issue upon which each will testify is:

13. (1) On behalf of Plaintiff: None.

14. (2) On behalf of Defendants:

15. 1. Ron Reisner
16. R. Reisner & Associates, LLC
17. 1315 Clarabelle Drive
18. Morro Bay, CA 93442

19. Will testify. Mr. Reisner is expected to testify regarding the opinions in his expert report

20. and supplementary report and topics discussed during his deposition.

21. 2. Neil Emmott
22. 2711 NE 14th Street
23. Fort Lauderdale, FL
24. 33304

25. Will testify. Mr. Emmott is expected to testify regarding the opinions in his updated

26. expert report and topics discussed during his deposition.

OTHER WITNESSES

PRETRIAL ORDER

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1. The names and addresses of witnesses, other than experts, to be used by each party at the
2. time of trial and the general nature of the testimony of each are:

3. (a) On behalf of plaintiff:

4. 1. Buck Fowler – Managing Member
5. Marine Lenders Services, LLC, dba: Waypoint Marine Group
6. Jacobson Terminals, 5350 30th Ave NW
7. Seattle, WA 98107

8. Will Testify. Mr. Fowler is expected to testify about the recovery, storage, marketing, sale,
9. and liquidation of Balassanian’s Motor Yacht JUST BE.

10. 2. Rick Young – National Sales Director
11. Denison Yacht Sales, Inc.
12. 850 N.E. 3rd Street, #205
13. Dania Beach, FL 33004

14. Will Testify. Mr. Young is expected to testify about the recovery, storage, marketing, sale,
15. and liquidation of Balassanian’s Motor Yacht JUST BE.

16. 3. Brandy Thore – Repossession Coordinator Manager
17. SunTrust Banks, Inc.
18. c/o International Maritime Group, PLLC
19. 800 Fifth Ave, Suite 4100 Seattle, WA 98104
20. Dania Beach, FL 33004

21. Will Testify. Ms. Thore is expected to testify about the recovery, repair, storage, and
22. liquidation of Balassanian’s Motor Yacht JUST BE.

23. 4. Don Beaumont – Owner
24. Nielson Beaumont Marine, Inc.
25. 2420 Shelter Island Drive
26. San Diego, CA 92106

Will Testify. Mr. Beaumont is expected to testify about the recovery, repair, storage, and
liquidation of Balassanian’s Motor Yacht JUST BE.

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1. (b) On behalf of defendant:

2.
3. 1. Edward Balassanian
4. c/o Anna Johnsen Law
5. 1420 Fifth Ave, Suite 2200
6. Seattle, WA 98101

7. Will testify. Mr. Balassanian is expected to testify about Be Yachts, LLC, how Just Be
8. was used, facts about Just Be, and his observations of the repossession, storage, marketing, and
9. sale of Just Be.

10. 2. John Brandenfels
11. 12514 NE 65th St.
12. Kirkland, WA 98033
13. (425) 440-1727

14. Will testify. John Brandenfels is expected to testify about how Just Be was used, facts
15. about Just Be, and his observations of the repossession, storage, marketing, and sale of Just Be.

16. 3. Fred Robinson
17. 11027 Marine View Dr. SW
18. Seattle, WA 98146

19. Will testify. Fred Robinson is expected to testify about his interactions with SunTrust,
20. Nielsen Beaumont, and the vendors involved in this case. He is also expected to testify about his
21. observations of the repossession, storage, marketing, and sale of Just Be.

22. 4. Catheryn Carpenter
23. 6503 128th Pl SW
24. Edmonds, WA 98026
25. (608) 661-3064
26.

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1. May testify. Ms. Carpenter is expected to testify about Be Yachts, LLC, how Just Be was
2. used, facts about Just Be, and her observations of the repossession, storage, maintenance,
3. marketing, and sale of Just Be.

4.
5. 5. Nancy Moore
6. 126 SW 148th Street
7. Suite C100-245
8. Seattle, WA 98166

9. May testify. Ms. Moore is Edward Balassanian's accountant and has been since 2006.
10. She has entered every value related to his businesses. She will testify that the Just Be was never
11. used for commercial purposes and the Be Yachts, LLC never carried on any business or
12. generated any income. If it is determined prior to trial that Just Be is a consumer good, then Mrs.
13. Moore will not testify.

14. 6. David Spencer
15. One Liberty Plaza
16. 23rd Floor
17. New York, NY 10006

18. May testify. David Spencer is Edward Balassanian's tax attorney and has knowledge of
19. Mr. Balassanian's tax history. He is expected to testify that Be Yachts, LLC was a pass-through
20. entity that generated no income and that Just Be was never treated as a commercial asset or used
21. in relation to any of the businesses with which Mr. Balassanian has been involved. Mr. Spencer
22. will also testify how an asset would appear on tax returns if it were used as a business asset. If it
23. is determined prior to trial that Just Be is a consumer good, then Mr. Spencer will not testify.

24. EXHIBITS

25. Each exhibit is identified below with a number, which becomes the number for the
26. exhibit at the trial and appears on the exhibit tag:

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Plaintiff's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
1	ST Marine Installment Note, Disclosure and Security Agrmt.	Stipulated	Stipulated		
2	1st Preferred Ship Mortgage	Stipulated	Stipulated		
3	ST Borrowing and Guaranty Resolution	Stipulated	Stipulated		
4	Bill of Sale and Transfer of Title	Stipulated	Stipulated		
5	USCG Certificate of Documentation	Stipulated	Stipulated		
6	Manufacturer's Statement of Origin as to Sunseeker Manhattan 63	Stipulated	Stipulated		
7	2/18/15 ST Notice of Plan to	Stipulated	Stipulated		

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	Sell to Be Yachts & Balassanian				
8	BUCValupro Report dated 2/3/15	Stipulated	Stipulated		
9	2/11/16 Boat Condition Report	Stipulated	Stipulated		
10	3/24/17 Calculation of Deficiency to Balassanian	Stipulated	Stipulated		
11	Katherine (NB) email to Brandy re negotiating offers to \$1.1M	Stipulated	Stipulated		
12	9/20/16 Email from R. Young (Silver Seas) attaching offers received	Stipulated	Stipulated		
13	9/19/16 \$1.05M Offer (Dean Jones)	Stipulated	Stipulated		
14	7/22/16 \$1.1M Offer	Stipulated	Stipulated		

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1.	15	9/15/16 \$1.0M Offer	Stipulated	Stipulated		
2.						
3.	16	8/26/16 Emails re taking Just Be to Seattle Boat Show and approval thereof	Stipulated	Stipulated		
4.						
5.						
6.						
7.						
8.	17	6/28/16 Email and offer for \$1.1M; Brandy counter at \$1.35M.	Stipulated	Stipulated		
9.						
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13.	18	6/15/16 Email from Brandy to reduce listing price to \$1.4M	Stipulated	Stipulated		
14.						
15.						
16.						
17.	19	4/26/16 \$1.35M Final Offer	Stipulated	Stipulated		
18.						
19.	20	4/28/16 Email from Brandy accepting \$1.35M offer	Stipulated	Stipulated		
20.						
21.						
22.						
23.	21	4/22 - 4/28/18 Emails re \$1.318M	Stipulated	Stipulated		
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	counter-offer and requesting survey and questions re other showings				
22	4/22/16 Email and \$1.255M Offer	Stipulated	Stipulated		
23	3/17/16 \$1.0M Offer	Stipulated	Stipulated		
24	3/17/16 Email from Brandy re initial pricing of Just Be at \$1.7M	Stipulated	Stipulated		
25	2/19/16 Email from Brandy approving Marine Surveyor	Stipulated	Stipulated		
26	3/8/16 Email from Katherine (NB) re inspection of bottom and cleaning as needed	Stipulated	Stipulated		

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27	3/14/16 Email from Don Beaumont re Just Be Valuation	Stipulated	Stipulated		
28	3/7/16 Blue Water Marine Survey	Stipulated	Stipulated		
29	6/9/16 CWS Maritime Services Survey	Stipulated	Stipulated		
30	Nielsen Beaumont, Waypoint and repair Invoices (dated 4/1/16 - 3/14/17)	Stipulated	Stipulated		
31	SunTrust Master Services Agreement with Nielsen Beaumont dated 10/23/14	Stipulated	Stipulated		
32	SunTrust Statement of Work with Nielsen	Stipulated	Stipulated		

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	Beaumont dated 11/18/14				
33	Initial Report of the entity Be Yachts, LLC, filed on January 28, 2013 with the Washington Secretary of State	Stipulated	Stipulated		
34	<i>Just Be</i> Posting and Sold Info on Denison Yachting Online, printout dated 11/21/18	Stipulated	Stipulated		
35	2/17/16 Invoice from Nielsen Beaumont to SunTrust	Stipulated	Stipulated		
36	5 photos of <i>Just Be</i> taken after repossession	Stipulated	Stipulated so long as redacted		
37	Boat Condition Report by Waypoint/Marine	Stipulated	Stipulated		

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	Lender Services 2/12/16				
38	Assignment Details for Just Be dated 1/30/15 and 2/11/16	Stipulated	Stipulated		
39	Nielsen Beaumont Involuntary Recovery dated 2/12/16	Stipulated	Stipulated		
40	Nielsen Beaumont Release of Personal Property dated 2/23/16; and receipts dated 2/23/16, 2/13/16, 2/19/16	Stipulated	Stipulated		
41	Full download of all SunTrust RMS Notes	Stipulated	Stipulated		
42	Publicly available	Stipulated	Stipulated		

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	screenshots of Superyacht Sales and Charter vessel docks and moorage				
43	Publicly available screenshots of Waypoint Marine Docks	Stipulated	Stipulated		
44	Yatco Newsletter Yacht Broker Agent Fees Explained	Stipulated	Stipulated		
45	Comps from May 25, 2020	Stipulated	Stipulated		
46	Yachtworld Website Articles	Stipulated	Stipulated		
47	Rick Obey & Associates Buyer's closing statement dated 1/1/13	Stipulated	Stipulated		

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48	January 2017 Blue Water Marine Survey	Not Stipulated	Not Stipulated	D	
49	Defendants' Discovery Responses and Supplemental Discovery Responses	Not Stipulated	Not Stipulated	D	

Because there is a numbering discrepancy for exhibits numbered 32 and higher, Defendants reserve the right to object if the exhibit actually offered is different from Plaintiff's prior representations.

Defendant's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
101	Email from Fred Robinson and Nielsen Beaumont's Response	Stipulated	Stipulated		
102	Email from Brent Martin and Nielsen Beaumont's Response	Stipulated	Stipulated		
103	List of boats for sale at WayPoint Marine	Stipulated	Stipulated		
104	Leases and Office Correspondence	Stipulated	Stipulated		

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1.	105	Survey of Vessel done on behalf of Dean Jones	Stipulated	Stipulated		
2.						
3.	106	Be Yachts LLC documents from the WA SOS	Stipulated	Stipulated		
4.						
5.	107	Purchase document showing price of Vessel was \$2,461,800.00	Stipulated	Stipulated		
6.						
7.						
8.	108	Publicly available screenshots regarding Nielsen Beaumont	Stipulated	Stipulated		
9.						
10.	109	Emails between Cathryn Carpenter and Buck Fowler	Stipulated	Stipulated		
11.						
12.	110	Transaction Summary Calculating Deficiency	Stipulated	Stipulated		
13.						
14.	111	SunTrust Record of Payment and Fees	Stipulated	Stipulated		
15.						
16.	112	Higher quality images of produced comps	Stipulated	Stipulated		
17.						
18.	113	Print Out from SunTrust Website	Stipulated	Stipulated		
19.						
20.	114	Article from Denison Yachting	Stipulated	Stipulated		
21.	115	Documents from Buck Fowler's fraud case	Stipulated	Disputed	C, R, P, E, 401, 403, 404, 608(b), 802	
22.						
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116	Photos of Waypoint Marine	Stipulated	Stipulated		
117	Ron Reisner's CV	Stipulated	Stipulated		
118	SunTrust's Discovery Responses Pleading	Stipulated	Stipulated		
119	SunTrust's Supplemental Discovery Responses Pleading	Stipulated	Stipulated		
120	Invoices and Correspondence showing maintenance and upgrades	Stipulated	Stipulated		
121	Ron Reisner's Expert Report	Stipulated	Stipulated		
122	Ron Reisner's Supplemental Expert Report	Stipulated	Disputed	N	
123	Neil Emmott's Updated Expert Report	Stipulated	Disputed	N	
124	Correspondence sent by Fred Robinson	Stipulated	Stipulated		
125	4 Screen Shots of SunTrust RMS Notes	Stipulated	Stipulated		
126	Email from Don Beaumont to Brandy Thore (ST0066)	Stipulated	Stipulated		
127	Neil Emmott's First Expert Report	Stipulated	Stipulated		

The Parties' Objection Code:

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1.	C	Character Evidence Not Admissible to Prove Conduct
2.	R	Relevance
3.	P	Probative value outweighed by unfair prejudice and confusing the issues
4.	E	Extrinsic evidence not admissible to prove specific instances of witnesses conduct
5.	N	The report is not fairly characterized as a supplemental report; it is a new report
6.		based on entirely different data and was provided after the deadline to provide
7.		expert witness reports.
8.	D	Authenticity and admissibility cannot be determined because the exhibit has not
9.		been produced in its final form after request by counsel.

10.

11.

12. ACTION BY THE COURT

13. (a) This case is scheduled for trial without a jury on June 15, 2020, at 9:00 a.m.
14. (b) Trial briefs shall be submitted to the court on or before June 5, 2020.
15. (c) Pretrial conference to be held on June 10, 2020 at 9:30 a.m.

16.

17. This order has been approved by the parties as evidenced by the signatures of their counsel.


18. This order shall control the subsequent course of the action unless modified by a

19. subsequent order. This order shall not be amended except by order of the court pursuant to

20. agreement of the parties or to prevent manifest injustice.

21.

22. DATED this 15th day of June, 2020.

23. 

24. _____

25. MARSHA J. PECHMAN

26. UNITED STATES DISTRICT JUDGE

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FORM APPROVED

 /s/Anna Johnsen

Anna K. Johnsen, WSBA No. 44828
ANNA JOHNSEN LAW PLLC
Attorney for Edward Balassanian and Be Yachts LLC
US Bank Centre
1420 Fifth Avenue, Suite 2200
Seattle, WA 98101
Tele: 206.450.4974
Facsimile: 206.770.6104
Email address: annaj@annajohnsenlaw.com

*Attorney for Defendants
Edward Balassanian and Be Yachts, LLC*

INTERNATIONAL MARITIME GROUP, PLLC

BY: /s/DANIEL ARMSTRONG
DANIEL A. ARMSTRONG (CAL BAR No. 270175)
ADMITTED *PRO HAC VICE*
800 FIFTH AVENUE; SUITE 4100
SEATTLE, WA 98104
PHONE: (206) 992-0710 | FAX: (206) 707-8338
ARMSTRONG@MARITIME.LAW

By: /s/Isaak Hurst
R. ISAAK HURST, WSBA BAR No. 43679
800 FIFTH AVENUE; SUITE 4100 | SEATTLE, WA 98104
PHONE: (206) 707-8338 | FAX: (206) 707-8338
HURST@MARITIME.LAW

Attorneys for Plaintiff SunTrust Banks, Inc.

PRETRIAL ORDER
Suntrust Banks, Inc. v. BE YACHTS LLC, et al.