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11 Defendant/Cross-complainant TORICK FARMS, LLC

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF LAKE

14 LANGTRY FARMS, LLC, a Delaware
15 Limited Liability Company,

16 Plaintiff,

17 v.

18 HUGH REIMERS, an individual;
19 TORICK FARMS, LLC, a California Limited
20 Liability Company; and
21 DOES 1-20,

22 Defendants.

23 AND RELATED CROSS-ACTION

Case No.: CV421774

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
CROSS-COMPLAINANT'S EX PARTE
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE PRELIMINARY
INJUNCTION**

Date: May 19, 2021

Time: 3:30 p.m.

Dept.: 1

Complaint Filed: May 3, 2021

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I
INTRODUCTION

This action seeks to compel the release of wine belonging Torick Farms, a grower, which is being held hostage by Langtry Farms, a winery. Langtry made the wine for Torick on a custom crush basis and Torick paid all amounts due. Langtry now claims that the wine damaged its tanks and refuses to release the wine until Torick pays \$327,000 in damages. Torick categorically rejects Langtry's damage claim. Langtry is currently holding \$950,000 worth of Torick's wine to strong-arm Torick.

Langtry claims it is holding the wine based on a warehouse lien. It does not have a warehouse lien, which attaches only if the goods are described in a warehouse receipt or written storage agreement. There is no storage agreement in this case and no warehouse receipts were issued. Even if Langtry had such a lien, it would only cover storage and handling charges, not a claim for tort damages. Nor would a warehouse lien entitle Langtry to seize wine valued at \$950,000 to secure an unsubstantiated \$327,000 claim.

Torick's need for judicial relief is urgent. Langtry is threatening to sell the wine to foreclose on its non-existent lien. Two buyers are about to walk away from contracts to purchase half the wine, a loss which will devastate Torick's business and irreparably injure its reputation in the marketplace. The wine itself is in jeopardy, because Langtry has blocked Torick's regular access to it, preventing Torick from monitoring the wine's quality and taking steps to preserve its value.

Torick prays for a temporary restraining order, directing release of the 21,900 gallons of wine that is currently under contract. Such an order will not cause Langtry any harm because the winery will still hold some 23,000 gallons of Torick's wine, worth far more than the damages Langtry is claiming.

Torick also seeks an order to show cause setting a preliminary injunction hearing to compel the release of the remaining 23,000 gallons of wine. The merits of Langtry's damage claim will be adjudicated in due course. Until then, Langtry should not be allowed to hold Torick's livelihood hostage.

II **STATEMENT OF FACTS**

Defendant/Cross-Complainant Torick Farms, LLC ("Torick") is a grape grower that also makes bulk wine. Plaintiff/Cross-Defendant Langtry Farms, LLC ("Langtry") is a winery that makes wine for customers on a custom crush basis. Torick delivered grapes from the 2020 harvest to Langtry pursuant to a "crush and delivery" arrangement (Reimers Dec. ¶ 3; Stine Dec. ¶ 3). For a flat fee of \$350 per ton, Langtry would make wine from Torick's grapes and allow Torick to keep the wine at Langtry through April 2021, by which time Torick would either sell it or transfer it to another facility (Reimers Dec. ¶ 3; Stine Dec. ¶ 3).

Torick negotiated these arrangements with Eric Stine, Langtry's Vice President of Winemaking. They were approved in advance by Langtry's CEO Easton Manson (Stine Dec. ¶ 4). Stine also told Manson that some of the grapes – Pinot Noir from the Russian River appellation in Sonoma County – had been rejected by Duckhorn Winery on grounds that they were smoke tainted. The grapes were not smoke tainted. Duckhorn merely used smoke taint as an excuse to get out of the Torick contract because Duckhorn had an oversupply of grapes, a common practice among wineries during fire years (Stine Dec. ¶ 5).

Stine told Manson that he knew the vineyard where Torick's Russian River Pinot Noir was grown, that it was far away from any fires, and that the grapes were not smoke tainted (Stine Dec. ¶ 6). Manson told Stine to bring Torick's grapes into the winery. Nothing more was said about

1 smoke taint until the end of March, six months after the wine was made (Stine Dec. ¶ 7; Reimers
2 Dec. ¶ 9).

3 In February and again in April 2021, Torick entered into contracts to sell some of its
4 Pinot Noir. Bogle Winery agreed to buy 11,100 gallons at \$22 per gallon, and WX Brands con-
5 tracted for 10,800 gallons at \$20 gallon (Reimers Dec. ¶ 4, Exhs. A and B). That would leave
6 over 23,000 of Torick’s Pinot Noir in the winery which Torick was planning to move to
7 Redwood Valley Cellars for storage by the end of April (Reimers Dec. ¶ 14).

9 On March 29, 2021, two days before Bogle was scheduled to pick up its wine, Langtry
10 presented Torick with an invoice for \$26,144.43 in storage charges, despite the parties’ “crush
11 and delivery” arrangement (Reimers Dec. ¶ 10, Exhs. D and E). This was the first time Langtry
12 had attempted to charge Torick for storage. Torick’s wine had been stored at the winery since
13 October 2020. Wanting to deliver the wine as promised to Bogle, and to avoid becoming
14 embroiled in a dispute with Langtry, Torick reluctantly paid the charges under protest (Reimers
15 Dec. ¶ 8). Langtry nonetheless refused to release the wine to Bogle when Bogle’s truck arrived
16 at Langtry’s facility on April 1 to pick up the wine (Reimers Dec. ¶ 6).

19 In its March 29 letter, enclosing the invoice for storage charges, Langtry asserted for the
20 first time that Torick’s Russian River Pinot Noir was smoke tainted and had damaged Langtry’s
21 large oak holding tanks (Reimers Dec. Exh. E). The wine is not smoke tainted and Torick has
22 the laboratory reports to prove it (Reimers Dec. ¶¶ 11-13, Exhs. G and H). Langtry was holding
23 the Pinot Noir in 40-year-old charred oak tanks that have handled millions of gallons of wine
24 (Stine Dec. ¶ 8). Torick has requested Langtry’s evidence that Torick’s wine is smoke tainted
25 and caused the alleged damage; Langtry has not provided any (Block Dec. ¶ 4).

1 On April 14, 2021, Langtry presented Torick with an invoice for \$327,135 as compensa-
2 tion for its damaged tanks (Reimers Dec. ¶ 10, Exh. E).¹ Langtry alleges that Torick committed
3 fraud by failing to disclose that the grapes were smoke tainted before they came into the winery
4 (Reimers Exh. F). It was actually Vice President Eric Stine who told CEO Easton Manson that
5 the grapes were untainted by smoke based on Stine’s personal knowledge of the vineyard in
6 question (Stine Dec. ¶¶ 6-7).

8 Langtry has repeatedly refused Torick’s requests to release the wine. Langtry told Bogle
9 Winery that it is holding the wine because Torick is “behind on payments” to Langtry. Bogle
10 repeated that comment to Turrentine, a leading bulk wine broker (Reimers Dec. ¶ 7, Exh. C),
11 which raises concerns that this false and derogatory information will spread further. For Langtry
12 to spread such misinformation about Torick in the tight-knit wine community is clear evidence of
13 malice. If Bogle Winery and WX Brands cancel their contracts with Torick because Torick
14 cannot deliver, Torick’s reputation in the bulk wine market will be irreparably injured.

17 **III** **ARGUMENT**

18 **A. Langtry Has No Warehouse Lien on the Torick Wine** 19 **Because the Parties Do Not Have A Written Storage** 20 **Agreement and No Warehouse Receipts Were Issued.**

21 The principles governing warehouse liens are set forth in section 7-209 of the Uniform
22 Commercial Code, adopted in California as Commercial Code section 7209. Previously, a ware-
23 house could claim a lien on stored goods only if the goods were covered by a warehouse receipt.²

26 ¹ The invoice is for a total of \$330,266.10 because it includes \$3,131.10 in storage charges (Reimers Dec. Exh. E).
The rest is for alleged tank damage.

27 ² A warehouse receipt is a negotiable document of title which must contain specified information, including storage
28 rates and a description of the goods, pursuant to the Uniform Commercial Code. (Cal. U. Comm. Code ¶ 7-202.)

1 As revised, the statute provides that a warehouse lien also attaches if the goods are covered by a
2 storage agreement. (See section 1 of the Official Comment to the California Uniform Commer-
3 cial Code § 7-209.)

4 A warehouse lien attaches only to the specific goods described in the storage agreement
5 or warehouse receipt. Thus, the existence of either a warehouse receipt or a storage agreement is
6 an absolute prerequisite to a warehouse lien. (*In re Aerospace Technologies, Inc.* (Bankr.
7 M.D.N.C. 1996) 199 B.R. 331, 337; accord *In re Siena Publishers Assn* (Bankr. S.D.N.Y. 1993)
8 149 B.R. 359, 362; *In re Celotex Corp.* (Bankr. M.D. Fla. 1991) 134 B.R. 993, 996; *In re*
9 *Knoware, Inc.* (Bankr. D. Mass. 1986) 57 B.R. 163, 165; *In re Charter Co.* (Bankr. M.D. Fla.
10 1985) 56 B.R. 91, 95.)³ There is no warehouse lien without one or the other. (See section 6 of
11 the Official Comment to the California Uniform Commercial Code § 7-209 [a “possessory
12 warehouse lien arises . . . if the parties to the bailment have a storage agreement or a warehouse
13 receipt is issued”].)

14 Langtry has no warehouse lien on the Torick wine. Torick never received a warehouse
15 receipt (Reimers Dec. ¶ 3) and Langtry concedes that there was no storage agreement (Reimers
16 Exhs. D and F). Unless a possessory lien exists, a defendant has no right to withhold possession
17 of property from its owner even if the owner is allegedly indebted to the defendant. (*RCA Service*
18 *Co. v. Sup.Ct. (Bullock)* (1982) 137 CA3d 1, 3.) Because Langtry has no warehouse or other
19 possessory lien, it has no lawful grounds to seize and detain Torick’s wine.
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27 ³ Although not binding, these cases are persuasive because they interpret identical language contained in the UCC as
28 adopted in various states. There is no California precedent on point.

1 **B. Even If Langtry Had a Warehouse Lien on the Wine,**
2 **It Would Only Cover Storage Charges, Not Langtry’s**
3 **Unsubstantiated Claim for Damages.**

4 Section 7-209 of the California Uniform Commercial Code defines the scope of a ware-
5 house lien. It provides that the lien attaches to the goods described in the warehouse receipt or
6 storage agreement “for charges for storage or transportation, including demurrage and terminal
7 charges, insurance, labor, or other charges, present or future, in relation to the goods, and for ex-
8 penses necessary for [their] preservation . . .”

9 In plain language, the lien covers storage and handling charges. It is limited, as the UCC
10 Official Comment notes, “to the usual charges arising out of a storage transaction.” (See section
11 1 of the Official Comment to the California Uniform Commercial Code § 7-209.) Because it is a
12 statutory lien, the scope of a warehouse lien must be strictly construed. (*Jefferson County Co-op*
13 *Ass’n v. Northeast Kansas Production Credit Ass’n* (Bankr. D. Kan. 1982) 73 B.R. 3, 5.)

14 Courts have rejected attempts to expand the warehouse lien to cover obligations only
15 tangentially related to the rendition of storage services. For example, a warehouse lien does not
16 secure a loan extended by a warehouse to a grower for seed, herbicide, insecticide and fertilizer
17 to produce his crop, even when the grain is subsequently stored in the warehouse that extended
18 the loan. (*In re Lewis* (Bankr. D. Kan. 1987) 70 B.R. 699, 702-703; *Jefferson County Co-op*
19 *Ass’n v. Northeast Kansas Production Credit Ass’n* (Bankr. D. Kan. 1982) 73 B.R. 3, 5.) Nor
20 does a warehouse lien secure a private factoring loan from a warehouse unrelated to the storage
21 and preservation of specific goods. (*James Talcott, Inc. v. Stagg Warehousing & Distributing*
22 *Co.* (1964) 252 N.Y.S.2d 628, 629.)

23 Langtry’s attempt to stretch its warehouse lien beyond its recognized scope should be
24 rejected. Its claim for tort damages is not among the “usual charges” arising from a storage
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1 transaction. It is not a “charge” at all but a demand to be compensated for an alleged tort which
2 may not even have occurred.

3 A warehouse lien is designed to secure the payment of storage and handling charges that
4 are set by the parties’ contract and generally undisputed. It is not intended to secure unliquidated
5 damage claims. If the rule were otherwise, warehouse owners would have a proverbial gun
6 pointed at the head of every bailee which they could use to extort money based on
7 unsubstantiated allegations. That is what Langtry is trying to do here.

9 Langtry will get its day in court on the merits. For now, the merits are not before the
10 Court. Before the Court now is a preliminary question of decisive importance, namely, whether
11 Langtry may deprive Torick of its inventory before the merits of Langtry’s claims have been
12 adjudicated. If so, then warehousemen enjoy privileges far beyond those enjoyed by other
13 litigants. That is clearly not what the authors of the warehouse lien statute intended.

15 Langtry’s complaint also cites section 7-206 of the California UCC, entitled “Termina-
16 tion of storage at the warehouseman’s option,” in support of its actions. Subsection (c) of that
17 statute provides that the warehouse may sell goods which are a threat to other property, the ware-
18 house facility, or other persons upon reasonable notice to all those having an interest in the
19 goods. First, however, the warehouse must “deliver the goods to any person entitled to them
20 under this division upon due demand made at any time before sale or other disposition under this
21 section.” (Cal. U. Comm. Code § 7-206, subsection (d).)

24 Section 7-206 merely allows a warehouse to rid itself of hazardous goods by selling them
25 when it has no other option. It has no application in cases such as this, where the owner of the
26 goods has not only agreed to remove them from the facility but has demanded that the warehouse
27 release them immediately.

1 **C. Injunctive Relief Is Warranted Because Torick Is Likely**
2 **to Prevail on the Merits of Langtry’s Damage Claim and the**
3 **Balance of Harms Tips Sharply in Torick’s Favor.**

4 In weighing the propriety of injunctive relief, the Court must (a) consider the likelihood
5 that the applicant will prevail on the merits at trial and (b) balance the interim harm that the ap-
6 plicant will suffer if the requested relief is not granted compared to the interim harm that the op-
7 posing party will suffer if it is. (6 Witkin, Cal. Proc. 5th, *Provisional Remedies* § 293 (2020)
8 (collecting cases).) “In balancing hardships, the trial court must exercise its discretion in favor
9 of the party that is more likely to be injured by that exercise.” (*Id.*)

10 Torick has a high likelihood of prevailing on the merits at trial. It has laboratory proof
11 that the grapes in question were not smoke tainted (Reimers Dec. ¶ 12, Exhs. G and H).

12 Langtry’s CEO Easton Manson was told as much not by Torick but by Langtry Vice President
13 Eric Stine based on Stine’s personal knowledge of the vineyard (Stine Dec. ¶¶ 6-7). The tanks
14 that were allegedly damaged were made of toasted oak, were placed in service around 1980, and
15 held millions of gallons of wine over the years (Stine Dec. ¶ 8). The probability of Langtry
16 proving that a specific batch of Torick wine damaged those tanks is extremely low.

17 Langtry will suffer no harm whatsoever from the issuance of a temporary restraining or-
18 der because it will still be holding 23,000 gallons of Torick’s wine, which is worth more than
19 Langtry is claiming in damages. Torick, in contrast, will lose half its Russian River Pinot Noir
20 inventory if Langtry is allowed to keep its wine. More importantly, it will lose two important
21 customers, perhaps forever, and potentially many more based on the damage caused to Torick’s
22 goodwill by breach of the Bogle and WX Brands contracts.

1 The injury to the reputation of Torick and its principal, Hugh Reimers, will be irreparable
2 in the absence of injunctive relief. The wine industry in Lake, Napa, and Sonoma Counties is in-
3 sular; it is common for business to be done based on reputations and handshakes rather than legal
4 documents. Torick's reputation as a reliable partner will be seriously harmed if it breaches its
5 Pinot Noir contracts. Langtry has already spread false rumors that it is holding Torick's wine be-
6 cause Torick is not paying its bills. The damage to Torick's goodwill from such a malicious
7 falsehood is obvious.
8

9 The Court has authority to issue an injunction ordering the return of wrongfully pos-
10 sessed personal property to its rightful owner. (*Pillsbury, Madison & Sutro v. Schectman* (1997)
11 55 Cal.App.4th 1279, 1289.) It should do so here.
12

13 **IV**
14 **CONCLUSION**

15 Torick respectfully requests the Court to issue a temporary restraining order, enabling
16 Torick to deliver the wine it sold to WX Brands and Bogle immediately. The Court should also
17 set a preliminary injunction hearing to determine whether Langtry has any right to hold the rest
18 of Torick's wine pending the adjudication of Langtry's sham damage claim.
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20 Respectfully submitted,

21
22 May 18, 2021

23 

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TORICK FARMS, LLC