

By: Jackson, Mike

S.C.R. No. 59

CONCURRENT RESOLUTION

1 WHEREAS, MBP Corp. alleges that:

2 (1) in May 1990, the Board of Trustees of the Galveston
3 Wharves entered into a lease and development agreement with The
4 Woodlands Corporation;

5 (2) in January 1993, The Woodlands Corporation
6 assigned all of its rights, title, and interest in the lease to
7 Strand Harborside Joint Venture, a Texas joint venture of The
8 Woodlands Corporation and MBP Corp.;

9 (3) in January 1994, The Woodlands Corporation
10 assigned all of its interest in the joint venture to MBP Corp.,
11 effectively dissolving the joint venture, and leaving MBP Corp. as
12 the successor in interest to the lease;

13 (4) under the terms of the lease, MBP Corp., as
14 successor in interest to the lease, would develop tourist-related
15 facilities at its own cost within a time frame dictated by the Board
16 of Trustees of the Galveston Wharves while paying rent to the board
17 for the property, and on termination of the lease, all developments
18 made by MBP Corp. would be owned by the Board of Trustees of the
19 Galveston Wharves;

20 (5) the property affected by the lease includes the
21 rooftop of the Mallory Building, also known as the Galveston Cruise
22 Ship Terminal, and the aerial rights above the Mallory Building;

23 (6) in 1999 and in 2003, the Board of Trustees of the
24 Galveston Wharves and MBP Corp. negotiated amendments to the lease

1 agreement to allow the board to make certain alterations to the
2 rooftop of the Mallory Building related to heating, venting, and
3 air-conditioning systems used in the Mallory Building, other
4 alterations, including construction of an enclosed pedestrian
5 walkway, were also permitted;

6 (7) the costs of developing the rooftop of the Mallory
7 Building and the aerial rights above it are a function of the
8 geometry of the roof, and those costs have consistently increased
9 due to alterations made by the Board of Trustees of the Galveston
10 Wharves;

11 (8) over the past 17 years, MBP Corp., its affiliates,
12 and its predecessors in interest have paid more than \$2,550,000 in
13 rent and expended more than \$10,000,000 in constructing
14 improvements on the leased property, which MBP Corp. markets
15 extensively as the Historic Strand Seaport area;

16 (9) in December 2006, Deputy Port Director Michael J.
17 Mierzwa contacted MBP Corp. on behalf of the Board of Trustees of
18 the Galveston Wharves to amend the lease to allow further
19 alterations to the property, including construction of a 140' x 20'
20 disembarkation ramp;

21 (10) MBP Corp. attempted in good faith to negotiate
22 with the Board of Trustees of the Galveston Wharves, but the board
23 has declined to agree to MBP Corp.'s proposal for an amendment to
24 the lease agreement and has been unwilling to negotiate alternate
25 terms with MBP Corp.;

26 (11) despite the parties' failure to reach an
27 agreement, the Board of Trustees of the Galveston Wharves has

1 proceeded with the alterations to the Mallory Building,
2 constructing "enhanced passenger loading operations," and in so
3 doing has breached the lease;

4 (12) due to existing set-back requirements, the
5 specific needs for development of the rooftop of the Mallory
6 Building and the aerial rights above it, and the Board of Trustees
7 of the Galveston Wharves' past and probable future violations of
8 the lease, MBP Corp. is unable to design a development that could be
9 constructed on the rooftop of the Mallory Building;

10 (13) on April 30, 2007, MBP Corp. issued a formal
11 notice to the Board of Trustees of the Galveston Wharves advising
12 the board that further construction and alterations to the Mallory
13 Building rooftop constituted a default under the lease;

14 (14) despite breach of the lease, MBP Corp. would like
15 to expand and improve its Historic Strand Seaport development and
16 continue its role in the area's tourism industry, to the benefit of
17 the people of Galveston;

18 (15) by entering into the lease with MBP Corp., the
19 Board of Trustees of the Galveston Wharves waived its immunity from
20 suit;

21 (16) under the terms of the lease, MBP Corp. may resort
22 to the courts for specific performance of the lease agreement and is
23 entitled to reasonable attorneys' fees;

24 (17) MBP Corp. will suffer irreparable damage unless
25 the Board of Trustees of the Galveston Wharves is ordered by the
26 courts to restore the Mallory Building rooftop to its condition
27 before the construction of the board's unauthorized alteration for

1 enhanced passenger loading operations, to dismantle the
2 alterations constructed on the rooftop without MBP Corp.'s
3 agreement, and to refrain from making any future alterations to the
4 rooftop and interfering with MBP Corp.'s rights in the air space
5 above the rooftop except as authorized under the lease agreement as
6 amended; now, therefore, be it

7 RESOLVED by the Legislature of the State of Texas, That MBP
8 Corp. is granted permission to sue the State of Texas and Board of
9 Trustees of the Galveston Wharves subject to Chapter 107, Civil
10 Practice and Remedies Code; and, be it further

11 RESOLVED, That the Chairman of the Board of Trustees of the
12 Galveston Wharves be served process as provided by Section
13 107.002(a)(3), Civil Practice and Remedies Code.