

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X		:
GOLDEN GATE YACHT CLUB		:
	Plaintiff,	:
		:
	-against-	:
		:
SOCIÉTÉ NAUTIQUE DE GENÈVE		:
	Defendant,	:
		:
CLUB NÁUTICO ESPAÑOL DE VELA		:
	Intervenor-Defendant.	:
-----X		:

Index No. 602446/07
(IAS Part 49; Cahn, J.)

**DEFENDANT SOCIÉTÉ NAUTIQUE DE GENÈVE’S
RULE 19-a STATEMENT OF MATERIAL FACTS NOT IN DISPUTE**

Pursuant to Rule 19-a of the Rules of the Justices of the Commercial Division, Supreme Court, New York County, Defendant Société Nautique de Genève (“SNG”) submits this statement of material facts in support of its motion to dismiss and for summary judgment under CPLR § 3211(a) and (c), seeking dismissal of the Verified Complaint filed by the plaintiff, Golden Gate Yacht Club (“GGYC”), dated July 20, 2007 (the “Complaint”). SNG contends that as to these facts there are no genuine issues to be tried.

1. The America’s Cup (the “Cup”) is a silver trophy cup that was donated to the New York Yacht Club under the terms of the Deed of Gift (the “Deed”). The Deed governs how challenges are made for the America’s Cup, who may be a qualified Challenger of Record for the Cup, and how matches for the Cup are to proceed. (Affidavit of Hamish Ross (the “Ross Aff.”) Ex. A (the current version of the Deed).)

2. SNG, through Team Alinghi, is the current Defender and trustee of the Cup. SNG won the 31st Cup on March 2, 2003, and successfully defended its title in the 32nd Cup on July 3, 2007. (Ross Aff. ¶ 4.)

3. SNG as trustee ran a very successful 32nd Cup competition. GGYC has stated that under “SNG’s stewardship, the 32nd America’s Cup delivered some of the most hotly-contested racing in recent Cup history and brought Cup sailing to more people worldwide than ever before.” (Ross Aff. ¶ 17.) Indeed, for the first time in Cup history, money from the Cup competition will be distributed to the challengers. (Id. at ¶ 18.)

4. The Deed requires that a challenger be (1) any organized yacht club; (2) of a foreign country; (3) legally recognized in its local jurisdiction; and (4) having an annual regatta on the sea or arm of the sea. As long as a challenger satisfies these requirements, the Deed provides that it is “entitled” to the right of a sailing match for the Cup. (Id. ¶¶ 8, 9 & Ex. A.)

5. The Deed nowhere specifies how old a yacht club must be, how it should be organized, or when its first regatta must be held for that club to qualify as a valid challenger. (Id. Ex. A, Ex. FF)

6. The first yacht club to validly challenge under the Deed is known as the Challenger of Record. The Deed provides that once a valid challenge has been received, the Defender cannot entertain another Challenger of Record until the match has been decided. (Id. Ex. A.)

7. Under the terms of the Deed, the Defender and the Challenger of Record may agree to terms of the race through mutual consent. (Id. Ex. A.) The Deed is silent about the kind of bargain the parties must strike or the content of the rules so agreed. (Id.)

8. If the Challenger of Record and the Defender cannot reach agreement by “mutual consent,” the Deed provides for a two-boat match race held under conditions specified in the Deed. The Challenger of Record designates its vessel with the precise dimensions specified in its notice of challenge and the dates for the match. The Defender, having received notice of the Challenger’s vessel, is free to select its vessel constrained only by the minimum and maximum waterline length dimensions specified in the Deed, chooses the location for the match, and provides the racing rules and sailing regulations that apply. The Deed is silent on when the location and rules are to be provided. (Id. Ex. A.)

9. Club Náutico Español de Vela (“CNEV”) formally challenged SNG for the 33rd America’s Cup on July 3, 2007, immediately after SNG defended its title. (Ross Aff. ¶ 20.)

10. CNEV has been an organized yacht club under the terms of Spanish law since the signing of its constitution on June 19, 2007. (Affidavit of Miquel Terrasa Monasterio “Terrasa Aff.” ¶ 6, attached to the Affirmation of David G. Hille at Ex. C.)

11. CNEV is a foreign yacht club domiciled in, and formed under the laws of, Spain. (Ross Aff. Ex. H.)

12. CNEV is legally registered in Valencia, Spain and has been duly incorporated and registered within the Registry of Sports Organizations of the Valencian Community since June 28, 2007. (Terrasa Aff. ¶¶ 4, 7.)

13. CNEV co-organized the Vuelta España a Vela, a regatta it is and will be having on the Mediterranean Sea, which started this year on September 2, 2007. (Ross Aff. Ex. EE.)

14. CNEV, through its Chairman, has formally undertaken to maintain a regatta called the “Club Náutico Español de Vela Annual Regatta” on an annual basis. (Id.)

15. Throughout the history of the America's Cup, there have been other examples of newly-formed yacht clubs being accepted as challengers, as well as challenger yacht clubs formed for the sole purpose of challenging for the Cup. (Ross Aff. ¶¶ 41 to 49.)

16. Deutscher Challenger Yacht Club e.V. of Germany was newly formed months before it challenged for the 32nd America's Cup (the cup in which GGYC was the Challenger of Record) and was formed for the purpose of challenging for the America's Cup. (Id. ¶ 30.)

17. SNG accepted CNEV's challenge on July 3, 2007, the same day it was issued, and on July 5, 2007, the two clubs publicly released the Protocol Governing the Thirty Third America's Cup (the "33rd Protocol"). (Id. ¶¶ 20, 22.)

18. CNEV negotiated the terms of the 33rd Protocol with SNG during June 2007. (Id. ¶ 22.)

19. GGYC was the Challenger of Record for the 32nd America's Cup. SNG and GGYC announced that GGYC would be the Challenger and publicly released the SNG-GGYC Protocol for the 32nd Cup (the "32nd Protocol") two days after SNG won the 31st American's Cup in March 2003. (Id. ¶ 15.)

20. The 32nd Protocol was amended eleven times. (Id.)

21. As part of the 31st America's Cup competition, an America's Cup arbitration panel ruled that the Deed of Gift does not

have any provision requiring the annual regatta to have been held prior to the lodging of a challenge, nor that the annual regatta must have been held more than once. The only requirement is that the challenging club must be a yacht club "having for its annual regatta an ocean water course on the sea" If it has such a regatta, it is eligible

(Id. Ex. FF.)

22. GGYC was a competitor in the 31st America's Cup and abided by this ruling. (Ross Aff. ¶ 51.)

23. Four other yacht clubs with America's Cup experience have signed onto the 33rd Protocol to race for the 33rd America's Cup: The Royal Cape Yacht Club of South; the Royal Thames Yacht Club of England; the Royal New Zealand Yacht Squadron of New Zealand; and the Deutscher Challenger Yacht Club e. V. of Germany. (Id. ¶¶ 26 to 31.)

24. On July 20, 2007, SNG initiated proceedings under the arbitration provisions in the 33rd Protocol seeking a ruling from the 33rd America's Cup Arbitration Panel (the "Panel") as to the validity of CNEV's challenge. (Id. ¶ 37.)

25. The Panel is comprised of Professor Henry Peter, Luis Maria Cazorla Prieto, and Graham McKenzie. Both Professor Peter and Mr. McKenzie served on the 32nd America's Cup International Sailing Jury under the 32nd Protocol and were therefore nominated and/or accepted by GGYC. (Id. ¶ 38.)

26. On July 23, 2007, the Panel directly asked GGYC to participate in the proceedings and stated that it would accept submissions from GGYC even if GGYC elected not to submit to the jurisdiction of the Panel. (Id. Ex. U.)

27. GGYC declined the invitation. (Id. Ex. V.)

28. On September 7, 2007, the Panel issued its decision, ruling that CNEV's challenge was valid under the Deed. (Id.)

29. A review of America's Cup protocols after 1983 would show that no two are alike. There is no model or standard protocol. The 32nd Protocol to which GGYC was a party is different from prior America's Cup protocols just as it is different from the 33rd Protocol. (Ross Aff. ¶ 34.)

Dated: New York, New York

WHITE & CASE LLP

September 21, 2007

By: _____

Owen C. Pell

David G. Hille

Timothy S. Pfeifer

1155 Avenue of the Americas

New York, New York 10036

(212) 819-8200

Attorneys for Defendant

Société Nautique de Genève