

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

GOLDEN GATE YACHT CLUB,

Plaintiff,

-against-

SOCIETE NAUTIQUE DE GENEVE,

Defendant,

-against-

CLUB NAUTICO ESPAÑOL DE VELA,

Intervenor-Defendant.

Index No. 602446/07

I.A.S. Part 49

Justice Herman J. Cahn

**NOTICE OF PROPOSED
COUNTER-ORDER**

PLEASE TAKE NOTICE that, pursuant to Section 202.48 of the Uniform Rules for the New York State Trial Courts, the annexed proposed counter-order will be presented for settlement and signature to the Honorable Herman J. Cahn, Justice of the Supreme Court of the State of New York, County of New York, in Commercial Division Part 49, Room 232, located at 60 Centre Street, New York, New York 10007, on January 14, 2008, at 9:30 a.m. or as soon thereafter as counsel can be heard.

Consistent with CNEV's letter to the Court dated December 12, 2007, and in contrast to the proposed orders submitted by other parties, the annexed proposed counter-order (a) is limited to the issues briefed by the parties and necessary to the resolution of the pending motions, and (b) avoids placing the Court in the role of referee as to the specifics of yacht races. A blacklined document, which shows the recommended changes to Plaintiffs' proposed Order, is attached as Exhibit A. This Notice of Proposed Counter-

Order supersedes the Notice of Joinder previously served by CNEV and dated December 7, 2007.

Dated: January 9, 2008

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COUNTER-ORDER

Plaintiff Golden Gate Yacht Club (“GGYC”) in motion sequence number 001 having moved this Court for a preliminary injunction and expedited discovery and an expedited trial, and non-parties Reale Yacht Club Canottieri Savoia and Mascalzone Latino (collectively, “Amici”) in motion sequence number 002 having moved this Court for leave to file an amici curiae brief, and Defendant Societe Nautique de Geneve (“SNG”) in motion sequence number 003 having moved this Court to dismiss and for summary judgment, and GGYC in motion sequence number 003 having cross-moved this Court for an order pursuant to N.Y. C.P.L.R. 3211(c) and 3212 granting GGYC’s cross-motion for summary judgment, and Intervenor-Defendant Club Nautico Español de Vela (“CNEV”) in motion sequence number 004 having moved this Court for summary judgment and an order dismissing Plaintiff’s claims;

NOW, upon reading and filing the following papers submitted to the Court:

Motion Sequence number 001: GGYC’s Order to Show Cause, dated August 22, 2007, and

the accompanying Memorandum of Law, the Affirmation of Gina M. Petrocelli and the Affidavit of Thomas F. Ehman, including the exhibits attached thereto; SNG's September 5, 2007 Memorandum of Law in Opposition and the September 5, 2007 Affidavits of Hamish Ross and Miquel Terrasa Monasterio, including the exhibits attached thereto; **Motion Sequence number 002**: Amici's October 5, 2007 Order to Show Cause and the Affirmation of Lance J. Gotko, including the exhibits attached thereto; SNG's October 12, 2007 Response to Proposed Amici's Application; **Motion Sequence numbers 003 and 004**: SNG's September 21 Notice of Motion and Memorandum of Law, the Affidavit of Hamish Ross, including the exhibits thereto, and SNG's September 21, 2007 Commercial Division Rule 19-a Statement of Material Facts; CNEV's September 21, 2007 Notice of Motion and Memorandum of Law, and the Affidavit of Manuel Jose Chirivella Bonet; GGYC's October 5, 2007 Notice of Cross-Motion, Memorandum of Law, the Affidavit of Thomas F. Ehman, Jr. and Affirmation of James V. Kearney including the exhibits thereto, and GGYC's Commercial Division Rule 19-a Statement of Material Facts, and Response to SNG's Commercial Division Rule 19-a Statement of Material Facts; SNG's October 12, 2007 Memorandum of Law, Response to Plaintiff's Commercial Division Rule 19-a Statement, the Affidavit of Hamish Ross and Affirmation of David G. Hille, including the exhibits thereto and CNEV's October 12, 2007 Reply Memorandum of Law and Response to Plaintiff's Commercial Division Rule 19-a Statement and the Affidavit of Manuel Jose Chirivella Bonet and Affirmation of Catherine M. Doll, including the exhibits attached thereto, and GGYC's October 19, 2007 Reply Memorandum of Law and Affirmation of Gina M. Petrocelli, including the exhibits attached thereto;

AND upon hearing oral argument from counsel for the parties on September 10, 2007 and October 22, 2007 respectively;

AND, upon all prior pleadings and proceedings hereto;

AND, upon the Memorandum Decision issued by this Court on November 27, 2007, a true copy of which is annexed hereto as Exhibit A;

it is hereby

ORDERED that the Motion, sequence number 001 for preliminary injunction and expedited discovery and an expedited trial, is denied as moot; and it is further

ORDERED that the Motion, sequence number 002 for leave to file an amici curiae brief, is granted; and it is further

ORDERED that Defendant SNG's Motion to Dismiss and for Summary Judgment in sequence number 003 is granted to the extent it dismisses GGYC's breach of fiduciary duty cause of action; Plaintiff GGYC's Cross-Motion for Summary Judgment in sequence number 003 is granted; and the Motion, sequence number 004 by CNEV for Summary Judgment and to Dismiss GGYC's claims, is denied; CNEV is deemed to not be a valid challenger under the Deed of Gift for the reasons stated in the Memorandum Decision; and it is further

ORDERED that the Clerk of Court is directed to enter judgment accordingly.

Dated: January __, 2008

E N T E R:

Hon. Herman J. Cahn, J.S.C.