

FIRM / AFFILIATE OFFICES

Barcelona	New Jersey
Brussels	New York
Chicago	Northern Virginia
Frankfurt	Orange County
Hamburg	Paris
Hong Kong	San Diego
London	San Francisco
Los Angeles	Shanghai
Madrid	Silicon Valley
Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

January 29, 2008

VIA MESSENGER

Hon. Herman J. Cahn
New York County Courthouse
60 Centre Street, Room 615
New York, NY 10007

Re: Golden Gate Yacht Club v. Societe Nautique de Geneve

Dear Justice Cahn:

Plaintiff Golden Gate Yacht Club ("GGYC") is compelled to ask the Court's indulgence to consider this reply to the lengthy factual submission of Defendant Societe Nautique de Geneve ("SNG"), dated January 28, 2008.

This Court's decision of November 27, 2007, declaring GGYC the valid Challenger of Record (p. 18), is entirely correct and will be upheld on appeal, as SNG provides no underlying basis for changing it. SNG raises no material issues of fact that would have precluded summary judgment had SNG raised them in a timely fashion.¹

The Deed explicitly prescribes the limited information that a challenger must certify in the certificate accompanying its written notice of challenge:

Accompanying the ten months' notice of challenge there must be sent the name of the owner and a certificate of the name, rig and following dimensions of the challenging vessel, namely, length on load water-line; beam at load water-line and extreme beam; and draught of water. (¶ 6.)

¹ The principles of judicial admission and legal standards for a motion to renew and reargue all preclude SNG from relying on its recent factual submission at this stage of the case. As demonstrated in GGYC's Opposition to SNG's Motion for Leave to Renew and Reargue, dated January 2, 2008 (pp. 6-7), SNG is bound by its previous judicial admissions, which contradict its current assertions. By presenting facts available to it at the time of the earlier motion, as well as new and different arguments about issues then before the Court, SNG also fails to meet CPLR 2221's standards for a motion for leave to renew and reargue. (*Id.* at 6.)

That is all the information that the Deed requires, and it was indisputably provided in GGYC's Certificate, dated July 11, 2007. (12/27/2007 Meyer Aff. Ex. C.) Nowhere does the Deed require that the challenger certify any other details about the challenging vessel, such as whether the challenger will race a multi-hull or a mono-hull. Because "the deed makes clear that the design and construction of the yachts as well as the races, are part of the competition contemplated," the Deed expressly identifies the information that a challenger must disclose about its vessel. *Mercury Bay Boating Club Inc. v. San Diego Yacht Club*, 76 N.Y.2d 256, 269 (1990).²

To counterbalance this, the Deed gives the defender great advantage by providing that the defender "shall not be required to name its representative vessel until at a time agreed upon for the start" of the match races. (¶ 8.) The balance struck by the express terms of the Deed is clear: the challenger has no right to know before the start of the match races whether the defender's vessel is multi-hull or mono-hull, the model of the defender's vessel, whether it has keels, the shape of any keel or the shape of the hulls; and the defender has no right to obtain any more information about the challenger's vessel than the owner, name, rig and the four dimensions required in the Deed.

Thus, SNG's new construction of the Deed (requiring the challenger to certify more detail than the name, rig and the four dimensions, or otherwise resolve the defender's claim of confusion) would entirely transform the clear and unambiguous meaning of the Deed and shift the competitive balance struck by the Deed. As the New York Court of Appeals has said, "the deed permits the competitors to both construct and race the fastest vessels possible so long as they fall within the broad criteria of the deed." *Mercury Bay*, 76 N.Y.2d at 269. To read the Deed to require that the challenger certify more than the name, rig and the four dimensions would be to add terms to the Deed.

SNG's new interpretation of the Deed would also obliterate another fundamental and unambiguous provision of the Deed. The Deed requires the defender to accept the first valid challenge ("when a challenge from a Club fulfilling all the conditions required by this instrument has been received, no other challenge can be considered until the pending event has been decided.") (¶ 10.) If the defender could reject a challenge simply by claiming subjective confusion about the challenger's certificate, or claiming it needs more information about the challenger's vessel than provided in the certificate -- as SNG seeks to do here -- it could cherry pick virtually any challenge it prefers from those it receives. This would, practically speaking, give the defender a veto over any first qualified and valid challenger, contravening the express terms of the Deed.

² In its Certificate, GGYC certifies, "the details set out below ..." which contain the name, rig and the four dimensions. (12/27/2007 Meyer Aff. Ex. C.) The Certificate complied with the Deed's requirements. It did not certify any other description of the vessel; it was not so required by the Deed.

Further, the Deed's express terms and structure provide the defender a process for relief if it desires to get more information about the challenger's vessel than the Deed requires.³ The Deed provides that once a valid challenge has been made, the defender has the choice to "accept the challenge, forfeit the Cup, or negotiate agreeable terms with the challenger." *Mercury Bay*, 76 N.Y.2d at 263. In the mutual consent process contemplated by the Deed, the defender can negotiate for additional information about the challenger's vessel, just as the challenger can negotiate, for example, for advance notification about the specifics of the defender vessel. What the defender cannot do is what SNG seeks to do here -- disqualify a challenger because the defender desires more information about the challenger's vessel than the Deed requires, or is allegedly confused about the dimensions provided in compliance with the Deed's explicit requirements.

For entirely separate reasons, SNG's arguments that International Sailing Federation ("ISAF") rules somehow require GGYC to describe in more detail its vessel or to race in a 90' x 90' mono-hull (a barge) are irrelevant as a matter of law. First, there is no evidence that the ISAF rules cited by SNG even apply to the races. The Deed of Gift provides that races shall be sailed subject to the rules and regulations of the "the Club holding the Cup." (¶ 8.) Indeed, GGYC had requested that SNG identify the applicable rules in its motion for a preliminary injunction. (8/22/2007 GGYC Mem. at 23.) SNG refused. (9/5/2007 Mem. at 22-23.) Even in its lengthy January 28, 2008 Ostrager Affirmation, SNG has not disclosed its sailing rules for the races.⁴

Second, whatever SNG's sailing rules are, they cannot supersede the Deed of Gift, or remove the jurisdiction of this Court to interpret and enforce the Deed. The Deed provides that the races "shall be sailed subject to [the defender's] rules and sailing regulations *so far as the same do not conflict with the provisions of this deed of gift.*" (¶ 8) (emphasis added.) Thus, to the extent that a defender's rules and regulations purport to require that a challenger's certificate disclose more information than that required by the Deed, those rules would not apply. Nor

³ It is clear from SNG's prior submissions that it has always been fully aware that GGYC's Certificate describes a multi-hull vessel; in his sworn affidavit, submitted by SNG on its motion for summary judgment, Hamish Ross, the General Counsel of SNG's representative racing team (Alinghi), stated that the Certificate contains "*dimensions [that] can only be for a multi-hulled vessel -- presumably, a catamaran.*" (9/21/2007 Ross Aff. ¶ 36.) (emphasis added.) Accordingly, SNG's new claim that it cannot "understand" GGYC's Certificate is a charade. SNG's post-summary judgment decision claim that it does not know that the dimensions of GGYC's challenging vessel describe a multi-hull is entirely belied by its team's retention of Mr. Nigel Antony Irens, who states that "the majority of my work has been in the field of the design of racing multi-hulled sailing yachts," (Ostrager Aff. Ex. B at ¶ 2), and that he is "currently retained by Team Alinghi [SNG's representative America's Cup racing team] as a design consultant with respect to the design of a defending yacht." (*Id.* at ¶ 1.)

⁴ Refer to ¶¶ 5 and 22, where SNG's counsel fails to aver that SNG agrees that the ISAF rules apply to the race.

LATHAM & WATKINS LLP

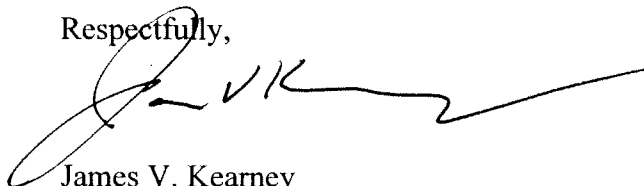
could a defender's selection of racing rules divest the New York Court of jurisdiction over the Deed.

Third, SNG cites no ISAF rule that so much as discusses the certificate that must accompany a notice of challenge, pursuant to the Deed, let alone one that explicitly prescribes what the Deed of Gift's certificate must contain.

Finally, SNG's contention that the ISAF rules for "keelboats" are distinct from those for "multihulls" is nothing more than a strawman; nowhere does GGYC's Certificate even contain the word "keelboat." Thus it does not matter that the ISAF, for Olympic competition, classifies some vessels as keelboats and others as multi-hulls.

Accordingly, GGYC respectfully requests that the Court enter its proposed order, dated December 11, 2007.

Respectfully,



James V. Kearney
of Latham & Watkins LLP

Copies by Hand Delivery to:

Carolyn T. Ellis, Esq.
Assistant Attorney General
Section Chief
Charities Bureau
120 Broadway
New York, NY 10271

David W. Rivkin, Esq.
Jeremy Feigelson, Esq.
Catherine M. Doll, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022

Barry R. Ostrager, Esq.
Jonathan K. Youngwood, Esq.
George S. Wang, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017