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March 26, 2008

VIA MESSENGER

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

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

Dear Justice Cahn:

As counsel for Plaintiff Golden Gate Yacht Club (“GGYC”), we respectfully submit this letter to request a hearing to complete the Rule 202.48(c) process to settle the order implementing the Court’s decision dated November 27, 2007, granting GGYC summary judgment. (“November 27 Decision”.)

In December 2007, pursuant to the Rule 202.48(c) process, the parties proposed orders to implement the November 27 Decision. GGYC proposed race dates of October 1, 3, and 5, 2008. (GGYC 12/3/2007 & 12/11/2007 Proposed Orders.) SNG agreed that the Order should contain race dates, but selected dates in July, 2009, a full two years after GGYC’s challenge issued on July 11, 2007. (12/6/2007 Affirmation of D. Hille ¶ 5.) By letter dated December 11, 2007, GGYC submitted a compromise proposed order which accepted all of the terms of SNG’s proposed counter-order dated December 6, 2007, except it contained GGYC’s selected dates of October 1, 3 and 5, 2008 rather than those selected by SNG in July 2009.

Only after SNG completed the Rule 202.48(c) process did SNG request that race dates be excluded from the Order, entirely. SNG’s untimely position is wrong as a matter of law.¹

¹ As instructed by the Court in its decision dated March 17, 2008, denying SNG’s motion for leave to reargue and renew, (“March 17 Decision”) GGYC has had a meeting with Defendant Societe Nautique de Geneve (“SNG”) to resolve the race date issues, but the parties have been unable to reach an agreement, as SNG insisted on a date a full two years after GGYC’s notice of challenge.

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Complete relief -- to which GGYC is entitled upon summary judgment -- requires the Court to order the race dates of GGYC's selection, rather than, in effect, grant to SNG a right to veto any dates GGYC may select and thereby effect a stay of the Court's summary judgment for GGYC.

The Deed of Gift explicitly provides that the challenger, in this case GGYC, is entitled to select the dates for the match in its Notice of Challenge. (¶ 6.) To counterbalance this, the Deed gives the defender great advantage, including the right to select the location, the right not to disclose its competing vessel until the start of the races and the right to use its sailing rules and regulations, to the extent that they do not conflict with the provisions of the Deed. (¶¶ 6, 8.) Having balanced the competitive advantages thusly between the two in a match prescribed in the Deed, the Deed then provides that they can engage in a mutual consent process to fix "any and all conditions of the match." (¶ 7.) But the competing clubs are *not* required by the Deed to negotiate the dates and location *before* they make their respective selections, which are binding unless otherwise agreed to by the competing clubs. An order implementing summary judgment declaring GGYC as the valid challenger of record that does not fix a date for the match upsets the competitive balance established in the Deed and, most significantly, denies GGYC its right to select the dates.

The only limitation provided in the Deed to the challenger's right to select the race dates is that it "shall give ten months notice" (¶ 6), giving each competitor at least ten months to prepare. GGYC did so in its July 11, 2007 Notice of Challenge, naming dates in July 2008. When GGYC was granted summary judgment in the November 27, 2007 Decision, the race dates were postponed in GGYC's proposed order to the October, 2008 dates to accommodate a ten-month period from November 27, 2007, at which time its rights as the challenger had been established.

In SNG's letter written after the March 17 Decision it asserted that the match should occur ten months after the date of the Court's March 17 Decision. (SNG 3/19/2008 Letter.)² But SNG is wrong as a matter of law when it contends that the ten month notice period should run from the issuance of the March 17 Decision, rather than the November 27 Decision. Accepting SNG's assertion would permit SNG to benefit from its breach of the terms of the Deed by using its breach and the ensuing litigation to extend its race preparation time. The law does not permit the wrongdoer to benefit from its wrongdoing. SNG would also benefit from its litigation tactic of first withholding arguments on its motion for summary judgment and then inserting them into a motion for leave to reargue and renew with the attendant effect of further delay in implementing the Court's declaratory relief on summary judgment.³

² See http://www.alinghi.com/multimedia/docs/2008/03/sng_letter_3-19-08_v6.pdf (last visited March 26, 2008.)

³ As detailed in SNG's proposed counter-order, attached to its notice of counter-settlement, dated December 6, 2007, "the parties agreed to attempt to negotiate a stipulation tolling the notice period" but they could not agree on the terms of a stipulation. (p. 3.)

SNG has raised two legal arguments to postpone the October 2008 race dates. Both can be rejected as a matter of law. First, SNG claims that it cannot have a race in Valencia on October 2, 3 and 5, 2008 because that City will host the Formula One race over eleven days in August, 2008. (12/6/2007 Affirmation of D. Hille ¶¶ 10-12.) However, under the Deed, the challenger is not required to select dates that are compatible with the defender's preferred location. It is the other way around. The challenger is entitled to select the dates. The defender is *then* entitled to select the location. The Deed does not permit SNG to effect a change in the dates selected by GGYC by simply choosing a venue that cannot accommodate the race dates. Most tellingly, on close examination of its prior submissions, it is apparent that SNG has not in fact selected Valencia for the race. (12/6/2007 Affirmation of D. Hille ¶ 9.)

SNG's second argument is no better. In its March 19th letter, SNG asserts that the ten-month notice period runs from the March 17 Decision, ending January 2009. But it then asserts that further delay is required because "GGYC's challenge specifies a race in the Northern Hemisphere." (*Id.*) This assertion is both incorrect and irrelevant. GGYC did not specify the Northern Hemisphere in its written notice of challenge and it had no right to specify the hemisphere – only the date.⁴ Rather, the hemisphere for the match is prescribed in the Deed, which provides that:

no race shall be sailed in the days intervening between November 1st and May 1st if the races are to be conducted in the Northern Hemisphere; and no race shall be sailed in the days intervening between May 1st and November 1st if the races are to be conducted in the Southern Hemisphere.

(¶ 6.) Nor does SNG have the right to select the hemisphere. Rather, it must comply with the Deed's specification of the hemisphere *after* the challenger has selected the race dates. Nothing in the Deed permits the defender to, in effect, extend the notice period by the simple expedient of selecting the hemisphere and then requiring that the challenger postpone its selected date to accommodate the defender's choice of hemisphere.

It cannot be disputed that SNG was free to begin preparation for an eventual match with GGYC immediately after the challenge on July 11, 2007 or promptly after the November 27, 2007 decision. Indeed, the publicly available facts show that SNG began preparation for a race in multi-hull vessels shortly after the November 27 Decision.⁵ Nonetheless, SNG now demands that the race be postponed until July 2009, claiming an undefined "unfairness."

⁴ The challenge merely states, "...recognizing the period permitted by the Deed of Gift for a match in the Northern Hemisphere...")

⁵ See, e.g., *Valencia Sailing Talks to Grant Simmer*, quoting Grant Simmer, <http://valenciasailing.blogspot.com/2008/01/valencia-sailing-talks-to-grant-simmer.htm> (last visited March 26, 2008) (quoting Managing Director and Design Coordinator for Team Alinghi, "We only started working on the design of a multihull in the middle of

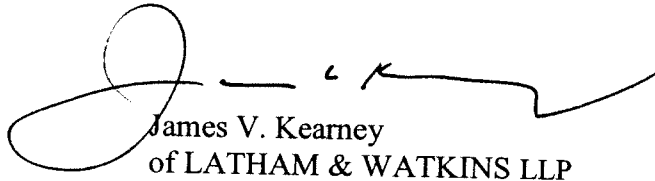
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Yet, the *Mercury Bay* decisions provide clear guidance for the court with the direction that the terms of the Deed must be enforced. First, *Mercury Bay* instructs that fairness and sportsmanship issues are not to be adjudicated by the court. SNG's entire argument that it has insufficient time to prepare a competitive vessel for the race is based on a plea of fairness and good sportsmanship. In support, SNG can present no applicable legal standard, nor any verifiable facts, for the court to adjudicate the issue. SNG's argument thus illustrates the rationale of the *Mercury Bay* directive to leave these issues to the sailors, either by way of the mutual consent process or on the water at the race prescribed in the Deed under the rules set out in the Deed for that race.

Secondly, the *Mercury Bay* decisions counsel that once the court has declared the challenger's right to challenge, the court should not stay the race pending resolution of contested issues. The *Mercury Bay* trial court declined to halt the race to settle issues regarding the "fairness" of the defender's proposed multihull vessel. Nor should this Court countenance further delay or stay the effect of its declaration of rights under the Deed.

Accordingly, GGYC respectfully requests entry of its proposed order, dated December 11, 2007 and respectfully offers to submit an additional copy of the proposed order, upon the Court's request.

Respectfully,



James V. Kearney
of LATHAM & WATKINS LLP

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December."); 1/28/2008 Ostrager Aff. Ex. B, ¶¶ 1, 2, Declaration of Nigel Antony Irens (stating that Mr. Irens is "currently retained by Team Alinghi as a design consultant with respect to the design of a defending yacht" and "[t]he majority of [his] work has been in the field of the design of multi-hulled sailing vessels.")

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