

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION-FIRST DEPARTMENT

Golden Gate Yacht Club
Plaintiff-Respondent,

v.

Societe Nautique de Geneve
Defendant-Appellant,

Club Nautico Espanol de Vela,
Intervenor-Defendant

New York County Clerk's
Index No. 602446/07

**MEMORANDUM OF LAW IN SUPPORT OF CROSS-MOTION TO DISMISS AND IN
OPPOSITION TO SOCIETE NAUTIQUE DE GENEVE'S MOTION FOR STAY
PENDING APPEAL**

LATHAM & WATKINS LLP
Attorneys for Plaintiff-Respondent
Golden Gate Yacht Club
885 Third Avenue
New York, New York 10022
(212) 906-1200

James V. Kearney
Gina M. Petrocelli

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES.....	ii
FACTUAL BACKGROUND.....	1
I. THE UNDERLYING ACTION	1
II. SUMMARY JUDGMENT GRANTED TO GOLDEN GATE	3
III. SOCIETE NAUTIQUE INTERRUPTS SETTLE ORDER PROCESS.....	3
IV. SOCIETE NAUTIQUE’S MOTION FOR REARGUMENT IS DENIED.....	4
V. THE MOTION COURT HAS YET TO ISSUE AN ORDER IMPLEMENTING ITS SUMMARY JUDGMENT IN FAVOR OF GOLDEN GATE	4
ARGUMENT.....	5
I. SOCIETE NAUTIQUE’S PURPORTED APPEAL FROM A NON- APPEALABLE ORDER SHOULD BE DISMISSED.....	5
II. SOCIETE NAUTIQUE SHOULD NOT BE GRANTED A STAY PENDING APPEAL.....	6
A. Societe Nautique Has Failed to Show that the Appeal Has Merit.....	6
B. Societe Nautique Fails to Articulate What, If Anything, Is to Be Stayed	7
C. Societe Nautique’s Appeal is Taken Primarily for Delay	8
D. Societe Nautique Will Not Be Harmed If There Is No Stay	9
E. Golden Gate Will Be Harmed by A Stay Pending Appeal.....	9
CONCLUSION	11

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Broadwall Amer., Inc. v. Bram Will-El LLC</i> , 32 A.D.3d 748, 821 N.Y.S.2d 190 (1st Dep't 2006).....	8
<i>Johnson v. Ford</i> , 823 N.Y.S.2d 67 (1st Dep't 2006).....	6
<i>Mercury Bay Boating Club, Inc. v. San Diego Yacht Club</i> , 150 A.D.2d 82 (1st Dep't 1989).....	7
<i>Mercury Bay Boating Club, Inc. v. San Diego Yacht Club</i> , 76 N.Y.2d 256 (1990).....	7, 10
<i>State Farm Ins. Co. v. Pennsylvania Manufacturers' Ass'n Co.</i> , 834 N.Y.S.2d 25 (1st Dep't 2007).....	6
OTHER	
David D. Siegel, <i>New York Practice § 254 Motion to Renew or Reargue (2008)</i>	5, 6

Plaintiff-Respondent Golden Gate Yacht Club (“Golden Gate”) submits this memorandum of law in support of its cross-motion for an order dismissing Defendant-Respondent Societe Nautique de Geneve’s (“Societe Nautique’s”) Appeal of the March 17, 2008 Order of the Supreme Court, New York County (Hon. Herman J. Cahn) (“Order”) and in opposition to Societe Nautique’s motion for a stay pending expedited appeal, dated April 15, 2008.

On its April 15th motion, Societe Nautique also sought an order expediting appeal and for expedited relief. On April 15, 2008, Golden Gate and Societe Nautique consented to an expedited schedule, which is reflected in this Court’s Order, dated April 15, 2008 (Hon. Richard T. Andrias). (Petrocelli Ex. A at 2).¹ This appeal was also placed on the calendar for the June 2008 term, following an agreed upon briefing schedule.² (*Id.*).

FACTUAL BACKGROUND

I. THE UNDERLYING ACTION

On July 11, 2007, Golden Gate issued a Notice of Challenge for the America’s Cup to the current holder of the Cup, the Defender Societe Nautique, pursuant to the Deed of Gift (“Deed”)³ that governs the event. In compliance with the Deed, Golden Gate’s Notice of Challenge

¹ Citations to “Petrocelli Ex.” refer to the exhibits attached to the Affirmation of Gina M. Petrocelli, dated April 22, 2008.

² Because of the agreed upon briefing schedule and expedited appeal, the parties will likely have submitted their briefs on the merits of this appeal before Golden Gate’s cross-motion to dismiss is decided. Accordingly, Golden Gate respectfully suggests that the motion be referred to the merits panel for consideration with the appeal.

³ For ease of reference, the Deed of Gift is attached hereto as Appendix (“App.”) I.

provided Societe Nautique with ten months' advance notice of the race dates. (Petrocelli Ex. B at 2).

Societe Nautique refused to recognize Golden Gate's challenge. Societe Nautique's claimed justification was the fabrication of a bogus challenge by a bogus yacht club, Club Nautico Espanol de Vela ("Club Nautico"), that had no existence before it was invented by a Spanish sailing federation, the Real Federacion Espanola de Vela ("Spanish Federation"). It was conceded by Societe Nautique and Club Nautico that the Spanish Federation created Club Nautico for the express purpose of challenging for the Cup in the Spanish Federation's place, because the Spanish Federation did not qualify as an "organized Yacht Club," as explicitly required by the Deed of Gift. (Ostrager Ex. Q ¶¶3 -7⁴; R1335⁵; App 1 ¶ 4). Club Nautico also failed to comply with the Deed's requirement that the challenging yacht club have an annual regatta. (Ostrager Ex. R at 13-14; Ex. Q ¶ 15; App 1 ¶ 4). To secure control of the America's Cup, Societe Nautique proceeded to publish, with Club Nautico, "The Protocol Governing the Thirty Third America's Cup" in which Societe Nautique usurped the power to determine unilaterally virtually all of the important match conditions. (Ostrager Ex. F).

Golden Gate commenced litigation against Societe Nautique on July 20, 2007, seeking, among other things, a declaration that Golden Gate was the valid Challenger of Record for the America's Cup, that Club Nautico's purported challenge was invalid and that Societe Nautique breached the Deed by accepting Club Nautico's invalid challenge. (Ostrager Ex. L).

⁴ Citations to "Ostrager Ex." refer to the exhibits attached to the Affirmation of Barry R. Ostrager, dated April 14, 2008.

⁵ Citations in the form "(R___)" refer to Societe Nautique's "Record on Appeal" submitted in connection with its Brief for Appellant-Defendant, dated April 21, 2008.

II. SUMMARY JUDGMENT GRANTED TO GOLDEN GATE

On November 27, 2007, the Supreme Court of the State of New York, County of New York (Hon. Herman J. Cahn) issued a Memorandum and Decision on the parties' cross-motions for summary judgment ("November 27 Decision"). (Ostrager Ex. R). The motion court held that Club Nautico failed to fulfill the express requirements of the Deed when it challenged and ruled that "GGYC [Golden Gate] is Challenger of Record" under the Deed. (*Id.* at 18). The motion court also directed the parties to settle an order to implement that decision. (*Id.*). On December 3, 2007 and December 11, 2007, pursuant to the Rule 202.48(c) settle order process, Golden Gate submitted proposed orders to implement the November 27 Decision, and requested race dates ten months later in October 2008. (R1415 - 22; R1479 - 86). In a counter-proposal, dated December 6, 2007, Societe Nautique requested that the races occur in July 2009, approximately two years after Golden Gate issued its challenge. (R1467 - 72).

III. SOCIETE NAUTIQUE INTERRUPTS SETTLE ORDER PROCESS

On December 27, 2007, Societe Nautique delayed settlement of the order by filing a motion requesting leave to renew and reargue ("Motion Sequence No. 005"). (R1532 - 33; Petrocelli Ex. C). Societe Nautique raised the new argument that Golden Gate's Notice of Challenge and accompanying Certificate did not meet the Deed's requirements and were invalid. (Petrocelli Ex. C at 9; Ostrager Ex. U at 6).

On January 15, 2008, Societe Nautique recast this motion as one brought on by order to show cause ("Motion Sequence No. 006") (Ostrager Ex. S), conceding that the parties already "fully briefed [Societe Nautique's objections to Golden Gate's Notice of Challenge and

Certificate] in the context of Societe Nautique's Motion for Leave to Renew and Reargue.” (Petrocelli Ex. D ¶ 3). The Order to Show Cause and its supporting affirmation also provided that the parties’ supporting and opposing memoranda on the motion to reargue would be deemed the support and opposition to the January 15 motion brought on by order to show cause. (Ostrager Ex. S at 2; Petrocelli Ex. D ¶ 3). Societe Nautique essentially sought identical relief in both motions, namely an order declaring Golden Gate’s Notice of Challenge and Certificate invalid. (Ostrager Ex. U at 3, 6, 11; Petrocelli Ex. D ¶ 2; Ostrager Ex. S at 1-2).

IV. SOCIETE NAUTIQUE’S MOTION FOR REARGUMENT IS DENIED

On March 17, 2008, the court issued a memorandum decision and orders denying both motions (Motion Sequence Nos. 005 and 006) and upholding its declaration that Golden Gate’s Notice of Challenge and Certificate are valid. (Ostrager Ex. U at 11). The motion court also recognized that in its December 27 motion, “SNG [Societe Nautique] seeks reargument not renewal, because SNG has not submitted any new or additional facts” and that in the January 15th motion brought on by order to show cause “SNG essentially restates many of the claims raised in motion no. 005 for reargument.” (Ostrager Ex. U at 5, 6).

V. THE MOTION COURT HAS YET TO ISSUE AN ORDER IMPLEMENTING ITS SUMMARY JUDGMENT IN FAVOR OF GOLDEN GATE

After the motion court’s decision on the reargument motions, Golden Gate requested that the motion court complete the Rule 202.48(c) settle order process begun in December to implement the November 2007 Decision, renewing Golden Gate’s request for a race date in October 2008. (Petrocelli Ex. E). Societe Nautique also asked for an order, but requested a race

date in July 2009. (Petrocelli Ex. F). Societe Nautique represented that it would “forego its appellate rights” if the race date were set between May 2009 and November 2009. (Petrocelli Ex. F at 2 & n.1). The court heard oral argument on that issue on April 2, 2008 and a decision regarding the race dates remains pending.

On April 14, 2008, prior to the motion court’s settlement of an order implementing the November 27, 2008 Decision, Societe Nautique filed its Notice of Appeal, which purports to appeal from the motion court’s order on its motion of January 15, 2008. (Petrocelli Ex. G). However, Societe Nautique also seeks review of elements of the motion court’s November 27 summary judgment decision by erroneously suggesting that the motion court necessarily invalidated the challenge of Club Nautico, the purported Spanish club, when it ruled on the reargument motion. (Br. at 21).⁶ By this sleight of hand, Societe Nautique seeks to raise claimed errors in the November 27 Decision before a final order implementing that decision is issued and before Golden Gate can cross-appeal on the motion court’s dismissal of Golden Gate’s breach of fiduciary duty claim and the court’s finding that there were issues of fact regarding whether Club Nautico was a bogus club.

ARGUMENT

I. SOCIETE NAUTIQUE’S PURPORTED APPEAL FROM A NON-APPEALABLE ORDER SHOULD BE DISMISSED

It is axiomatic under New York law that an order denying a motion for leave to reargue may not be appealed. *See, e.g.,* David D. Siegel, New York Practice § 254, *Motion to Renew or*

⁶ Citations to “Br.” refer to Societe Nautique’s Memorandum of Law, dated April 15, 2008.

Reargue (2008); *State Farm Ins. Co. v. Pennsylvania Manufacturers' Ass'n Co.*, 834 N.Y.S.2d 25, 26 (1st Dep't 2007).

The Order on appeal amounts to nothing other than an order denying a motion to reargue. As the motion court held, Societe Nautique's January 15, 2008 motion essentially restated the arguments presented in Societe Nautique's December 27, 2007 motion to reargue. (Ostrager Ex. U at 6). Societe Nautique cannot circumvent New York law by re-packaging its motion to reargue in a different form. *See, e.g., Johnson v. Ford*, 823 N.Y.S.2d 67, 68 (1st Dep't 2006) (holding that a denial of a motion to reargue is non-appealable where the motion was incorrectly denominated as "motion to restore the action to the trial calendar.") Thus, Societe Nautique's re-styled motion brought on by order to show cause on January 15, 2008 is non-appealable and Societe Nautique's appeal should be dismissed. Societe Nautique's tactical maneuvering to appeal a summary judgment decision not yet reduced to an order, as described above (*supra* § V) points out the wisdom and necessity of this rule.

II. SOCIETE NAUTIQUE SHOULD NOT BE GRANTED A STAY PENDING APPEAL

A. Societe Nautique Has Failed to Show that the Appeal Has Merit

On its motion for a stay, Societe Nautique re-hashes the merits arguments that it raised on its cross-motion for summary judgment and motions for leave to reargue -- which were rejected by the motion court. Rather than repeating here the reasons why Societe Nautique's arguments fail, Golden Gate respectfully refers the court to the well-reasoned and detailed grounds in the Memoranda and Decisions of the motion court, dated November 27 and March 17, for finding and re-affirming summary judgment in favor of Golden Gate, and to Golden Gate's papers below. (Ostrager Exs. P, R, U; R1336 - 1414; R1853 - 95; R2733-2836).

B. Societe Nautique Fails to Articulate What, If Anything, Is to Be Stayed

Both in its supporting papers and before Justice Andrias of this Court, Societe Nautique has failed to define exactly what the requested stay pending this appeal is intended to stay. The March 17 Order does not require Societe Nautique to do anything between now and the expedited conclusion of this appeal. The March 17 Order merely declares the right of Golden Gate to be challenger. Under the process set out in the Deed, Societe Nautique can decide when and how to prepare for a match race with Golden Gate, engage in a mutual consent process to agree on different dates and conditions of the race, or wait until the conclusion of this appeal. These are the same decisions Societe Nautique had before the March 17 Order. These are the same decisions that Golden Gate has faced: begin to prepare for the race, try to negotiate different dates or conditions to the race or simply wait for the outcome of this appeal.

Societe Nautique also contends that its appeal may become moot if a stay does not issue. (Br. at 29-30). However, Golden Gate and Societe Nautique have consented to an expedited schedule for this appeal and the appeal has been placed on the June calendar. There is no race date scheduled in these months. Moreover, this Court's decision in *Mercury Bay* demonstrates that this appeal is not mooted even if the race were to take place before the resolution of the appeal. *Mercury Bay Boating Club Inc. v. San Diego Yacht Club*, 76 N.Y.2d 256, 557 N.Y.S.2d 851 (1990); 150 A.D. 2d 82 (1st Dep't 1989). The *Mercury Bay* litigation determined whether the San Diego Yacht Club's defense of the Cup in a multi-hull violated the terms of the Deed of Gift. Thus, were Societe Nautique entitled to appeal from its motion to reargue (which it is not), it would not lose any right to pursue an appeal simply because the race occurred during the pendency of the appeal.

What Societe Nautique really seeks on its motion to stay is the substantive, mandatory relief it is currently seeking in the motion court: an extension of the 10-month preparation period prescribed in the Deed to approximately two years by setting a July 2009 race date. The motion court's decision on that request is pending. During the period of the requested stay, Societe Nautique is free to continue to prepare a racing vessel for the America's Cup.⁷ Thus, in this motion, Societe Nautique actually seeks to expand the period of the 10-month advance notice of race prescribed in the Deed, undermine the competitive framework prescribed in the Deed and destroy Golden Gate's right under the Deed to limit Societe Nautique's preparation time to 10 months. This Court has held that that type of relief is not available "by way of preliminary motion practice." *Broadwall Amer., Inc. v. Bram Will-El LLC*, 32 A.D.2d 748, 751, 821 N.Y.S.2d 190, 193 (1st Dep't 2006) (holding that plaintiff's time to exercise the option at issue ("option period") was not extended by an interim stay granted to plaintiff pending determination of plaintiff's stay application.).

C. Societe Nautique's Appeal is Taken Primarily for Delay

As Societe Nautique concedes, a motion for a stay pending appeal may not be granted where the appeal is meritless or taken primarily for delay. (Br. at 20). Societe Nautique hopes that its prosecution of its appeal, combined with its motion for a stay, will accomplish the only

⁷ The publicly available facts show that Societe Nautique began preparation for a race with Golden Gate in multi-hull vessels shortly after the November 27 Decision. *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 December."); R2852 ¶¶ 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 racing multi-hulled yachts.").

relief that Societe Nautique told the motion court that it needed -- delay of the match races with Golden Gate. Societe Nautique represented in its most recent set of papers submitted to the motion court that it will forego its appellate rights if the race dates were set between May 2009 and November 2009. (Petrocelli Ex. F at 2 & n. 1).

D. Societe Nautique Will Not Be Harmed If There Is No Stay

Societe Nautique will not be harmed if a stay is not issued. Regardless of whether a stay issues, both Golden Gate and Societe Nautique must decide whether to prepare for the races. Societe Nautique, and its non-party representative racing team, Alinghi, are faced with the same choices that Golden Gate and its representative racing team face -- they can race an existing craft, spend money on a new one or postpone decision until after the appeal, as they wish. A stay pending appeal will not change the uncertainty faced by both parties.

Moreover, there is no evidence that Societe Nautique will incur any economic harm if its representative racing team, Alinghi, -- a distinct entity not a party to this litigation -- decides to spend money during the pendency of this expedited appeal preparing for the race. In any event, any harm that Alinghi incurs by deciding to build a new vessel for the race is self-inflicted. Nothing in the motion court's order on appeal compels Societe Nautique or Alinghi to spend any money.

E. Golden Gate Will Be Harmed by A Stay Pending Appeal

By contrast, Golden Gate will be injured by a stay. If a stay issues, Golden Gate will lose the right granted to the Challenger of Record in the Deed to limit Societe Nautique's preparation time to the period of the 10-month advance notice of race that is prescribed in the Deed of Gift.

As the Court of Appeals held in *Mercury Bay*, “the deed makes clear that the design and construction of the yachts as well as the races, are part of the competition contemplated”.

Mercury Bay, 76 N.Y.2d at 269. The Deed of Gift explicitly provides that the challenger, in this case Golden Gate, is entitled to select the dates for the match in its Notice of Challenge, thereby limiting the defender’s time to prepare a vessel. (App. I ¶ 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. (*Id.* ¶ 8).

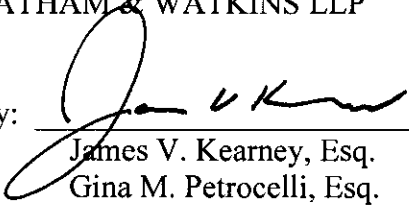
A stay would deprive Golden Gate of the competitive balance set forth in the Deed.

CONCLUSION

For the reasons set forth above, Societe Nautique's appeal should be dismissed and its motion for stay pending appeal should be denied.

Dated: New York, New York
April 22, 2008

LATHAM & WATKINS LLP

By: 
James V. Kearney, Esq.
Gina M. Petrocelli, Esq.

885 Third Avenue
New York, New York 10022
(212) 906-1200

Attorneys for Plaintiff the Golden Gate Yacht Club

TO:

SIMPSON THACHER & BARTLETT LLP
Barry R. Ostrager, Esq.
Jonathan K. Youngwood, Esq.
George S. Wang, Esq.
425 Lexington Avenue
New York, New York 10017

DEBEVOISE & PLIMPTON LLP
Attorneys for Intervenor-Defendant
David W. Rivkin, Esq.
Jeremy Feigelson, Esq.
Catherine M. Doll, Esq.
919 Third Avenue
New York, NY 10022

APPENDIX I

DEED OF GIFT

This Deed of Gift, made the twenty-fourth day of October, one thousand eight hundred and eighty-seven, between George L. Schuyler as sole surviving owner of the Cup won by the yacht AMERICA at Cowes, England, on the twenty-second day of August, one thousand eight hundred and fifty-one, of the first part, and the New York Yacht Club, of the second part, as amended by orders of the Supreme Court of the State of New York dated December 17, 1956, and April 5, 1985.

WITNESSETH

That the said party of the first part, for and in consideration of the premises and of the performance of the conditions and agreements hereinafter set forth by the party of the second part, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto said party of the second part, its successors and assigns, the Cup won by the schooner yacht AMERICA, at Cowes, England, upon the twenty-second day of August, 1851. To have and to hold the same to the said party of the second part, its successors and assigns, IN TRUST, NEVERTHELESS, for the following uses and purposes:

This Cup is donated upon the conditions that it shall be preserved as a perpetual Challenge Cup for friendly competition between foreign countries.

Any organized Yacht Club of a foreign country, incorporated, patented, or licensed by the legislature, admiralty, or other executive department, having for its annual regatta an ocean water course on the sea, or on an arm of the sea, or one which combines both, shall always be entitled to the right of sailing a match of this Cup, with a yacht or vessel propelled by sails only and constructed in the country to which the Challenging Club belongs, against any one yacht or vessel constructed in the country of the Club holding the Cup.

The competing yachts or vessels, if of one mast, shall be not less than forty-four feet nor more than ninety feet on the load water-line; if of more than one mast they shall be not less than eighty feet nor more than one hundred and fifteen feet on the load water-line.

The Challenging Club shall give ten months' notice, in writing, naming the days for the proposed races; but 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. 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; which dimensions shall not be

exceeded; and a custom-house registry of the vessel must also be sent as soon as possible. Center-board or sliding keel vessels shall always be allowed to compete in any race for this Cup, and no restriction nor limitation whatever shall be placed upon the use of such center-board or sliding keel, nor shall the center-board or sliding keel be considered a part of the vessel for any purposes of measurement.

The Club challenging for the Cup and the Club holding the same may, by mutual consent, make any arrangement satisfactory to both as to the dates, courses, number of trials, rules and sailing regulations, and any and all other conditions of the match, in which case also the ten months' notice may be waived.

In case the parties cannot mutually agree upon the terms of a match, then three races shall be sailed, and the winner of two of such races shall be entitled to the Cup. All such races shall be on ocean courses, free from headlands, as follows: The first race, twenty nautical miles to windward and return; the second race an equilateral triangular race of thirty-nine nautical miles, the first side of which shall be a beat to windward; the third race (if necessary) twenty nautical miles to windward and return; and one week day shall intervene between the conclusion of one race and the starting of the next race. These ocean courses shall be practicable in all parts for vessels of twenty-two feet draught of water, and shall be selected by the Club holding the Cup; and these races shall be sailed subject to its rules and sailing regulations so far as the same do not conflict with the provisions of this deed of gift, but without any times allowances whatever. The challenged Club shall not be required to name its representative vessel until at a time agreed upon for the start, but the vessel when named must compete in all the races, and each of such races must be completed within seven hours.

Should the Club holding the Cup be for any cause dissolved, the Cup shall be transferred to some Club of the same nationality, eligible to challenge under this deed of gift, in trust and subject to its provisions. In the event of the failure of such transfer within three months after such dissolution, such Cup shall revert to the preceding Club holding the same, and under the terms of this deed of gift. It is distinctly understood that the Cup is to be the property of the Club subject to the provisions of this deed, and not the property of the owner or owners of any vessel winning a match.

No vessel which has been defeated in a match for this Cup can be again selected by any Club as its representative until after a contest for it by some other vessel has intervened, or until after the expiration of two years from the time of such defeat. And 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.

AND, the said party of the second part hereby accepts the said Cup subject to the said trust, terms, and conditions, and hereby covenants and agrees to and

with said party of the first part that it will faithfully and will fully see that the foregoing conditions are fully observed and complied with by any contestant for the said Cup during the holding thereof by it; and that it will assign, transfer, and deliver the said Cup to the foreign Yacht Club whose representative yacht shall have won the same in accordance with the foregoing terms and conditions, provided the said foreign Club shall, by instrument in writing lawfully executed, enter with said part of the second part into the like covenants as are herein entered into by it, such instrument to contain a like provision for the successive assignees to enter into the same covenants with their respective assignors, and to be executed in duplicate, one to be retained by each Club, and a copy thereof to be forwarded to the said party of the second part.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal, and the said party of the second part has caused its corporate seal to be affixed to these presents and the same to be signed by its Commodore and attested by its Secretary, the day and year first above written.

GEORGE L. SCHUYLER, (L.S.) In the presence of THE NEW YORK YACHT CLUB H. D. Hamilton. by Elbridge T. Gerry, Commodore (Seal of the New York Yacht Club) John H. Bird, Secretary