

New York State
COURT OF APPEALS

GOLDEN GATE YACHT CLUB,

Plaintiff-Appellant,

against

SOCIÉTÉ NAUTIQUE DE GENÈVE,

Defendant-Respondent,

against

CLUB NÁUTICO ESPAÑOL DE VELA,

Intervenor-Defendant.

BRIEF OF *AMICI CURIAE* TEAM FRENCH SPIRIT, ARGO CHALLENGE,
GREEN COMM CHALLENGE, TEAM SHOSHOLAZA AND AYRE
CHALLENGE IN SUPPORT OF RESPONDENT

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Interest of Amici Curiae

Amici curiae Team French Spirit, Argo Challenge, Green Comm Challenge, Team Shosholoza and Ayre Challenge (collectively "Amici") are well-established racing teams who have entered into and are preparing to compete for the 33rd America's Cup, along with more than 15 other teams.

Team French Spirit is a racing team headed by the renowned French sailor, Marc Pajot, who was skipper of France's America's Cup teams in 1987, 1992 and 1995 in addition to his numerous world championships and other sailing titles. Team French Spirit has submitted a Notice of Entry for the 33rd America's Cup to Respondent Société Nautique de Genève ("SNG"), which entry has been accepted, and intend to and will compete in the 33rd America's Cup, so long as it is held as a multi-challenger regatta.

Argo Challenge is a racing team dedicated to supporting disabled people to practice sport. Argo Challenge filed Notice of Entry for the 33rd America's Cup on November 5, 2007 on behalf of Club Nautico Gaeta and are now actively preparing to race in the 33rd America's Cup.

Green Comm Challenge filed their Notice of Entry on October 23, 2007, on behalf of an Italian yacht club, Circolo di Vela Gargnano. Green Comm Challenge competed in the 32nd America's Cup under the name of +39 Challenge.

Team Shosholoza is South Africa's first and widely-acclaimed

America's Cup sailing team. Team Shosholoza submitted Notice of Entry for the 33rd America's Cup on July 18, 2007 on behalf of Royal Cape Yacht Club.

Ayre Challenge filed their Notice of Entry on November 19, 2007 on behalf of a Spanish yacht club Real Club Náutico de Denia. Ayre Challenge intend to and will compete in the America's Cup for the first time.

The Notice of Entries submitted by Team French Spirit, Argo Challenge, Green Comm Challenge, Team Shosholoza and Ayre Challenge to Respondent Société Nautique de Genève ("SNG") have been accepted by SNG, and each of the Amici intend to and will compete in the 33rd America's Cup, so long as it is held as a multi-challenger regatta. Amici are each interested in this appeal because the trial court's decision has not only adversely affected Amici, but also has adversely affected other yacht clubs that intended to race in the 33rd America's Cup as well as the international sailing community in general.

This case raises significant issues regarding the interpretation and application of the Deed of Gift governing the America's Cup. The trial court's disqualification of Club Náutico Español De Vela ("CNEV") as the Challenger of Record and declaration of Golden Gate Yacht Club ("GGYC") as the Challenger of Record adversely affected yacht clubs all over the world that planned to participate in the 33rd America's Cup. The trial court foreclosed Team French Spirit, Argo Challenge, Green Comm Challenge, Team Shosholoza and Ayre

Challenge—and all other yacht clubs other than SNG and GGYC—from participating in the 33rd America’s Cup. The Appellate Division’s July 29, 2008 Order corrected this error, setting the Cup back on track in accordance with the controlling Deed of Gift. Amici seek to file an *amici curiae* brief because they can offer an important perspective to the Court on why the Appellate Division’s Order should be affirmed.

Preliminary Statement

This appeal raises issues that have serious implications for Team French Spirit, Argo Challenge, Green Comm Challenge, Team Shosholoza and Ayre Challenge and other racing teams and yacht clubs that will be foreclosed of the opportunity to participate in the 33rd America’s Cup if the decision of the Appellate Division is reversed. GGYC is seeking to use this litigation to eliminate 20 yacht clubs from participating in the America’s Cup, thereby eliminating the competition it would face if it had chosen to participate in a traditional multi-challenger event that was envisioned by SNG. Once the competition is eliminated, GGYC intends to race in a vessel that none of the Amici, nor virtually any other competitor could afford to build.

The practical effect of granting GGYC’s request would be to cancel what would be the greatest sailing event in history, to the great detriment of Amici and others who hope to and are preparing to participate in the 33rd America’s Cup.

If GGYC prevails, it will be rewarded only for its ability to outspend and outlitigate other yacht clubs, whose livelihood depends upon the multi-challenger format.

Disqualification of CNEV, a newly formed yacht club that issued a valid challenge, in favor of GGYC, an exceedingly well-financed yacht club, would be a monumentally detrimental result at odds with the Deed of Gift in light of the fact that SNG's organization of the 32nd America's Cup was considered one of the most successful competitions in Cup history. Amici submit that this would also be contrary to the interests of the sport and contrary to the express terms of the Deed of Gift.

Statement of Facts

The America's Cup is the most prestigious event in the sport of sailing. SNG won the 32nd America's Cup on July 3, 2007. It thereafter accepted a challenge for the next America's Cup from CNEV and proceeded, with CNEV, to publish a protocol setting forth the rules for the 33rd America's Cup (the "33rd Protocol"). Team French Spirit issued a Notice of Challenge on September 15, 2007. Argo Challenge filed Notice of Entry for the 33rd America's Cup on November 5, 2007 on behalf of Club Nautico Gaeta. Green Comm Challenge filed their Notice of Entry on October 23, 2007, on behalf of an Italian yacht club, Circolo di Vela Gargnano. Team Shosholoza submitted Notice of Entry for the

33rd America's Cup on July 18, 2007 on behalf of Royal Cape Yacht Club. Ayre Challenge submitted their Notice of Entry on on November 19, 2007. Fifteen other yacht clubs have also joined into the 33rd Protocol and began preparations for the 33rd America's Cup. As is typical in America's Cup preparations, each of the Amici have begun spending thousands of dollars to hire design teams, build boats, and train crews to compete for the America's Cup. Amici planned to spend a full two years and millions of dollars to challenge for the Cup.

GGYC, which issued its own putative challenge for the 33rd America's Cup, squelched the plans of every other challenger when it instituted this action. On November 27, 2007, the trial court held that CNEV was disqualified as the Challenger of Record because its first annual regatta was not held before it lodged its Notice of Challenge. On March 17, 2008, the trial court declared that GGYC was the Challenger of Record. It did not resolve the ambiguities contained in the boat certificate that accompanied GGYC's Notice of Challenge. SNG filed a Notice of Appeal on April 14, 2008 and filed its appellate brief on April 21, 2008. Amici file this brief to aid to the Court in resolving issues that will have an affect on yacht clubs such as Amici and on the entire sailing community.

Argument

The Trial Court's Erroneous Interpretation Of The Deed Of Gift Will Seriously Undermine Competition For The America's Cup

The continued success of the America's Cup rests upon inclusion of competitors, rather than exclusion based on hyper-technical (and invalid) grounds. GGYC's strained interpretation of the Deed of Gift, the 121-year-old document governing America's Cup races cannot be reconciled with well-established America's Cup precedent encouraging the participation of newly-formed yacht clubs. More specifically, the Deed of Gift provides, among other things that "[a]ny 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 for this Cup." GGYC is asking this Court to read this provision to exclude new yacht clubs, an interpretation that would hinder the Deed of Gift's purpose of promoting "friendly competition between foreign countries."

Invalidating CNEV because it is a newly formed yacht club would deprive the Cup of its primary source of innovation and success—new yacht clubs. Inclusion of newly created yacht clubs in the promotion of "friendly competition" is the primary reason that the America's Cup is the second-most watched sporting event in the world. New clubs (such as Germany's yacht club formed in 2004 for

the purpose of competing in the 32nd America's Cup) bring more competition, which in turn ensures that the America's Cup is consistently the world's premiere sailing event. Excluding newly formed yacht clubs would hinder the expansion of the sport and diminish the reputation and success of the America's Cup.

Accordingly, new clubs, such as CNEV, which are often formed by well-established members of the sailing community, should be encouraged to compete, not precluded from competing.

A presumption in favor of acceptance is the only way to ensure the continued success of the America's Cup. Indeed, the history of the America's Cup is replete with examples where newly formed yacht clubs — created by organizations, federations, or wealthy individuals solely to challenge for the Cup — have been permitted to compete as challengers. (R. at 799-801.)

It is not uncommon for countries who wish to participate in the America's Cup to create a yacht club for that express and sole purpose. (R. at 799-801.) For example, Deutscher Challenger Yacht Club e.V. ("DCYC"), was specially created on August 2, 2004 for the purpose of representing all of Germany for the 32nd America's Cup in 2005. (R. at 795, 1000-1001.) DCYC's challenge, which was accepted on April 29, 2005, was never questioned or protested by GGYC as Challenger of Record or by any other competitor during the 32nd America's Cup. (R. at 795.) Other examples include the Secret Cove Yacht Club,

Sun City Yacht Club and Mercury Bay Boating Club, all of which were incorporated between one day and a few months prior to challenging for the Cup. (R. at 639-648, 799-800.) Likewise, the Nippon Yacht Club was created solely to compete in the America's Cup. (R. at 800-801.) Such inclusion of newly formed yacht clubs furthers the purpose of the Deed of Gift to promote "friendly competition between foreign countries" and ensures the continued success of the America's Cup.

Conclusion

For all of the foregoing reasons, Amici respectfully submit that the Appellate Division's Order should be affirmed.

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