

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

Golden Gate Yacht Club
Plaintiff,

-against-

Societe Nautique de Geneve,
Defendant.

Index No. _____

Date Purchased _____

SUMMONS NEW YORK
COUNTY CLERK'S OFFICE

JUL 20 2007

**NOT COMPARED
WITH COPY FILE**

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorneys an answer to the complaint in this action within 20 days after the service of this summons, exclusive of the date of the summons, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer or appear, judgment will be taken against you by default for the relief demanded in the complaint.

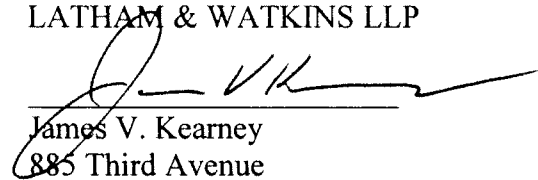
Plaintiff designates New York County as the place of trial. Venue is based on N.Y. C.P.L.R. §503(a) in that neither party is deemed to be a resident of the State of New York. Defendant is an association organized under the laws of the Swiss Confederation ("Switzerland") and has its principal place of business in the Republic and Canton of Geneva, Swiss Confederation. Plaintiff is a California corporation with a principal place of business in San

Francisco, California.

Dated: New York, New York
July 20, 2007

LATHAM & WATKINS LLP

By:



James V. Kearney
885 Third Avenue
New York, NY 10022
Telephone: (202) 637-2200

Attorneys for Plaintiff
Golden Gate Yacht Club

Defendant's address:

Société Nautique de Genève
Port Noir, Lake Geneva
Geneva
Switzerland

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

Golden Gate Yacht Club
Plaintiff,

-against-

Societe Nautique de Geneve,
Defendant.

Index No. _____/07

VERIFIED COMPLAINT

Plaintiff Golden Gate Yacht Club (“GGYC”) hereby files this Verified Complaint and respectfully shows the Court as follows:

INTRODUCTION

1. This action arises out of defendant Societe Nautique de Geneve’s (“SNG’s or “Defender’s”) violation of the clear, express terms of the Deed of Gift, a trust instrument executed under the laws of New York, on October 24, 1887, as amended by Orders of this Court dated December 17, 1956 and April 5, 1985. SNG is the present holder and successor trustee of the trophy known world-wide as the “America’s Cup” (“Cup”). The Deed of Gift (“Deed”) provides that the America’s Cup is a “perpetual *Challenge Cup* for friendly competition between foreign countries” (emphasis supplied). By failing to enforce the terms of the Deed, SNG has turned the Deed of Gift on its head and transformed it into a “Defender’s Cup,” dominated by SNG, in breach of the terms of the Deed and of SNG’s fiduciary duties.

2. As described in detail below, SNG has accepted a challenge that is invalid under the Deed of Gift from Club Nautico Espanol de Vela (“CNEV”), a brand new yacht club that had never had an annual regatta before it was specifically created to collaborate with SNG. Indeed, after its supposed challenge for the America's Cup it sponsored a sham annual regatta for

children in a sailing training session. SNG used CNEV, as a fabricated challenger, to engineer a match Protocol in which virtually all challenger rights are eliminated and total control of the event and its rules are granted to SNG, altering the very nature of the competition and giving unprecedented and unfair advantages to SNG. By refusing to disclose in the match Protocol the basic elements of regatta venue, date and boat design rules, SNG has eliminated the opportunity for a fair and equitable competition. Only SNG can begin to plan its campaign and design its yachts while all other competitors must sit and wait.

THE PARTIES

3. Plaintiff GGYC is an organized yacht club incorporated under the laws of the State of California. GGYC has issued a Notice of Challenge to sail a match for the America's Cup in accordance with the terms and conditions of the Deed of Gift, dated October 24, 1887, as amended by Orders of this Court dated December 17, 1956 and April 5, 1985 ("Deed of Gift"). GGYC has standing as a beneficiary of the trust instrument, the Deed of Gift, a charitable trust, to bring this action to enforce the trust.

4. Defendant SNG is a yacht club organized under the laws of Switzerland. SNG currently holds the America's Cup, in trust, in accordance with the terms and conditions of the Deed of Gift.

BACKGROUND

5. On March 2, 2003, yacht SUI 64 ("Team Alinghi"), as representative of SNG, won the America's Cup in a sailing match with yacht NZL 82 ("Team New Zealand"), as representative of the Royal New Zealand Yacht Squadron, the immediate prior holder and trustee of the America's Cup. SNG became the current holder and trustee of the America's Cup, pursuant to the terms and conditions of the Deed of Gift.

6. On July 3, 2007, yacht SUI 100 (“Team Alinghi”), as representative of SNG, defended its title in the 32nd America’s Cup sailing match with the yacht NZL 92 (“Emirates Team New Zealand”), as representative of the Royal New Zealand Yacht Squadron.

7. On July 2, 2007, prior to SNG’s 32nd America’s Cup victory, it was announced that Club Nautico Espanol de Vela (“CNEV”) would challenge to sail a match for the America’s Cup as “Challenger of Record,” provided that SNG defended its position as holder and trustee of the Cup.

8. On July 3, 2007, after SNG defended its title, CNEV issued, and SNG accepted, a purported challenge to sail a match for the 33rd America’s Cup.

9. Only two days after winning the 32nd America’s Cup, on July 5, 2007, SNG and CNEV published a 25 page document entitled “The Protocol Governing the Thirty Third America’s Cup” (“Protocol”). The Protocol asserts that “the challenge received by SNG from the Challenger of Record [CNEV] ... met the requirements of the Deed of Gift”.

10. On July 11, 2007, GGYC representatives hand-delivered to the SNG Secretary-General at the SNG clubhouse in Geneva a valid formal challenge to sail the 33rd America’s Cup match, in accordance with the terms and conditions of the Deed of Gift. At the same time, the GGYC representatives delivered a letter addressed to the President of SNG which disputed the validity of the CNEV challenge. As of the date of this Complaint, SNG has neither accepted GGYC’s challenge nor responded to its letter concerning the invalidity of the CNEV challenge.

11. On July 19, 2007, SNG announced a challenge filed the day before by the Royal Cape Yacht Club of South Africa under the Protocol.

DEED OF GIFT

12. The Deed of Gift provides that holders of the Cup accept it “subject to the said trust, terms and conditions” and agree to ensure that its conditions are “fully observed and complied with by any contestant for the said Cup during the holding thereof by it”.

13. The Notice of Challenge must “nam[e] the days for the proposed races” and include “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 draught of water”.

14. The Deed of Gift provides that “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”.

15. The Deed of Gift requires that a bona fide yacht club challenge for the Cup. Pursuant to the Deed of Gift, “[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 of this Cup”.

16. The Deed of Gift, by its express terms, contemplates a consensual process for the definition of the match. It provides that the America’s Cup “is donated upon the condition that it shall be preserved as a perpetual *Challenge Cup* for friendly competition between foreign countries” (emphasis supplied). The Deed of Gift further provides that “[t]he 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”. If the defending and challenging

clubs cannot reach mutual agreement, then the Deed prescribes particular match rules (“Default Match Conditions”).

**CNEV’S INVALID CHALLENGE AND THE RESULTING PROTOCOL VIOLATE
THE TERMS OF THE DEED OF GIFT**

17. On July 3, 2007, CNEV issued a purported challenge for the 33rd America’s Cup. On the same date, SNG accepted CNEV’s purported challenge.

18. On information and belief, CNEV was created in the form of a yacht club, specifically to issue the purported challenge, only a few days before the issuance of its purported challenge.

19. As of the date of the purported challenge and acceptance, CNEV had not conducted an “annual regatta ... on the sea, or on an arm of the sea, or one which combines both,” as required by the Deed of Gift.

20. Demonstrating its failure to comply with the terms of the Deed of Gift regarding an annual regatta, CNEV subsequently sought to hold a sham regatta which was announced by the Spanish Sailing Federation on July 13, 2007, the very same day that the regatta was supposed to take place, with children as participants. Reports have indicated that the sham regatta was actually a sailing training session primarily for local kids.

21. SNG and CNEV published a 25 page document entitled “Protocol Governing the Thirty Third America’s Cup” (“Protocol”) on July 5, 2007 -- just two days after SNG won the 32nd America’s Cup.

22. At the time of its purported challenge, CNEV was not a bona fide yacht club capable of issuing a challenge as defined in the Deed of Gift.

23. There was little, if any, consensual process between the Defender and a legitimate challenger to define by mutual consent the match rules and regulation, as required by the Deed of Gift.

24. By accepting CNEV's challenge and then collaborating with CNEV to publish the Protocol, SNG usurped the power to unilaterally determine virtually all of the conditions governing the 33rd America's Cup, in violation of the Deed of Gift. SNG thereby eliminated challenger rights to either a consensual definition of the match or application of the specific match rules, which are expressly set forth in the Deed of Gift.

25. The terms of the Protocol make it manifestly clear that SNG, as defender, and CNEV, as purported challenger, did not perform their duties, outlined in the Deed of Gift, to negotiate mutually accepted rules for the matches or conduct them under the "Default Match Conditions".

26. According to the Protocol, "[t]o help SNG organize, manage and fulfill all of SNG's obligations under the Deed of Gift," SNG may appoint ACM as the Event Authority. ACM is required to "act in a manner that is consistent with the provisions of...this Protocol," which provides that "SNG shall have the sole responsibility to organize and manage the Event". Accordingly, ACM works under SNG's management.

27. ACM (and therefore SNG) enjoys near exclusive power over the next America's Cup contest. By way of illustration, "ACM may, at its sole and entire discretion, accept or reject any entry received". In addition, ACM may fine Competitors. ACM also possesses the exclusive power to appoint the Race Committee, Measurement Committee, Umpires, and "other necessary persons" under the Protocol, in sharp contrast to the 32nd

America's Cup protocol in which all racing teams could effectively elect committee members.¹ Unlike the 32nd America's Cup protocol, this Protocol nowhere requires that these committees or ACM act neutrally. No legitimate challenger would have agreed to such terms in any bona fide consensual process contemplated by the Deed of Gift.

28. While empowering itself, SNG eliminates challenger authority. Under the 32nd America's Cup Protocol, the Challenger of Record represented the interests of all challengers through broad powers granted to a Challenger Commission. The Protocol replaces that commission with a Competitors' Commission which "shall have no voting powers". The Protocol expressly provides that CNEV "shall not owe any additional duties to the Challenging Competitors". The Protocol also renders challengers and prospective challengers entirely without recourse to dispute any Protocol provisions; the Protocol grants to SNG itself -- even without its handpicked event organizer, ACM -- the power to disqualify any challenger that so much as raises a dispute over the binding effect of any Protocol terms. Indeed, SNG's usurpation of the rights of challengers goes to the extent that it can even disqualify CNEV, if it so much as raises a dispute over any Protocol provision. This lack of due process is a stark departure from previous protocols. CNEV's purported "agreement" to grant SNG such power -- without granting CNEV any reciprocal rights -- further demonstrates that SNG did not conduct negotiations with a legitimate challenger as required by the Deed of Gift.

29. SNG also protects its power to unilaterally control the competition in the event of CNEV's withdrawal as the Challenger of Record. Unlike the 32nd America's Cup protocol, which provided for the immediate replacement of a withdrawing Challenger of Record with any club that had challenged under the protocol, this Protocol grants SNG the right to

¹ Under the Protocol, the Challenger of Record's role is limited to objecting to senior appointments made by SNG solely on the grounds of neutrality.

operate for 120 days without *any* Challenger of Record, even if there were another club that had challenged. No bona fide Challenger of Record would have consented to such a provision.

30. ACM is empowered -- at its discretion and at a time of its choosing -- to issue new America's Cup Class ("ACC") Rules that specify the class of boat that will race and then give to the challengers and prospective challengers only 18 months to prepare, finance, design and build a vessel and train for the event. SNG, which ultimately controls ACM, is therefore empowered to design and build a vessel and train for the event under its own rules, without disclosing them to challengers until 18 months prior to the first race. This departs from the 32nd America's Cup protocol, which adopted at the time that its protocol was published the pre-existing ACC rules establishing the class of boat that would compete.

31. ACM may determine the racing schedule for the event only 16 months prior to the first race. Upon issuing this schedule, ACM may publish yet more rules "which may include (but are not limited to) limiting the number of supporting boats; limiting the number of sails; limiting modification of yachts; training and testing restrictions; meteorological and oceanographic restrictions, reconnaissance restrictions, further crew and designer restrictions...[as well as t]he Race Area and the Course Area including their format and dimensions for the Qualifying Regattas and the Regatta". Similarly, ACM may also withhold Notice of Race and Sailing Instructions until approximately 60 days before the first race. ACM remains free to "amend the Competitions Regulations *from time to time*" (emphasis supplied). Nowhere does the Protocol constrain ACM's timing of those amendments. While SNG, by virtue of its relationship with ACM, enjoys unfettered access to this vital information, challengers lack any certainty as to the venue, schedule, format, and rules for the races.

32. SNG also enjoys the “option to participate wholly or partly at its discretion in the Trials and Challenger Selection other than the final between the two Challengers to select a Challenger for the Match”. It is difficult to believe that a bona-fide Challenger of Record would grant SNG the opportunity to eliminate its strongest potential adversaries before the ultimate title match -- without risking its own elimination. Provisions such as these strongly evidence SNG’s invalid and self-serving choice of CNEV as Challenger of Record and improper match determination process.

GGYC’S VALID CHALLENGE

GGYC’S LEGITIMACY

33. On July 11, 2007, GGYC issued a notice of challenge for the America’s Cup.

34. In accordance with the Deed of Gift, GGYC is “an organized Yacht Club of a foreign country, incorporated, patented, or licensed by the legislature, admiralty, or other executive department”.

35. GGYC is incorporated in the United States of America, in the State of California.

36. GGYC maintains a membership of more than 200 members.

37. GGYC operates as a yacht club and has objectives consistent with the furtherance of yachting activities.

38. GGYC holds an annual regatta, the Sea Weed Soup Perpetual Trophy that, among other GGYC regattas, is and has been held annually on an arm of the sea, namely San Francisco Bay.

GGYC Issued a Valid Notice of Challenge

39. The Deed of Gift requires that “[t]he Challenging Club shall give ten months’ notice, in writing, naming the days for the proposed races ... Accompanying 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 and extreme beam; and draught of water; which dimensions shall not be exceeded”.

40. GGYC complied with the requirements of the Deed of Gift by naming July 4, 2008 as the date of the first race of the 33rd America’s Cup, July 6, 2008 for the second, and if necessary, July 8, 2008, for the third race. GGYC also provided a Certificate as to the name, rig and specified dimensions of the challenging vessel.

41. GGYC acknowledged that the Deed of Gift contemplates negotiations between the Challenger and the Defender that may alter and supplement these terms. GGYC also acknowledged that should SNG be unwilling to participate in the establishment of a protocol through a consensual process, the match shall proceed under the Default Match Conditions as expressly set forth in the Deed of Gift.

COUNT ONE – BREACH OF FIDUCIARY DUTY

42. GGYC incorporates by reference paragraphs 1 through 41 above, as if set forth therein.

43. SNG has violated the fiduciary duties of care, loyalty, good faith and honesty that it owes as holder and trustee of the America’s Cup.

44. As trustee, SNG was, and is, under a duty to enforce the terms of the trust instrument, the Deed of Gift.

45. As demonstrated by the allegations above, SNG failed, and continues to fail, to exercise the care required and breached its duty of care, loyalty, good faith and honesty by accepting CNEV's invalid challenge and by entering into the Protocol without engaging in the consensual process required by the mutual consent clause of the Deed, each in violation of the terms of the Deed of Gift.

46. As demonstrated by the allegations above, SNG is engaging in self-dealing by accepting CNEV's invalid challenge and by entering into the Protocol without engaging in the consensual process required by the mutual consent clause of the Deed, each in violation of the terms of the Deed of Gift.

COUNT TWO – BREACH OF TERMS OF DEED OF GIFT

Failure to Enforce Trust Agreement

47. GGYC incorporates by reference paragraphs 1 through 46 above, as if set forth therein.

48. CNEV's notice of challenge and challenge, which was accepted by SNG, was invalid and failed to conform to the terms of the Deed of Gift, and the resulting Protocol was not the product of the required consensual process.

WHEREFORE, GGYC prays for the following relief:

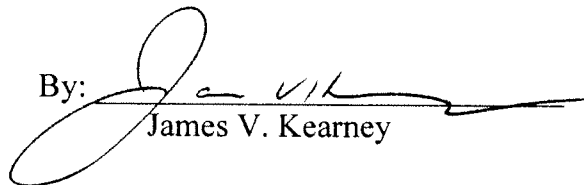
- (a) A declaration that CNEV's purported challenge and the Protocol are void;
- (b) A declaration that GGYC's challenge is valid;
- (c) That judgment be entered in favor of GGYC and against SNG (i) enjoining SNG from promulgating rules and regulations pursuant to the Protocol and (ii) directing SNG to reject CNEV's challenge;

(d) That judgment be entered in favor of GGYC and against SNG enjoining SNG to (i) accept GGYC's notice of challenge and (ii) implement the terms of the Deed of Gift by participating with GGYC in the establishment of a protocol through a consensual process and failing that to proceed with the match under the rules expressly set forth in the Deed of Gift; and

(e) That GGYC shall have all such further and other relief as is just and proper in this case.

Dated: New York, New York
July 20, 2007

LATHAM & WATKINS LLP

By: 
James V. Kearney

885 Third Avenue
New York, New York 10022-4802
(212) 906-1200

Attorneys for Plaintiff Golden Gate Yacht
Club