

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS Part 49

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GOLDEN GATE YACHT CLUB,

Plaintiff,

- against -

Index No. 602446/07

SOCIÉTÉ NAUTIQUE DE GENÈVE,

Defendant,

CLUB NÁUTICO ESPAÑOL DE VELA,

Intervenor-Defendant.

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HERMAN CAHN, J.:

This decision addresses a supplemental issue pertaining to the decisions rendered in this action, dated November 27, 2007 and March 17, 2008.

The essential facts underlying this action have been described at length in those decisions, including an analysis of the Deed of Gift, dated October 24, 1887, which provides, in relevant part:

The Challenging Club shall give ten months' notice, in writing, naming the days for the proposed races 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

(emphasis added).

The July 11, 2007 Notice of Challenge, issued by Golden Gate Yacht Club (GGYC), the Challenger of Record, designated July 4, 2008 as the date of the first race, and July 6, 2008 and

July 8, 2008 as the respective dates for the second and third races, if necessary, thereby satisfying the ten-month notice requirement provided for in the Deed of Gift. This litigation intervened, however, in that ten-month period, thereby creating an issue as to what effect, if any, this action should have on that ten-month period.

GGYC contends that the ten-month notice period should be deemed to have commenced when the first decision was issued on November 27, 2007. The defending champion, Société Nautique de Genève (SNG), argues that the ten-month notice period should be deemed to have commenced when the second decision was issued, on March 17, 2008.

GGYC commenced the litigation, and the subsequent opposition to GGYC's claim as the Challenger of Record prolonged the uncertainty. Thus, it would be inequitable to deprive SNG of the benefit of a full ten-month period in which to prepare its racing vessel. The ten-month period should commence when the Court's order is final, after the uncertainty created by this litigation has been resolved. Indeed, as this Court noted in its March 17, 2008 decision and order, these legal proceedings "interrupted" the ten-month period, albeit it did not invalidate the Notice of Challenge. And as stated by the Court of Appeals in *Mercury Bay Boating Club v San Diego Yacht Club* (76 NY2d 256, 268 [1990]):

Because the deed allows a challenge to be mounted upon 10 months' notice, the defender of the Cup is allowed only this short time to construct a defending vessel although the challenger has had unlimited time to mount a challenge and thus may have taken years designing and constructing its challenging vessel.

Because I do not deem this litigation, nor any of the motions made therein, to have been frivolous, the appropriate date for the commencement of the ten-month period should be no earlier than the disposition of the last motion made. Indeed, the latest decision fully addressed

the issue of GGYC's status as the official Challenger of Record, and the determination is reflected in the order issued in conjunction with the decision. The ten-month period should commence when a binding decision has been entered. In New York practice that is when an order has been made by the Court. Only such an order triggers finality, for example the right to appeal. Such an order has been simultaneously signed.

Dated: May 12, 2008

ENTER:



J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS Part 49

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GOLDEN GATE YACHT CLUB,

Plaintiff,

- against -

Index No. 602446/07

ORDER

SOCIÉTÉ NAUTIQUE DE GENÈVE,

Defendant,

CLUB NÁUTICO ESPAÑOL DE VELA,

Intervenor-Defendant.

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HERMAN CAHN, J.:

Plaintiff Golden Gate Yacht Club (“GGYC”) in motion sequence number 001 having moved this Court for a preliminary injunction and expedited discovery and an expedited trial, and non-parties Reale Yacht Club Canottieri Savoia and Mascalzone Latino (collectively, “Amici”) in motion sequence number 002 having moved this Court for leave to file an amici curiae brief, and Defendant Société Nautique de Genève (“SNG”) in motion sequence number 003 having moved this Court to dismiss and for summary judgment, and GGYC in motion sequence number 003 having cross-moved this Court for an order pursuant to N.Y. C.P.L.R. 3211(c) and 3212 granting GGYC's cross-motion for summary judgment, together with such further and other relief as this Court deems just and proper, and Intervenor-Defendant Club Náutico Español de Vela (“CNEV”) in motion sequence number 004 having moved this Court for summary judgment and an order dismissing Plaintiff's claims;

NOW, upon reading and filing the following papers submitted to the Court: **Motion Sequence number 001**: GGYC's Order to Show Cause, dated August 22, 2007, and the accompanying Memorandum of Law, the Affirmation of Gina M. Petrocelli and the Affidavit of Thomas F. Ehman, including the exhibits attached thereto; SNG's September 5, 2007 Memorandum of Law in Opposition and the September 5, 2007 Affidavits of Hamish Ross and Miquel Terrasa Monasterio, including the exhibits attached thereto; **Motion Sequence number 002**: Amici's October 5, 2007 Order to Show Cause and the Affirmation of Lance J. Gotko, including the exhibits attached thereto; SNG's October 12, 2007 Response to Proposed Amici's Application; **Motion Sequence numbers 003 and 004**: SNG's September 21 Notice of Motion and Memorandum of Law, the Affidavit of Hamish Ross and Affirmation of David G. Hille including the exhibits thereto, and SNG's September 21, 2007 Commercial Division Rule 19-a Statement of Material Facts; CNEV's September 21, 2007 Notice of Motion and the Affidavit of Manuel Jose Chirivella Bonet; GGYC's October 5, 2007 Notice of Cross-Motion, Memorandum of Law, the Affidavit of Thomas F. Ehman, Jr. and Affirmation of James V. Kearney including the exhibits thereto, and GGYC's Commercial Division Rule 19-a Statement of Material Facts, and Response to SNG's Commercial Division Rule 19-a Statement of Material Facts; SNG's October 12, 2007 Memorandum of Law, Response to Plaintiff's Commercial Division Rule 19-a Statement, the Affidavit of Hamish Ross, including the exhibits thereto and CNEV's October 12, 2007 Reply Memorandum of Law and Response to Plaintiff's Commercial Division Rule 19-a Statement and the Affidavit of Manuel Jose Chirivella Bonet and Affirmation of Catherine M. Doll, including the exhibits attached thereto, and GGYC's October 19, 2007 Reply Memorandum of Law and Affirmation of Gina M. Petrocelli, including the exhibits attached thereto;

AND upon reading and filing the following additional papers submitted to the Court: SNG's December 27, 2007 Notice of Motion and Memorandum of Law in Support of Motion to Renew and Reargue pursuant to CPLR 2221, the Affidavit of Fred Meyer and the exhibits attached thereto; GGYC's January 2, 2008 Memorandum of Law in Opposition to SNG's Memorandum of Law in Support of Motion to Renew and Reargue, the Affirmation of Gina M. Petrocelli and the exhibits attached thereto; SNG's January 14, 2008 Order to Show Cause, the Affirmation of Jonathan K. Youngwood and the exhibits attached thereto; the January 23, 2008 Affirmation of Gina M. Petrocelli and the exhibits attached thereto; the January 28, 2008 Affirmation of Barry R. Ostrager and the exhibits attached thereto; GGYC's March 26, 2008 Notice of Filing and the exhibit attached thereto; SNG's March 28, 2008 Notice of Filing and the exhibit attached thereto; GGYC's April 1, 2008 Notice of Filing and the exhibit attached thereto; SNG's April 2, 2008 Notice of Filing and the exhibit attached thereto;

AND upon hearing oral argument from counsel for the parties on September 10, 2007, October 22, 2007, January 14, 2008, January 23, 2008, and April 2, 2008;

AND, upon all prior pleadings and proceedings hereto;

AND, upon the Decision and Order issued by this Court on November 27, 2007 (the "November 27, 2007 Decision") granting Plaintiff GGYC's cross-motion for summary judgment, dismissing GGYC's breach of fiduciary duty claim against SNG and directing the parties to "Settle Order", a true copy of which is annexed hereto as Exhibit A;

AND, whereas, on July 11, 2007, GGYC issued a "Notice of Challenge for the America's Cup" ("Notice of Challenge") that the Court determined to be a valid challenge in its November 27, 2007 Decision; whereas, at a September 10, 2007 hearing before the Court on GGYC's motion for preliminary injunction and expedited discovery, the Court inquired whether

the parties would enter into an agreement, pursuant to which the date for the challenge match races prescribed in the Deed of Gift would be extended following a final decision on the merits of this litigation, and counsel for the parties agreed to attempt to negotiate a stipulation tolling the notice period pending a final decision on the merits; it is hereby

ORDERED that the Motion, sequence number 001 for preliminary injunction and expedited discovery and an expedited trial, is denied as moot; and it is further

ORDERED that the Motion, sequence number 002 for leave to file an amici curiae brief, is granted; and it is further

ORDERED that Defendant SNG's Motion to Dismiss and for Summary Judgment in sequence number 003 is granted to the extent it dismisses GGYC's breach of fiduciary duty cause of action, and Plaintiff GGYG's Cross-Motion for Summary Judgment in sequence number 003 is granted; and it is further

ORDERED that the Motion, sequence number 004 by CNEV for Summary Judgment and to Dismiss GGYC's claims, is denied; and it is further

ORDERED and adjudged that CNEV's challenge is invalid, and CNEV is not a valid Challenger of Record pursuant to the Deed of Gift; and it is further

ORDERED and adjudged that GGYC's challenge is valid, and GGYC is the Challenger of Record pursuant to the Deed of Gift; and it is further

ORDERED that the dates for the challenge match races shall be the date ten calendar months from the date of service of a copy of this order, with notice of entry, upon the attorneys who have appeared herein, unless said date is a Sunday or legal holiday, in which case the next day shall be the first date of the challenge match races. The second date shall be two business

days thereafter and the third date, if necessary, shall be two business days after the second race. Notwithstanding the above, the parties may mutually agree in writing to other dates.

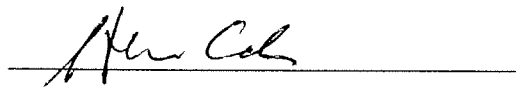
ORDERED that the location of the match shall be in Valencia, Spain or any other location selected by SNG, provided SNG notify GGYC in writing not less than six months in advance of the date set for the first challenge match race of the location it has selected for the challenge match races; and it is further

ORDERED that GGYC and SNG may engage in a mutual consent process and 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 challenge match races in accordance with the Deed of Gift; and it is further

ORDERED that the Clerk of Court is directed to enter judgment accordingly.

Dated: May 12, 2008

E N T E R:

A handwritten signature in cursive script, appearing to read "John Cole", is written over a horizontal line.

J,S.C.