

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

Golden Gate Yacht Club,

Plaintiff,

v.

Societe Nautique de Geneve,

Defendant,

Club Nautico Espanol de Vela,

Intervenor-defendant.

Index No. 602446/07

**AFFIDAVIT OF
WILLIAM I. KOCH**

WILLIAM I. KOCH, being duly sworn, deposes and says:

1. I am over 18 years of age and am a citizen of the United States. I submit this affidavit in connection with the above-captioned litigation to support Golden Gate Yacht Club's ("GGYC") motion regarding the Deed of Gift's constructed-in-country requirement and in opposition to Societe Nautique de Geneve's ("SNG")'s cross-motion to disqualify GGYC's vessel.

Personal Background

2. I have been actively involved in the America's Cup for nearly two decades. I financed, led and sailed on the 1992 winner of the America's Cup, the *America*³. I was inducted in the America's Cup Hall of Fame in 1992. In 1995, I financed and led the first and only women's team to compete for the Cup in a yacht named *Mighty Mary*.

3. I have studied the history of the America's Cup for many years. I commissioned and participated in the publication one of the definitive works on the history of the America's Cup, *An Absorbing Interest*, by Bob Fisher. I am currently supporting two further works on the

America's Cup: one covering the technology that has been employed by competing yachts; and another on Cup art and photography. I authored a series of articles during the America's Cup conducted in New Zealand in 2000 as well as co-hosted a television series on the America's Cup that aired in New Zealand. I have given over 250 speeches on various aspects of the Cup competitions. I am the largest collector of Cup memorabilia in the world. My collection includes a to-scale model of every single yacht that has competed in the match for the America's Cup.

Summary of Opinion

4. I have read the "Report and Declaration of John Rousmaniere" (the "Rousmaniere Report"). While I respect Mr. Rousmaniere as a historian, I respectfully disagree with his conclusion that the history surrounding the 1882 amendments to the Deed of Gift or past America's Cup practice suggest that the "constructed –in-country" requirement of the Deed of Gift applies only to hulls. To the contrary, I believe the historical evidence shows just the opposite – that the provision applies to the entire vessel, including and specifically its sails.

The 1882 Amendments

5. Mr. Rousmaniere argues that the point of the 1882 amendments was to "prevent the 1876 and 1881 Canadian challenger, Captain Cuthbert, from returning." (Rousmaniere ¶ 34.) However, in addressing the events that led to the 1882 amendments, Mr. Rousmaniere has not cited any evidence to suggest that the hull of either of Captain Cuthbert's vessels, the *Countess of Dufferin* or the *Atalanta*, was constructed in the United States.

6. By contrast, contemporaneous sources confirm that the sails of these vessels *were* substantially modified, and in some instances, fully constructed in New York:

- “Her sails were so poorly cut that they had to be taken off and recut by the renowned American sailmaker, Wilson. Later, four feet were added to her main boom to give her more mainsail.” (Exhibit A.)
- “All her sails, also, with a few exceptions, had been made in New York, and so, as a daily paper remarked, whichever way the contest terminated, it would be a victory for the American model.” (Exhibit B.)
- “There is in reality nothing about her [the *Countess of Dufferin*] which would lead anyone looking at her at a little distance to pronounce her a foreign yacht. . . . [F]rom the cut of her jib to the hoist of her mainpeak, the *Countess of Dufferin*, so far as appearances go, is a thorough Yankee vessel; she has a Yankee model, a Yankee rig, and is furnished with a patent Yankee steering apparatus, bearing the imprint of a dealer in that sort of wares located in Cannon street, in this City.” (Exhibit C.)
- “[The first Deed] held until after the *Atalanta-Mischief, Madeleine-Countess of Dufferin* races, when a new deed was made. The reason for the change was that the two Canadian boats were towed through canals, and the dates of the races delayed time and again. Not only this, American riggers fitted this pair out. John Sawyer practically made over the sails, and so ‘fresh water’ were those in control of the *Countess of Dufferin* that the late Joe Ellsworth sailed her in one race, and he had a south side of Long Island oysterman crew to help him out.”) (Exhibit D.)
- “Had this yacht [*Countess of Dufferin*] sailed these races within a reasonable time after her arrival, in all the maiden bloom of her Canadian builders’ art and skill, she would have been beaten hull down today, without a shadow of doubt. But with a keenness worthy of the shrewdest Yankee, her owner had not been here many days before he saw that his yacht was a monstrosity, compared with the club yachts of the squadron he had come to contend with. He at once called to his aid all the combined yachting skill which New York city possessed, and completely transformed his yacht: booms were lengthened out, clouds of canvas were fitted . . . a full crew of the choicest Yankee tars were selected . . . the best sailing master in New York was engaged . . .”). (Exhibit E.)

7. Thus the manufacture of the sails was very much at the center of the controversy that led to the 1882 amendments to the Deed of Gift, leading me to conclude that the amendments were intended to include sails.

8. The evidence Mr. Rousmaniere cites regarding “exchanges in sailmaking technology” is enlightening, but to me it demonstrates quite clearly that it was well understood that the constructed in country provision in the Deed of Gift prohibits the foreign manufacture of sails.

9. Specifically, the evidence cited by Mr. Rousmaniere shows that *prior to* the 1882 amendments (in 1876 and 1881) the Canadian challenger used American-made sails, which as discussed above was widely criticized and led to the 1882 amendments. (Rousmaniere ¶ 15.). However, it shows that *after* 1882, while there are multiple examples of the use of foreign materials to make sails (1887, 1892, 1895, 1901, 1903, 1920, 1930, 1934 and 1937) there are only three examples in 111 years of the use of sails that were not constructed in country. As the evidence he cites shows, one example was the result of an act of “courtesy” that “upset some diehard yachtsmen” (*Id.*), another was the result of the defender turning “a blind eye” (*Id.* ¶ 42)¹ and the third was the result of a “relaxation of the rule”. (*Id.* ¶ 43 & Ex. R.)

¹ Mr. Roumaniere cites no documentary evidence for the proposition that the 1958 British challenger *Sceptre* raced with a spinnaker constructed in France. (*Id.* ¶ 42.) In fact, according to Hugh Summerville’s book, *Sceptre: The Seventeenth Challenger* (1958) at 95, the spinnaker with which *Sceptre* raced was built in the Ratsey & Lapthorn sail loft in Gosport, England.

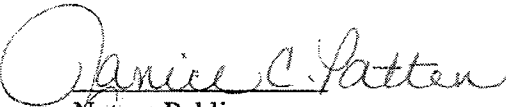
10. This evidence indicates to me that it was well understood that the Deed of Gift did not pose restrictions on the use of foreign raw materials but did prevent the construction of sails outside the competitor's country.

Dated: January 27, 2010



William I. Koch

Subscribed and sworn to me before this
27th day of January 2010



Notary Public

