

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

-----X

GOLDEN GATE YACHT CLUB,

Plaintiff,

- against -

Index No. 602446/07

ORDER

SOCIÉTÉ NAUTIQUE DE GENÈVE,

**FILED**

Defendant, MAY 13 2008

CLUB NÁUTICO ESPAÑOL DE VELA,

NEW YORK  
COUNTY CLERK'S OFFICE

**RECEIVED**  
MAY 13 2008  
IAS MOTION  
SUPPORT OFFICE

Intervenor-Defendant.

-----X

**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;

YCP

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

**FILED**

ENTER:

MAY 13 2008

NEW YORK  
COUNTY CLERK'S OFFICE

*Ann Col*

J.S.C.

*Norman Cardman*  
Clerk

**FILED**  
APR -7 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

*as a judgment*

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

GOLDEN GATE YACHT CLUB,

Plaintiff,

- against -

SOCIETE NAUTIQUE DE GENEVE

Defendant,

CLUB NAUTICO ESPANOL DE VELA,

Intervenor-Defendant.

Index No. 602446 / 07

ORDER AND JUDGMENT

LATHAM & WATKINS LLP

Attorneys for

885 THIRD AVENUE  
NEW YORK, NEW YORK 10022-4802  
(212) 906-1200

**FILED**

APR - 7 2009

AT 4:33 P.M.  
N.Y., CO. CLK'S OFFICE

*as a judgment*

To

Service of a copy of the within is hereby admitted.

Dated: .....20.....

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

GOLDEN GATE YACHT CLUB

Plaintiff(s)

602446/07

against  
SOCIETE NAUTIQUE DE GENEVE

Costs of Plaintiff

CLUB NAUTICO ESPANOL DE VELA

Defendant(s)

COSTS		\$
Costs before note of issue CPLR §8201 subd. 1		
Costs after note of issue CPLR §8201 subd. 2		
Trial of issue CPLR §8201 subd. 3		
Allowance by statute CPLR §8302(a), (b)		
Additional allowance CPLR §8302 (d)		
Motion costs CPLR §8202		
Appeal to Appellate Term CPLR §8203 (b)		
Appeal to Appellate Division CPLR §8203 (a)		
Appeal to Court of Appeals CPLR §8204	500.00 ✓	
Costs upon frivolous claims and counterclaims CPLR §8303-a		
COSTS	\$500.00	
	20,950.44	
DISBURSEMENTS	<del>35,535.44</del>	
TOTAL	<del>36,035.44</del>	
	\$21,450.44	

DISBURSEMENTS		\$
Fee for index number CPLR §8018(a)		
Referee's fees CPLR §8301(a)(1), 8003(a)		
Commissioner's compensation CPLR §8301(a)(2)		
Clerk's fee, filing notice of pend. or attach. CPLR §8021(a)(10)		
Entering and docketing judgment CPLR §8301(a)(7), 8016(a)(2)		
Paid for searches CPLR §8301(a)(10)		
Affidavits & acknowledgments CPLR §8009		
Serving copy summons & complaint CPLR §8011(h)(1), 8301(d)		
Request for judicial intervention		
Note of issue CPLR §8020(a)		
Paid referee's report CPLR §8301(a)(12)		
Certified copies of papers CPLR §8301(a)(4)		
Satisfaction piece CPLR §5020(a), 8021		
Transcripts and filing CPLR §8021		
Certified copy of judgment CPLR §8021		
Postage CPLR §8301(a)(12)		
Jury fee CPLR §8020(c)		
Stenographers' fees CPLR §8002, 8301		
Sheriff's fees on execution CPLR §8011, 8012		
Sheriff's fees, attachment, arrest, etc. CPLR §8011		
Paid printing cases CPLR §8301(a)(6)		
Clerk's fees Court of Appeals CPLR §8301(a)(12)		
Paid copies of papers CPLR §8016(a)(4)		
Motion expenses CPLR §8301(b)		
Fees for publication CPLR §8301(a)(3)		
Serving subpoena CPLR §8011(h)1, 8301(d)		
Paid for Search CPLR §8301(a)(10)		
Referee's report		
Attendance of witnesses CPLR §8001(a)(b)(c), 8301(a)(1)		
Ⓢ Copies of the invoices attached		
		20,950.44
		<del>35,535.44</del>
		\$35,535.44
		20,950.44

THESE I CERTIFY THAT I HAVE  
EXHAUSTED THIS BILL OF COSTS AT  
\$21,450.44  
APR - 7 2009

Document filed  
pursuant to court  
of Appeals order  
dated 4/2/09,  
filed 4/7/09.

My APD

State of New York, County of

Index No. 602440/07

ss.: being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on deponent served the within bill of costs and notice of taxation on

attorney(s) for herein, at his/her office at

during his/her absence from said office strike out either (a) or (b)

(a) by then and there leaving a true copy of the same with

his/her clerk; partner; person having charge of said office.

(b) and said office being closed, by depositing a true copy of same, enclosed in a sealed wrapper directed to said attorney(s), in the office letter drop or box.

Sworn to before me on

State of New York, County of

ss.: being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on deponent served the within bill of costs and notice of taxation on

attorney(s) for at

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid property addressed wrapper, in—a post office—official depository under the exclusive care and custody of the United States Postal Service within New York State.

Sworn to before me on

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

GOLDEN GATE YACHT CLUB

Plaintiff(s)

against

SOCIETE NAUTIQUE DE GENEVE

CLUB NAUTICO ESPANOL DE VELA

Defendant(s)

Bill of Costs  
and Notice of Taxation

Please Take Notice that the within is a true copy of the items of costs and disbursements in the within action taxed\* and that the same will be taxed\* by the Clerk of the Supreme Court Court, at his/her office in the courthouse thereof on at M. of that day—and the amount inserted in the judgment. Yours, etc.

Latham & Watkins LLP

Attorney(s) for Plaintiff

To Simpson, Thacher & Bartlett LLP  
Debevoise & Plimpton LLP

Attorney(s) for Defendants

Service of the within bill of costs and notice of taxation is hereby admitted on

Attorney(s) for

\* Strike out one (CPLR §8402.8403)

The undersigned, an attorney admitted to practice in the courts of this state, affirms: that I am a member of the bar of this Court and of the firm Latham & Watkins LLP

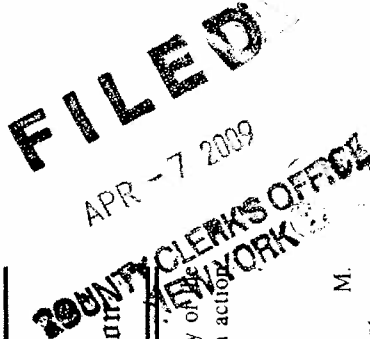
the attorney(s) of record for the Plaintiff in the above entitled action; that the foregoing disbursements have been or will necessarily be made or incurred in this action and are reasonable in amount and that each of the persons named as witnesses attended as such witness on the trial, hearing or examination before trial herein the number of days set opposite their names; that each of said persons resided the number of miles set opposite their names from the place of said trial, hearing or examination; and each of said persons, as such witness as aforesaid, necessarily traveled the number of miles so set opposite their names in traveling to, and the same distance in returning from, the same place of trial, hearing or examination; and that copies of documents or papers as charged herein were actually and necessarily obtained for use.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: April 7, 2009

The name signed must be printed beneath

Aaron Siri





Golden Gate Yacht Club  
Plaintiff-Respondent,

v.

Societe Nautique de Geneve

Defendant-Appellant,

Club Nautico Espanol de Vela,

Intervenor-Defendant

Index No. 602446/07

**AFFIRMATION OF AARON SIRI**

AARON SIRI, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true, under penalty of perjury, pursuant to CPLR § 2106:

1. Attached hereto as Exhibit A is a true and correct copy of an invoice from Counsel Press LLC dated September 30, 2008 in the amount of \$36,032.34, of which \$34,868.39 constitutes printing fees incurred by Plaintiff in prosecuting its appeal in the above captioned matter at the New York State Court of Appeals.
2. Attached hereto as Exhibit B is a true and correct copy of an invoice from Counsel Press LLC dated December 10, 2008 in the amount of \$941.24, of which \$667.05 constitutes additional printing fees incurred by Plaintiff in prosecuting its appeal in the above captioned matter at the New York State Court of Appeals.
3. Accordingly, the total printing fees incurred by Plaintiff in prosecuting its appeal in the above captioned matter at the New York State Court of Appeals is \$35,535.44.

Dated: April 7, 2009  
New York, NY



AARON SIRI

**EXHIBIT A**

**COUNSEL PRESS LLC**  
**PO Box 1053**  
**New York, NY 10018-9998**  
**(800) 427-7325**

### INVOICE

Latham & Watkins LLP

885 Third Avenue, 10th Floor  
New York, NY 10022

ATTENTION: Aaron Siri, Esq.

CASE NAME: Golden Gate Yacht Club v. SNG

COURT: NYCOA

INVOICE NO.: 8092461  
 INVOICE DATE: 09/30/2008  
 FED.TAX I.D.# 43-2070509  
 FILE NO.: 218298  
 TERMS: Due Upon Receipt

	@	AMOUNT
For Reproduction of :		
Record on Appeal - (39 copies)		
6.00 Cover(s) - 1st side	@	135.000 \$810.00
2.00 Page(s) Table of Contents	@	95.000 \$190.00
3,556.00 Pages	@	4.950 \$17,602.20
87.00 Numbered Make Ready	@	0.250 \$21.75
15.00 Page Headings	@	5.500 \$82.50
2.00 Retype(s) - 5531, 2105	@	55.000 \$110.00
19.00 Additional Copies Over 20	@	703.020 \$13,357.38
1 Filing & 2 Services		\$115.00
Messenger Service		\$717.00
Federal Express - To Client		\$184.00
Federal Express Advance		\$58.00

FILED

APR - 7 2009

COUNTY CLERK'S OFFICE  
NEW YORK

SUB-TOTAL : \$ 33,247.83

0.00

0.00

APPLICABLE SALES TAX: \$ 2,784.51

INVOICE TOTAL: \$ 36,032.34

18,821.45

1,576.30

20,399.00

This Invoice is Due Upon Receipt. Please Show Invoice Number on Check When Making Payment

DA

# **EXHIBIT B**

# Invoice

Counsel Press LLC  
SDS-12-2802  
PO Box 86  
Minneapolis, MN 55486-2802

Invoice Number: 0008120073

Date: 12/10/2008

Fed. Tax ID: 43-2070509

\*\*\*\*Reprint\*\*\*\*

Terms: ON RECEIPT

Sold To

Latham & Watkins LLP  
885 Third Avenue, 10th Floor  
New York, NY 10022 USA

Attention: Aaron Siri, Esq.

File No.: 219573  
Court: NYCOA  
Case Name: Golden Gate v. Societe Nautique

For Reproduction of:

			Amount
	REPLY BRIEF		
1.00	Preparation of Brief	@	\$375.00
26.00	Additional Copies Over 20	@	\$9.25
1.00	Filing & 3 Service(s)	@	\$135.00
1.00	Federal Express - Service(s)	@	\$60.00
1.00	Federal Express - Filing	@	\$31.00
1.00	Federal Express	@	\$27.00

**FILED**  
APR - 7 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

00-DA

This Invoice is Due Upon Receipt. Please Show Invoice Number on Check When Submitting Payment.

Subtotal

Sales Tax

Payment/Credit Amount

Balance

\$510.00

~~\$868.50~~

\$72.74 42.69

\$0.00

\$0.00

~~\$041.24~~

NEW YORK, NY - WASHINGTON, DC - PHILADELPHIA, PA - LOS ANGELES, CA, CHICAGO, IL  
BUFFALO, NY - RICHMOND, VA - BOSTON, MA - ISELIN, NJ - SYRACUSE, NY - ROCHESTER, NY

552.69



# State of New York Court of Appeals

*Remittitur*

HON. CARMEN BEAUCHAMP CIPARICK, *Senior Associate Judge, presiding.*

No. 25

Golden Gate Yacht Club,  
Appellant,

v.

Societe Nautique De Geneve,  
Respondent,  
Club Nautico Espanol De Vela,  
Intervenor-Respondent.

Appellant in the above entitled appeal appeared by Latham & Watkins, LLP; respondent appeared by Simpson Thacher & Barlett, LLP; intervenor-respondent appeared by Debevoise & Plimpton, LLP; and amici curiae appeared by Carter Ledyard & Milburn, LLP; Sheppard Mullin Richter & Hampton, LLP; Troutman Sanders, LLP; Menz Bonner & Komar, LLP; Friedman Kaplan Seller & Adelman, LLP; and Meiselman Denlea Packman Carton & Eberz, P.C.

The Court, after due deliberation, orders and adjudges that the order is reversed, with costs, and orders of Supreme Court, New York County, reinstated. Opinion by Judge Ciparick. Judges Graffeo, Read, Smith, Pigott and Jones concur. Chief Judge Lippman took no part.

The Court further orders that this record of the proceedings in this Court be remitted to the Supreme Court, New York County, there to be proceeded upon according to law.

I certify that the preceding contains a correct record of the proceedings in this appeal in the Court of Appeals and that the papers required to be filed are attached.

*Stuart M. Cohen*

Stuart M. Cohen, Clerk of the Court

FILED  
APR 7 - 2009  
NEW YORK  
COUNTY CLERK'S OFFICE

Court of Appeals, Clerk's Office, Albany, April 2, 2009

# State of New York

## Court of Appeals

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No. 25  
Golden Gate Yacht Club,  
Appellant,  
v.  
Societe Nautique De Geneve,  
Respondent,  
Club Nautico Espanol De Vela,  
Intervenor-Respondent.

### OPINION

This opinion is uncorrected and subject to revision  
before publication in the New York Reports.

Maureen E. Mahoney, for appellant.  
Barry R. Ostrager, for respondent.  
David W. Rivkin, for intervenor-respondent.  
New York Yacht Club; The San Diego Yacht Club Sailing  
Foundation et al.; William I. Koch; Team French Spirit et al.;  
Deutscher Challenger Yacht Club et al.; Reale Yacht Club  
Canottieri; Savoia et al.; City of Valencia, Spain, amici curiae.

CIPARICK, J.:

This appeal involves the preeminent international sailing regatta and match race, the America's Cup. We had occasion once before to examine the charitable trust that governs the competition. In Mercury Bay Boating Club v San Diego Yacht Club (76 NY2d 256 [1990]), we strictly construed the provisions



of Captain Alexander Cuthbert. Neither of the challenging vessels could withstand the rigors of open sea competition. The *Countess of Dufferin*, the first challenging vessel, was described as having "fresh water written all over her. . . [h]er hull lacked finish, being as rough as a nutmeg grater. . . and had little of the shipshape appearance expected of a cup challenger."<sup>1</sup> The *Atalanta*, the second challenging vessel, was also denounced by critics as being "a new yacht, hastily built, totally untried, and miserably equipped. . ."<sup>2</sup> To deal with this "unseaworthiness" issue, Schuyler amended the Deed of Gift with the intent of precluding Great Lakes yacht clubs from competing and reconveyed the America's Cup to the New York Yacht Club to hold in trust. In addition to requiring that a challenger be an "organized" yacht club, the amended Deed of Gift, dated October 24, 1887, added new eligibility requirements that a challenger must meet, including that it be "incorporated, patented or licensed by the Legislature, admiralty or other executive department, having for its annual regatta an ocean water course. . ." (Deed of Gift, October 24, 1887, ¶ 4). The Deed further provides that the Cup "shall be preserved as a perpetual Challenge Cup for friendly competition between foreign

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<sup>1</sup> Winfield M. Thompson and Thomas W. Lawson, *The Lawson History of the America's Cup: Record of Fifty Years*, at 78 [Ashford Press Publishing, Southampton 1986] (internal quotations omitted).

<sup>2</sup> *Id.* at 88.

and the Challenger of Record agree to such an arrangement and provide in their protocol for such participation. Traditionally, challengers that are allowed to participate based upon the mutual agreement of the Defender and the Challenger of Record pursuant to their resulting protocol, are known as Mutual Consent Challengers. However, should the Defender and the Challenger of Record fail to reach an agreement as to the terms under which they will race, the Deed of Gift contains a default match provision for a one-on-one race between the Defender and the Challenger of Record.

On July 5, 2007, SNG as the Defender and CNEV as Challenger of Record, published a protocol for the 33rd America's Cup setting forth the conditions of the competition that includes an arbitration provision to resolve disputes. On July 11, 2007, plaintiff Golden Gate Yacht Club (GGYC),<sup>6</sup> disputing the validity of CNEV's challenge, primarily on the basis that CNEV was not a bona fide yacht club -- formed only a few days before submitting its challenge -- and had never held an annual regatta, presented its own Notice of Challenge. SNG rejected GGYC's challenge on the basis that CNEV's challenge was first in time and since CNEV's challenge had already been accepted, no other challenge could be considered until after CNEV's challenge had been decided.

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<sup>6</sup> GGYC is a yacht club incorporated in the State of California.

Notice of Challenge to SNG. Supreme Court, strictly interpreting the Deed of Gift, declared GGYC to be the Challenger of Record. A divided Appellate Division reversed, holding the language of the Deed to be ambiguous and declaring the Notice of Challenge issued by CNEV valid, and CNEV the rightful Challenger of Record. GGYC appealed pursuant to CPLR 5601(a) dissent grounds and we now reverse.

In Mercury Bay, where we resolved a dispute regarding a type of vessel that arose relating to the 27th America's Cup match, we stated that the

"[l]ong-settled rules of construction preclude an attempt to divine a settlor's intention by looking first to extrinsic evidence. Rather, the trust instrument is to be construed as written and the settlor's intention determined solely from the unambiguous language of the instrument itself. It is only where the court determines the words of the trust instrument to be ambiguous that it may properly resort to extrinsic evidence" (id. 76 NY2d at 267).

The relevant provisions of the Deed of Gift, to be construed here at paragraph 4 provide 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."

The Deed, in paragraph 10, further provides that:

"when a challenge from a Club fulfilling

157, 162 [1990]), "[e]vidence outside the four corners of the document as to what was really intended but unstated or misstated is generally inadmissible to add to or vary the writing." The Appellate Division majority deemed the phrase, "having for its annual regatta," ambiguous and therefore found it appropriate to glean the settlor's intention as to the meaning and purpose of this phrase by looking to extrinsic evidence. We disagree and find the phrase to be unambiguous. As we did in Mercury Bay, we must first examine the plain language of the Deed of Gift and determine, as a matter of law, whether the language can be construed as written and the settlor's intention determined solely from the unambiguous language of the instrument itself.

In looking at the plain language of the Deed of Gift itself, as we must, we first note that the annual regatta requirement is only one of a list of eligibility requirements set forth in the Deed of Gift. The settlor clearly placed the requirements of "organized" and "incorporated, patented, or licensed" in the past and intended that a challenger would continue to meet these eligibility requirements in the present and future. For example, the term "incorporated" refers both to a past event of incorporation and to a continuing status. We believe that the settlor intended the same to be true for the "annual" regatta requirement. By using the word "annual," the settlor suggested an event that has already occurred at least once and will occur regularly in the future. Taken as a whole,

settlor intended that a challenging yacht club is not required to have held a regatta on the open sea prior to issuing its Notice of Challenge. This assertion has no merit because the plain language of the Deed of Gift itself forecloses such an illogical conclusion. Even if the language of the Deed of Gift were ambiguous, evidence of these practices would not qualify as extrinsic evidence of the settlor's intent in 1887 as these practices emerged much later. Thus, the decision of the Defender and the Challenger of Record to waive the eligibility requirements for yacht clubs seeking to participate as Mutual Consent Challengers has no bearing on whether a yacht club seeking to establish itself as the Challenger of Record must meet the requirements imposed by the Deed of Gift itself.

Since CNEV has failed to show that at the time it submitted its Notice of Challenge it was a "[c]lub fulfilling all the conditions required by" the Deed of Gift, it does not qualify as the Challenger of Record for the 33rd America's Cup competition and Supreme Court was correct in declaring GGYC to be the valid Challenger of Record.

It has been posited that the right to act as trustee of the America's Cup should be decided on the water and not in a courtroom. We wholeheartedly agree. It falls now to SNG and GGYC to work together to maintain this noble sailing tradition as "a perpetual Challenge Cup for friendly competition between foreign countries" (Deed of Gift, October 24, 1887, ¶ 3).



*State of New York  
Court of Appeals*

*Stuart M. Cohen  
Clerk of the Court*

*Clerk's Office  
Albany, New York 12207-1095*

Decided April 2, 2009

No. 25

Golden Gate Yacht Club,  
Appellant,

v.

Societe Nautique De Geneve,  
Respondent,  
Club Nautico Espanol De Vela,  
Intervenor-Respondent.

Order reversed, with costs, and orders of  
Supreme Court, New York County,  
reinstated.

Opinion by Judge Ciparick.

Judges Graffeo, Read, Smith, Pigott and  
Jones concur.

Chief Judge Lippman took no part.

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

GOLDEN GATE YACHT CLUB,

Plaintiff,

- against -

SOCIETE NAUTIQUE DE GENEVE

Defendant,

CLUB NAUTICO ESPANOL DE VELA,

Intervenor-Defendant.

Index No. 602446 / 07

BILL OF COSTS

**FILED**

APR -7 2009

**COUNTY CLERKS OFFICE  
NEW YORK**

LATHAM & WATKINS LLP

*Attorneys for*

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To

Service of a copy of the within is hereby admitted.

Dated: .....20.....