

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

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GOLDEN GATE YACHT CLUB, :
 :
 :
 :
 Plaintiff, :
 :
 : INDEX NO. 602446/07
 v. :
 : IAS Part 54
 SOCIÉTÉ NAUTIQUE DE GENÈVE, :
 :
 : Hon. Shirley Werner Kornreich
 Defendant, :
 :
 :
 v. : **AFFIRMATION OF**
 : **BARRY R. OSTRAGER**
 CLUB NÁUTICO ESPAÑOL DE VELA, :
 :
 :
 Intervenor-Defendant. :
 :
-----x

BARRY R. OSTRAGER, an attorney duly admitted to practice law before the
Courts of the State of New York, hereby affirms under penalty of perjury:

1. I am a member of the firm Simpson Thacher & Bartlett LLP, counsel to Société Nautique de Genève (“SNG”) in the above-captioned action. I submit this Affirmation in further support of SNG’s Opposition to Golden Gate Yacht Club’s (“GGYC”) Motion for Contempt.
2. Attached hereto as Exhibit A is a true and correct copy of the Deed of Gift.
3. Attached hereto as Exhibit B is a true and correct copy of a letter from Marcus Young and Norbert Bajurin of GGYC to SNG, dated July 11, 2007, attaching GGYC’s Notice of Challenge and GGYC’s Certificate of Name, Rig, and Specified Dimensions of Challenging Vessel.
4. Attached hereto as Exhibit C is a true and correct copy of the Order and Judgment of this Court dated April 7, 2009.

5. Attached hereto as Exhibit D is a true and correct copy of an article from the New Zealand Herald entitled *Yachting: Alinghi bosses threatened with jail*, dated April 30, 2009.


By: 
Barry R. Ostrager

Exhibit A

DEED OF GIFT

This Deed of Gift, made the twenty-fourth day of October, one thousand eight hundred and eighty-seven, between George L. Schuyler as sole surviving owner of the Cup won by the yacht AMERICA at Cowes, England, on the twenty-second day of August, one thousand eight hundred and fifty-one, of the first part, and the New York Yacht Club, of the second part, as amended by orders of the Supreme Court of the State of New York dated December 17, 1956, and April 5, 1985.

WITNESSETH

That the said party of the first part, for and in consideration of the premises and of the performance of the conditions and agreements hereinafter set forth by the party of the second part, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto said party of the second part, its successors and assigns, the Cup won by the schooner yacht AMERICA, at Cowes, England, upon the twenty-second day of August, 1851. To have and to hold the same to the said party of the second part, its successors and assigns, IN TRUST, NEVERTHELESS, for the following uses and purposes:

This Cup is donated upon the conditions that it shall be preserved as a perpetual Challenge Cup for friendly competition between foreign countries.

Any 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, with a yacht or vessel propelled by sails only and constructed in the country to which the Challenging Club belongs, against any one yacht or vessel constructed in the country of the Club holding the Cup.

The competing yachts or vessels, if of one mast, shall be not less than forty-four feet nor more than ninety feet on the load water-line; if of more than one mast they shall be not less than eighty feet nor more than one hundred and fifteen feet on the load water-line.

The Challenging Club shall give ten months' notice, in writing, naming the days for the proposed races; but no race shall be sailed in the days intervening between November 1st and May 1st if the races are to be conducted in the Northern Hemisphere; and no race shall be sailed in the days intervening between May 1st and November 1st if the races are to be conducted in the Southern Hemisphere. 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. Center-board or sliding keel vessels shall always be allowed to compete in any race for this Cup, and no restriction nor limitation whatever shall be placed upon the use of such center-board or sliding keel, nor shall the center-board or sliding keel be considered a part of the vessel for any purposes of measurement.

The 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, in which case also the ten months' notice may be waived.

In case the parties cannot mutually agree upon the terms of a match, then three races shall be sailed, and the winner of two of such races shall be entitled to the Cup. All such races shall be on ocean courses, free from headlands, as follows: The first race, twenty nautical miles to windward and return; the second race an equilateral triangular race of thirty-nine nautical miles, the first side of which shall be a beat to windward; the third race (if necessary) twenty nautical miles to windward and return; and one week day shall intervene between the conclusion of one race and the starting of the next race. These ocean courses shall be practicable in all parts for vessels of twenty-two feet draught of water, and shall be selected by the Club holding the Cup; and these races shall be sailed subject to its rules and sailing regulations so far as the same do not conflict with the provisions of this deed of gift, but without any times allowances whatever. The challenged Club shall not be required to name its representative vessel until at a time agreed upon for the start, but the vessel when named must compete in all the races, and each of such races must be completed within seven hours.

Should the Club holding the Cup be for any cause dissolved, the Cup shall be transferred to some Club of the same nationality, eligible to challenge under this deed of gift, in trust and subject to its provisions. In the event of the failure of such transfer within three months after such dissolution, such Cup shall revert to the preceding Club holding the same, and under the terms of this deed of gift. It is distinctly understood that the Cup is to be the property of the Club subject to the provisions of this deed, and not the property of the owner or owners of any vessel winning a match.

No vessel which has been defeated in a match for this Cup can be again selected by any Club as its representative until after a contest for it by some other vessel has intervened, or until after the expiration of two years from the time of such defeat. And 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.

AND, the said party of the second part hereby accepts the said Cup subject to the said trust, terms, and conditions, and hereby covenants and agrees to and

with said party of the first part that it will faithfully and will fully see that the foregoing conditions are fully observed and complied with by any contestant for the said Cup during the holding thereof by it; and that it will assign, transfer, and deliver the said Cup to the foreign Yacht Club whose representative yacht shall have won the same in accordance with the foregoing terms and conditions, provided the said foreign Club shall, by instrument in writing lawfully executed, enter with said part of the second part into the like covenants as are herein entered into by it, such instrument to contain a like provision for the successive assignees to enter into the same covenants with their respective assignors, and to be executed in duplicate, one to be retained by each Club, and a copy thereof to be forwarded to the said party of the second part.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal, and the said party of the second part has caused its corporate seal to be affixed to these presents and the same to be signed by its Commodore and attested by its Secretary, the day and year first above written.

GEORGE L. SCHUYLER, (L.S.) In the presence of THE NEW YORK YACHT CLUB H. D. Hamilton. by Elbridge T. Gerry, Commodore (Seal of the New York Yacht Club) John H. Bird, Secretary

Exhibit B



GOLDEN GATE YACHT CLUB
#1 Yacht Road, San Francisco, California USA 94123

11 July 2007

The President
Société Nautique de Genève
Port Noir, Lake Geneva
Geneva, SWITZERLAND

Dear Sir:

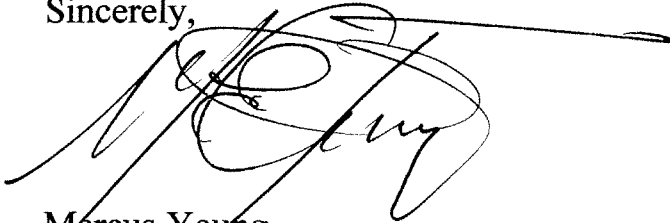
Enclosed Challenge for the 33rd America's Cup

On 3 July 2007 Société Nautique de Genève (SNG) announced the acceptance of a challenge for the 33rd America's Cup from the Club Náutico Español de Vela (CNEV).

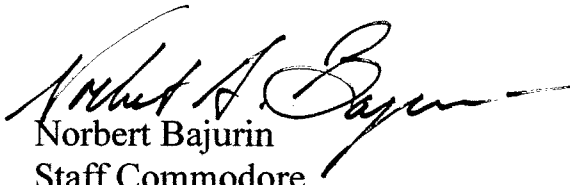
We respectfully submit that the challenge is invalid. Among other deficiencies, it is not from a *bona fide* yacht club, but from an entity organized in the form of a yacht club only a few days before the challenge was accepted by SNG and which has never had an annual regatta on an open water course on the sea or an arm of the sea as required by the Deed of Gift. It is also apparent that this "Challenger of Record" has not performed any of the duties of the Challenger as contemplated by the Deed of Gift, but has simply delegated to the Defender the authority to determine all of the "conditions" governing the match. This undermines the fundamental purpose of the Deed of Gift to preserve this competition as a Challenge Cup.

Attached is a *bona fide* challenge from the Golden Gate Yacht Club (GGYC). GGYC hereby demands recognition as the legitimate Challenger of Record for the 33rd America's Cup. GGYC is fully prepared to meet all of the obligations of the Challenger, as provided by the letter and spirit of the Deed of Gift, in accordance with the history and tradition of the oldest trophy in international sport.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marcus Young', with a long horizontal flourish extending to the right.

Marcus Young
Commodore
Golden Gate Yacht Club

A handwritten signature in black ink, appearing to read 'Norbert Bajurin', with a long horizontal flourish extending to the right.

Norbert Bajurin
Staff Commodore
Golden Gate Yacht Club

enclosure



GOLDEN GATE YACHT CLUB
#1 Yacht Road, San Francisco, California USA 94123

11 July 2007

The President
Société Nautique de Genève
Port Noir, Lake Geneva
Geneva, SWITZERLAND

Dear Sir:

Notice of Challenge for the America's Cup

It is with much pleasure that the Golden Gate Yacht Club (GGYC) hereby formally challenges Société Nautique de Genève (SNG) to a match for the America's Cup.

This Notice of Challenge is given in accordance with the America's Cup Deed of Gift dated 24 October 1887 between George L Schuyler and the New York Yacht Club as amended by Orders of the Supreme Court of the State of New York dated 17 December 1956 and 5 April 1985.

We are pleased to confirm that GGYC:

- (a) is incorporated in the United States of America, in the State of California;
- (b) maintains a membership of more than 200 members;
- (c) operates as a yacht club and has objectives consistent with the furtherance of yachting activities;
- (d) is a member of our national sailing authority, US SAILING; and
- (e) has 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.

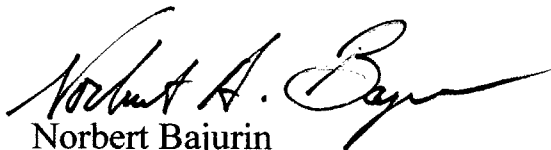
To comply with the requirements of the Deed of Gift that ten months' notice be given, and recognizing the period permitted by the Deed of Gift for a match in the Northern Hemisphere, we name 4 July 2008 as the date of the first race, 6 July 2008 and 8 July 2008 as the dates for the second and, if necessary, third races. GGYC acknowledges that the Deed of Gift contemplates negotiations between the Challenger and the Defender that may alter and supplement these terms, and nothing in this Challenge is intended to circumvent consensual negotiations in the spirit of the Deed of Gift toward a Protocol comparable in scope, and similar in terms, to that used for the 32nd America's Cup. However, should SNG be unwilling to participate in the establishment of a Protocol through a consensual process, then the match shall proceed as expressly set forth in the Deed of Gift.

Also in accordance with the requirements of the Deed of Gift, attached is the Certificate as to the name, rig and specified dimensions of the challenging vessel. The "Custom House" registry of the challenging vessel will be sent as soon as possible. It is again acknowledged that the dimensions of the challenging and defending vessel for the proposed match may be altered as a result of the consensual process contemplated in the Deed of Trust – provided that SNG is willing to engage in that process.

Sincerely,



Marcus Young
Commodore
Golden Gate Yacht Club



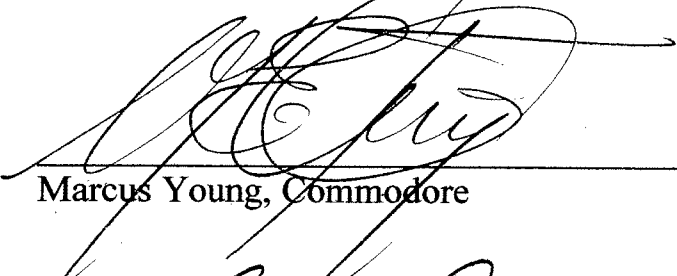
Norbert Bajurin
Staff Commodore
Golden Gate Yacht Club

**CERTIFICATE
OF NAME, RIG AND SPECIFIED DIMENSIONS OF
CHALLENGING VESSEL**

I, Commodore Marcus Young, certify the details set out below as to the name, rig and specified dimensions of the keel yacht to represent **Golden Gate Yacht Club** in a match for the America's Cup to be sailed in accordance with the Notice of Challenge herewith:

1. **Name:** *USA*
2. **Owner:** Oracle Racing, Inc.
3. **Rig:** Single-masted, sloop-rigged
4. **Dimensions:**
 - (a) Length on Load Waterline – 90 feet
 - (b) Beam at Load Waterline – 90 feet
 - (c) Extreme Beam – 90 feet
 - (d) Draught of water (hull draft) – 3 feet
 - (e) Draught of water (boards down) – 20 feet

For the **Golden Gate Yacht Club**,



Marcus Young, Commodore



Norbert Bajurin, Staff Commodore

Exhibit C

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

-----X
GOLDEN GATE YACHT CLUB,

Plaintiff,

- against -

SOCIÉTÉ NAUTIQUE DE GENÈVE,

FILED

Index No. 602446/07

ORDER

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;

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

Alan Cole

J.S.C.

Norman Cedeno
Clerk

FILED

APR -7 2009

COUNTY CLERK'S OFFICE
NEW YORK

As a Judgment

Exhibit D



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The New Zealand Herald

April 30, 2009 Thursday

SECTION: SPORT; General

LENGTH: 432 words

HEADLINE: Yachting: Alinghi bosses threatened with jail

BODY:

Top Alinghi officials are facing threats of fines and even imprisonment if BMW-Oracle are successful in their bid to have the America's Cup defenders found in contempt of court.

The latest legal twist in the bitter 21-month feud between the two rival syndicates centres on the date on which they will meet in the 33rd America's Cup.

After the failed attempts of the two teams to negotiate a traditional multi-challenger regatta, Alinghi announced they would meet Oracle in a rare Deed of Gift challenge in giant multihulls in May next year.

This appeared to contravene an earlier court ruling that set down the date of the first meeting for February 8.

The Golden Gate Yacht Club (GGYC) has now gone back to the New York Supreme Court and persuaded it to issue an order directing Alinghi to explain why they should not be held in contempt of court.

A court hearing has been scheduled for two weeks' time.

The front page of the court notice, signed by "the Honourable Judge Kornreich", reads:

"Pursuant to Judiciary Law 756 and this court's inherent remedial authority, please take notice that the purpose of this hearing, inter alia, is to punish defendant Societe Nautique de Geneve for contempt of court and such punishment may consist of a fine or imprisonment or both according to law."

An added warning states: "Your failure to appear in court may result in your immediate arrest and imprisonment for contempt of court."

The documents imply such punishments could be dished out to Alinghi head Ernesto Bertarelli, his skipper, Brad Butterworth, and the commodore of his challenging club, the Societe Nautique de Geneve.

SNG are expected to argue their basis for a May 2010 event is consistent with the rules set down in the Deed of Gift for a defence in the Northern Hemisphere, whereby match races can be held only between May 1 and October 31.

But Golden Gate spokesman Tom Ehman contends Alinghi are just trying to buy further time while they attempt to build a giant multihull fast enough to rival BMW-Oracle's spectacular 90ft trimaran.

"By forcing litigation over our rightful challenge, they have already managed to delay the match from July 2008 to February 2010," said Ehman. "Now they seek another three-month delay, in defiance of the court's clear mandate. Enough is enough."

Court arguments lodged by Golden Gate go further, accusing the Swiss of attempting to "further unravel the competitive balance struck under the deed".

Yachting: Alinghi bosses threatened with jail The New Zealand Herald April 30, 2009 Thursday

"With each passing day beyond the 10-month advance notice prescribed in the deed, SNG gains a competitive advantage with respect to GGYC to which it is not entitled."

LOAD-DATE: April 29, 2009