

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

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: Index No. 602446/07
: GOLDEN GATE YACHT CLUB, :
: : IAS Part 54
: Plaintiff, :
: : Hon. Shirley Werner Kornreich
: v. :
: SOCIÉTÉ NAUTIQUE DE GENÈVE, :
: : **AFFIRMATION OF JEFFREY A.**
: Defendant, : **ROSENTHAL IN SUPPORT OF**
: v. : **THE EMIRATE OF RAS AL**
: CLUB NÁUTICO ESPAÑOL DE VELA, : **KHAIMAH'S MOTION FOR**
: Intervenor/Defendant. : **LEAVE TO FILE BRIEF AS**
: : **AMICUS CURIAE**
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Jeffrey A. Rosenthal hereby states under penalty of perjury of the laws of the United States and the State of New York:

1. I am a member of the Bar of this Court and a member of the law firm of Cleary Gottlieb Steen & Hamilton LLP, counsel for The Emirate of Ras Al Khaimah (“RAK”). I submit this affirmation in support of RAK’s motion for leave to file the attached *amicus curiae* brief and supporting affirmations of Dr. Khater Massaad and Jennifer L. Gorskie.

RAK’s Interest In This Dispute

2. RAK, one of the seven emirates that form the United Arab Emirates (“UAE”), was chosen by Société Nautique de Genève (“SNG”) as the venue for the 33rd America’s Cup, currently scheduled to be held in February 2010. Golden Gate Yacht Club (“GGYC”) has challenged the designation of RAK as the venue for the America’s Cup and seeks an order directing that the America’s Cup be held “in Valencia, Spain, unless the parties mutually consent otherwise.” Mem. Of Law In Supp. Of GGYC’s Motion To Enforce Compliance With The Order And Judgment Entered April 7, 2009 Regarding Venue Location

For The 33rd America's Cup, dated Oct. 1, 2009 ("Pl. Br."), at 7. In support of its motion, GGYC argues, among other things, that RAK is an unsafe venue for the 33rd America's Cup and that RAK lacks the infrastructure necessary to host the America's Cup.

3. RAK's interest in the outcome of this dispute is three-fold. First, RAK is surprised and offended by the egregious statements of GGYC, made in this litigation and publicly, that RAK presents a security risk to the participants of the America's Cup. In recent years, RAK has built its reputation as a modern and secure city, attracting major international business investment and a robust tourism industry. RAK thus has a keen interest in protecting its reputation, as well as the reputation of the UAE as a whole, against the baseless attacks made by GGYC.

4. Second, RAK has a specific interest in defending its suitability to host the America's Cup, an event that will bring international recognition to RAK and attract both business and tourism to the region. Through its *amicus* submission, RAK seeks to present the court with a full and accurate picture of the safety and security of RAK for an international sporting event, as well as the specific security measures which will be put in place by RAK for the America's Cup. Similarly, RAK seeks to present the court with an accurate and complete record of the infrastructure improvements and logistical planning that RAK has undertaken in preparation for the America's Cup, which render RAK fully prepared to host the event.

5. Third, since it was selected as the host venue in August, RAK has invested considerable time and money in preparing to host the America's Cup. For two months (a full one-third of the time between RAK's formal selection and the event itself), GGYC failed to disclose its intention to challenge the race venue, during which time RAK invested in significant infrastructure improvements, spent large sums on logistical planning, and entered into multiple

third-party contracts, all in reliance on SNG's selection of RAK as the host venue. RAK thus has a significant interest in demonstrating to the Court why its designation as the host venue for the America's Cup should not be disturbed.

Reasons An *Amicus Curiae* Submission Is Desirable

6. RAK's *amicus curiae* submission is desirable because it provides the Court with a full and accurate picture of the suitability of RAK to serve as the venue for the 33rd America's Cup, which has been directly challenged by GGYC. As a sovereign territory, RAK understandably wishes to present the Court with its own views as to the safety of RAK and the infrastructure put in place for the America's Cup. Because RAK has been independently conducting its preparation for the America's Cup and has unique knowledge about its geopolitics, economic development and state security, it is in a position to present facts and arguments that go to the core of one of GGYC's prayers for relief from a perspective the parties are unable to provide. It would benefit the Court to hear the views of RAK – a party that has not previously been involved in this long and contentious litigation – on these issues.

7. RAK's *amicus curiae* brief meets each of the criteria set forth in N.Y. Appellate Rules of Practice § 500.23(a)(4), which sets forth the requirements for a motion for *amicus curiae* relief. First, given that RAK is a sovereign territory that has been independently conducting its preparation for the America's Cup, the parties to this dispute cannot offer a full and adequate presentation of the facts on safety and infrastructure in RAK without the input of RAK officials. RAK's *amicus* submission can remedy this deficiency. RAK presents an affirmation made under penalty of perjury by Dr. Khater Massaad, CEO of the RAK Investment Authority, the entity responsible for organizing the 33rd America's Cup. Dr. Massaad

has first-hand knowledge of the facts pertaining to RAK's safety and America's Cup preparations, while the parties to this litigation do not.

8. Second, RAK's *amicus* brief includes facts and arguments, including those regarding international comity, that have not been focused on by the parties to this litigation and might otherwise escape the Court's consideration. RAK therefore presents views other than those already represented by counsel to the parties in this action.

9. Third, RAK's *amicus* brief would be of assistance to the Court, in that it provides a means through which the Court may independently verify the factual assertions made by both parties as to the safety and fitness of RAK. Moreover, the brief and accompanying affirmations bring to the Court's attention important background information and specific information about the safety and infrastructure in RAK that have regrettably been omitted by GGYC, rendering its purported recitation of the facts severely misleading.

The *Amicus* Submission Will Not Delay Or Prejudice These Proceedings

10. RAK's *amicus* submission will not delay or prejudice these proceedings in any way. RAK is submitting its brief on October 13, 2009, the same day as the opposition papers for the underlying venue motion are due. The date by which plaintiff must file its reply papers for the underlying venue motion is October 20, 2009. The hearing date for the venue motion is scheduled for October 27, 2009. This provides ample time for GGYC to file responsive papers, if any, and for the Court to decide whether to accept and consider RAK's *amicus* submission in conjunction with the venue motion.

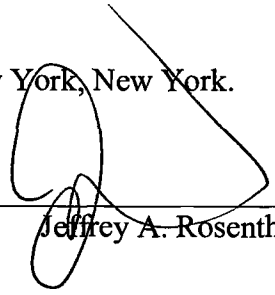
11. Moreover, RAK's *amicus* submission is directly related to the pending venue motion. While RAK's submission presents the Court with additional facts and arguments that have not been presented by the parties to this action, it does not address any substantive

matters that are outside the scope of the venue motion. Indeed, RAK's sole interest in this litigation concerns the venue at which the 33rd America's Cup will be held. Thus, the parties to this proceeding will not be prejudiced in any way through RAK's participation as *amicus*.

12. I have discussed RAK's intent to file a brief as *amicus curiae* with James Kearney of Latham & Watkins LLP, counsel for plaintiff GGYC. Mr. Kearney advised me that, although GGYC does not consent to this motion, we may advise the Court that GGYC does not oppose the motion.

13. For all of these reasons, we respectfully request that the Court grant RAK's motion to file as *amicus curiae* the attached brief and supporting affirmations of Dr. Khater Massaad and Jennifer L. Gorskie.

Executed this 13th day of October, 2009 in New York, New York.



Jeffrey A. Rosenthal