

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

GOLDEN GATE YACHT CLUB,  
  
Plaintiff,  
  
-against-  
  
SOCIETE NAUTIQUE DE GENEVE,  
  
Defendant,  
  
-against-  
  
CLUB NAUTICO ESPANOL DE VELA,  
  
Intervenor-Defendant.

Index No. 602446/07  
  
(I.A.S. Part 49, J. Cahn)

**NOTICE OF  
CROSS-MOTION**

**PLEASE TAKE NOTICE** that, upon the accompanying Affidavit of Thomas F. Ehman, Jr., dated October 5, 2007, and the exhibits thereto, the accompanying Affirmation of James V. Kearney, dated October 5, 2007, and the exhibits thereto, the annexed Commercial Division Rule 19-a Statement of Material Facts, dated October 5, 2007, and upon the accompanying Memorandum of Law, dated October 5, 2007, and upon all prior pleadings and papers filed herein, Plaintiff Golden Gate Yacht Club (“GGYC”), by and through their attorneys Latham & Watkins LLP, will cross-move before this Court, at the Supreme Court of the State of New York, New York County, Commercial Division Part 49, Room 232, 60 Centre Street, New York, New York, 10007, on the 22<sup>nd</sup> day of October, 2007, at 2:00 p.m., 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.

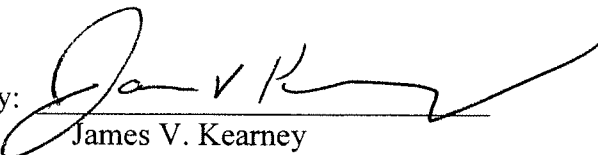
**PLEASE TAKE FURTHER NOTICE** that this Court has set the hearing date listed above, and by agreement among the parties as reported to the Court, Societe Nautique de Geneve shall serve its reply and opposition papers to GGYC’s cross-motion for summary

judgment on or before October 12, 2007; and GGYC shall serve its reply papers on its cross-motion for summary judgment on or before October 19, 2007.

Dated: New York, New York  
October 5, 2007

Respectfully submitted,

LATHAM & WATKINS LLP

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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  
(IAS Part 49; Cahn, J.)

**PLAINTIFF'S  
STATEMENT  
PURSUANT  
TO RULE 19-A**

Pursuant to Rule 19-a of the Rules of the Justices of the Commercial Division, Supreme Court, New York County, Plaintiff Golden Gate Yacht Club (“GGYC”), by their attorneys, Latham & Watkins LLP, submit the following statement of the material facts as to which Plaintiff Golden Gate Yacht Club (“GGYC”) contends that there is no genuine issue to be tried:

1. The Spanish sailing federation, Real Federacion Espanola de Vela (“RFEV”), sought to serve as Challenger of Record for the 33<sup>rd</sup> America’s Cup to secure Valencia as the location for the next America’s Cup and to maintain and increase RFEV’s sponsorship budgets. In his affidavit dated August 13, 2007, Manuel Chirivella, Vice Chairman of RFEV and Chairmen of CNEV stated: “The project headed by RFEV in the XXXII America’s Cup was a success and the Sponsors assure their intention to maintain or increase their budgets for the XXXIII America’s Cup before the termination of the XXXII. Given that we have for a new resources campaign it was decided by the RFEV to be a Challenger in the next Cup. It also considered the possibility of being Challenger of Record in order the help the next venue to be Valencia.” (Ross Ex. V ¶ 56(2)).

2. RFEV is not a yacht club; it is a federation of yacht clubs. (Kearney Ex. W at 1). When RFEV submitted a challenge under the 32<sup>nd</sup> Protocol, The New York Yacht Club (“NYYC”), the Cup’s trustee from 1857 to 1983, sent a letter to SNG stating:

[T]he Deed of Gift provides expressly that a challenge must be submitted by a *yacht club*. There is no provision in the Deed, either for a team to submit a challenge, or for a national yachting federation to submit a challenge on behalf of a team. . . We trust that you are cognizant of this requirement and that you will not deviate from the express provisions of the Deed of Gift.

(Kearney Ex. Y, p. 1) (emphasis added)

3. The Royal New Zealand Yacht Squadron, trustee of the Cup from 1995 to 2003, and a signatory to the Protocol Governing the Thirty Third America’s Cup (“Protocol”), also objected to RFEV’s challenge, stating that only a yacht club can be a Challenger of Record (Kearney Ex. Z p. 1\_):

We strongly support the concept that is provided in the Deed of Gift that a challenge must be submitted by a Yacht Club. . . We do not believe it is in the interest of the event for an individual team nor a National Yachting Federation to submit a challenge on behalf of a team. We believe that if this were to happen there would be more opportunity to manipulate and change the spirit and quality of the contest between countries represented by the sailing clubs of that country. . .

(Kearney Ex. Z, p. 1).

4. RFEV’s “lawyers consider[ed] that the possibility of being a Royal Federation Challenger may be disputed, and advised the incorporation of a Club in order to formalize the Challenge.” (Ross Ex. V ¶ 56 (3)),

5. RFEV directors executed incorporation and registration papers for CNEV, dated June 19, 2007. *Id.* at ¶ 56(4).

6. “Club Nautico de Vela was incorporated for the purpose to challenge in the XXXIII America’s Cup in order to avoid further controversies about the capacity of a Royal Sailing Federation [ RFEV] to become Challenger under the Deed of Gift and, which is more relevant, the availability of such federation to become trustee under the Deed of Gift.” (Kearney Ex. B ¶ 2.5); (Ross Ex. V, ¶¶ 56(2), 56(3)).

7. “RFEV controls the decisions to be taken by the new incorporated Club [CNEV].” (Ross Ex. V ¶ 56 (4)).

8. SNG has stated that “the club [CNEV] albeit newly formed, was the Real Federacion Espanola de Vela.” (Ross Ex. V ¶ 13.3).

9. CNEV has no vessels. (Kearney Ex. N). Jaume Soler Alberti, Director of Communications for RFEV for seven years and press chief for the Spanish sailing team in the Sydney and Atlanta Olympics (Kearney Ex. V), and “one of Spain’s most authoritative sailing journalists” (Kearney Ex. T), described CNEV on July 18, 2007 as a “phantom club” with “no vessels.” (Kearney Ex. X, N).

10. Apart from the five RFEV directors that executed incorporation and registration papers for CNEV on June 19, 2007, no members of CNEV have been identified. (Ross Ex. H).

11. CNEV has no telephone number, other than the telephone number of the base facility of the racing team, Desafio Espanol. (Kearney Exs. E ¶ 14, AA; Ross Ex. E, p.1; ).

12. CNEV has no website. (Kearney Ex. E ¶ 12-13).

13. Hamish Ross acknowledged in a radio interview on September 2, 2007 that CNEV “is a paper club.” (Kearney Ex. C, p.1) (Interviewer: “Now, you had well know that you have been the subject of some criticism across the World. Not just here in New Zealand saying this is a paper club. Hamish [Ross]: Yes, it is and it’s a fresh yacht club.”) (Kearney Ex. C, p.1)

14. CNEV commenced the mutual consent process leading up to the Protocol before the execution of CNEV’s incorporation and registration papers June 19, 2007 and the acceptance of those papers by Spanish authorities on June 28, 2007. (Ross Ex. H, V ¶ 56(4); SNG’s Statement # 12; Ross Ex. F).

15. CNEV had not held an annual regatta by June 29, 2007, the date appearing on its Notice of Challenge, by the time that it was accepted as the Challenger of Record on July 3, 2007 or by the time that GGYC challenged SNG for the Cup, on July 11, 2007. (Kearney Ex. B ¶ 2.7, Ross Ex. V ¶ 56(5)(b)).

16. CNEV’s Notice of Challenge to SNG bears the date June 29, 2007. SNG accepted CNEV’s challenge on July 3, 2007. GGYC lodged its challenge for the America’s Cup on July 11, 2007. (Ross. Aff. Exs. E, V ¶ 52, 63).

17. CNEV has stated that it would meet the annual regatta requirement by holding a regatta in Santander on July 13-14, 2007. That event was organized and announced on the very day that the regatta began. That event was only for children between the ages of seven and fourteen racing in Optimist boats. (Chirivella Aff ¶ 5(a); Kearney Ex. R).

18. CNEV later stated in its submission to ACAP 33 that CNEV “does not try to comply with the requirement of having an annual Regatta at the Sea organizing an optimist race in Santander.” (Kearney Ex. B ¶ 2.7).

19. CNEV has stated that it organized the Sailing Tour of Spain for September 2007. (Kearney Ex. T). The Sailing Tour of Spain had been announced as an RFEV event as early as March 13, 2007. (Kearney Ex. F). All commercial and press rights are to be signed over to RFEV and Deporevents. The Notice of Race for the Sailing Tour of Spain is printed on pages with RFEV letterhead and with RFEV and Deporevents’ names in the footer, solicitations for pre-entry are to be mailed and addressed to RFEV in its Madrid office; this office is apparently where registrations will be formalized. (Kearney Ex. B, Annex B, pp. 1-6 ¶ 7.2, 7.5 - 7.8, 18.) Apart from a single sentence in the introduction indicating that the Sailing Tour of Spain will be organized by RFEV, Deporevents and CNEV, there is no mention of CNEV. (Kearney Ex. B, Annex B ¶ 1.)

20. A former seven-year director for RFEV, two time press chief for Spain’s Olympic sailing team, and “one of Spain’s most authoritative sailing journalists” commented that CNEV’s participation in this regatta will likely be similar to its participation in its “so-called” first attempted regatta; CNEV will be “*missing*.” (Kearney Exs. V, T, X at 2) (emphasis in original.)

21. On July 5, 2007, SNG published with CNEV the Protocol. (Ross Aff. ¶ 22).

22. GGYC delivered its Notice of Challenge for the 33<sup>rd</sup> America’s Cup to SNG on July 11, 2007. (Kearney Ex. M at 6).

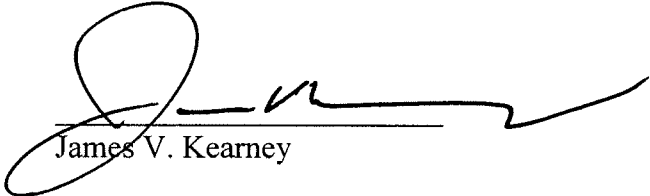
23. SNG accepted GGYC's formal challenge for the 32<sup>nd</sup> America's Cup (Ross Aff. ¶ 15) and GGYC became the Challenger of Record for the 32<sup>nd</sup> America' Cup. (*Id.*)

24. GGYC is incorporated in the United States of America, in the State of California. (Kearney Ex. M at 6). GGYC maintains a membership of more than 200 members. *Id.* It operates as a yacht club and has objectives consistent with the furtherance of yachting activities. *Id.* GGYC holds 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. *Id.* GGYC is a Yacht "Club fulfilling all the conditions required by" the Deed of Gift.

October 5, 2007  
New York, New York

Respectfully submitted,

LATHAM & WATKINS LLP



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