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BY HAND

March 26, 2008

Re: *Golden Gate Yacht Club v. Société
Nautique de Genève, Index No. 602446/07*

The Honorable Herman J. Cahn
The Supreme Court of the State of New York
County of New York
60 Centre Street, Room 615
New York, New York 10007

Dear Justice Cahn:

We represent Société Nautique de Genève in the above-referenced action and respectfully submit this letter in accordance with the Court's instruction that the parties request a hearing if they could not amicably "resolve issues pertaining to the 10-month notice period, in view of any delay entailed by this litigation or otherwise". Order at 10.

Over the past ten days, SNG has reached out to GGYC and made repeated efforts, including a meeting held earlier today, to avoid additional court proceedings. However, GGYC is making this impossible. Specifically, GGYC is insisting on race dates in July or October 2008 and refusing to take into account in any way the uncertainty created by the proceedings pending before your Honor, which was resolved at the trial court level only last week when your Honor issued an Order entered March 19, 2008. GGYC's intransigence requires us to request an immediate hearing (hopefully this week) to raise with the Court certain issues that could potentially end the need for further litigation.

**The Deed of Gift Requires the Defender Be Allowed
No Less Than 10 Months to Prepare for the Match**

GGYC's present effort to dictate a race date in 2008 is, simply stated, an effort to seize the America's Cup through litigation rather than by winning on the water. If the Court is to set the race dates in either July or October 2008, it would virtually guarantee that SNG would not be able to compete with GGYC in the 33rd America's Cup and thus grant GGYC a victory without a competitive race.

It was not until last week that this Court declared in a final, appealable order GGYC's status as challenger of record. Until then, there was uncertainty (which has not been conclusively resolved) over either the challenger or the type of boat that would be

competing in the next America's Cup race, and hence SNG has not begun construction of any boat.

America's Cup racing vessels cost tens of millions of dollars to build, and it did not make sense for SNG to incur such expense on a boat to meet GGYC's challenge when SNG believed GGYC's challenge to be invalid (which remains SNG's view). SNG has publicly declared that it is prepared to forego further legal proceedings and decide the next America's Cup on the water on or after May 1, 2009, a timeframe that would allow SNG to prepare for the race. But, the six months and one week before October 1, 2008 is insufficient time for SNG to build and test a boat to have any chance to defend the Cup successfully.

The Deed of Gift contains a 10-month notice period precisely in order to ensure that the Cup holder and trustee is given sufficient time to prepare its defense of the Cup and organize a successful event in the best interest of the Cup. Furthermore, given that the proposed match contemplates boats of a novel type and scale not yet ever built, the 10-month notice period which was adequate in 1887 is itself marginal at best for this event. Ordering the parties to race in July or October of 2008 would improperly deprive SNG of the period of notice guaranteed by the Deed of Gift.

SNG Has Stated It Will Race GGYC on Any Date on or after May 1, 2009

SNG has made clear that it will meet GGYC on the water on any date GGYC may choose to specify on or after May 1, 2009, which (as described further below) is the earliest possible race date that would give SNG ten months notice of the race running from the entry of this Court's order last week holding that GGYC is the challenger of record. SNG has stated that it is willing to forego its appellate rights both as respects to CNEV's disqualification and GGYC's defective notice of challenge so long as GGYC agrees to race in good faith in 2009 consistent with the Deed of Gift's requirements.¹

Unfortunately, rather than agreeing to meet SNG on the water in a fair contest, GGYC is pressing for the originally noticed date of July 2008 and offering October 1, 2008 as a supposed compromise, knowing that six months is simply not adequate to construct a boat that can be competitive against the vessel that GGYC has apparently already designed and whose construction is well underway. GGYC confirmed during the meeting between GGYC and SNG that GGYC is well underway in its construction of the vessel to be raced in any Deed of Gift match against SNG as described in its certificate. GGYC recognizes that SNG has not begun construction of its vessel, but suggests that SNG

¹ Specifically, SNG is prepared to waive this appellate right if and only if GGYC agrees to a race between May 1, 2009 and November 1, 2009 and agrees to respect the rights of the Cup holder under the Deed of Gift including as respects the selection and disclosure of the race location and the rules of the race.

should race an existing 41-foot catamaran even though it recognizes that such vessel would not be competitive against GGYC's 90-foot vessel. As well, the 41-foot vessel is less than the minimum size of 44 feet specified in the Deed of Gift, and extensions to its length necessarily involve compromises both in design and construction.

The Parties' Agreement to Toll the 10-Month Notice Period

As your Honor may recall, during a September 10, 2007 hearing on GGYC's preliminary injunction motion, GGYC argued that emergency relief was necessitated by the imminency of the 2008 race date proposed in GGYC's challenge. At your Honor's suggestion, this concern was obviated through an agreement between SNG and GGYC to toll the 10-month notice period before the race during the pendency of the litigation, so that both parties could have a fair and reasonable opportunity to prepare for the race.

Subsequent to the hearing, GGYC's lead counsel, James Kearney, wrote to SNG and CNEV to confirm "the tolling arrangement agreed to before Justice Chan at the September 10, 2007 hearing." Letter from James V. Kearney to David G. Hille and David W. Rivkin, dated Sept. 25, 2007 (attached hereto as Exhibit A). GGYC attached a stipulation that purported to memorialize the agreement reached during the hearing. This stipulation was executed on behalf of GGYC by its attorney James Kearney and provided that:

The Notice Period is tolled, so that the time to the Races is extended until:

- 1. ten months after the latest of the following events: (a) service of a notice of entry of the trial court's final order or judgment on the merits; (b) service of a notice of entry of any Appellate Division, First Department's final order or judgment on the merits, if any; (c) service of a notice of entry of any New York State Court of Appeals' final order or judgment on the merits, if any or (d) the expiration of the time to pursue all appellate rights, if any, or***
- 2. a date mutually agreed upon by GGYC and SNG. (emphasis added)***

Although this stipulation was never fully executed and filed with this Court because of ongoing negotiations over whether there should be 10 or 12 months notice subsequent to the final order, no one ever disputed that the notice period would be at least 10 months or that such period would be tolled during the pendency of this litigation.

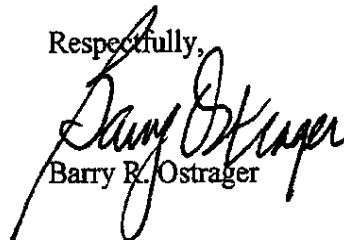
The parties' agreement to toll the notice period through the entry of a final order is consistent with the *Mercury Bay* court's tolling of the notice period through service of the order resolving the pending motions in that case. *Mercury Bay Boating Club v. San Diego Yacht Club*, Index No. 21299/87, Order dated December 21, 1987, at 6 (attached hereto as Exhibit B).

In light of the fact that GGYC has not yet served notice of entry of this Court's order entered on March 19, 2008, the earliest possible date that would afford the requisite notice and comply with the Deed of Gift's requirements for a Northern Hemisphere match would be May 1, 2009. While a 10-month notice period that began to run again from entry of your Honor's final order on March 19, 2008 would expire in January 2009, the Deed of Gift requires races in the Northern Hemisphere to be held between May 1 and November 1. The Deed of Gift match between GGYC and SNG must be held in the Northern Hemisphere because (i) SNG is located within the Northern Hemisphere, (ii) SNG is entitled under the Deed of Gift to select the location and has previously advised GGYC of its intention to hold the 33rd America's Cup in the Northern Hemisphere and (iii) GGYC's challenge specified a race in the Northern Hemisphere (Ex. C). Thus, the earliest permissible date for this Northern Hemisphere race is May 1, 2009.

* * *

For the reasons stated above, without prejudice to any rights SNG retains either as the holder of the America's Cup or as a litigant in this Court, SNG respectfully requests that this Court hold an immediate hearing to direct that any challenge from GGYC that SNG accepts take place on or after May 1, 2009 in the Northern Hemisphere.

Respectfully,



Barry R. Ostrager

Encl.

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