

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

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GOLDEN GATE YACHT CLUB, :  
 : Index No.: 602440/07  
 : (IAS Part 49, Cahn, J.)  
 Plaintiff, :  
 :  
 -against- :  
 :  
 SOCIÉTÉ NAUTIQUE DE GENÈVE, : **AFFIDAVIT OF**  
 : **FRED MEYER**  
 :  
 Defendant. :  
 :  
 CLUB NAUTICO ESPANOL DE VELA :  
 :  
 Intervenor-Defendant. :  
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**AFFIDAVIT OF FRED MEYER IN SUPPORT OF  
DEFENDANT’S MOTION TO DISMISS AND FOR SUMMARY JUDGMENT**

FRED MEYER, being duly sworn, deposes and says:

1. I am a citizen of Germany over the age of 18 and Vice-Commodore of Société Nautique de Genève (“SNG”), a Swiss yacht club represented by Team Alinghi SA (“Alinghi”). I am as well the Chairman of the International 8 m JI Class association. I submit this Affidavit in support of Defendant SNG’s Motion for Leave to Reargue and Renew Its Motion for Summary Judgment and Its Opposition to Golden Gate Yacht Club’s (“GGYC”) Motion to Dismiss and for Summary Judgment.

**GGYC’s Challenge**

2. On July 11, 2007, GGYC delivered a letter to SNG in which GGYC attacked the Club Nautico Espanol de Vela (“CNEV”) challenge as invalid because CNEV is a “new” club, because it has not yet held an annual regatta and because it does not appear to GGYC to have performed any of the duties of a Challenger of Record. Attached hereto as Ex. A is a true and correct copy of GGYC’s Letter to SNG, dated July 11, 2007.

3. With its July 11, 2007 letter, GGYC also submitted its own purported challenge for the 33<sup>rd</sup> Cup demanding that it be considered the Challenger of Record (the “GGYC Notice of Challenge” or “GGYC’s Notice of Challenge”). Attached hereto as Ex. B is a true and correct copy of GGYC’s Notice of Challenge.

4. On the certificate provided with GGYC’s bid (the “GGYC Certificate” or “GGYC’s Certificate”), the dimensions of the vessel GGYC proposes to race include a length on load water-line of 90 feet and a beam at load water-line of 90 feet. Attached hereto as Ex. C is a true and correct copy of GGYC’s Certificate.

5. On July 23, 2007, SNG delivered a response letter to GGYC, stating that SNG had already received a valid challenge from CNEV and that the Deed of Gift barred consideration of another challenge until the pending challenge of CNEV had been decided. Attached hereto as Ex. D is a true and correct copy of SNG’s Letter to GGYC, dated July 23, 2007.

6. At that time, SNG did not analyze in any detail the technicalities of GGYC’s Notice of Challenge or accompanying Certificate since (i) SNG had already accepted in good faith CNEV’s challenge and (ii) the Deed of Gift states clearly that no challenge can be made as long as a previous challenge has not been resolved. Attached hereto as Ex. E is a true and correct copy of the Deed of Gift.

7. On November 27, 2007, the Court issued a Decision resolving CNEV’s challenge to be invalid. While the time to take an appeal has not yet started to run, SNG has nevertheless commenced to study the GGYC’s Notice of Challenge, and has not yet accepted the Notice of Challenge of GGYC.

**GGYC's Certificate Specifies That The Challenging Vessel Shall Be A Keel Yacht**

8. Upon studying the challenge, SNG has noted that GGYC's Certificate states that the challenging vessel is a "keel yacht". (Ex. C.)

9. A keel yacht is necessarily a mono-hull vessel, as described further below. A mono-hull is a sail boat with only one hull, with centreboard or a fin keel or permanent keel(s) designed to provide stability when under sail. The Oxford English Dictionary defines a "keel-boat" as "a yacht having a keel instead of a centre-board". Ex. F, at 1528. Attached hereto as Ex. F is a true and correct copy of excerpts from The Compact Edition of the Oxford English Dictionary: Complete Text Reproduced Micrographically, Vol. I (Oxford Univ. Press 1987). By opposition, multi-hull boats, encompassing catamarans and trimarans, are not referred to as a keel yacht as they do not have keels and achieve stability through the broad stance of the multiple hulls.

10. This distinction between "keel yacht" and "multi-hull" is confirmed by the International Sailing Federation ("ISAF") rules, which clearly distinguishes among the following class designs: (i) Keel boat, (ii) Multi-hull, (iii) Centreboard, and (iv) Windsurfing. Ex. G, §§ 15.2.1, 18.2.1.b. Attached hereto as Ex. G is a true and correct copy of the 2007 ISAF Regulations. In addition, on the website [www.isaf.org](http://www.isaf.org), the ISAF distinguishes the following boat classes: (i) Centreboard, (ii) Keelboat, (iii) Multihull, and (iv) Windsurfing. Attached hereto as Ex. H is a true and correct of a December 27, 2007 print-out of <http://www.isaf.org/boatclasses.php>.

11. Reinforcing such distinction, the ISAF requires specialists attending the ISAF committees with different competencies and experience on keel yachts as opposed to multi-hulls: "Class Rules Sub-committee. In appointing committee members the following experience and

competencies shall be properly represented: centreboard boats, keelboats, multihulls, offshore and windsurfing”. Ex. G, § 15.2.1 (emphasis added).

12. Likewise, the equipment required on-board differs based on class of boat. Ex. G, § 16.1.6.

13. Moreover, the ISAF International Measurer’s Manual opposes keel-boat to multi-hull and provides different measurement rules for both class designs. Attached hereto as Ex. I is a true and correct copy of the 2007 ISAF International Measurer Manual.

14. The 2007 ISAF International Measurers Manual states the following in Section 13.5: “For most Dinghy and multi-hull classes only the profile of the immersed part of the rudder and centreboard, as well as the maximum section thickness and edge radii or tapering are controlled, as well of course as their weights. However, for keelboat classes the keel shapes are a critical factor in boat speed and are therefore carefully controlled in both shape and alignment”. Ex. I, § 13.5 (emphasis added).

15. In view of the above, the yachting community considers that a keel yacht is not a multi-hull yacht.

16. According to the terms of the GGYC Certificate, GGYC’s keel yacht shall have a length of 90 feet and a beam of 90 feet. (Ex. C) Such dimensions are unusual for a keel yacht. These dimensions would be suggestive of for a multi-hulled vessel—presumably, a catamaran or trimaran. However, GGYC’s Certificate expressly provides that the challenging boat will be a keel yacht, not a multi-hulled vessel. Thus, GGYC’s Certificate appears to contain an inherent and irreconcilable inconsistency.

17. In the current situation, based on the express language in the Certificate, SNG understands and expects that the challenging vessel of GGYC shall be a keel yacht (not a multi-

hulled vessel), with a length on load water-line of 90 feet and a beam at load water-line of 90 feet.<sup>1</sup>

**The Certificate Is a Central Component of Any Challenge under the Deed of Gift**

18. The certificate is a central component of any challenge under the Deed of Gift. Under the Deed of Gift, it is key for the defender to receive an accurate certificate describing the challenging vessel to be able to prepare the defense.

19. The Donor George Schuyler, the last of the surviving original donors wrote, when arbitrating a measurement dispute between the New York Yacht Club (“NYYC”) and the challenger the Royal Clyde Yacht Club when its challenging vessel was found to be 18” longer on the waterline than its notice of challenge had indicated it would be: “The importance of accuracy in giving the dimensions of a yacht challenging for the Cup is so great that any decision reached in any one case cannot be used as a precedent in any other that might arise. A great error in any of the ‘dimensions’, whether through mistake or design, would vitiate the agreement – a small one should be governed by the circumstances attending it, and always on the liberal side”. Ex. J, at 23. Schuyler wrote that he found the variance between the stated and the actual load water line dimension (a difference of about 18” over an almost 90’ waterline) was “so large to be of great disadvantage to the defender of the Cup”. Attached hereto as Ex. J is a true and correct copy of a Letter from George Schuyler to James Smith Esq., Chairman, America’s Cup

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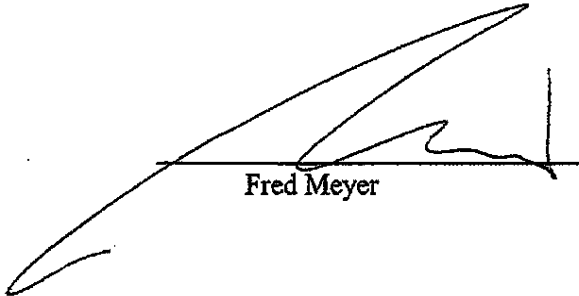
<sup>1</sup> In prior Court filings, SNG has assumed that GGYC boat will be a catamaran, *see, e.g.* Affidavit of Hamish Ross, sworn to on September 21, 2007, ¶ 36, based on the dimensions given in the GGYC Certificate. However, upon further review of GGYC’s Certificate, it is clear that GGYC has specified that its challenging vessel shall be a keel yacht, not a catamaran, of those dimensions, even though such dimensions appear to be unusual (but not at all impossible) for a keel yacht.

Committee, New York Yacht Club dated 24<sup>th</sup> September 1887, as reprinted in New York Yacht Club AC Committee Report for the *Thistle* Match (1887).

20. Several months before he died in July 1890 Schuyler was interviewed by the New York Times and was reported as saying: *“The main reason we ask for the load waterline length, draught of water, beam at the waterline and extreme beam is to know what kind of vessel we have to meet, I believe the challenged party has a right to know what the yacht challenging is like, so it can meet her with a yacht of her own type if it is so desired”*. Ex. K (emphasis added). Attached hereto as Ex. K is a true and correct copy of a New York Times article entitled “A Question of Fair Play; Why British Yachtsmen are Opposed to the New Deed. Future Contests for the America’s Cup are prevented by the ‘Dimensions’ Clause”, dated May 14, 1890.

21. In the event that GGYC seeks to deviate from its current Notice of Challenge by changing from a mono-hulled vessel to a multi-hulled vessel, its Notice of Challenge should be declared invalid and/or forfeited, as such alteration is material. In this case, GGYC would be replaced as Challenger of Record by the next challenge received by SNG in chronologic order (Royal Cape Yacht Club, South Africa; Royal Thames Yacht Club, Great Britain; Royal New Zealand Yacht Squadron, New Zealand, etc.) valid under the Deed of Gift.

Dated: December 27, 2007  
Geneva, Switzerland



Fred Meyer

Seen solely for authentication of the above mentioned signature of Mr Alfred MEYER .

Geneva, the 27th of Décembre 2007/st.

