

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

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GOLDEN GATE YACHT CLUB,

Plaintiff,

- against -

Index No. 602446/07

SOCIÉTÉ NAUTIQUE DE GENÈVE,

Defendant,

CLUB NÁUTICO ESPAÑOL DE VELA,

Intervenor-Defendant.

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HERMAN CAHN, J.:

This decision addresses a supplemental issue pertaining to the decisions rendered in this action, dated November 27, 2007 and March 17, 2008.

The essential facts underlying this action have been described at length in those decisions, including an analysis of the Deed of Gift, dated October 24, 1887, which provides, in relevant part:

The Challenging Club shall give ten months' notice, in writing, naming the days for the proposed races 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

(emphasis added).

The July 11, 2007 Notice of Challenge, issued by Golden Gate Yacht Club (GGYC), the Challenger of Record, designated July 4, 2008 as the date of the first race, and July 6, 2008 and

July 8, 2008 as the respective dates for the second and third races, if necessary, thereby satisfying the ten-month notice requirement provided for in the Deed of Gift. This litigation intervened, however, in that ten-month period, thereby creating an issue as to what effect, if any, this action should have on that ten-month period.

GGYC contends that the ten-month notice period should be deemed to have commenced when the first decision was issued on November 27, 2007. The defending champion, Société Nautique de Genève (SNG), argues that the ten-month notice period should be deemed to have commenced when the second decision was issued, on March 17, 2008.

GGYC commenced the litigation, and the subsequent opposition to GGYC's claim as the Challenger of Record prolonged the uncertainty. Thus, it would be inequitable to deprive SNG of the benefit of a full ten-month period in which to prepare its racing vessel. The ten-month period should commence when the Court's order is final, after the uncertainty created by this litigation has been resolved. Indeed, as this Court noted in its March 17, 2008 decision and order, these legal proceedings "interrupted" the ten-month period, albeit it did not invalidate the Notice of Challenge. And as stated by the Court of Appeals in *Mercury Bay Boating Club v San Diego Yacht Club* (76 NY2d 256, 268 [1990]):

Because the deed allows a challenge to be mounted upon 10 months' notice, the defender of the Cup is allowed only this short time to construct a defending vessel although the challenger has had unlimited time to mount a challenge and thus may have taken years designing and constructing its challenging vessel.

Because I do not deem this litigation, nor any of the motions made therein, to have been frivolous, the appropriate date for the commencement of the ten-month period should be no earlier than the disposition of the last motion made. Indeed, the latest decision fully addressed

the issue of GGYC's status as the official Challenger of Record, and the determination is reflected in the order issued in conjunction with the decision. The ten-month period should commence when a binding decision has been entered. In New York practice that is when an order has been made by the Court. Only such an order triggers finality, for example the right to appeal. Such an order has been simultaneously signed.

Dated: May 12, 2008

ENTER:



J.S.C.