



Mr. Marcus Young Commodore
The Golden Gate Yacht Club
1 Yacht Road
San Francisco
California 94123
USA

26 May 2009

33rd America's Cup

Dear Commodore,

We are disappointed by your letter of 20th May 2009 which makes plain GGYC's intent to litigate other issues, and its continued refusal to engage in good faith negotiations. Your letter makes several statements that are simply wrong. We will not endeavor to catalog or correct each of them herein, but instead will highlight a few examples.

1. Customs House Registry

Your assertion that you have "no further obligation to declare a vessel" blatantly disregards Justice Kornreich's instructions at the conclusion of the May 14, 2009 hearing:

"I am stating right now that ... the deed does require that the vessel conform to the challenge dimensions. If the [Custom House Registry] does not conform to the challenge dimensions, it is this Court's belief, and my direction, that Golden Gate will be disqualified, and I am directing Golden Gate, in good faith, to abide by the deed, to make application for the [Custom House Registry] as soon as possible and providing it as soon as possible."

GGYC must provide a Custom House Registry. It must do so as soon as possible. And it must conform to the challenge dimensions in GGYC's Notice of Challenge and accompanying Certificate. Justice Kornreich has already explained the consequences of failure to comply.





2. Challenger Selection Series

SNG continues to urge you to allow other interested challengers to compete in a challenger selection series prior to the Match which at this stage will be held under the terms of the Deed.

We have indicated to you a willingness to allow additional time to allow such a series to take place, however, if for your own competitive reasons, you wish to maintain the present match schedule, the challenger series can be held beforehand. SNG remains happy to continue with the present scheduled date of the Match.

SNG has been advised by several interested challengers they will be ready to compete in a challenger series with the Match as presently scheduled. Please provide as soon as possible a clear indication whether or not you are prepared to allow a challenger selection series. You are aware that your delay in providing a clear answer to this issue is damaging the prospects of the challengers.

We would counsel that a decision on your part to agree a challenger series would go along way to dispelling the widely held belief that your litigation has been to secure a match and avoid the risk of another loss in a challenger selection series.

3. Defender's Yacht or Vessel

Your suggestion that GGYC's designation of a single-masted yacht requires SNG to race a single-masted yacht is mischievous and flies in the face of the New York Court of Appeals decision in Mercury Bay Boating Club, Inc. v. San Diego Yacht Club. There, the Court explained that:

"...nowhere in the Deed of Gift have the donors expressed an intention to ... require the defender of the Cup to race a vessel of the same type as the vessel to be used by the challenger."

and

" In this match , however , the deed expressly permits a defense by any type of yacht or vessel, and restricts the actual vessels to be used only by the length on load water- line restrictions applicable to all competing vessels"

and





“... the deed permits the competitors to both construct and race the fastest vessels possible so long as they fall within the broad criteria of the deed.”

and

“Accordingly, we conclude that the unambiguous language of the Deed of Gift, permitting the defending club to defend the Cup in “any one yacht or vessel” within the specified range of load water-line length, does not require the defender to race a vessel of the same type or “evenly matched” to that of the challenger and does not preclude the defender’s use of a catamaran.”

76 N.Y.2d256, 267 (1990).

GGYC had the unrestrained freedom to challenge with a yacht or vessel within the permitted range of load water-line lengths specified in the Deed with any number of masts, and with the benefit of the Mercury Bay judgment. The Defender is exercising the same freedom in its defence, and is relying on the terms of the Deed, as interpreted by the Court of Appeals, in designing and building its yacht or vessel.

4. Venue

Your assertion that SNG cannot select a Northern Hemisphere venue other than Valencia unless GGYC consents, is likewise mischievous and misguided. As SNG has repeatedly informed the Court and GGYC, it will select and announce a Northern Hemisphere venue in accordance with the Court Orders allowing SNG to select Valencia "or any other location" for the next Cup.

5. Rules and Sailing Regulations

The Deed of Gift clearly and unambiguously states that, absent mutual consent, the races for the America's Cup "shall be sailed subject to [the Defender's] rules and sailing regulations so far as the same do not conflict with the provisions of this deed of gift...." This is what we told you in our letter of 23rd April 2009. Your efforts to constrain SNG's rights are groundless.

6. Measurement Regulations

As with any regatta including past America's Cup regattas, there will be a measurement process to confirm compliance of the challenging vessel with the terms of the Deed and that it has the dimensions and meets the description specified in your Notice of Challenge and in the accompanying certificate, and your customs house registry.





SOCIÉTÉ NAUTIQUE DE GENÈVE

We again urge GGYC to reconsider its decision to wage litigation on all fronts, and agree to meet us on the water where this can be properly decided. To the extent there are issues that need to be resolved in advance, we reiterate our agreement to prompt mediation under the supervision of a Court-appointed mediator, as proposed by Justice Kornreich.

Yours sincerely,

Fred Meyer
Vice-Commodore
and Chairman of America's Cup Committee

Alec Tournier
General Secretary

