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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 54

- - - - - X

GOLDEN GATE YACHT CLUB,

Plaintiff,

- against -

SOCIETE NAUTIQUE DE GENEVE,

Defendant.

- - - - - X

CLUB NAUTICO ESPANOL DE VELA,

Intervenor-Defendant.

- - - - - -X

Index No. 602446/07
May 14, 2009 60 Centre Street
Motion New York, New York

BEFORE:

HONORABLE SHIRLEY WERNER KORNREICH,
Justice.

APPEARANCES:

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BARBARA STROH, CSR, CRR, CMR
OFFICIAL COURT REPORTER

1 Proceedings

2 THE COURT: I'm going to -- I'm going to hear
3 from Golden Gate first, since the first application was
4 Golden Gate.

5 Am I correct?

6 MR. KEARNEY: Yes, your Honor.

7 THE COURT: The application is, basically, it
8 is an application for contempt in terms of when the
9 race, the American Cup Race, is to be run.

10 MR. KEARNEY: Yes, your Honor.

11 THE COURT: Okay. There does seem to be an
12 issue with regard to the deed, which requires that the
13 race not be run between November 1 and May.

14 Am I correct?

15 MR. KEARNEY: That's an issue that's been
16 raised, yes, your Honor.

17 THE COURT: What's your argument?

18 MR. KEARNEY: It's that that issue was raised
19 in the trial court before the order and judgment of
20 Justice Cahn originally.

21 THE COURT: But it was at a different time
22 period at that point, was it not?

23 MR. KEARNEY: No, it was not, your Honor. It
24 was precisely the same issue, and Justice Cahn resolved
25 it in the May 12 opinion and order.

26 Prior to the May 12 opinion and order, May 12

1 Proceedings

2 of 2008 -- this litigation is going on so long, we've
3 got to get the years right.

4 Prior to that order, SNG raised this issue,
5 precisely this same issue four different times, and we
6 have cited in our affirmation and put into our
7 affirmation their letters and memos where they raise it
8 precisely.

9 Justice Cahn looked at that, and Justice Cahn
10 said -- ordered, rather, that the race date would be
11 ten months after notice of entry of his order.

12 THE COURT: I understand, but what date would
13 that have been?

14 MR. KEARNEY: When he did that, he understood
15 that ten months from May 12 would put the race into the
16 winter months, so to speak.

17 THE COURT: I believe it was October, wasn't
18 it?

19 MR. KEARNEY: No, it would put the race into,
20 I believe, March, which was still in the northern
21 hemisphere during the wintertime.

22 THE COURT: That's right. So I don't think
23 that issue came up before Justice Cahn because it did
24 not conflict with the deed at that point.

25 MR. KEARNEY: Well, let me explain why that's
26 not correct, your Honor.

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2 It did precisely come up before Justice Cahn,
3 and the reason is this: The argument was made that the
4 race could not be conducted in Valencia in the
5 wintertime from November to May.

6 THE COURT: Right.

7 MR. KEARNEY: That argument was made to
8 Justice Cahn.

9 Justice Cahn then issued an order, and he had
10 a decision, but he issued an order on May 12, and the
11 order said that this race will occur ten months from
12 now, which puts it into March, which counsel argues,
13 and argued at the time, was in contravention of the
14 deed.

15 Justice Cahn also said that the race will
16 occur in Valencia, which had been litigated as well.
17 That was an order of this court, your Honor.

18 What happened next?

19 THE COURT: Is it your position that it is to
20 take place in Valencia now?

21 MR. KEARNEY: It's our position that --

22 THE COURT: Or is it -- because I read in your
23 papers that you would not -- that you would be amenable
24 to a southern hemisphere race.

25 MR. KEARNEY: Absolutely. It's our position,
26 your Honor --

1 Proceedings

2 THE COURT: So that goes against what Justice
3 Cahn said, then.

4 MR. KEARNEY: No, it does not. Let me explain
5 why, if I can.

6 THE COURT: Yes.

7 MR. KEARNEY: The order says that the race
8 should occur and the location of the race should be
9 Valencia or any other venue selected by SNG, which is
10 consistent with the deed, right?

11 THE COURT: Right.

12 MR. KEARNEY: So the conflict that you're
13 referring to can be completely resolved. It's not an
14 irreconcilable conflict, assuming that there is one.

15 It can be completely resolved by SNG, by the
16 trustee simply deciding to have the February race in a
17 southern hemisphere.

18 Then there is no conflict. The trustee would
19 be abiding by that provision of the judge's order.

20 THE COURT: I understand that, but you earlier
21 said that Justice Cahn in his decision, in his order
22 said that it was to take place, the race was to take
23 place in Valencia.

24 MR. KEARNEY: Well, Justice Cahn said it will
25 take place in Valencia unless SNG decides to have it
26 someplace else.

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2 So Justice Cahn is saying that the race can be
3 in Valencia, and it can be in Valencia during the
4 winter months. He's saying that after the same issues
5 about conflict had been presented.

6 Let me put this out: Then that order and
7 judgment was appealed to the Appellate Division and the
8 Court of Appeals. SNG decides which arguments they're
9 going to make, all right?

10 They attack that judgment on a whole lot of
11 arguments, okay? And the Court of Appeals has ruled,
12 and the Court of Appeals has issued a mandate to this
13 court that this court enforce the judgment, all right?

14 The court, I would respectfully submit, has no
15 authority to do anything other than to enforce the
16 judgment.

17 I direct the court to the Mount Sinai decision
18 we have in our brief, which is --

19 THE COURT: The Davis case.

20 MR. KEARNEY: Pardon?

21 THE COURT: Was it Mount Sinai, Davis?

22 MR. KEARNEY: It stands for this
23 proposition -- it stands for this proposition: That
24 is, that in the present posture of this case, counsel
25 --the court cannot entertain counsel's arguments that
26 the decision was wrong, the order was wrong.

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2 That Mount Sinai case makes it clear that
3 counsel can't come and argue to a separate judge in the
4 same court what they already argued before Justice
5 Cahn.

6 They can't, in essence, appeal again the
7 judgment order that they already appealed all the way
8 up to Albany, which is exactly what is happening here.
9 They're coming back and asking for a do-over, let's do
10 a do-over. Let's try these arguments again.

11 THE COURT: By the same token, the two of you
12 can decide and determine when the race should be. It
13 can be changed, that date can be changed, on consent,
14 can it not?

15 MR. KEARNEY: That's exactly right. The two
16 of us can. But here's the rub, your Honor.

17 THE COURT: What is the rub there?

18 MR. KEARNEY: You must understand -- and
19 that's what it is. It is what it is.

20 If you look -- and it comes from their April
21 23 letter to us, which is in my affirmation on 007, in
22 exhibit D, your Honor, their April 23 letter.

23 THE COURT: April of which year?

24 MR. KEARNEY: April 23 of '09. This is what
25 constitutes the contempt. Here's what they say --

26 THE COURT: You're saying it's going to be in

1 Proceedings

2 May, but there had been negotiations, there had been
3 talks prior to that.

4 Let me ask you one other thing: Is the
5 race -- are you committed to a multi-hull vessel?

6 MR. KEARNEY: We would enter our discussions
7 and --

8 THE COURT: I'd like to know. I'm asking you
9 right now, is there a commitment to a multi-hull
10 vessel?

11 MR. KEARNEY: We, Golden Gate --

12 THE COURT: I think that's a yes-or-no. It
13 just seems to me that -- it appears to me that the
14 vessel -- I know that there's been the challenge, and
15 looking at the letters, continuously in the past the
16 Golden Gate stated they've already applied to the Navy
17 for a tonnage certificate and also for what's required.
18 Now, I've forgotten what it's called.

19 MR. KEARNEY: A custom house registry.

20 THE COURT: That's right.

21 MR. KEARNEY: Or a certificate of
22 documentation.

23 THE COURT: That's right, CHR, as it was
24 called, that you've already applied for this, and now
25 you've changed your position and said we've taken the
26 vessel apart, even though there have been trials on

1 Proceedings

2 this vessel, and which everybody assumed was the vessel
3 you were going to race. It seems a little slick that,
4 all of a sudden, this vessel has been taken apart.

5 MR. KEARNEY: Can I explain that.

6 THE COURT: Yes, I'd like to hear. And I'd
7 like to hear why there has been an application and, all
8 of a sudden, there is no application.

9 MR. KEARNEY: An application?

10 THE COURT: An application to the Navy and for
11 the tonnage certificate. It seems to me that perhaps
12 Golden Gate is playing fast and loose.

13 MR. KEARNEY: I'd like to explain that, if I
14 can.

15 THE COURT: Yes, I'd like to hear, but you
16 still haven't answered my question. Is it going to be
17 multi-hulled or not?

18 MR. KEARNEY: Here's the answer: We have
19 consistently said that we would prefer a conventional
20 America's Cup on mono-hulls with multiple challengers.
21 We have consistently said that.

22 After we won the Court of Appeals, we sent a
23 letter to SNG, saying we would like to meet with them
24 to discuss exactly that. We wanted a multi-challenger
25 mono-hull race, not with the multi-hulls, okay?

26 THE COURT: Shouldn't they have notice of what

1 Proceedings

2 kind of race you want? You want the race to take place
3 in February, am I correct?

4 MR. KEARNEY: Can I say something.

5 THE COURT: That's a short period. Shouldn't
6 they know what kind of boat you plan on using?

7 I mean your argument is that the CHR -- I'm
8 going to use that term because it's easier for me --
9 doesn't really tell them what kind of boat, that your
10 challenge tells them the dimensions and the type of
11 boat, that the CHR is only to assure that it's from a
12 different country and the country that the boat is
13 coming from.

14 If that's the case, what you should be able to
15 tell them now is what kind of boat you intend to race.
16 That just seems fair.

17 MR. KEARNEY: Okay, if they insist on a
18 default match, okay, we will compete in a multi-hull.
19 There is no question about that.

20 If we can mutually agree to the conventional
21 America's Cup, letting all our challengers in, if
22 that's possible -- and that's what we wanted to do, and
23 that's what we said we wanted to do -- then we will
24 compete in the mono-hull. But they said to us -- in
25 the April letter they changed their position.

26 They said to us they don't want to have to a

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2 conventional America's Cup and mono-hulls. That means
3 we must come in with a multi-cup because that's what we
4 described in our initial challenge certificate, so it's
5 their action that dictates what boat we have to come in
6 with now.

7 We had to prepare, your Honor, for that
8 contingency during the past litigation of two years
9 that that may happen, even though we want to have a
10 mono-hull race, a conventional multi-challenger
11 mono-hull race.

12 But we had to get prepared for that. So we
13 will be prepared with a multi-hull for the February
14 race, as required by this judgment, and they know that.

15 THE COURT: I have a question for you,
16 counsel.

17 MR. KEARNEY: Yes.

18 THE COURT: Is it feasible to do a mono-hull
19 race in February at this point? Is there enough time
20 for other challengers to build mono-hull boats if it's
21 going to be in February?

22 MR. KEARNEY: I would say if it's going to be
23 a mono-hull race, conventional America's Cup mono-hull
24 race, it would be by mutual consent.

25 THE COURT: That's not my question.

26 MR. KEARNEY: Part of the consent, your Honor,

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2 would be to get a race date that would probably be
3 later 2010, 2011, because it would take longer to get a
4 group of seven to ten challengers together, but that
5 only happens if there's mutual consent, and the
6 judgment works cohesively with the deed in this
7 respect, your Honor.

8 THE COURT; I understand. I understand all of
9 this. I've read your papers. I just have some
10 questions.

11 MR. KEARNEY: I understand. Can I address
12 the CHR a moment, your Honor.

13 THE COURT: Yes.

14 MR. KEARNEY: Here's our position on the CHR.
15 The first is that the court has no authority to rule on
16 that motion because the court, again, is limited to
17 enforcing the judgment.

18 You can't come after an action has proceeded,
19 a judgment has been upheld by the Court of Appeals and
20 bring a new claim, all right, on a motion and expect --

21 THE COURT: Why is there a new claim? The
22 deed specifically says -- and I don't believe there's
23 been any ruling on this -- that you're supposed to turn
24 over the CHR car as soon as possible, and it says
25 "must."

26 So why is that any kind of new claim?

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2 MR. KEARNEY: Because this case is over. The
3 judgment has been rendered. The Court of Appeals --

4 THE COURT: It's not over as to that issue.

5 MR. KEARNEY: Yes, it is.

6 THE COURT: Why is it?

7 MR. KEARNEY: It's over. You know--

8 THE COURT: Please, counsel.

9 Did the Court render a decision as to the CHR?
10 It looks to me, through the papers, that continuously
11 and consistently, Golden Gate kept telling the court
12 and writing to SNG that you're working on a CHR, that
13 you were going to give them the CHR.

14 Surprisingly, in your reply papers you say
15 you've taken the boat apart and, therefore, you have to
16 reapply for a new CHR? I don't think that the courts
17 previously ruled on this.

18 MR. KEARNEY: Let me explain.

19 THE COURT: Yes.

20 MR. KEARNEY: It doesn't matter what the court
21 previously ruled. In fact, the court did not
22 previously rule. This was not in the case.

23 It was not a claim. There's been no pleading
24 about it, there's been no discovery about it, there's
25 been no claim.

26 This case -- your jurisdiction is purely

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2 limited to enforcing the judgment. Otherwise, this
3 case is over. If they want to bring a preliminary
4 action, they can. Let me go to the merits.

5 THE COURT: But if I--

6 MR. KEARNEY: Let me go to the merits.

7 THE COURT: Please, counsel. Don't interrupt.

8 If I buy your argument, that means they have
9 no recourse if you don't follow the rest of the deed.
10 It means that all I can do is enforce the judgment of
11 the Court of Appeals, and if you breach other terms of
12 the deed, SNG has no recourse; is that your argument?

13 MR. KEARNEY: They have recourse. They can
14 bring an action, but they can't do it here. They can't
15 bring it here. That's my argument, and that's what the
16 cases say.

17 Let me go to the merits. Let me say this:
18 That in July 2007 Golden Gate put out a challenge.
19 They challenged for the America's Cup, July 11.

20 On July 23 of that year SNG rejected the
21 challenge. They not only rejected the challenge. They
22 sent it back.

23 THE COURT: I understand all of this. I read
24 the papers.

25 MR. KEARNEY: Not only that. They said under
26 the deed they cannot consider our challenge.

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2 They maintain that position throughout two
3 years of litigation and all the briefing.

4 So what they're saying is that during this
5 period of time GGYC had none of the privileges -- had
6 none of the benefits of being a challenger, but now
7 they're coming in and saying that during that period of
8 time we should have done the following, we should have
9 done the following.

10 Listen to this. We should have completed the
11 construction of a multi-million-dollar multi-hull.

12 THE COURT: It looks like you did that.

13 MR. KEARNEY: Let me say, we should have
14 completed that, and we should have then gotten the CHR.
15 We should have done all those things they claim during
16 this two-year period of time.

17 We should have done all those things during
18 that period of time when we didn't know we would be the
19 challenger, we had none of the rights and privileges of
20 the challenger.

21 THE COURT: I read it, and I understand your
22 argument, but I think the facts refute what you're
23 saying because it looks to me from the facts that
24 Golden Gate, in fact, did do all of that.

25 That they built a multi-million-dollar craft,
26 that they put it to sea, that there were trials, and

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2 all of that was done, and that they stated in letters
3 specifically that they were working on getting the CHR.

4 So let me hear from the other side.

5 MR. KEARNEY: Let me just --

6 THE COURT: No, let me hear from the other
7 side. Could you have a seat.

8 MR. KEARNEY: Thank you.

9 THE COURT: Counsel.

10 MR. OSTRAGER: Good morning, your Honor, and
11 thank you.

12 I think premature and slick would fairly
13 characterize the behavior of GGYC in making the
14 application for contempt that they made to your Honor,
15 as your Honor clearly knows from carefully reviewing
16 the record.

17 THE COURT: I don't think their application
18 was premature, frankly. I don't believe I have much
19 authority beyond what the Court of Appeals has directed
20 unless you both come to terms with regard to the date.

21 MR. OSTRAGER: Well, to be perfectly clear,
22 there were almost a full year of proceedings before
23 Justice Cahn. Justice Cahn ultimately issued an order.

24 The order that Justice Cahn issued reads as
25 follows: Quote "Ordered that the location of the match
26 shall be in Valencia, Spain or any location selected by

1 Proceedings

2 SNG, provided SNG notifies GGYC in writing not less
3 than six months in advance of the date set forth for
4 the first challenge match race of the location it has
5 selected for the challenge match race, and it is
6 further ordered that GGYC and SNG may engage in a
7 mutual consent process and make any arrangements
8 satisfactory to both as to the dates, courses, number
9 of trials, rules and sailing regulations and any other
10 conditions on the challenge match race in accordance
11 with the deed of gift."

12 Now, that order is entered on May 12. As of
13 May 12 GGYC was the challenger of record, and GGYC
14 remained the challenger of record until the Appellate
15 Division reversed Justice Cahn.

16 THE COURT: What possible authority do I have
17 to change the date set by the Court of Appeals?

18 MR. OSTRAGER: The long and the short of this
19 is you have Mr. Masmajan's affidavit. He is seated
20 next to me. He described a meeting that was had
21 between SNG and GGYC last month.

22 At the meeting there was absolutely no
23 discussion with respect to race dates. SNG told GGYC
24 that it was SNG's view that it would be best to have
25 the race in May because these multi-hulled vessels go
26 at three times the speed of wind and it's dangerous to

1 Proceedings

2 the sailors to have a northern hemisphere race in
3 February.

4 THE COURT: What about a southern hemisphere
5 race?

6 MR. OSTRAGER: SNG is absolutely committed to
7 a northern hemisphere race. There will be a northern
8 hemisphere race.

9 We thought we were going to have a discussion
10 with them as to when that would be. We're going to
11 have a northern hemisphere race.

12 Whatever they agree to, wherever -- when they
13 agree to it at such date they agree to it, as such date
14 as the court directs, but we're going to have a
15 northern hemisphere race.

16 We thought we were going to have a discussion
17 with them. We thought we were going to have a
18 discussion with them as to why May would be a better
19 date than February.

20 We thought we were going to have a discussion
21 with them about the Italian challenger that wants to
22 participate in a multi-hull elimination series.

23 THE COURT: Let me ask you the same thing: Is
24 it possible to have a multi-hull race with challengers
25 at this point?

26 MR. OSTRAGER: Yes, it's possible.

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2 THE COURT: As early as May?

3 MR. OSTRAGER: It's definitely possible.

4 THE COURT: Is it possible to have it in
5 February?

6 MR. OSTRAGER: It would be difficult to have
7 it in February, but SNG is committed to defending the
8 cup at such time as GGYC agrees or at such time as the
9 court directs --

10 THE COURT: Now --

11 MR. OSTRAGER: -- in the northern hemisphere.

12 THE COURT: Has SNG changed its position by
13 building a multi-hull vessel based upon what Golden
14 Gate has previously said?

15 MR. OSTRAGER: Golden Gate submitted a notice
16 of challenge. It's exhibit C to my affidavit. It
17 specified a 90-foot-by-90-foot multi-hulled vessel.

18 In accordance with the deed of gift, the
19 defender is entitled in the certificate of challenge to
20 know the vessel that the challenger is going to
21 challenge, and so SNG is preparing to defend in a
22 multi-hull the challenge that SNG -- that GGYC, rather,
23 has made.

24 As your Honor pointed out, all through April
25 2008 and all through May of 2008, when GGYC was the
26 challenger of record, GGYC proceeded to build for

1 Proceedings

2 10-plus million dollars a multi-hull vessel.

3 They launched that vessel in August in
4 correspondence in April, and May they told SNG they
5 would provide a customs house registry as soon as
6 possible. They told SNG they were going to give us
7 that customs house registry.

8 And the purpose of that customs house registry
9 is to confirm that the vessel that they build conforms
10 to the notice of challenge they gave us, so that we
11 know that the vessel that they have launched and the
12 vessel that they're going to challenge is the vessel
13 specified in the challenge that was made pursuant to
14 the deed of gift.

15 THE COURT: They would be held to the notice
16 of challenge no matter what, would they not?

17 MR. OSTRAGER: Correct.

18 THE COURT: So what does the CHR do?

19 MR. OSTRAGER: The CHR confirms that the
20 vessel that's been built conforms to the notice of
21 challenge so that they don't show up on race day with a
22 vessel that's other than -- different from the one
23 specified in the notice of challenge, so we have to
24 come running back to court.

25 THE COURT: If they showed up on race day or
26 shortly before race day with the CHR that did not

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conform to the notice of challenge, they would be --

MR. OSTRAGER: In default.

THE COURT: They would be disqualified,
clearly.

MR. OSTRAGER: They would be disqualified.

THE COURT: Why do you need the CHR, then?

MR. OSTRAGER: The gift specifically specifies
that there is supposed to be a CHR issued as soon as
possible after the vessel is built.

THE COURT: But it doesn't give a date.

MR. OSTRAGER: No, it says as soon as
possible.

They built and launched the vessel. It's been
in all the newspapers. It's been on television.

THE COURT: Well, newspapers are hearsay. But
they've made statements.

MR. OSTRAGER: We know from their web site, we
know from physically seeing the vessel in the water, we
know from viewing it on television that they built and
launched the vessel.

THE COURT: You have the right now at this
point to take the vessel apart and apply for a new CHR.
What's your position on that?

MR. OSTRAGER: That's their position. Our
position is that if they built the vessel and it's the

1 Proceedings

2 vessel that's described in the notice of challenge and
3 it's the vessel they said they were going to give us a
4 CHR certificate for as soon as possible in April and
5 May -- and, by the way, your Honor, it takes two days
6 to get from the Coast Guard a CHR. That's how long it
7 takes to get a CHR, two days.

8 THE COURT: Well, there's nothing from the
9 Coast Guard saying that, is there?

10 MR. OSTRAGER: There are regulations that are
11 promulgated.

12 THE COURT: We don't know how long it takes.

13 MR. OSTRAGER: It takes two days. I represent
14 that as an officer of the court.

15 THE COURT: What I'm trying to tell you is
16 there is nothing in the deed. It says as soon as
17 possible, but there's no cutoff date, and there has
18 been case law that says that the challenging vessel
19 does not have to be built at the time of challenge, but
20 they do have to conform to the challenge, to the
21 dimensions and the type of vessel given in the
22 challenge; am I correct?

23 MR. OSTRAGER: Yes. I just want to be clear
24 about our position. We are going to have a northern
25 hemisphere race, and it's going to take place on a date
26 mutually agreed to by GGYC which, for reasons I cannot

1 Proceedings

2 explain, has refused to engage in good-faith
3 discussions, as the Court of Appeals directed it to,
4 with respect to when the race is to take place.

5 THE COURT: The Court of Appeals also stated
6 it was to be ten months if they don't agree to another
7 date.

8 MR. OSTRAGER: If we have to have the race in
9 the northern hemisphere in February, we will have the
10 race in the northern hemisphere in February.

11 We think that before they come running into
12 this court seeking contempt, they have a minimum
13 irrefutable responsibility to have a discussion of the
14 issue before they file a motion for contempt.

15 THE COURT: Can you have the race in the
16 northern hemisphere, rather than the southern
17 hemisphere if it's in February?

18 MR. OSTRAGER: They say in their papers that
19 if a court issues an order, however erroneous that
20 order may be, we have to comply with it, and we're
21 prepared to comply with it.

22 THE COURT: But the order of the Court of
23 Appeals does not say it has to be in the northern
24 hemisphere.

25 MR. OSTRAGER: The challenger has the
26 undisputed, uncontested right to designate any venue

1 Proceedings

2 issues. That's what Judge Cahn's order says. It says
3 the location of the match shall be in Valencia or any
4 other location selected by SNG.

5 THE COURT: But that's not what the Court of
6 Appeals said.

7 MR. OSTRAGER: The Court of Appeals reinstated
8 this order, so if we accept Mr. Kearney's argument as
9 literally being what he means, we're going to have a
10 match in Valencia, Spain or any other location selected
11 by SNG.

12 And I'm representing to the court that we are
13 going to have a match in the northern hemisphere. It
14 may be Valencia, or it may be another location in the
15 northern hemisphere.

16 Now, we believe, because of the safety of the
17 sailors and because of the pendency of a multi-hull
18 challenge by an Italian challenger, that GGYC should be
19 directed to comply with that portion of the Court of
20 Appeals order that directed the parties to negotiate in
21 good faith to deal with the circumstances as
22 appropriate.

23 But if GGYC refuses to engage and insists on
24 proceeding in accordance with the literal terms of
25 Justice Cahn's order, even though we, who participated
26 in a year 's worth of hearings before Justice Cahn,

1 Proceedings

2 don't believe that's what he fully intended to
3 accomplish, we will comply with this order.

4 We are not in contempt of anything. We are
5 going to comply with this order. We will have a match
6 race in the northern hemisphere, either Valencia or
7 another location that we're entitled to pick under the
8 deed of gift.

9 And as far as the CHR is concerned, we think
10 that GGYC has engaged in ultimate bad faith, and
11 they're compounding that bad faith by what we refer to
12 in our papers as oralgate.

13 They're sending spies to look at the
14 construction of our vessel, which we don't think is
15 very sportsmanlike.

16 THE COURT: At this point I'm going to issue
17 my decision.

18

19 MR. KEARNEY: May I be heard on CHR, your
20 Honor.

21 THE COURT: No, I think you've taken long
22 enough. I think you've argued as to the issues. I'm
23 just going to issue my decision at this point.

24 At this point, in regard to Golden Gate
25 Yacht's application for contempt, I'm directing SNG to
26 hold the race as per the order of the Court of Appeals

1 Proceedings

2 and Justice Cahn in February as the order required.

3 Should SNG not do so, I am then going to give
4 the other party, Golden Gate, the opportunity to move
5 for contempt.

6 MR. OSTRAGER: You need not be concerned, your
7 Honor. We will comply.

8 THE COURT: In regard to SNG's application, I
9 am stating right now that, although the deed does not
10 require a certain date, the deed does require that the
11 vessel conform to the challenge dimensions.

12 If the CHR does not conform to the challenge
13 dimensions, it is this Court's belief, and my
14 direction, that Golden Gate will be disqualified, and I
15 am directing Golden Gate, in good faith, to abide by
16 the deed, to make application for the CHR as soon as
17 possible and providing it as soon as possible.

18 That's the order of the Court.

19 I would ask that the parties step up, so we
20 can discuss mediation, perhaps.

21 (Conference at the bench)

22 (End of proceedings)

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CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT
OF THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS
PROCEEDING.

BARBARA STROH, CSR, CMR, CRR
Senior Court Reporter

