

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

AFRICAN DIASPORA MARITIME  
CORPORATION,

Plaintiff-Appellant,

-against-

GOLDEN GATE YACHT CLUB,

Defendant-Respondent.

Index No. 653419/2011

**PRE-ARGUMENT STATEMENT**

1. The title of the action is set forth in the caption.
2. The full names of the current parties are set forth in the caption.
3. The name, address, and telephone number of counsel for Plaintiff-Appellant

African Diaspora Maritime Corporation ("Plaintiff") is:

Banks Brown, Esq.  
Andrew B. Kratenstein, Esq.  
Audrey Lu, Esq.  
McDermott Will & Emery LLP  
340 Madison Avenue  
New York, New York 10173-1922  
(212) 547-5400

4. The name, address, and telephone number of counsel for Defendant-Respondent

is ("Defendant"):

Philip M. Bowman, Esq.  
Julia C. Hamilton, Esq.  
Boies, Schiller & Flexner LLP  
575 Lexington Ave.  
New York, NY 10022  
(212) 446-2300

5. This appeal is taken from the Supreme Court of New York, County of New York.

6. This appeal is taken from the Decision/Order of the Honorable Barbara R. Kapnick, Supreme Court of the State of New York, County of New York, dated January 18, 2013, and filed in the Office of the Clerk of New York County on January 18, 2013, granting Defendant's Motion to Dismiss Plaintiff's Amended Complaint (the "Decision/Order").

7. Defendant is the current trustee of the America's Cup (the "Cup"). On or about April 20, 2012, Plaintiff filed an Amended Complaint ("Complaint") asserting causes of action for breach of contract and breach of trust based upon Defendant's failure to undertake a good faith review of Plaintiff's application to participate in the 34th America's Cup ("AC34"). Plaintiff also asserted a claim for breach of fiduciary duty based on Defendant's self-dealing by negotiating to purchase for itself long-term property rights on San Francisco Bay, and also by requiring that all competitors purchase AC 45 yachts to the benefit of one of Defendant's members or affiliates.

8. As relief, Plaintiff sought \$1 million in compensatory damages and equitable relief including, but not limited to, an order directing Defendant to accept its application to participate in AC34; rescheduling and postponing any currently scheduled AC34 races and event to allow Plaintiff to build a racing vessel; and removing Defendant as the trustee of the Cup and appointing an independent trustee.

9. On May 11, 2012, Defendant filed a Motion to Dismiss Plaintiff's Amended Complaint. On January 18, 2012, the Supreme Court granted Defendant's Motion to Dismiss.

10. The Supreme Court's grant of Defendant's Motion to Dismiss was erroneous. First, the Court erred in holding on a motion to dismiss that there was "nothing in the record to support plaintiff's contention that [Defendant] acted in bad faith in reviewing Plaintiff's application." (Decision/Order at 18.)


11. Second, the court erred in holding that Plaintiff lacks standing to bring its breach of trust and breach of fiduciary duty causes of action purportedly because the Cup is a charitable trust and because Plaintiff is not a beneficiary of that trust.

12. There are no factually related actions pending.

13. There are no additional appeals pending in this action.

Dated: New York, New York  
January 23, 2013

**MCDERMOTT WILL & EMERY LLP**

By:   
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*Attorneys for Plaintiff-Appellant African  
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