

1 THE HONORABLE BARBARA J. ROTHSTEIN

2 CC TO JUDGE DJ

3 [Signature] FILED _____ ENTERED
4 _____ LODGED _____ RECEIVED

5 FEB - 6 2002 DJ

6 AT SEATTLE
7 CLERK U S DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 BY _____ DEPUTY

10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

13 ONEWORLD CHALLENGE, LLC, a
14 Washington Limited Liability Company,

15 Plaintiff,

16 v.

17 SEAN REEVES, a New Zealand individual,
18 Defendant.

No. C01-1844R

**DEFENDANT'S VERIFIED ANSWER,
AFFIRMATIVE DEFENSES, AND
COUNTERCLAIMS**

19 In response to Plaintiff's Third Amended Complaint ("Complaint"), defendant Sean
20 St. Leger Reeves admits, denies and alleges as follows:

21 ANSWER

22 1. Answering paragraph 1, on information and belief, defendant admits the same.

23 2. Answering paragraph 2, defendant admits that he is a former independent
24 contractor of OneWorld Challenge ("OWC"), and that he signed certain contracts which
25 indicate that courts in King County, Washington, have jurisdiction over this dispute.

Defendant denies the remaining allegations in paragraph 2 of the Complaint.

3. Answering paragraph 3, defendant admits the same.

FFIRMATIVE
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ORIGINAL

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1 4. Answering paragraph 4, defendant admits the same, however the correct
2 reference is "Royal New Zealand Yacht Squadron."

3 5. Answering paragraph 5, defendant admits the race can be won or lost in the
4 design phase. Defendant lacks sufficient information or knowledge to form a belief as to the
5 truth or falsity of the remainder of the allegations in paragraph 5 and therefore denies same.

6 6. Answering paragraph 6, defendant admits that confidentiality of hull designs is
7 important. Defendant denies the remaining allegations in paragraph 6 of the Complaint.

8 7. Answering paragraph 7, defendant admits that plaintiff has filed declarations
9 purportedly signed by Chris Dickson and David Barnes, admits speaking with both
10 Mr. Dickson and Mr. Barnes, but denies offering to provide OWC Confidential Information to
11 Oracle Racing Limited, Great Britain Racing, or any other challenge team or individual.

12 Defendant has known Mr. Dickson for approximately 26 years. Mr. Dickson and
13 defendant sailed double handed Olympic class yachts intensively together between 1980 and
14 1983 with considerable success. However, due to a personality clash Dr. Dickson and
15 defendant ceased sailing together in Olympic class yachts in August 1983. This separation
16 was unpleasant and compounded by defendant's beating Mr. Dickson and Mr Barnes for the
17 Olympic 470 class position for New Zealand to compete in the 1984 Los Angeles Olympic
18 Games. The ongoing animosity between Mr Dickson and defendant is well known in
19 yachting circles. After defendant left the employment of OWC in early May 2001, he was
20 contacted by Mr. Michael Spanhake (a previous member of Team New Zealand's winning
21 America's Cup Team in 1995 and one of New Zealand's most experienced yachtsmen). Mr.
22 Spanhake indicated that he had been approached by a wealthy individual who wished to form
23 a new British America's Cup Challenge. Mr. Spanhake asked whether defendant knew of any
24 qualified individuals who were available who could join in such a late entry into the 2003
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1 event. Under the terms of the Protocol governing the event, the designers and sailors for each
2 team must comply with the "Nationality Eligibility" criteria in the Protocol, which includes
3 holding a valid passport from the country of the challenge. In April 2001, it was reported in
4 the New Zealand Herald that Mr Dickson had been terminated as skipper of Oracle Racing's
5 challenge team. If true, Mr. Dickson would have been an ideal candidate to fill the position
6 for the new British Challenge as he holds a passport from the United Kingdom. In mid-July
7 2001, defendant placed a call to Mr. Dickson at his home in Ventura, California, with the
8 objective of ascertaining the status of Mr. Dickson's employment with Oracle Racing. If Mr
9 Dickson had in fact been terminated by Oracle, defendant intended to inquire as to whether he
10 had any interest in joining this new British challenge. Mr. Dickson was not home, but Mr.
11 Dickson returned defendant's call on or about July 16, 2001. The conversation started with a
12 discussion regarding defendant's departure from the OWC team. At no point during this
13 conversation did defendant indicate that he was looking to recover some of his losses; that he
14 held lines plans, rig plans, keel plans, deck layouts lines, or other Confidential OWC
15 Information; or that he wished to sell such information to Oracle or provide some sort of
16 "debriefing" regarding OWC affairs. During this conversation, Mr. Dickson indicated that he
17 was still employed by Oracle, and intended to remain with the Oracle team. Therefore,
18 defendant did not disclose to Mr. Dickson the purpose of his call (namely to see if Mr.
19 Dickson was available to join a new British challenge).

20 On or about June 21, 2001, defendant contacted David Barnes to obtain the identity of
21 the designers and sailors working for the GBR challenge, in order to eliminate them from the
22 list of potential team members for the new British challenge. Mr Barnes was not home, but
23 returned the call to defendant at his wife's parent's home in Bethesda, Maryland. At no time
24 during this conversation did defendant indicate that he was seeking to recover his losses, nor
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1 did he offer to sell to Mr. Barnes or the GBR challenge any information belonging to OWC or
2 Team New Zealand. In fact, defendant has never had in his possession or control any of the
3 items identified in paragraph 6 of Mr. Barnes' declaration other than the Laurie Davidson
4 design package discussed in paragraph 14 infra. At no stage during this call was the Laurie
5 Davidson design package mentioned or alluded to Mr Barnes did ask if defendant would be
6 interested in providing GBR with a "debriefing" about OWC, indicating "we would make it
7 worth your while," but defendant declined. The defendant also took the opportunity during
8 his initial telephone conversation with Mr. Barnes to explain why OWC had decided not to
9 employ Mr. Barnes as a member of OWC campaign. On numerous occasions, Mr. Barnes
10 contacted the defendant at OWC during the time defendant was its Operations Manager,
11 trying to convince defendant why OWC should employ him. Mr. Barnes' "sales pitch"
12 became so incessant that defendant had to ask Mr Barnes not to continue his requests and
13 OWC would contact him if it changed its mind. Mr Barnes seemed very bitter about his
14 rejection by OWC. After defendant had explained the reason why Mr. Barnes had not been
15 engaged by OWC, being a concern by OWC's skipper Mr. Peter Gilmour that Mr. Barnes
16 would challenge his role as sailing director, Mr Barnes thanked defendant for the explanation
17 and seemed to accept it. Mr. Barnes may still bear some grudge against defendant for his role
18 in OWC's decision not to employ Mr. Barnes.

19 During both conversations with Dickson and Barnes, the subject of the future of OWC
20 and its designers and sailors was discussed. In particular whether the provisions of the
21 Protocol permitted such designers and sailors to transfer to other syndicates and take their
22 technical information with them. One interpretation of the Protocol allows such a transfer.
23 Both Dickson and Barnes were extremely interested in this and said they were going to go
24 back to their respective syndicates and discuss the issue with them. In fact, both did so and
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1 later called defendant to discuss the interpretation further but indicated that they believed
2 there was a high degree of risk in taking OWC designers and their information under this
3 interpretation of the rules. Defendant believes both the Dickson and Barnes declarations have
4 been filed to protect their respective syndicates from any suggestion that their discussions
5 with defendant constituted a violation of the reconnaissance rules in the Protocol.

6 8. Answering paragraph 8, defendant denies the same.

7 9. Answering paragraph 9, defendant acknowledges having possession of a
8 Design Package delivered by Laurie Davidson to OWC, which has been placed in the hands
9 of attorney Art Claflin for safe keeping pending resolution of the claims between the parties.
10 Defendant denies the remaining allegations in paragraph 9 of the Complaint.

11 10. Answering paragraph 10, defendant admits that he was an independent
12 contractor working with OWC on the 2003 America's Cup challenge

13 11. Answering paragraph 11, defendant admits signing a Confidentiality and Non-
14 Competition Agreement, which speaks for itself

15 12. Answering paragraph 12, defendant admits signing a Separation Agreement
16 ambiguously drafted by OWC. Defendant denies receiving consideration for extending the
17 restraint of competitive activities until May 31, 2002

18 13. Answering paragraph 13, defendant denies the same.

19 14. Answering paragraph 14, defendant denies the same. The only arguably
20 confidential information from OWC that defendant has had in his possession, custody, or
21 control following termination of his relationship with OWC is a duplicate original of a certain
22 Design Package purchased by OWC for \$1 5 million U.S dollars from Laurie Davidson in
23 August 2000. This Design package includes a total of eight lines plans for yachts of the
24 International America's Cup Class coupled with hydrostatic studies, plus keel strut, keel bulb
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1 and rudder drawings. Defendant does not believe that the drawings in the Design Package are
2 the Confidential Information of OWC because it is his understanding that they were derived
3 in whole or in part from work performed under contract by Laurie Davidson for Team New
4 Zealand. Upon receipt of written demand for such information from OWC's New Zealand
5 counsel, defendant forwarded these design drawings to his U S attorney, Guy Michelson.
6 These design drawings are now in the hands of attorney Art Claflin in Seattle for safekeeping.
7 Defendant has had no other arguably Confidential Information of OWC in his possession,
8 custody or control since leaving OWC. Specifically, following termination of his relationship
9 with OWC he has not had in his possession, custody or control any of the allegedly
10 Confidential Information of OWC referenced in the declarations of Mr. Dickson or Mr.
11 Barnes filed in this litigation. Furthermore, he has not attempted to sell or disclose this
12 Design Package or any other arguably Confidential Information of OWC to Dickson, Barnes,
13 or anyone else, nor has he received any compensation from any source for this information.

14 15. Answering paragraph 15, defendant denies the same.

15 16. Answering paragraph 16, defendant denies the same.

16 17. Answering paragraph 17, defendant denies the same.

17 18. Answering paragraph 18, defendant denies the same.

18 19. Answering paragraph 19, defendant denies the same.

19 20. Answering paragraph 20, defendant denies the same.

20 21. Answering paragraph 21, defendant denies the same.

21 22. Answering paragraph 22, defendant admits knowing that OWC hopes to
22 compete in the America's Cup. Defendant denies the remaining allegations in paragraph 22
23 of the Complaint.

24 23. Answering paragraph 23, defendant denies the same.

1 producing the next generation of the Team New Zealand yachts to be raced by OWC.
2 Defendant believes that the designs for struts, rudders, tabs, and/or bulbs in this design
3 package were taken from work performed for Team New Zealand. The narrow version of
4 NZL 57-60 (referred to as #3 narrow), which is part of this design package was created while
5 Laurie Davidson was employed by Team New Zealand. Defendant believes that these
6 allegations can be confirmed by comparing these drawings to Team New Zealand drawings,
7 and by checking the dates on which work was performed preparing these drawings by
8 probably either Matt Hall-Smith (using MacSurf software and Graphic Magic), or Kevin
9 Dibley of Dibley Marine Architects. Defendant spoke to Gary Wright regarding his concern
10 that these Protocol violations could lead to disqualification of OWC's entire campaign. To
11 defendant's knowledge, Gary Wright took no action to address these concerns while
12 defendant was working with OWC. In fact, shortly after Laurie Davidson delivered the
13 Design Package to OWC on or about August 15, 2000, he met with Gary Wright and gave a
14 detailed explanation of the lines plans and other information contained in the Design Package.
15 Laurie Davidson later explained to defendant that he had told Gary Wright that lines plan #3
16 Standard was an exact replica of Team New Zealand's yachts NZL 57-60. Notwithstanding
17 this admission, Gary Wright formally accepted the Design Package and approved the payment
18 of \$1.5 million U.S. to Laurie Davidson.

19 b. Laurie Davidson brought to OWC dozens of color photographs of tank towing
20 tests and models at the Wolfson Unit in Britain from the 2000 Team New Zealand campaign.
21 This violates the Protocol.

22 c. Laurie Davidson had in his possession at OWC copies of the Measurement
23 Certificates for NZL-57 and NZL-60. This violates the Protocol.

1 d. OWC purchased two yachts from other syndicates which challenged for the
2 2000 America's Cup: USA-51 (America True) and USA-55 (Stars and Stripes). It is a
3 violation of the Protocol to obtain the line drawings for these yachts as part of the purchase or
4 acquisition of the vessels. One-quarter and/or one-third scale test models were made of both
5 hulls and tested at the Naval Surface Warfare Center in Maryland. The Calibration and
6 Measurement Center in Auckland was used to measure the hull of USA-55 using a
7 planometre or inclinometre in order to recreate her lines. No such measurements were taken
8 of the hull of USA-51. OWC had the line drawings for USA-51 and measurement was not
9 necessary. Phillip Kaiko, one of the lead designers for OWC, had all design drawings for
10 USA-51, including buttock lines, waterlines, and sectional shapes—essentially a blue print for
11 the boat. This violates the Protocol

12 e. It took Team New Zealand nearly three years to develop its revolutionary
13 millennium three spreader mast. OWC duplicated it in three months. OWC was able to do
14 this because the OWC team had the drawings and technical specifications for Team New
15 Zealand's mast. Kurt Jordan is one of the rig designers for OWC. Richard Karn gave him
16 design information for the Team New Zealand millennium rig at a meeting in San Francisco
17 in July 2000. Neil Wilkinson was a structural mechanical engineer for Team New Zealand.
18 He brought internal fittings designs with him from Team New Zealand to OWC. This
19 violates the Protocol.

20 f. Peter Sowman was the senior boat builder for the America True challenge
21 team. America True developed a revolutionary system of making an aluminum male mold to
22 construct the canoe body with internal water heating to cure the carbon fiber and core
23 elements. Sowman brought to OWC dozens of pictures of the process. This violates the
24 Protocol.
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1 g. Ian Mitchell and Richard Karn had all sorts of design and technical
2 information from the 1995 and 2000 Team New Zealand effort that they brought with them,
3 including lines drawings for NZL 57-60. Ian Mitchell had the ability to produce, on demand,
4 almost any design or technical plan or specification of any Team New Zealand boat or study.
5 This information was removed by Mitchell/Karn from their computer hard drives and placed
6 on disks before their computers were purged by Team New Zealand. This violates the
7 Protocol.

8 h. Richard Karn brought with him from Team New Zealand a performance
9 analysis model used to plot the performance of the Team New Zealand yacht against
10 challenger yachts under various racing conditions This violates the Protocol.

11 i. Wayne Smith came to the OWC from Team New Zealand. He was one of the
12 laminate specialists for the team. At OWC, Smith had in his desk drawer a blue and white
13 folder entitled "Team NZ laminate specifications" that he brought with him from Team New
14 Zealand, including original pre-impregnated carbon fiber certificates for the carbon fiber used
15 on the Team New Zealand yachts issued by suppliers. This violates the Protocol.

16 j. Michael Spanhake came to OWC from Prada America's cup Challenge 2000
17 He was one of Prada's coaches with expertise in sail design. At OWC, Spanhake had two
18 large folders containing sail designs from Prada's campaign, including on-the-water sailing
19 test result for Prada's campaign, sail measurements, sail racing inventories and combinations,
20 limited mast design information, "sail stories", and minutes from Prada's sail design
21 meetings. This violates the Protocol.

22 k. The Protocol allows a competitor to buy old sails with old yachts The rules do
23 not allow a team to simply appropriate the sail designs of a present or past competing
24 syndicate. OWC violated the rules by misappropriating and reproducing the sail designs for
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1 American One and Team New Zealand. OWC purchased two former competition yachts,
2 USA 55 (Stars and Stripes) & USA-51 (America Time). Mike Spanhake and Don Cowie of
3 OWC (both formerly of the Prada 2000 sailing team) conducted a full examination of every
4 sail OWC had purchased with each of those yachts. Following this examination, various
5 meetings were held, led by OWC's headsail designer, Robert Hook. Hook was the sail
6 designer from the 2000 America One team. The meetings resulted in the decision to buy a
7 series of new sails to be used in OWC's testing program at Auckland or with USA-55 or
8 USA-51. Such sails included mainsails, headsails (genoas), spinnakers and gennakers. With
9 the exception of the spinnakers and gennakers, these new sails were made by one of the
10 world's biggest sail-making companies, "North Sails," using the revolutionary "3DL" system
11 of manufacturing. The 3DL factories are situated in Minden, Nevada, and Reno, Nevada.
12 3DL is unique in that the sails do not have conventional seams and stitching or panels. They
13 are made by molding or laminating mylar, kevlar, and carbon fibers together on one gigantic
14 mold in full scale. The mold's shape is determined by configurations from a computer
15 program. Most Cup syndicates, including Team New Zealand, use 3DL sails and each team's
16 sail designer specifies sail shapes on their computer and simply e-mails these coded shapes to
17 the 3DL factory for manufacture of the custom designed sails. The sails are manufactured
18 under tight security and airfreighted to wherever the team requests. 3DL sails are lighter,
19 stronger and aerodynamically superior to traditional "paneled sails." Hook has a contractual
20 relationship with North Sails. Two of the new 3DL sails ordered by Hook for OWC were: (1)
21 an exact copy of America One's code 4 genoa, and (2) an exact copy of Team New Zealand's
22 code 4 genoa (one of the headsails which Team New Zealand used to win the 2000 Cup).
23 These two reproduced sails were delivered to OWC and tested by OWC on the Hauraki Gulf
24 in New Zealand. Defendant is not certain how Hook obtained the design specifications for
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1 the Team New Zealand sail. However, the America One sail specification was likely taken by
2 Hook directly from America One. This is a Protocol violation.

3 2. Waiver and Estoppel: Plaintiff has waived or is otherwise estopped from
4 seeking (a) liquidated damages under the Confidentiality and Noncompetition Agreement, and
5 (b) arbitration under the Separation Agreement.

6 3. Accord and Satisfaction: Various claims asserted by plaintiff under the
7 Confidentiality and Non-Competition Agreement are without merit to the extent that this
8 agreement has been superseded and replaced by the Separation Agreement.

9 4. Illegality or Violation of Public Policy Plaintiff's interpretation of certain
10 provisions of the Confidentiality and Noncompetition Agreement and the Separation
11 Agreement would make those provisions void for illegality or as a violation of public policy.

12 COUNTERCLAIMS

13 In further response to plaintiff's Complaint, Sean Reeves asserts the following
14 counterclaims

15 Parties

16 1. Counterclaim Plaintiff: Sean Reeves ("Reeves") is a New Zealand resident
17 and citizen. He was retained by OWC in April 2000 to assist with OWC's campaign to win
18 the 2003 America's Cup sailing competition.

19 2. Counterclaim Defendants: On information and belief, OneWorld Challenge,
20 LLC ("OWC"), is a Washington limited liability company with its principal place of business
21 in Kirkland, Washington.

22 FIRST COUNTERCLAIM 23 BREACH OF CONTRACT

24 3. The parties executed a Separation and General Release Agreement
25 ("Separation Agreement"), dated May 21, 2001.

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4. For an award in favor of defendant and against plaintiff of defendant's attorneys' fees and costs incurred herein.


5. For such other and further relief, both legal and equitable, as the Court deems just and proper.

DATED this _____ day of February, 2002.

CORR CRONIN LLP

Guy P. Michelson, WSBA No. 07017
Attorneys for defendant Sean Reeves

Defendant certifies that the statements contained herein are true and correct to the best of his knowledge, information, and belief.


Sean St. Leger Reeves, Auckland, New Zealand

DEFENDANT'S VERIFIED ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS - Page 15

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