

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

Golden Gate Yacht Club,

Plaintiff,

v.

Societe Nautique de Geneve,

Defendant,

Club Nautico Espanol de Vela,

Intervenor-defendant.

Index No. 602446/07

**AFFIDAVIT OF
RUSSELL COUTTS**

RUSSELL COUTTS, being duly sworn, hereby deposes and says:

1. I am over 18 years old and am a citizen of New Zealand. I am the CEO of BMW ORACLE Racing (“BOR”), which represents Golden Gate Yacht Club (“GGYC”) in the upcoming 33rd America’s Cup.

2. I have won the America’s Cup as a skipper three times. In 1995 and again in 2000, I won with Team New Zealand. In 2003, I won the America’s Cup as skipper of Team Alinghi. I hold the record for most consecutive America’s Cup match race wins (14) of any skipper.

3. I won a gold medal in the 1984 Olympic Games, representing New Zealand in the Finn class. I also co-designed the RC 44 boat. I’ve also won the ISAF World Youth Championships, three World Match Racing Championships, and numerous IOR, IMS and One Design World Championship titles. In New Zealand, I have been honored as a Member of the British Empire “MBE” and Comander of the British Empire “CBE”, the Distinguished Companion of The



PAGINA 1/4

R.C

New Zealand Order of Merit "DCNZM" and more recently Knight of the British Empire "KBE", and have twice been the International Yacht Racing Union's World Sailor of the Year.

4. For the previous America's Cup, the Defender and Challenger of Record had mutually agreed that teams could use American constructed 3DL sails. SNG's representative team, Alinghi, have availed themselves of this concession for this 33rd America's Cup.

5. Early in 2009, BMW ORACLE Racing (BOR) commenced a project to develop a wing sail. In part, this was a defensive strategy as we suspected Alinghi would choose a light air venue and also race their boat with a wing sail. Around this time, we noticed that Alinghi had recruited wing sail experts to its design team, including Duncan MacLane, the renowned multihull and wingsail designer and a key member of Dennis Conner's 1988 defense of the America's Cup which utilized a wing sail.

6. On July 5, 2009, Alinghi launched *Alinghi 5* on Lake Geneva. *Alinghi 5* was tested for two weeks from July 20th to August 5th. Over this period, we noticed that the sails were 3DL sails. We assumed that Alinghi was conducting initial sea trials with 3DL and then going to make their own sails in Switzerland, either using the 3Di tape technology developed in Switzerland during the 32nd America's Cup or using traditional paneled sail construction.

7. BOR was going through a similar process with parts of our vessel to ensure compliance under the Deed. For example, a hydraulics system was



PAGINA 2/4

R.C

purchased from Cariboni in Italy. Following trials, the system was redesigned and a new system constructed in Anacortes, WA, USA.

8. From August 15, 2009 *Alinghi 5*'s trialing continued off Genoa, Italy for approximately a month. At the time, we were surprised at the small inventory of sails they were testing. This strengthened our assumption that Alinghi was planning to build their own sails perhaps in combination with a wing sail.

9. However, on December 15, 2009 our representatives Tom Ehman and Richard Slater met in Sydney with Alinghi reps Brad Butterworth and Hamish Ross, and ISAF officials, to discuss the SNG-ISAF Agreement and the draft Notice of Race pursuant to the Court's decision and order of November 19, 2009. Following that meeting our representatives reported to me their concern that Alinghi apparently believed that, contrary to the Deed's constructed in country ("CIC") requirement, they could build 3DL sails in Minden *without mutual consent*. This was the first time we realized that Alinghi believed it could, and intended to, sail with 3DL sails without our express agreement to relax the rules.

10. Immediately thereafter, on December 22, 2009 GGYC Commodore Marcus Young wrote to SNG to formally raise our concerns that if in fact they were going to race with American-manufactured 3DL sails, as appeared increasingly likely to us could be the case, it would be a violation of the Deed. We sought from them a clarification of their intentions.

11. On December 27, 2009 SNG replied by saying, in effect, that their sails need not be manufactured in Switzerland, and that, regardless, the issue was



PAGINA 3/4

P.c

not ripe unless and until they showed up on the starting line with such sails.

SNG/Alinghi, however, agreed to meet with our representatives to further discuss CIC and try to reach mutual consent on this and other issues. A meeting was set, with ISAF officials to be present, at Singapore on January 12, 2009.

12. In order to facilitate those talks, GGYC delayed filing the motion on Alinghi's use of 3DL sails. After a full day of discussions, the motion was filed because time was running out before the race, but we continued the discussions. Unfortunately, although I authorized an agreement reached by our negotiators to be signed on behalf of GGYC, SNG declined, in the end, to sign it.



Russell Coutts

Dated: January 27, 2010



PAGINA 4/4

LEGITIMACION anotada al numero 45 de mi Libro Indicador:

Yo, Emilio Vicente Orts Calabuig, Notario de Ilustre Colegio de Valencia, con residencia en la Capital,

DOY FE:

Que ante me ha comparecido **DON RUSSELL COUTTS**, mayor de edad, a quien identifico por su Pasaporte neocelandes numero EA880117, vigente.

Que dicho Sr. Libre y voluntariamente ha estampado a mi presencia la firma que precede y manifiesta que conoce el contenido de este documento extendido en cuatro folios de papel comun escritos a una cara, y quiere que surtan los efectos que le son propios en USA.

En su virtud LEGITIMO la firma que antecede conforme el articulo 207. 2 del Reglamento Notarial y hago constar que todo lo anterior esta conforme con el Acta numero 392 de mi protocolo de esta misma fecha y que signo, rubrico y sello es diligencia, que anoto en el Libro Indicador, en Valencia a 27 de Enero de 2.010.

SELLO DE
LEGITIMACIONES Y
LEGALIZACIONES



NIHIL PRIUS FIDE

A15115754



0,15 €

