

REPUBLIC OF THE PHILIPPINES
OFFICE OF THE OMBUDSMAN
AGHAM ROAD, GOVERNMENT CENTER
DILIMAN, QUEZON CITY

AUG 29 2003

VICENTE GAMBITO
ARIEL T. LIM

Complainant,

OMB-C-C-03-0350-F

- versus -

ALFONSO G. CUSI, et. al.,
Respondents.

x-----x

REPLY TO COUNTER AFFIDAVIT OF RESPONDENT ALFONSO CUSI

1. The complaint does not claim that Respondent be made responsible for PPA actions before his assumption into office as PPA GM prior to 23 February 2001.
2. The complaint refers to the "conspiring, confederating, and cooperating" done by Respondent while he was PPA GM. In due time, his cohorts shall be named.
3. It is not at all incredible that complainants were easily attracted to the letters from Blue Crown mentioned in the complaint because they are part of the Annexes in Civil Case No. 99-94463, filed by Blue Crown against PPA on 9 July 1999. Significant to us was the fact that since 17 February 1998, Blue Crown never raised such issues.

We are aware that during the Administration of President Estrada, the PPA tried to promote a monopoly in all Philippine ports by pushing for the approval of EO 59. This was signed on 28 December 1998. The executive Order called for a "unified contractor" to operate the ports. EO 59 contains the following provisions:

- A. Creation of a big private monopoly. EO 59 requires all existing port players to unify themselves into a single corporation ("unified contractor scheme") for the purpose of operating and developing public ports;
- B. Bundling of ports services. This means that all ports services, including ancillary services will have to be provided by the private port monopolist.
- C. Negotiated Contract. The operation and development of the ports will be awarded to the port monopolist without public bidding which is contrary to the principle of transparency. This is like giving our ports to a favored friend on a silver platter.
- D. Nationwide coverage. This is not only a monopoly of one port but of the entire port system.

With such an EO in place the owners of Blue Crown had no choice but to give up the contract since they were not a part of the unified contractor. The members of the unified contractor are:

Asian Terminals Inc. 25.5%
International Container Terminal Services Inc. 25.5%
Domestic Shipowners Association 40.0%
Cargo Handling Companies 9.0%
TOTAL 100%

4. We believe that the case filed by Blue Crown against PPA was instituted in order to salvage whatever value it could get for a contract that was overtaken by an Executive Order.

- A. Respondent's counter-affidavit cites a document being claimed as part of the Contract documents. (Annex 2). It is very difficult to put equal weight on Section IV B of the Terms of Reference (TOR), which is not signed nor dated. There is no indication that this document existed at the time of the Contract signing.
- B. Besides, Section 17 of the Contract stipulates as follows: Contract Documents. The following documents shall constitute integral parts of this CONTRACT, as fully as if the contents of said documents are reproduced, incorporated and set forth herein, and shall govern in full force and effect the rights and obligations of the parties, except as **otherwise modified by the terms and conditions** of this CONTRACT or by mutual agreement in writing by both parties.
- C. Section 2 of the CONTRACT clearly modifies Section IV B of the TOR when it omits the words "in good operating condition" as a requirement for the turnover of the facilities in question.

Blue Crown worked the contract as soon as they had it signed. They continued to work on it until the impact of EO 59 would have forced them to surrender it to the Consortium. Besides, the waterworks system at the North Harbor was rehabilitated only in 1996, therefore, it is reasonable to expect that most of it was still operational in 1997 when the Contract was signed with Blue Crown. Ships were able to take water into their water tanks and the commercial establishments inside the North Harbor all had flowing water.

5. It is more reasonable to assume that had EO 59 not intervened, the Blue Contract would have proceeded up to the end of its 15-year term.

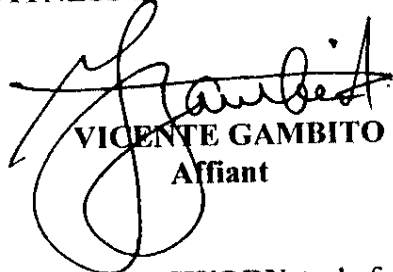
- A. The counter-affidavit fails to mention that an important element in the circumstances surrounding the Contract was EO 59, which called for a monopoly. Under such a provision, the owners then of Blue Crown had no choice but to give up the contract and get for themselves what they felt might be reasonable compensation for their efforts.
- B. However, it appears now that a new owner of the CONTRACT has surfaced. Mr. Eusebio H. Tanco signed the Compromise Agreement with the Respondent on 17 March 2003, involving a payment of P44,177,853 instead of damages amounting to P20,426,500 as prayed for by the previous owners.

6. Respondent cannot offer the Privatization and Modernization program of the North Harbor as reason for terminating the CONTRACT. EO 59 has already been replaced with EO 308 and no more unified contractors, monopolies or negotiated contracts are to be allowed. Under these circumstances, the Modernization Program for the North Harbor becomes very flimsy.

7. Respondent knows that EO 308 was signed on 31st day of October during President Estrada's term, so EO 59 cannot be used as a strong argument. Besides, if newspaper reports are to be believed, President Arroyo ordered the PPA to stop the Project last December 2002.


8. That all arguments of the respondent are matters of defense which should be ventilated in a full blown trial.

IN WITNESS hereof affiant have herein signed this 29th of August 2003.


VICENTE GAMBITO
Affiant


ARIEL T. LIM
Affiant

SUBSCRIBED AND SWORN to before me this 29th day of August 2003 at Quezon City. I further certify that I have examined the affiant and I am satisfied that he understood and voluntarily executed the foregoing complaint affidavit.



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EXPLANATION

Due to time constraints and to lack of messengerial personnel, a copy hereof was served by registered mail upon complainant.