



Claim No. CL-2020-000092

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

BETWEEN:

CRF I LIMITED

Claimant

-and-

(1) BANCO NACIONAL DE CUBA

(2) THE REPUBLIC OF CUBA

Defendants

**DEFENDANTS' RESPONSE TO THE CLAIMANT'S
PART 18 REQUESTS OF THE POINTS OF DEFENCE**

A. Bribery/corruption allegations

Of: paragraphs 21(c), 21(d) and 40 of the Points of Defence

1. Request 1: do the Defendants allege that Mr Don Stevenson was involved in the alleged bribery and corruption?

Response 1: The Defendants do not, in their pleaded case, allege that Mr Don Stevenson was involved in the bribery and corruption. The Defendants reserve their right to amend their pleaded case following disclosure and/or witness evidence.



2. Request 2: if the answer to request 1 is “yes”, please provide full particulars of the alleged involvement of Mr Stevenson in the alleged bribery and corruption.

Response 2: N/A.

3. Request 3: if the answer to request 1 is “no”, please explain why and how the Defendants rely upon the Cuban judgment referred to at paragraph 21(d) of the Points of Defence in which it is stated that Mr Stevenson initiated the scheme to bribe Mr Lozano.

Response 3: Judgment 38/2021 is relied upon as evidence of its own existence, date and legal effect, *viz.* the fact that, on 26 May 2021, the Criminal Chamber of the Popular Provincial Court of Havana found Mr Lozano guilty of, *inter alia*, the criminal offence of bribery. For the avoidance of doubt, Judgment 38/2021 is not relied upon in support of, or in order to prove, the allegations of bribery and corruption.

B. CRF’s predecessors in title

Of: paragraph 27(b) of the Points of Defence

4. Request 4: why do the Defendants deny that title to the Credit Lyonnais Loan and Debt, the IBI Loan and Debt and/or the IBI Guarantee was validly assigned to ICBC? Please state each ground relied upon in this regard.

Response 4: For the reasons pleaded in paragraph 27(b) of the Points of Defence, namely: (i) Cuba’s consent was not obtained in the manner alleged by CRF or at all; and (ii) the Cuban law requirements pleaded in paragraph 25 of the Points of Defence (*viz.* Articles 54-56 of Decree Law 192) were not complied with, in that the alleged assignments to ICBC were not authorised or approved by the Ministry of Finance and Prices and/or the Cuban Council of Ministers. See also Response 5 below.

5. Request 5: did BNC or Cuba give their prior consent to the assignment to ICBC of the aforementioned Loans, Debts and Guarantee?

Response 5: It is noted that CRF does not allege that BNC’s and/or Cuba’s prior consent had been sought and/or obtained in respect of the alleged



assignments to ICBC. Further and in any event, as pleaded in paragraph 27(b) of the Points of Defence, Cuba's consent (whether prior or otherwise) was not obtained. As for BNC: (i) it is denied, if alleged, that either the 14 March 2006 letter (in respect of the CL Debt) and/or the 14 May 2010 letter (in respect of the IBI Debt and the IBI Guarantee) constituted prior consent to the alleged assignments; and (ii) otherwise, CRF is put to proof of the matters alleged in paragraphs 26 and 27 of the Points of Claim. See also Response 6 below.

6. Request 6: if the answer to request 5 is "no":

6.1 Please explain on what basis such plea is maintained.

6.2 In particular, please state (i) why Raúl Olivera Lozano and Lidia Gómez Beltrán signed the 14 March 2006 letter consenting to the assignment of the CL Debt to ICBC and why consent to assignment was not validly given thereby on behalf of BNC and/or Cuba and (ii) why Almira Barba Lorenzo and Lidia Gómez Beltrán signed the 14 May 2010 letter consenting to the assignment of the IBI Debt and the IBI Guarantee to ICBC and why consent to assignment was not validly given thereby on behalf of BNC and/or Cuba.

Response 6: This is a request for evidence and/or submissions, and/or it is not strictly confined to matters which are reasonably necessary and proportionate to enable CRF to prepare its own case or to understand the case it has to meet, and CRF is not entitled to a response. Without prejudice to that, the Defendants will say that:

a. The 14 March 2006 letter post-dated the alleged assignment of the CL Debt to ICBC and, as such, did not satisfy the contractual condition precedent for a valid assignment (*viz.* prior consent). Further and in any event:

(i) the letter was sent only on behalf of BNC and not on behalf of Cuba;

(ii) neither BNC nor (if alleged) Mr Lozano or Lidia Gómez Beltrán had authority to act on behalf of Cuba in relation to the alleged assignment, and their acts were not attributable to Cuba; and



(iii) the alleged assignment was not authorised or approved by the Ministry of Finance and Prices and/or the Cuban Council of Ministers (as required by Articles 54-56 of Decree Law 192), such that BNC was not capable of consenting and/or any act of a BNC official and/or employee purporting so to consent was *ultra vires* BNC and void.

In the circumstances, any such assignment was void and of no effect.

b. The 14 May 2010 letter post-dated the alleged assignment of the IBI Debt and Guarantee to ICBC and, as such, did not satisfy the contractual condition precedent for a valid assignment (*viz.* prior consent). Further and in any event:

(i) the letter was sent only on behalf of BNC and not on behalf of Cuba;

(ii) neither BNC nor (if alleged) Almina Barba Lorenzo or Lidia Gómez Beltrán had authority to act on behalf of Cuba in relation to the alleged assignment, and their acts were not attributable to Cuba; and

(iii) the alleged assignment was not authorised or approved by the Ministry of Finance and Prices and/or the Cuban Council of Ministers (as required by Articles 54-56 of Decree Law 192), such that BNC was not capable of consenting and/or any act of a BNC official and/or employee purporting so to consent was *ultra vires* BNC and void.

In the circumstances, any such assignment was void and of no effect.

7. Request 7: with respect to ICBC's predecessors in title, namely GML International Limited and ING L Rent a Fund Emerging Market Debt Hard Currency, do the Defendants accept that these entities had good title to the aforementioned Loans, Debts and Guarantee?

Response 7: This request is not strictly confined to matters which are reasonably necessary and proportionate to enable CRF to prepare its own case or to understand the case it has to meet, and CRF is not entitled to a response.

8. Request 8: if the answer to request 7 is "no", please state why.



Response 8: See Response 7 above.

C. The Defendants’ refusal of consent to assignment

Of: paragraph 38(a)(ii) of the Points of Defence

9. **Request 9:** The Claimant does not accept that the Defendants have any “*right*” to state further reasons for their purported refusal of consent in evidence “*in due course*”. The same must be pleaded. Please therefore state each ground which is relied upon to justify the Defendants’ alleged refusal of consent to assignment to CRF in 2019 and provide full particulars in respect of the same.

Response 9: Without prejudice to the last sentence of paragraph 38(a)(ii) of the Points of Defence (as to which CRF’s case is noted), the Defendants do not presently rely on any further grounds for withholding consent in 2019.

Of: paragraph 40(a) of the Points of Defence

10. **Request 10:** The Claimant does not accept that the Defendants have any “*right*” to state further reasons for their refusal of consent in evidence “*in due course*”. The same must be pleaded. Please therefore state each ground which is relied upon to justify the Defendants’ alleged refusal of consent to assignment to CRF in 2020 and provide full particulars in respect of the same.

Response 10: Without prejudice to the penultimate sentence of paragraph 40(a) of the Points of Defence (as to which CRF’s case is noted), the Defendants do not presently rely on any further grounds for withholding consent in 2020.

11. **Request 11:** It is assumed, in light of the judgment of Mr Salter QC delivered on 4 March 2021, that the Defendants are not alleging that a reason for refusal of consent to assignment in 2020 was the Claimant’s conduct of these proceedings including acting as “*an unscrupulous entity prepared to seek to gain any advantage by illegitimate means*” as stated in the Defendants’ solicitors’ letter dated 23 November 2020. Please confirm. Alternatively, if that assumption is wrong and the allegation is maintained, please provide (i) full particulars of this allegation and (ii) a statement of

the basis for such allegation in light of the judgment of Mr Salter QC delivered on 4 March 2021.



Response 11: The onus of proving that consent has been unreasonably withheld is on CRF. Without prejudice thereto:

- a. The Defendants will say that, as at the date consent was refused on 23 November 2020, CRF's conduct of these proceedings had been such as to amount to a reasonable ground for withholding consent. In particular:
 - (i) Following the purported assignments in November 2019, CRF immediately moved to enforce the IBI and CL Agreements and Guarantees, culminating in its application for default judgment of 16 March 2020.
 - (ii) One of the claims on which default judgment was sought by CRF against Cuba, an impoverished nation, was the claim for a sum exceeding €50 million in respect of the CL Guarantee, in circumstances where (as CRF accepted by letter dated 21 October 2020 from Memery Crystal) it had no title to the CL Guarantee.
 - (iii) In the premises, CRF's conduct in these proceedings was consistent with its status as a vulture fund, rather than a responsible creditor of a sovereign state.
- b. The judgment of Mr Salter QC (sitting as Judge of the High Court) delivered on 4 March 2021 does not address, and is not relevant to, the issue of whether the Defendants' grounds for refusing consent were reasonable. Alternatively, if the judgment of Mr Salter QC is relevant to that issue, the Defendants will rely on his findings that (i) there was no relevant "*change in the forensic landscape*" sufficient to justify CRF's change of heart as regards the CL Guarantee claim (see paragraph 25); (ii) "*it can fairly be said that the claim was ... being vigorously pursued at a time when proper investigation and thought should perhaps have brought home to CRF and its advisers the difficulties which this aspect of CRF's claim was facing*" (see paragraph 36); and (iii) it was a "*well-founded*

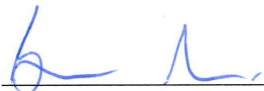
criticism of CRF's conduct" that even by "late July [2020], CRF was still actively pursuing the claim under the ~~CT Guarantee~~ which it now acknowledges that it had no right to bring. CRF had not withdrawn the application for default judgment and, instead of acknowledging at least a potential problem with their title to sue, had ... 'stuck their head in the sand'" (see paragraph 37).

12. Request 12: It is assumed, in light of the judgment of Mr Salter QC delivered on 4 March 2021, that the Defendants are not alleging that a reason for refusal of consent to assignment in 2020 was the alleged misleading of the Court (or alleged attempt to mislead the Court) by CRF and/or its solicitors and counsel. Please confirm. Alternatively, if that assumption is wrong and the allegation is maintained, please provide (i) full particulars of this allegation (ii) a statement of the basis for such allegation in light of the judgment of Mr Salter QC delivered on 4 March 2021.

Response 12: See Response 11 above. For the avoidance of doubt, the Defendants are not alleging that a reason for refusal of consent to assignment in 2020 was the alleged misleading of the Court (or alleged attempt to mislead the Court) by CRF and/or its solicitors and/or counsel. The Defendants note CRF's apology by Memery Crystal's letter dated 21 October 2020.

Statement of Truth

The Defendants believe that the facts stated in this Response are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I am duly authorised to sign this statement of truth on behalf of the Defendants.

Signed: 

Name: BEN DAVIES

Position: PARTNER, PCB BAKER

Date: 11/11/2021