



Claim No. CL-2020-000092

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

B E T W E E N: -

CRF I LIMITED

Claimant

and

(1) BANCO NACIONAL DE CUBA

(2) THE REPUBLIC OF CUBA

Defendants

POINTS OF REPLY

Introduction

1. In these Points of Reply, unless otherwise stated, references to paragraph numbers are references to paragraphs of the Points of Defence. Save insofar as the same consists of admissions and save as otherwise appears from the Amended Points of Claim or herein, the Claimant joins issue with the Defendants on their Points of Defence.
2. The definitions used in the Amended Points of Claim are adopted in these Points of Reply. Where definitions are adopted from the Points of Defence, no admissions are made thereby.

The parties

3. As to paragraph 5:
 - 3.1 It is denied that CRF is a “*vulture fund*” that invests in distressed Cuban debt for “*enforcement purposes*”.
 - 3.2 The label “*vulture fund*” is not a term of art and is of no legal significance. This pejorative term is, in any event, not an accurate or fair description of CRF and should not be allowed to obscure the fact that (a) CRF’s employees and advisers have extensive experience in restructuring emerging market debt and (b) CRF has been trying to work constructively



with Cuba over a period of many years to help restructure its debt in a manner that was equitable and mutually beneficial.

- 3.3 It is denied, if the same is alleged, that CRF has recently become involved in Cuban debt and promptly issued proceedings for “*enforcement purposes*”. CRF has held a portfolio of Cuban sovereign debt positions for many years and has repeatedly offered to work constructively with the Cuban government to restructure its sovereign debt so as to give Cuba renewed access to the international capital markets. For example, by way of a letter dated 6 August 2013, CRF explained that it was looking to become a “*long-term partner for the Cuban government*” and was seeking “*a fair, rational restructuring that [was] equitable to all sides based on established international norms.*”
- 3.4 The Defendants therefore knew, or ought to have known, that CRF has at all material times acted as a responsible creditor in respect of Cuban sovereign debt, including by looking for a long-term partnership that was equitable and mutually beneficial.
4. As to paragraph 6, BNC’s functions are as pleaded at paragraph 3 of the Amended Points of Claim. It is denied that any Cuban law provisions (including but not limited to those relied upon by the Defendants) derogate from or otherwise limit the effect, as pleaded in paragraph 3 of the Amended Points of Claim, of Decree Law 172 as endorsed by Decree Law 181.

The sovereign debt obligations

5. As to paragraph 8(a):
 - 5.1 It is admitted that the Credit Lyonnais Loan was an agreement whereby Credit Lyonnais agreed to maintain and extend the maturity dates of existing deposits with BNC.
 - 5.2 Under the terms of the agreement, BNC, as the borrower, agreed to pay interest on the deposits until the date of their repayment. Under the agreement, Credit Lyonnais was agreeing to lend the amount of the deposits to BNC for a further period against the payment of interest. The Credit Lyonnais Loan is therefore properly described as a “*loan*”, which is how it has been described in these proceedings hitherto by all the parties, including the Defendants.
 - 5.3 The Credit Lyonnais Loan, if not a loan, is a transaction for the “*provision of finance*” within the meaning of s 3(3)(b) of the State Immunity Act 1978 and / or a transaction or activity of a commercial, financial or similar character entered into or engaged in otherwise than in the exercise of sovereign authority, within the meaning of s 3(3)(c) of the State Immunity Act 1978.
6. As to paragraph 8(b):



- 6.1 It is denied that the Credit Lyonnais Loan was described on its face as “*Short-Term Non-Trade Related Indebtedness*”. Whilst under the heading “*Particulars*” in the Credit Lyonnais Loan the words “*for the purpose of the Form of Confirmation of Short Term Bank Non-Trade Related Indebtedness*” appear in parentheses, on the face of the agreement it is described as “*Short Term Bank Lines*”.
- 6.2 No admissions are made as to the purpose of the deposits or the use to which they were put. It is denied, if the same is alleged, that BNC and / or Cuba was restricted by the terms of the Credit Lyonnais Loan to only use the finance or deposits for non-trade related purposes.
- 6.3 Section 3(3)(b) of the State Immunity Act 1978 refers to “*any*” loan or other transaction for the provision of finance and “*any*” guarantee or indemnity in respect of any such transaction or of “*any*” other financial obligation, without making any exception for contracts in these classes that are entered into for purposes of enabling a foreign state to do things in the exercise of its sovereign authority.
- 6.4 It is therefore denied, if the same is alleged, that even if, which is not admitted, the Credit Lyonnais Loan was entered into to enable Cuba to do non-trade related things, this meant that the Credit Lyonnais Loan was not a “*commercial transaction*” within the meaning of s 3 of the State Immunity Act 1978.
- 6.5 It is further denied that BNC, in entering into the Credit Lyonnais Loan, did so in exercise of Cuba’s sovereign authority in the sense of carrying out a sovereign rather than non-sovereign activity.
- 6.6 Except insofar as consistent with the foregoing, sub-paragraph 8(b) is denied.
7. As to sub-paragraph 8(c):
- 7.1 Sub-paragraph 8(c)(i) and the first sentence of sub-paragraph 8(c)(ii) are admitted.
- 7.2 If BNC unreasonably refuses to consent and / or unreasonably fails to address a request for consent to any assignment by the lender of some or all of the lender’s rights and / or obligations, the requirement for BNC’s prior consent is deemed fulfilled. In those circumstances, even though BNC does not provide its consent, the assignment is effective at law to transfer the said rights and / or obligations.
- 7.3 Pursuant to Clause 17(C)(3) of the Credit Lyonnais Loan, if BNC provides its prior consent to an assignment, or if BNC unreasonably refuses to provide its prior consent and / or unreasonably fails to address a request for consent to any assignment, the assignee is treated as the lender for the purposes of the Credit Lyonnais Loan and is entitled to the full



benefit of the Credit Lyonnais Loan and is bound by the obligations of the lender thereunder.

- 7.4 Except insofar as consistent with the foregoing, sub-paragraph 8(c) is denied.
8. As to sub-paragraph 10(a), it is admitted that the IBI Loan was an agreement whereby IBI agreed to maintain and extend the maturity dates of existing desposits with BNC. It is properly described as a “loan” but, if not, it is a transaction for the “*provision of finance*” within the meaning of s 3(3)(b) of the State Immunity Act 1978 and / or a transaction or activity of a commercial, financial or similar character entered into or engaged in otherwise than in the exercise of sovereign authority, within the meaning of s 3(3)(c) of the State Immunity Act 1978. The Claimant repeats paragraph 5 above *mutatis mutandis*.
9. As to sub-paragraph 10(b):
- 9.1 It is denied that the IBI Agreement was described on its face as “*Short-Term Non-Trade Related Indebtedness*”. Whilst the covering letter enclosing the IBI Loan referred in its subject-line to “*Short Term Bank Non-Trade Related Indebtedness*”, the IBI Loan is described on its face as “*Short term bank lines*”.
- 9.2 The Claimant repeats paragraphs 6.2 to 6.5 above, *mutatis mutandis*.
- 9.3 Except insofar as consistent with the foregoing, sub-paragraph 10(b) is denied.
10. As to sub-paragraph 10(c):
- 10.1 Sub-paragraph 10(c)(i) and the first sentence of sub-paragraph 10(c)(ii) are admitted.
- 10.2 If BNC unreasonably refuses to consent and / or unreasonably fails to address a request for consent to any assignment by the lender of some or all of the lender’s rights and / or obligations, the requirement for BNC’s prior consent will be deemed fulfilled. In those circumstances, even though BNC has not provided its consent, the assignment will be effective at law to transfer the said rights and / or obligations.
- 10.3 Pursuant to Clause 17(C)(3) of the IBI Loan, if BNC provides its prior consent to an assignment, or if BNC unreasonably refuses to provide its prior consent and / or unreasonably fails to address a request for consent to any assignment, the assignee is treated as the lender for the purposes of the IBI Loan and is entitled to the full benefit of the IBI Loan and is bound by the obligations of the lender thereunder.
- 10.4 Except insofar as consistent with the foregoing, sub-paragraph 10(c) is denied.
11. As to paragraph 12:
- 11.1 The IBI Guarantee is a commercial transaction within the meaning of s 3(3)(b) of the State Immunity Act 1978 and / or a transaction or activity of a commercial, financial or similar



character entered into or engaged in otherwise than in the exercise of sovereign authority, within the meaning of s 3(3)(c) of the State Immunity Act 1978. The second sentence of sub-paragraph 12(a) is denied.

- 11.2 Sub-paragraph 12(b)(i) and the first sentence of sub-paragraph 12(b)(ii) are admitted.
- 11.3 If Cuba unreasonably refuses to consent and / or unreasonably fails to address a request for consent to an assignment under the IBI Guarantee, the requirement for Cuba's prior consent is deemed fulfilled. In those circumstances, even though Cuba has not provided its consent, the assignment is effective at law to transfer the rights and / or obligations in question.
- 11.4 Pursuant to Clause 3(B) of the IBI Guarantee, if Cuba provides its prior consent and / or unreasonably refuses to consent or unreasonably fails to address a request for consent to any assignment, the assignee is entitled to the benefit of the IBI Guarantee to the same extent as if it were an original party in respect of the rights assigned to it.
- 11.5 Except insofar as consistent with the foregoing, paragraph 12 is denied.

Waiver of sovereign immunity

- 12. As to paragraph 15:
 - 12.1 As is obvious from the Amended Points of Claim, CRF does rely on s 2 of the State Immunity Act 1978. The Defendants have submitted to the jurisdiction of the courts of United Kingdom for the reasons pleaded at paragraphs 11 to 13 of the Amended Points of Claim. The second and third sentences of sub-paragraph 15(a) are accordingly denied.
 - 12.2 Sub-paragraph 15(b) is denied for the reasons pleaded in the Amended Points of Claim and herein.
 - 12.3 The Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee are commercial transactions within the meaning of s 3(3)(b) and / or s 3(3)(c) of the State Immunity Act 1978, such that the present proceedings relate to a commercial transaction and the exception at s 3(1)(a) of the State Immunity Act 1978 applies.
 - 12.4 For the reasons pleaded above and in the Amended Points of Claim, Cuba is therefore not entitled to an immunity arising under s 1 of the State Immunity Act 1978 or at all.
 - 12.5 Except insofar as consistent with the foregoing, sub-paragraphs 15(c)-(d) are denied.

BNC as agent of Cuba

- 13. Under the terms of the Credit Lyonnais Loan and the IBI Loan, the only party that was required to give its consent to the assignment of the Credit Lyonnais Loan and Debt and the IBI Loan and Debt was the "Borrower" which in both cases was BNC. As a matter of English law, which is



the applicable law, Cuba did not need to consent to these assignments and therefore whether or not BNC acted as Cuba's agent in this regard is irrelevant.

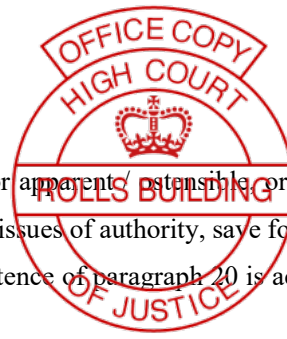
14. All issues of authority, whether actual or apparent / ostensible, or regarding ratification are a matter for English law, or alternatively all issues of authority, save for issues of actual authority, are a matter for English law. Sub-paragraph 18(a) is accordingly denied.
15. As to paragraph 18(d), it is not clear what the Defendants mean by the "*alleged obligations at issue in these proceedings*" that were "*assumed by BNC*". The only obligations assumed by BNC were the debt obligations assumed under the Credit Lyonnais Loan and the IBI Loan. These are irrelevant for present purposes because this section of the Points of Defence is concerned with whether BNC acted as agent for Cuba in relation to the assignment of rights under the IBI Guarantee.
16. As to paragraph 18(e):
 - 16.1 BNC had authority to consent to the assignment of the IBI Guarantee on behalf of Cuba pursuant to the laws identified in paragraph 17 of the Amended Points of Claim, including Decree Law 172 and Decree Law 181.
 - 16.2 It is denied that Articles 54 to 56 of Decree Law 192 of 1999, on their true construction, apply to the assignments at issue as a matter of Cuban law because they do not constitute a "*public credit operation*" within the meaning of Article 56 of Decree Law 192 of 1999. A "*public credit operation*" involves the creation of a "*public debt*". An assignment of rights under an existing debt or guarantee does not constitute or involve the creation of a new debt. In the premises, BNC was not required, as a matter of Cuban law, to obtain the express authorisation of the Ministry of Finance and Prices or the approval of the Council of Ministers before it could consent to the assignments.
 - 16.3 Further or alternatively, Article 55 expressly states that "*public debt*" will be either "*direct*" or "*indirect*". Direct public debt is said to be assumed by the State itself in the capacity of principal debtor; indirect public debt is public debt guaranteed by the State where the principal debtor is a natural or legal, public or not public person different from the State. Cuba did not enter into the Credit Lyonnais Debt as principal debtor, nor (as is common ground) is the Credit Lyonnais Debt guaranteed by Cuba. In the premises, the Credit Lyonnais Debt is neither a direct nor an indirect public debt within the meaning of Article 55 and Article 56 accordingly does not apply to it.
 - 16.4 Without prejudice to CRF's case pleaded below with respect to its status, nature and effect, the BNC Handbook in setting out the process for dealing with assignments makes no reference to BNC having to obtain the prior authorisation of the Ministry of Finance and



Prices or the approval of the Council of Ministers or otherwise mentions the requirements of Articles 54-56 of Decree Law 192. Had such authorisation and approval been a necessary prerequisite to BNC providing its consent to an assignment, as a matter of Cuban law or otherwise, it would have been referred to in the BNC Handbook, but it was not. To the contrary, the BNC Handbook explicitly states that “*legally each creditor has the right to assign its debt to another creditor, be it private, bank, etc. (if there is no restriction in the agreement) as long as it is not under the jurisdiction of the United States of America*” (emphasis supplied). The only restriction on assignment in the loans or guarantee at issue was the prior consent of BNC in the former and Cuba in the latter. The right to assign in the agreements at issue was not restricted by any requirement to also obtain the prior authorisation of the Ministry of Finance and Prices or the approval of the Council of Ministers.

- 16.5 Further or alternatively, if, which is not admitted, Articles 54 to 56 of Decree Law 192 of 1999 prohibited BNC from consenting to these assignments, or rendered the assignments void and of no effect as a matter of Cuban Law, the same is irrelevant as Cuban law does not apply.
- 16.6 Further or alternatively, if relevant, the Defendants are put to strict proof that BNC failed to obtain the express authorisation of the Ministry of Finance and Prices or the approval of the Council of Ministers. If, as the Defendants’ allege, Cuban law required the express authorisation of the Ministry of Finance and Prices and the approval of the Council of Ministers to these types of assignment, that is something that BNC would have known about and routinely implemented. If, in fact, no prior authorisation or approval was sought or obtained for these types of assignment, that would support CRF’s case that the provisions relied upon have no application to assignments.
- 16.7 Except insofar as consistent with the foregoing, sub-paragraph 18(e) is denied.
17. As to sub-paragraph 19(f)(iii), it is denied that BNC was not authorised to act on Cuba’s behalf as alleged. If, contrary to CRF’s primary case, BNC was not authorised to act on Cuba’s behalf, CRF, its predecessors in title and market participants generally were not aware of such limitation on BNC’s authority. It is denied that such limitations were a matter of public record or that such limitations would have been known to any reasonable market participant.
18. As to the first sentence of sub-paragraph 19(g)(ii), CRF has not pleaded that either it or its predecessors in title communicated solely with BNC in respect of the assignment of the IBI Guarantee.

BNC’s employees and agents



19. As pleaded above, all issues of authority, whether actual or apparent/ostensible, or regarding ratification are a matter for English law, or alternatively all issues of authority, save for issues of actual authority, are a matter for English law. The first sentence of paragraph 20 is accordingly denied.

Actual authority of Mr Lozano

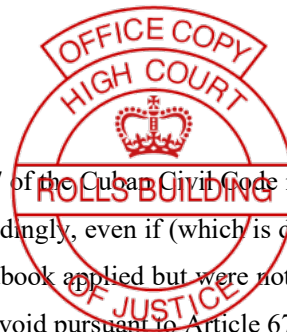
20. As to sub-paragraphs 20(a)-(e):

20.1 The Defendants are required to prove the existence, implementation and application of the BNC Rules and BNC Handbook.

20.2 Without prejudice to the foregoing, it is denied that the requirements set out in Section 17 of the BNC Rules applied to the assignment to CRF of ICBC's rights under the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee. Section 17 expressly only applies to the banking operations listed in Section 15 and / or only applies to banking transactions with a monetary value. The assignment of ICBC's rights to CRF is not a banking operation listed in Section 15 and / or has no monetary value.

20.3 Alternatively, if (which is denied) the requirements of Section 17 of the BNC Rules did apply to the assignment, the exception to Section 17 provided by Section 16 of the BNC Rules applied, whereby a banking operation can be authorised by a single signatory (other than the President of BNC) if it is also authorised by another individual with the appropriate authority. This requirement was fulfilled when María Teresa Compte Zubeldía, the BNC Secretary (who had custody of BNC's seal under Article 26 of Decree Law 181 and Article 31 of Resolution 1 of the 15 December 1998 Statutes of the National Bank of Cuba, and who was also a 'Type A' signatory and acting with BNC's actual or apparent / ostensible authority) sealed the Notice of Assignment and Agreement to be Bound alongside Mr Lozano's signature and / or when she sealed the 25 November 2019 letter alongside Mr Lozano's signature.

20.4 Further or alternatively, the Section 17 requirements were fulfilled either (a) by Ms Marti's electronic signature on her email of 13 June 2019 (described at paragraph 36.1 of the Points of Claim) and by the signature of Mr Lozano on the Notice of Assignment and Agreement to be Bound and / or on the 25 November 2019 letter (as to which CRF notes that where Section 17 of the BNC Rules requires two signatures, it does not require them to be on the same document); or (b) by the signature of Mr Lozano on the Notice of Assignment and Agreement to be Bound and / or on the 25 November 2019 letter and by the BNC seal, which was, as aforesaid, in the custody of the BNC Secretary, Ms Zubeldía, on the same documents.



- 20.5 As to sub-paragraph 20(d), it is denied that Article 67 of the Cuban Civil Code is engaged if BNC's internal rules are not complied with. Accordingly, even if (which is denied) the formalities set out in the BNC Rules and BNC Handbook applied but were not complied with, that would not render the assignments null and void pursuant to Article 67.
- 20.6 Except insofar as consistent with the foregoing, paragraph 20 is denied.
21. As to sub-paragraph 21(a), Mr Lozano was the Director of Operations at BNC and a 'Type A' signatory under the BNC Rules.
22. As to sub-paragraph 21(b), for the reasons pleaded above:
- 22.1 It is denied that Section 17 of the BNC Rules applied to the assignments in question. In particular, two 'Type A' signatories were not required in order for BNC and Cuba validly to provide their prior consent under the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee.
- 22.2 Alternatively, the Notice of Assignment and Agreement to be Bound and / or the 25 November 2019 letter was signed by Mr Lozano and authorised by Ms Zubeldía in accordance with Section 16, as pleaded above.
- 22.3 Alternatively, if (which is denied) Section 17 did apply to the assignments, the requirements set out therein were met, for the reasons pleaded above.
- 22.4 Further, it is denied that the scope of Mr Lozano's authority was limited to any relevant extent by the BNC Handbook, for the reasons pleaded above.
- 22.5 Further, the Defendants are required to prove the existence, implementation and application of the Signature Book and they are required to prove that the Signature Book was provided to ICBC.
- 22.6 Except insofar as consistent with the foregoing, sub-paragraph 21(b) is denied.
23. As to sub-paragraph 21(c), it is denied that CRF or Mr Gordhandas paid or promised to pay any financial inducement to Mr Lozano whether as alleged or at all. The allegations of bribery against CRF and Mr Gordhandas, which are scurrilous and fabricated, are denied. In this regard:
- 23.1 Sub-paragraph 21(c)(i) is denied.
- (a) Mr Gordhandas was and is a consultant to CRF.
 - (b) Following failures by couriers to deliver to Cuba copies of the documents effecting the assignment of the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee, on instructions from CRF, Mr Gordhandas travelled to Cuba on 25 October 2019 to hand deliver these documents in order that they could be legalized. Mr Gordhandas



delivered these documents to Bufete Internacional law firm on 28 October 2019. Mr Gordhandas departed Cuba on 29 October 2019.

- (c) During his trip to Cuba on 25 to 29 October 2019, Mr Gordhandas did not meet with or communicate with Mr Lozano or anyone at BNC.
- (d) Mr Gordhandas did not make any payment to Mr Lozano or promise him further payments.

23.2 As to sub-paragraph 21(c)(ii):

- (a) It is admitted and averred that Mr Lozano signed the letter dated 25 November 2019 and that BNC's seal was affixed thereto by Ms Zubeldía.
- (b) Mr Lozano was thereby acting as agent for BNC. Mr Lozano was also acting as agent for Cuba at all material times given BNC's role as agent for Cuba, and CRF understood him to be so acting. Mr Lozano was not acting outside the scope of his authority or contrary to BNC's interests or in breach of the BNC Rules or the BNC Handbook.
- (c) Alternatively and in any event, CRF was not aware that Mr Lozano was acting outside the scope of his authority (which is denied).

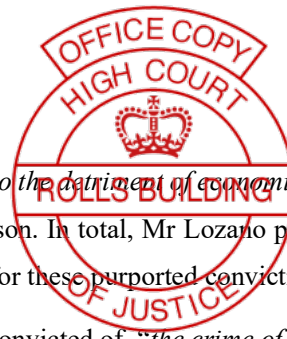
24. As to sub-paragraph 21(d):

24.1 It is admitted that the Defendants have provided what purports to be a judgment of the Second Criminal Chamber of the Popular Provincial Court of Havana. For the avoidance of doubt, it is denied that this purported judgment is relevant or admissible to prove that the alleged corrupt scheme took place.

24.2 In any event, the Cuban judiciary is not independent of the executive and there are no or no adequate due process safeguards in criminal prosecutions in Cuba. CRF reserves the right to seek to adduce evidence in this regard in accordance with the court's direction, including but not limited to the restrictions on defendants' access to independent lawyers, the restrictions on defence lawyers' right to review investigation files, and the arbitrary and discriminatory criteria in relation to the admission of evidence.

24.3 The judgment is accordingly not the product of a fair judicial process and is therefore irrelevant and of no evidential value in this jurisdiction. CRF notes, in particular, that the judgment purports to find all the key BNC officials who were involved in the assignments guilty of criminal offences, for which they were purportedly given custodial sentences.

- (a) Mr Lozano was purportedly found guilty of, amongst other things, bribery, for which he was purportedly given a 6-year custodial sentence. He was also



purportedly found guilty of “*the crime of acts to the detriment of economic activity*” for which he was sentenced to 10 years in prison. In total, Mr Lozano purportedly received a combined 13-year prison sentence for these purported convictions.

- (b) Ms Marti and Ms Zubeldía were purportedly convicted of “*the crime of acts to the detriment of economic activity*” and both given a 5-year custodial sentence.
 - (c) Mr René Lazo Fernández (who is said in the same judgment to have served as President of BNC at the material time, which CRF is unable to admit or deny) was purportedly convicted of the “*crime of breach of the duty to preserve property in an economic entity*” and given a 1-year custodial sentence .
25. CRF notes that the Defendants’ case regarding the alleged corrupt scheme / bribery as pleaded in the Points of Defence is markedly different to and inconsistent with both the description of the same in the purported judgment and to the allegations which the Defendants have previously made in this regard.
- 25.1 The position as stated in the judgment and in previous *inter partes* correspondence is that Don Stevenson of ICBC played a key role in the alleged bribery of Mr Lozano.
- 25.2 It is said on the face of the purported judgment that Mr Stevenson, acting as a representative of ICBC, “*began to hold several telephone conversations*” with Mr Lozano in the first quarter of 2019, “*trying to obtain information of interest that would allow him to know the form in which Cuba could be forced to renegotiate or collect some of the Cuban debts that they held with the banking institution that he represented (ICBC Standard Bank plc). In order to achieve this purpose and to be able to compromise the will of the Cuban executive according to his interests in the future, Don Stevenson proposed to the aforementioned prisoner to give him some kind of economic benefit, a request that the defendant accepted even though this meant moving away from the commitment that as a Cuban official and citizen he maintained with the banking institution where he worked and with the Cuban State that he represented.*” The purported judgment then states that Mr Lozano “*selected and informed CRF I Limited of the debts*” and CRF is described as the “*chosen institution*”, presumably (CRF infers, without prejudice to its pleaded case that the judgment is neither relevant nor admissible) of Mr Stevenson and Mr Lozano.
- 25.3 CRF’s present understanding of the purported judgment (which is, again, for the avoidance of doubt, stated without prejudice to CRF’s pleaded case and without prejudice to its right to develop its case in this regard in submissions in due course) is that the impetus behind the purported scheme came from ICBC and its alleged representative Don Stevenson, being the individual who is said to have made contact with and offered “*some kind of economic benefit*” to Mr Lozano in early 2019.



- 25.4 Consistently with the position as stated in the purported judgment, in the letter from the Defendants’ solicitors to CRF’s solicitors dated 23 November 2020, by which the Defendants refused to accede to the 2020 request for consent to assignment, the alleged bribery of Mr Lozano was described as having taken place “*with the apparent knowledge of Don Stevenson, a representative of ICBC, with whom the essential elements of the scheme had been pre-agreed earlier in 2019.*” This section of the letter was then quoted in the Second Witness Statement of Benjamin Paul Davies, dated 25 February 2021, which was relied upon at the CMC on 4 March 2021.
- 25.5 Such an allegation is conspicuous by its absence from the Defendants’ case as pleaded in the Points of Defence. The Defendants’ case as set out therein is in this respect materially different to that alleged in the 23 November 2020 letter and in the purported judgment. Nonetheless, the Defendants not only seek to rely on the purported judgment in their Points of Defence, but they also - in paragraph 40 thereof - purport to “*incorporate*” into their pleading the “*non-exhaustive summary of the reasons*” for refusing consent to assignment in 2020 (which include the bribery allegations against, *inter alia*, Mr Stevenson) which is set out in the 23 November 2020 letter. The Defendants’ case as to the alleged corrupt scheme is accordingly unclear and CRF reserves the right to plead further if and insofar as the Defendants properly particularise their case in due course.
- 25.6 CRF will rely on the inconsistent manner in which these allegations have been made as evidence of the fact that they are spurious and fabricated. In this regard CRF will also rely on an obvious flaw in the Defendants’ account of the alleged scheme as set out in their 23 November 2020 letter and in the purported judgment, namely that Mr Stevenson in fact retired from ICBC on 23 December 2015 and was, therefore, no longer employed by ICBC at the material time. For the avoidance of doubt, CRF understands that Mr Stevenson and ICBC deny any involvement in any such alleged corrupt scheme.
26. It further appears from the purported judgment that a red notice has been issued by Interpol against Mr Gordhandas on the basis of the fabricated allegations made against him in the purported judgment. Although a search of the Interpol website suggests that no red notice has been issued against him, Mr Gordhandas was nevertheless prevented from entering Mexico in July 2021. It appears that Cuba / the Defendants are using the false allegations of bribery as a way to harass Mr Gordhandas.
27. CRF also notes that this is not the first occasion that Cuba has sought to avoid its liabilities by prosecuting and convicting foreign parties and / or Cuban officials of crimes including bribery and / or damage to Cuban economic activity. CRF reserves its right to adduce, with the court’s permission, evidence already in the public domain of previous occasions (including the high



profile cases of Max Marambio and Cy Tokmajian) where Cuba has reportedly sought to expropriate assets or avoid its debt obligations by prosecuting and convicting foreign parties and / or Cuban officials of crimes including bribery and / or damage to Cuban economic activity in circumstances where the individuals involved vehemently deny those allegations.

28. As to sub-paragraph 21(e):
 - 28.1 BNC had actual authority to act on behalf of Cuba, for the reasons pleaded above.
 - 28.2 Mr Lozano, as Director of Operations of BNC, was the authorised representative of BNC with the authority to act on behalf of BNC and Cuba, for the reasons pleaded above.
 - 28.3 It is denied that Mr Lozano's acts were in breach of "*Cuban law provisions*" as alleged at paragraph 25 of the Points of Defence or at all, for the reasons set out below.
 - 28.4 Further, and in any event, even if Mr Lozano acted in excess of authority, the issue of authority is a matter of English law and Cuban law is accordingly irrelevant.
29. Sub-paragraph 21(f) addresses issues of apparent / ostensible authority which are dealt with below.

Ostensible authority of Mr Lozano

30. As to sub-paragraph 22(a), if (which is denied) Mr Lozano did not act at all material times with the actual authority of BNC, alternatively he acted with BNC's apparent / ostensible authority, which is a matter of English law. CRF reasonably relied on BNC's representations as to his authority, as pleaded herein and in the Amended Points of Claim.
31. As to sub-paragraph 22(b), Mr Lozano's position was as pleaded at paragraph 21 above in response to paragraph 21(a) of the Points of Defence (to which the Defendants are presumably referring in the first sentence of paragraph 22(b)(i)). Mr Lozano's appointment as Director of Operations carried with it a representation that Mr Lozano had the authority usually to be expected of such a senior director or manager within a bank which extended to the authority to act in his sole name on behalf of the bank including in relation to the assignment of debt obligations. It is denied that BNC's representations as to Mr Lozano's authority were limited by the internal rules and procedures of BNC (which are not admitted). CRF notes that the Defendants have not pleaded that the BNC Rules or the BNC Handbook were provided to CRF or ICBC.
32. As to sub-paragraph 22(g)(iii), ICBC communicated with BNC with respect to the assignment of the Credit Lyonnais Debt and the IBI Debt and Guarantee prior to 13 June 2019 on behalf of ICBC and CRF as parties to the intended assignment but ICBC did not act as CRF's agent in this regard. Thereafter, BNC communicated directly with CRF. In particular, Mr Lozano's letter dated 25 November 2019 and the signed and sealed Notice of Assignment and Agreement to be

Bound were provided directly to CRF and not to ICBC. Accordingly, it is denied that any knowledge of ICBC as to alleged limitations on Mr Lozano's authority (which is not admitted) falls to be imputed to CRF.



Ms Marti's actual authority

33. As to paragraph 23:

33.1 As to sub-paragraph 23(a), the first sentence is admitted. Ms Marti was also a 'Type A' signatory.

33.2 As to sub-paragraph 23(b), for the reasons pleaded above:

- (a) It is denied that Section 17 of the BNC Rules applied to the assignments in issue. In particular, two 'Type A' signatories were not required in order for BNC and Cuba validly to provide their prior consent under the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee.
- (b) Alternatively, if the Section 17 requirements applied to the assignments, those requirements were fulfilled, for the reasons pleaded above.
- (c) Further, it is denied that the scope of Ms Marti's authority was limited to any relevant extent by the BNC Handbook, for the reasons pleaded above.
- (d) Further, the Defendants are required to prove the existence, implementation and application of the Signature Book and they are required to prove that the Signature Book was provided to ICBC.
- (e) Except insofar as consistent with the foregoing, sub-paragraph 21(b) is denied.

Ostensible authority of Ms Marti

34. As to sub-paragraph 24(a), if (which is denied) Ms Marti did not act at all material times with the actual authority of BNC, alternatively she acted with BNC's apparent / ostensible authority, which is a matter of English law, and CRF reasonably relied on BNC's representations as to her authority, as pleaded above and in the Amended Points of Claim.

35. As to sub-paragraph 24(b), Ms Marti's position as Manager within BNC's Foreign Debt Department carried with it a representation that she had the authority usually to be expected of such a senior manager within a bank which extended to the authority to act in her sole name on behalf of the bank including in relation to the assignment of debt obligations. It is denied that BNC's representations as to Ms Marti's authority were limited by the internal rules and procedures of BNC (which are not admitted).

36. As to subparagraph 24(d)(ii), the allegation that CRF was required to inform itself of the scope of authority of the employees at BNC with whom it and / or ICBC were dealing in connection

with the assignment of the Credit Lyonnais Loan and the IBI Loan is denied. Paragraph 32, above, is repeated *mutatis mutandis*.



Ratification

37. As pleaded at paragraph 36.4 of the Points of Claim, on 30 December 2019, following receipt of CRF's letter before action, the President of BNC on behalf of BNC and Cuba wrote to CRF's then solicitors "*regarding the assignment of receivables executed by ICBC Standard Bank Plc. in favour of CRF I Limited, concluded on 25 November 2019.*" The same letter stated that "*these assignments correspond to debts that the Banco Nacional de Cuba [National Bank of Cuba] has had on its records since the 1980s ...*"
38. Further, on 27 January 2020, the BNC President on behalf of BNC and Cuba wrote to CRF's then solicitors again, referring to "*the assignment of receivables executed by ICBC Standard Bank Plc. In favour of CRF I Limited*". In the same letter, the BNC President confirmed that the "*assigned receivables*" were "*signed bilaterally (under Short-Term Bank Non-Trade Related Indebtedness)*".
39. The BNC President had the authority to consent on behalf of BNC and / or Cuba with respect to the assignments at issue. Without prejudice to CRF's case as pleaded above with respect to the validity and effect of the BNC Rules and without prejudice to CRF's right to adduce further evidence as to the authority of Mr Fernández at trial, in this regard CRF will refer to Sections 3 and 17 of the BNC Rules.
40. It is to be inferred that, before sending the letters dated 30 December 2019 and 27 January 2020, Mr Fernández would have satisfied himself that there had been an assignment to CRF on 25 November 2019, as alleged by CRF in their letter before action, including, at a minimum, by reading the 25 November 2019 letter. Mr Fernández would therefore have known, before sending the letters, the subject-matter of the assignments and how the Notice of Assignment and Agreement to be Bound and / or the 25 November 2019 letter had been signed and / or stamped by BNC. If, which is denied, the Notice of Assignment and Agreement to be Bound and / or the 25 November 2019 letter lacked a relevant signatory and were therefore unauthorised, this is something that would have been apparent to Mr Fernández. Mr Fernández therefore responded to CRF in the terms set out at paragraph 37 and / or 38 above with knowledge of all the material circumstances.
41. In the premises, Mr Fernández (acting with the actual or apparent / ostensible authority of BNC) made a conscious, informed decision to adopt the allegedly unauthorised acts of the relevant BNC employees and thereby ratified their acts, insofar as they were unauthorised (which is denied), on behalf of BNC and/or Cuba.



Assignment of the sovereign debt obligations

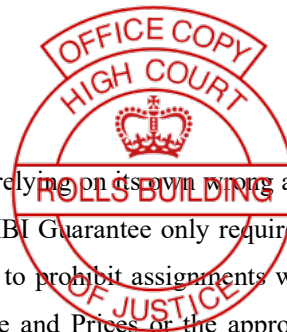
42. As to paragraph 25:

42.1 It is not clear what the Defendants are referring to when they refer to *“the issue of whether BNC and / or Cuba consented to the ... assignments at issue in these proceedings”*. It is denied, if the same is so alleged, that issues as to the existence or validity of BNC and / or Cuba’s consent is a matter of Cuban law. These issues are a matter for English law, as the law governing the right to which the assignments relate, pursuant to Clause 22 and Part III(A) of the Credit Lyonnais Loan, Clause 22 and Part III(A) of the IBI Loan, and Clause 7(A) of the IBI Guarantee.

42.2 Save that it is noted that the Defendants allege that Articles 54 to 56 of Decree Law 192 are mandatory provisions of Cuban law that cannot be derogated from by agreement, it is not clear on what basis it is alleged by the Defendants that Cuban law applies to issues of consent.

42.3 It is denied, if the same is so alleged, that Articles 54 to 56 of Decree Law 192 are overriding mandatory provisions of Cuban law that should be given effect in these proceedings because:

- (a) Articles 54 to 56 of Decree Law 192 of 1999, on their true construction, do not apply to the assignments in issue or in any event to the assignment of the Credit Lyonnais Loan and Debt for the reasons given in paragraph 16.2 above;
- (b) Even if Articles 54 to 56 of Decree Law 192 of 1999 are mandatory provisions of Cuban law, which is not admitted, Cuban law does not apply because Cuba is not the place where BNC’s and / or Cuba’s obligations under the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee have to be or have been performed;
- (c) There is no basis (and no basis is pleaded in the Points of Defence) for applying such provisions of Cuban law in the instant case;
- (d) Once regard is had to the nature and purpose of Articles 54 to 56 of Decree Law 192 of 1999 and to the consequences of their application or non-application, no effect should be given to these provisions in the instant case. The Claimant relies, without limitation, upon the following facts and matters: (i) the application of these provisions to assignments is, at best, doubtful; (ii) the purpose of these provisions is to put certain safeguards in place around the creation of public debt, which purpose does not apply to assignments; (iii) the extent to which BNC did or did not comply with these Articles is outwith the Claimant’s control; (iv) if BNC did fail to comply with these Articles this is the fault of BNC and its reliance on these Articles to escape



its obligations to the Claimant involves BNC relying on its own wrong and (v) the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee only require the prior consent of BNC. Had the Defendants wanted to prohibit assignments without the prior authorisation of the Ministry of Finance and Prices or the approval of the Council of Ministers they could and should have included these restrictions in the relevant contracts, which they chose not to do.

- 42.4 As to sub-paragraph 25(c), the Defendants do not allege that Article 67 of the Cuban Civil Code is a mandatory provision of Cuban law. It is therefore not understood on what basis the Defendants allege that Article 67 of the Cuban Civil Code applies to the issue as to the existence or validity of BNC's consent, which consent was provided under English law contracts and / or in respect of English law rights. CRF reserves the right to plead further to the meaning and effect of Article 67 of the Cuban Civil Code once the Defendants' case is clarified.
43. As to sub-paragraph 27(a):
- 43.1 It is admitted that the Claimant bears the burden of proving its title to sue. It is denied, however, if the same is so alleged, that this requires the Claimant to advance a positive case that each of ICBC's predecessors in title had validly acquired the rights in issue. All that the Claimant needs to establish is that ICBC had title to the relevant loans and debts at the time it purported to assign them to the Claimant.
- 43.2 If, contrary to the above, it is necessary for the Claimant to prove that ICBC's predecessors in title obtained good title to the Credit Lyonnais Loan and Debt, the IBI Loan and Debt and the IBI Guarantee, the Claimant will rely on the following facts and matters:
- (a) Prior to consenting to any assignment of the Credit Lyonnais Loan and Debt, the IBI Loan and Debt and the IBI Guarantee at any stage, BNC would have verified that the relevant assignor had good title.
 - (b) The fact that BNC consented to and / or approved these prior assignments demonstrates that the assignors were verified as having good title by BNC.
 - (c) BNC has explicitly confirmed that ICBC had title to the assigned rights, which confirmation carries with it a confirmation that ICBC's predecessors had validly acquired the rights in issue. In particular, on 27 May 2015, in response to a request from Mr Lozano, Mr Stevenson of ICBC sent Mr Lozano a spreadsheet of the existing balances in respect of each category of debt ICBC then held with BNC. The spreadsheet included the balance in Euros of the Credit Lyonnais Debt and the IBI Debt. On 2 June 2015, Ms Martí and Mr Lozano emailed Mr Stevenson to confirm



that they “agree[d] with the balance for the short term debt in EUR and CHF”. BNC thereby confirmed to ICBC, *inter alia*, that ICBC had valid title to the Credit Lyonnais Loan and Debt and the IBI Loan and Debt.

- (d) Further, BNC has not only confirmed that ICBC possessed valid title to the debts, it also subsequently confirmed that ICBC had validly transferred its title to CRF. On 5 February 2020, ICBC sent BNC a copy of its position statement and asked BNC to confirm to ICBC that it had reconciled the debts once it had done so. On 9 March 2020, Ms Marti responded noting that the assignment of the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee from ICBC to CRF had not been recorded in the position statement. On 29 October 2020, Coris Ng of ICBC provided a revised version of the document, apologising for the discrepancies and confirming that the previous document had mistakenly not been updated to reflect the assignment to CRF.
- (e) No other creditor has asserted title to the Credit Lyonnais Loan and Debt and the IBI Loan and Debt.

43.3 If the Defendants want to contend that any of the prior assignments were invalid due to a failure on the part of BNC to comply with a mandatory provision of Cuban law or otherwise, the Defendants bear the burden of proving the same.

43.4 Further or alternatively, not only does BNC’s explicit confirmation of ICBC’s title as referred to in paragraphs 37-38 above discharge any evidential burden that rests on the Claimant to prove that ICBC had good title, it is also unconscionable for BNC to now assert otherwise. The Claimant will therefore contend, if necessary, that BNC is estopped or otherwise precluded from disputing ICBC’s title.

43.5 Further, given this express acknowledgment of title, the Claimant will if necessary rely on the principle that where a defendant (BNC) acknowledges that it owes a debt to the third person (ICBC) and the third person (ICBC) directs the defendant (BNC) to pay the claimant (CRF) the debt, then, if the defendant (BNC) acknowledges that direction and promises the claimant (CRF) to pay it accordingly, the claimant (CRF) may uphold the promise against the defendant (BNC) by an action for money had and received. This cause of action does not require the Claimant to prove the title of ICBC’s predecessors in title.

44. As to paragraph 27(b):

44.1 It is noted that the Defendants are alleging that BNC failed to comply with “*Cuban law requirements pleaded above*”, which can only be a reference to Articles 54-56 of the Decree Law 192, in relation to the assignments to ICBC.



44.2 The assignments to ICBC occurred in two tranches, first in March 2006 when BNC consented to the assignment of the Credit Lyonnais Debt and secondly in May 2010 when BNC consented to the assignment of the IBI Debt and IBI Guarantee.

44.3 It is not known, or understood, what evidential basis the Defendants have for alleging that Articles 54-56 of the Decree Law 192 were not met in 2006 or in 2010. In relation to the 2010 assignments, Mr Lozano was not involved, and BNC in giving its consent was represented by Almina Barba Lorenzo and Lidia Gómez Beltrán. On the Defendants' case, none of BNC's officials appear to have been aware of the need to comply with Articles 54-56 of the Decree Law 192 in this context.

44.4 If, as alleged by the Defendants, Articles 54-56 of the Decree Law 192 were not followed in 2006 or in 2010, the position is either that officials at BNC habitually violated Cuban law, or, consistent with the Claimant's case, these alleged Cuban law requirements do not apply in the context of these types of assignment.

45. In the premises, paragraph 27(c) is denied.

46. As to paragraph 32(c), it is denied that the clauses in the agreements referred to applied to the giving of notice of assignment under section 136 of the Law of Property Act 1925. In any event, it is denied that the clauses referred to were not complied with. Notice of the assignment was delivered to BNC and Cuba at BNC's offices in Havana, which were the place for delivery of letters to BNC and Cuba under the clauses in the agreements referred to because BNC (on its behalf and as agent for Cuba) had indicated to market participants that that was where such letters should be delivered to.

The Defendants' disputing of the assignment to CRF

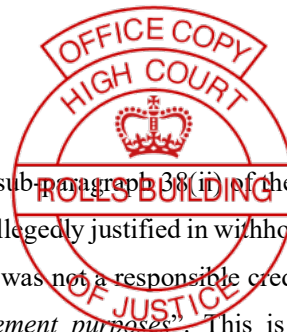
47. As to sub-paragraph 38(a)(i): paragraphs 23-27 of these Points of Reply are repeated. If BNC and Cuba did refuse consent to assignment, the making of such allegations against Mr Gordhandas and CRF is further evidence of the unreasonableness of BNC and Cuba in so refusing consent.

48. As to sub-paragraph 38(a)(ii): paragraph 3 of these Points of Reply is repeated.

Further requests for consent to assignment

49. As to paragraph 40:

49.1 The Defendants' attempt to plead their case in this regard by way of a reference to a letter sent at an earlier stage of these proceedings, which letter has been or appears to have been overtaken by events in material respects, is unsatisfactory. As a result, the case being made against CRF is not understood and CRF is not able to respond to it.



- 49.2 The Defendants appear, in light of paragraph 5 and sub-paragraph 38(ii) of the Points of Defence, to be maintaining their case that they were allegedly justified in withholding their consent to the assignments on the grounds that CRF was not a responsible creditor, but a “vulture fund” that acquired the debt for “enforcement purposes”. This is an unfair mischaracterisation of CRF and its dealings with the Defendants. Paragraph 3 of these Points of Reply is repeated.
- 49.3 As referred to above, it is unclear to CRF to what extent the Defendants are maintaining any case to the effect that the alleged bribery of Mr Lozano took place “with the apparent knowledge of Don Stevenson, a representative of ICBC, with whom the essential elements of the scheme had been pre-agreed earlier in 2019.” CRF repeats paragraph 25 of these Points of Reply.
- 49.4 CRF assumes, in light of the judgment of Mr Salter QC delivered on 4 March 2021, that the Defendants are not seeking to maintain their allegation that CRF, in bringing these proceedings, was or is acting as “an unscrupulous entity prepared to seek to gain any advantage by illegitimate means”. For the avoidance of doubt, CRF denies that it acted in any way improperly. At all material times it was acting responsibly and in good faith with the benefit of legal advice (as to which privilege is maintained).
- 49.5 If the Defendants intend to make the allegations referred to in sub-paragraphs 49.3 and 49.4 above, the Defendants must clearly plead the same and provide proper particulars thereof. CRF reserves the right to plead further in this regard if and insofar as the Defendants plead such a case in due course.

RICHARD WALLER QC

MICHAEL RYAN

JULIA GIBBON

Statement of Truth

The Claimant believes that the facts stated in these Points of Reply 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 Claimant.

Signed: 

Name: David Harvey Rands

Position: Consultant, Memery Crystal – Solicitors for the Claimant

Date: 4 October 2021

