



Claim No. CI-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

AMENDED POINTS OF CLAIM

Introduction

1. These Amended Points of Claim are served by the Claimant pursuant to paragraph 6(a) of the order of Mr Richard Salter QC (sitting as a judge of the High Court) dated 4 March 2021.
2. The Claimant (“**CRF**”) is a company incorporated under the laws of the Cayman Islands.
3. The First Defendant is the Banco Nacional de Cuba (“**BNC**”), which was established by a Cuban Decree (Law 13 of 1948) on 23 December 1948 and was until 28 May 1997 the central bank of the Republic of Cuba and a commercial bank. On 28 May 1997, by Decree Law 172 Banco Central de Cuba (“**BCC**”) was created, and the role of central bank was transferred to BCC. However, Decree Law 172 maintained BNC’s functions as a commercial bank and as manager of Cuban sovereign debt incurred prior to 1997. These functions were endorsed on 2 April 1998 by Decree-Law 181, which is still force today. BNC is the debtor under the Cuban sovereign debt obligations described below.



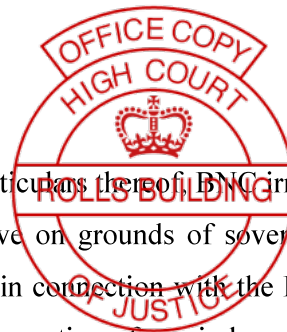
4. The Second Defendant is the Republic of Cuba (“**Cuba**”) which is the guarantor of one of the Cuban sovereign debt obligations described below.

The sovereign debt obligations

5. By a loan agreement dated 17 January 1984 and executed on 25 January 1984 by BNC as “*Borrower*” and Credit Lyonnais Bank Nederland NV (“**Credit Lyonnais**”) as “*Bank*”, Credit Lyonnais agreed to lend to BNC various sums and advanced the same to BNC (“**the Credit Lyonnais Loan**”).
6. There remains outstanding under the Credit Lyonnais Loan the principal sum of DEM 22,500,00 (equivalent to €11,504,067.33) together with interest which has accrued on the principal sum in accordance with the terms of the Credit Lyonnais Loan, which sums are due and owing from BNC as a debt (“**the Credit Lyonnais Debt**”).
7. By a loan agreement dated 19 January 1984 and executed on 30 January 1984 by BNC as “*Borrower*” and Instituto Banco Italiano (“**IBI**”) as “*Bank*”, IBI agreed to lend BNC various sums and advanced the same to BNC (“**the IBI Loan**”).
8. There remains outstanding under the IBI Loan the principal sum of DEM 5,750,000 (equivalent to €2,939,928.32) together with interest which has accrued on the principal sum in accordance with the terms of the IBI Loan, which sums are due and owing from BNC as a debt (“**the IBI Debt**”).
9. By a guarantee dated 30 January 1984 and in consideration of the IBI Loan, Cuba agreed unconditionally and irrevocably to guarantee that if IBI failed to make payment of any sum payable under the IBI Loan, Cuba would pay the same as if it were the sole principal debtor (“**the IBI Guarantee**”).
10. Accordingly, the IBI Debt is due and owing from Cuba under the IBI Guarantee.

Waiver of Sovereign Immunity

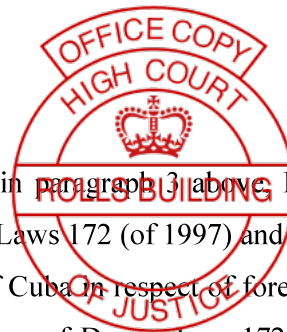
11. By clause 22 of the Credit Lyonnais Loan and Part III(F) of the Particulars thereof, BNC irrevocably waived any immunity from suit that BNC might have on grounds of sovereignty or otherwise in relation to proceedings arising out of or in connection with the Credit Lyonnais Loan. BNC further irrevocably waived any immunity from execution of any judgment arising from such proceedings against its assets.



12. By clause 22 of the IBI Loan and Part III(F) of the Particulars thereof, BNC irrevocably waived any immunity from suit that BNC might have on grounds of sovereignty or otherwise in relation to proceedings arising out of or in connection with the IBI Loan. BNC further irrevocably waived any immunity from execution of any judgment arising from such proceedings against its assets.
13. By clause 7(B) of the IBI Guarantee, Cuba irrevocably waived any immunity from suit that Cuba might have on grounds of sovereignty or otherwise in relation to proceedings arising out of or in connection with the IBI Loan and/or Guarantee. Cuba further irrevocably waived any immunity from execution of any judgment arising from such proceedings against its assets.
14. Further or alternatively, Cuba has no immunity from suit on grounds of sovereign immunity because the proceedings against Cuba relate to the IBI Guarantee which is a commercial transaction within the meaning of s3(1)(a) and s3(3)(b) or (c) of the State Immunity Act 1978.
15. Further or alternatively, BNC has no immunity from suit on grounds of sovereign immunity in respect of these proceedings because it is a separate entity within the meaning of to section 14(2) of the State Immunity Act 1978 and the proceedings do not relate to anything done by BNC in the exercise of sovereign authority and/or the circumstances are such that a State would not have been so immune. This is because the proceedings against BNC relate to the Credit Lyonnais Loan and the IBI Loan which are commercial transactions within the meaning of s3(1)(a) and s3(3)(b) or (c) of the State Immunity Act 1978.
16. In the above premises, neither BNC nor Cuba has any immunity from suit in relation to the claims brought against them in these proceedings on grounds of sovereign immunity or otherwise.

BNC as agent of Cuba

17. In all matters relating to the assignment of the Credit Lyonnais Loan and Debt, the IBI Loan and Debt, and the IBI Guarantee, BNC acted as the agent of Cuba. In this regard, by Law 930 of 23 February 1961 BNC was authorised to act on Cuba's behalf in relation to sovereign debt obligations. Law 930 was in effect until 13 October 1984 when Decree Law 84 came into force, which restated that BNC was authorised to act on Cuba's behalf



in relation to sovereign debt obligations. As set out in paragraph 3 above, BCC was created as Cuba's central bank in 1997 but by Decree-Laws 172 (of 1997) and 181 (of 2 April 1998) BNC has continuously acted on behalf of Cuba in respect of foreign debts incurred by BNC and Cuba before the entry into force of Decree-Law 172 in 1997; Decree-Law 181 remains in force. Further, Decree-Law 192 of 12 April 1999, which remains in force, states that BNC acts on behalf of Cuba in respect of foreign debts incurred by BNC and Cuba before 1999. Further, Decree-Law 361 of 2018, which gives further powers to BCC, does not supplant BNC's position in respect of Cuban sovereign debt incurred before 1999.

18. Further or alternatively, BNC acted with the apparent/ostensible authority of Cuba in relation to the Credit Lyonnais Loan and Debt, the IBI Loan and Debt, and the IBI Guarantee. In this regard:

18.1. As described in paragraph 11, BNC was the central bank of Cuba until 1997, appointed in this regard by Cuba. After 1997 it retained responsibility for the management of foreign debts incurred by BNC and Cuba before that date.

18.2. At all material times, matters concerning the Credit Lyonnais Loan and Debt, the IBI Loan and Debt, and the IBI Guarantee were dealt with by BNC.

18.3. To the knowledge of Cuba, it was understood by participants in the Cuban sovereign debt market that BNC acted as the agent of Cuba concerning the sovereign debt obligations of Cuba entered into prior to 1997.

18.4. To the knowledge of Cuba, at all material times BNC stated on its website that it was duly authorised to act in relation to the sovereign debt obligations of Cuba. In particular, the BNC website stated: "*Banco Nacional de Cuba is committed to the effectively handling of financial operations related to foreign trade, managing foreign financing and export credit insurance coverage, keeping the strict record and control of Cuba's foreign debt and its own, as well as debt servicing and attending through cessions and transactions, any renegotiations derived or required from it.*"

18.5. Cuba thus placed BNC in a position where reasonable participants in the Cuban sovereign debt market, including CRF and its predecessors in title, understood that BNC was authorised to act on Cuba's behalf in relation to Cuba's sovereign



debt obligations entered into prior to 1997. Cuba thereby represented to participants in the Cuban sovereign debt market, including CRF and CRF's predecessors in title, that BNC was duly authorised to act on its behalf in relation to such matters.

- 18.6. CRF and CRF's predecessors in title relied upon the above representations by Cuba and each of them and communicated with BNC in relation to all matters concerning the IBI Guarantee.

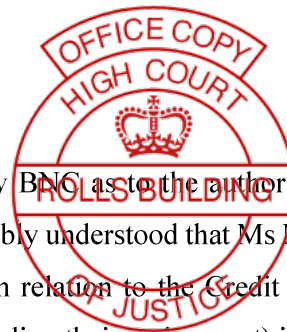
BNC's employees and agents

19. At all material times, Mr Raul Olivera Lozano acted with the actual authority of BNC. Mr Olivera Lozano was a director of BNC and duly authorised to act on behalf of BNC including in relation to the assignment of sovereign debt obligations such as the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee.
20. Alternatively, Mr Olivera Lozano acted with the ostensible/apparent authority of BNC. In particular:
 - 20.1. By appointing Mr Olivera Lozano to the position of director of BNC, BNC represented that Mr Olivera Lozano had the authority usually to be expected of a director of a bank, which included the authority to act in his sole name on behalf of the bank including in relation to the assignment of debt obligations.
 - 20.2. Further or alternatively, BNC entrusted all matters relating to the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee to Mr Olivera Lozano and presented Mr Olivera Lozano as duly authorised to deal with such obligations (including their assignment) in his sole name.
 - 20.3. Further or alternatively, BNC generally entrusted matters relating to the sovereign debt obligations of BNC and Cuba to Mr Olivera Lozano and presented Mr Olivera Lozano as duly authorised to deal with such obligations (including their assignment) in his sole name. In consequence, participants in the Cuban sovereign debt market reasonably understood Mr Olivera Lozano to be duly authorised to act in his sole name in such matters.
 - 20.4. Further or alternatively, BNC represented to participants in the Cuban sovereign debt market that Mr Olivera Lozano was duly authorised to act in his sole name



in relation to the sovereign debt obligations of BNC and Cuba by listing Mr Olivera Lozano as a director of BNC on its website and in the official Cuban gazette.


- 20.5. As a result of the foregoing representations by BNC as to the authority of Mr Olivera Lozano and each of them, CRF and CRF's predecessor in title, ICBC Standard Bank Plc ("**ICBC**"), reasonably understood that Mr Olivera Lozano was duly authorised by BNC to act on its behalf in relation to the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee (including their assignment) in his sole name.
- 20.6. In reliance upon the foregoing representations and each of them and upon its understanding therefrom, CRF and/or ICBC on its own behalf and on behalf of CRF dealt with Mr Olivera Lozano in relation to the assignment of the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee.
21. At all material times, Ms Londa Caridad Marti was employed by BNC with responsibility for assignment of debts and acted with the actual authority of BNC in relation to the assignment of sovereign debt obligations such as the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee.
22. Alternatively, Ms Marti acted with the apparent/ostensible authority of BNC. In particular:
 - 22.1. By appointing Ms Marti to her position, BNC represented that Ms Marti had the authority usually to be expected of an employee in her position, which included the authority to act in her sole name on behalf of the bank including in relation to the assignment of debt obligations of BNC.
 - 22.2. To the knowledge of BNC and its directors, including Mr Olivera Lozano, Ms Marti was held out as being duly authorised to act in her sole name on behalf of BNC in relation to the assignment of sovereign debt obligations such as the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee.
 - 22.3. Ms Marti's BNC email signature read "*Assignment of Debt*", which represented that she was duly authorised to act in her sole name on behalf of BNC in relation to the assignment of debts.



- 22.4. As a result of the foregoing representations by BNC as to the authority of Ms Marti and each of them, CRF and ICBC reasonably understood that Ms Marti was duly authorised by BNC to act on its behalf in relation to the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee (including their assignment) in her sole name.
- 22.5. In reliance upon the foregoing representations and each of them and upon its understanding therefrom, CRF and/or ICBC on its own behalf and on behalf of CRF dealt with Ms Marti in relation to the assignment of the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee.

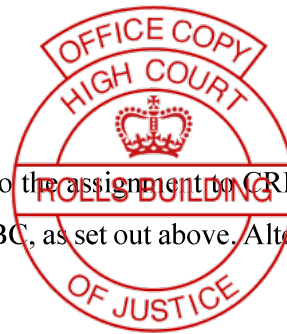
Assignment of the sovereign debt obligations

23. Under clause 17 of the Credit Lyonnais Loan, Credit Lyonnais and its successors and assignees were entitled to assign both the benefit and the burden of the Credit Lyonnais Loan with the prior consent of BNC, such consent not to be unreasonably withheld.
24. Under clause 17 of the IBI Loan, IBI and its successors and assignees were entitled to assign both the benefit and the burden of the IBI Loan with the prior consent of BNC, such consent not to be unreasonably withheld.
25. Under clause 3 of the IBI Guarantee, IBI and its successors and assignees were entitled to assign both the benefit and the burden of the IBI Guarantee with the prior consent of Cuba, such consent not to be unreasonably withheld.
26. By a notice of assignment and agreement to be bound dated 30 January 2006 to which BNC gave its consent both on its behalf and on behalf of Cuba, title to the Credit Lyonnais Debt was assigned to ICBC, then known as Standard Bank Plc.
27. By a joint seller notice of assignment and buyer agreement to be bound dated 13 October 2009 to which BNC gave its consent both on its behalf and on behalf of Cuba, title to the IBI Debt and the IBI Guarantee was assigned to ICBC.
28. By an email from Mr Olivier Dagba of ICBC dated 8 May 2019 sent to Mr Raul Olivera Lozano and Ms Londa Caridad Marti of BNC, ICBC requested that BNC consent to the assignment of the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee from ICBC to CRF. In the circumstances set out at paragraphs 17 and 18, this request was also impliedly a request for consent to the assignment from Cuba.

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29. The request for consent to assignment to CRF was repeated by Mr Dagba in emails of 20 May 2019, 10 June 2019 and 13 June 2019.
 30. On 13 June 2019, Londa Caridad Marti of BNC responded to Mr Dagba's emails and stated, *inter alia*, "We accept in principle the assignment from ICBC Standard Bank to CRF I LIMITED" and proceeded to ask CRF to provide various documents for the purpose of identifying the "current real creditor" including the Joint Seller Notice of Assignment and Buyer Agreement to be Bound signed by ICBC and CRF. BNC thereby consented on its own behalf and on behalf of Cuba to the assignment of the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee from ICBC to CRF.
 31. Subsequently, as requested by BNC, ICBC and CRF executed a document entitled Joint Seller Notice of Assignment and Buyer Agreement(s) to be Bound whereby legal title to the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee was assigned by ICBC to CRF ("**the Notice of Assignment and Agreement to be Bound**").
 32. Notice of the said assignment was given to BNC (both on its behalf and on behalf of Cuba) on 14 November 2019 when the Notice of Assignment and Agreement to be Bound was delivered to BNC's address in Havana, Cuba.
 33. By letter dated 25 November 2019 from Mr Raul Olivera Lozano of BNC addressed to CRF, BNC confirmed both its agreement and the agreement of Cuba to the assignment of the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee from ICBC to CRF. Enclosed with this letter was a copy of the Notice of Assignment and Agreement to be Bound signed by Mr Olivera Lozano on behalf of BNC and stamped with the seal of BNC.
 34. In the above premises, legal title to the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee was assigned by ICBC to CRF and the sums outstanding under the said Loans and the Guarantee are due and owing to CRF.

The Defendants' disputing of the assignment to CRF

35. Subsequent to the events set out in the preceding section, the Defendants have disputed the validity of the assignment of the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee to CRF.



36. The Defendants have alleged that their prior consent to the assignment to CRF was not sought. This is incorrect and consent was sought by ICBC, as set out above. Alternatively and without prejudice to the foregoing:

36.1. By her email of 13 June 2019 to Mr Dagba, Ms Marti requested that ICBC provide a copy of the Notice of Assignment and Agreement to be Bound signed by ICBC and CRF. By this email, BNC (on its behalf and on behalf of Cuba) represented that the Notice of Assignment and Agreement to be Bound should be executed by ICBC and CRF before BNC and Cuba gave their consent to the assignment.

36.2. In reliance upon the aforesaid representation, ICBC and CRF executed the Notice of Assignment and Agreement to be Bound.

36.3. By the letter dated 25 November 2019 and the Notice of Assignment and Agreement to be Bound signed by Mr Olivera Lozano enclosed therewith, referred to at paragraphs 32 and 33 of these Particulars of Claim respectively, BNC confirmed consent to the assignment of the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee.

36.4. By a letter dated 30 December 2019 sent by the President of BNC on behalf of BNC and Cuba to CRF's then solicitors (Gibson Dunn & Crutcher UK LLP) in response to a letter before action seeking payment of the Debts and the Guarantee, BNC acknowledged "*the assignment of receivables executed by ICBC Standard Bank Plc in favour of CRF I Limited, concluded on 25 November 2019*" and did not contest the validity of the assignment of the Debts or the Guarantee on grounds of lack of prior consent or any other grounds.

36.5. In reliance upon the above facts and representations by BNC and Cuba, CRF instituted these present proceedings against BNC and Cuba.

36.6. In the above premises and each of them:

- (a) BNC waived (on its behalf and on behalf of Cuba) the requirements under the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee for prior consent to the assignment to CRF.



(b) Further or alternatively, both BNC and Cuba are estopped from asserting that the assignments to CRF are invalid by reason of purported lack of prior consent or otherwise.

37. The Defendants have further alleged that Mr Olivera Lozano was not authorised to act on behalf of the Defendants. This is denied for the reasons stated at paragraphs 19 and 20 above.
38. Alternatively, if, which is denied, BNC and/or Cuba did not give their consent to the requests for assignment made in the emails of Mr Dagba identified at paragraphs 28 and 29 of these Particulars of Claim, such refusal of consent or failure to address the request for consent (whereby BNC and/or Cuba constructively refused consent) was unreasonable. Neither BNC nor Cuba had any valid basis upon which to object to the assignment of the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee to CRF. In these premises, the restrictions on assignment contained in the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee were deemed fulfilled. The assignment effected by the Notice of Assignment and Agreement to be Bound was thus effective at law to transfer title to the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee to CRF.

Further requests for consent to assignment

39. Without prejudice to its primary case that the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee have been assigned to CRF by the Notice of Assignment and Agreement to be Bound, on 18 September 2020 the solicitors to CRF (Memery Crystal LLP) wrote to the solicitors for BNC and Cuba (Byrne and Partners LLP) and further requested consent from each of BNC and Cuba to the assignment of the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee to CRF.
40. On 23 November 2020, Byrne and Partners LLP responded to Memery Crystal's letter of 18 September 2020 and on behalf of BNC and Cuba refused to consent to the assignment of the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee to CRF. Neither BNC nor Cuba had any valid basis upon which to object to the assignment of the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee to CRF. In these premises, the restrictions on assignment contained in the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee lapsed and are of no continuing effect or are deemed fulfilled.



40A. Without prejudice to the validity of the Notice of Assignment and Agreement to be Bound, and pursuant to the request for consent made of BNC and Cuba on 18 September 2020 and the unreasonable refusal of consent by BNC and Cuba on 23 November 2020, by a further document dated 18 May 2021 and entitled Joint Seller Notice of Assignment and Buyer Agreement(s) to be Bound, ICBC assigned to CRF legal title to the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee (“**the Second Notice of Assignment and Agreement to be Bound**”).

40B. Notice of the said assignment was given to BNC on 19 May 2021 by registered prepaid airmail, fax and email, to Cuba on 19 May 2021 by registered prepaid airmail, fax and email, and by email dated 19 May 2021 to PCB Byrne LLP as agents for BNC and Cuba..

40C. In the above premises, legal title to the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee was assigned by ICBC to CRF and the sums outstanding under the said Loans and the Guarantee are due and owing to CRF.

Alternative claim for declaratory relief

41. In the further alternative, as a result of:

41.1. the Defendants’ unreasonable refusal of consent or failure to address the request for consent (whereby BNC and/or Cuba constructively and unreasonably refused consent) in 2019 as set out at paragraph 38, above; and/or

41.2. the Defendants’ unreasonable refusal of consent in November 2020 as set out in paragraph 40, above

the restrictions on assignment contained in the Credit Lyonnais Loan, the IBI Loan and the IBI Guarantee have lapsed and are of no continuing effect and the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee may freely be assigned to CRF.

Claims against the Defendants

42. CRF claims as a debt from BNC the Credit Lyonnais Debt.

43. CRF claims as a debt from BNC the IBI Debt.

44. CRF claims as debt, alternatively damages, from Cuba the IBI Debt under the IBI Guarantee.

45. CRF further seeks against each of BNC and Cuba declarations in the following terms:

45.1. That the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee have been validly assigned to CRF.

45.2. Alternatively, that consent to the assignment of the Credit Lyonnais Debt, the IBI Debt and the IBI Guarantee to CRF has been unreasonably withheld by BNC and Cuba and the said Loans and Guarantee may freely be assigned to CRF.

RICHARD WALLER QC

MICHAEL RYAN

RICHARD WALLER QC

MICHAEL RYAN



Statement of Truth

The Claimant believes that the facts stated in these Amended Points of Claim 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: DH Rands

Name: David Harvey Rands

Position: Partner

Date: 14 June 2021