

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QUEEN'S BENCH
DIVISION)



CL-2020-000092

Before Mr Justice Andrew Baker (in public, sitting remotely via MS Teams)

B E T W E E N:

CRF I LIMITED (CAYMAN ISLANDS)

Claimant

- and -

(1) BANCO NACIONAL DE CUBA
(2) THE REPUBLIC OF CUBA

Defendants

SECOND CMC ORDER

UPON the commencement of these proceedings by Claim Form dated 18 February 2020 (**Claim Form**)

AND UPON the Defendants' CPR Part 11 application dated 26 May 2020, contesting the Court's jurisdiction

AND UPON the Order of Richard Salter QC, sitting as a Deputy Judge of the High Court, made at the first CMC on 4 March 2021 (**First CMC Order**), pursuant to which a jurisdiction trial with a time estimate of 6-8 days has been listed to commence on 10 October 2022 (**Jurisdiction Trial**) for the purpose of determining the issues identified in paragraph 5 of the First CMC Order

AND UPON the Consent Order made by Jacobs J on 4 August 2021, extending the time for disclosure to be given until 4pm on 15 February 2022

AND UPON the Claimant consenting to the draft amendments to the Defendants' Points of Defence (**Amended Points of Defence**) in the form of the draft enclosed with PCB Byrne's letter dated 16 November 2021, and the Defendants accordingly being permitted to amend pursuant to CPR 17.1(2)(a)



AND UPON the parties agreeing, and the Claimant undertaking, that the Claimant will not contend that, by serving evidence, making submissions and/or otherwise engaging with the matters addressed in this Order and/or in issue in this hearing, either of the Defendants has taken any step in the proceedings within the meaning of section 2 of the State Immunity Act 1978, or otherwise submitted to the jurisdiction of the English Court, and that all of their rights, privileges and immunities (if any) remain unaffected (including, but not limited to, those arising under the State Immunity Act 1978). For the avoidance of doubt, the Claimant makes no admissions or concessions in relation to the issues of immunity and jurisdiction or otherwise

AND UPON the Second CMC in this matter

AND UPON hearing counsel for the Claimant and counsel for the Defendants

IT IS ORDERED THAT:

Amendment

1. The Claimant shall by 4pm on 28 January 2022 serve Amended Points of Reply responding to the Defendants' Amended Points of Defence.
2. The Defendants shall pay the costs of and occasioned by the amendments to the Points of Defence.

Request for Further Information

3. The Defendants shall by 4pm on 3 January 2022 serve a revised response to Requests 7 and 8 of the Claimant's CPR Part 18 Request for Further Information. For the avoidance of doubt, the Defendants are not obliged, in response to Requests 7 and 8, to advance a positive case as to the title of ICBC's alleged predecessors in title.

Disclosure and inspection

4. The issues for Extended Disclosure and the models for Extended Disclosure to be applied by the parties in respect of each issue are set out in Section 1A of the Disclosure Review Document attached to this Order. The Court's decision on the parties' Model C requests is set out in Section 1B of the Disclosure Review Document attached to this Order.
5. Model C disclosure, or a hybrid version thereof, is to be made in respect of Issues 1-5 for Disclosure by 1 March 2022, with inspection to be agreed by the parties thereafter.



6. Model D disclosure (with narrative documents) is to be made in respect of Issues 6 and 7 for Disclosure by 1 March 2022, with inspection to be agreed by the parties thereafter.
7. Any redaction applied by the Claimant to a disclosed document shall be accompanied by an indication as to whether the redacted material is alleged to be (i) commercially sensitive and irrelevant; or (ii) commercially sensitive only.
8. Each of the Claimant and the Defendants shall engage separate forensic IT specialists for the purpose of collecting and searching electronic data.
9. Subject to agreement between the parties and/or further order(s) of the Court as to the parameters of Extended Disclosure (including as to keywords and date ranges), the parties shall conduct a reasonable and proportionate search for relevant documents in accordance with their respective Disclosure Review Documents. For the avoidance of doubt, the review of potentially relevant documents for the purposes of giving disclosure shall be carried out by the parties' respective legal representatives.

Witness statements

10. Witness statements and any notices of intention to rely on hearsay evidence shall be exchanged by 4pm on 13 May 2022.
11. Any short supplemental witness statements shall be exchanged by 4pm on 1 July 2022.
12. Unless otherwise ordered, witness statements are to stand as the evidence in chief of the witness at the Jurisdiction Trial.
13. Any applications in relation to witness statements exceeding 30 pages in length, and/or in relation to the interpretation of witness evidence at trial, shall be determined at the pre-trial review (**PTR**).

Expert evidence of Cuban law

14. There shall be permission for expert evidence on Cuban law, in particular on the Cuban law principles governing:
 - 14.1. the attribution to the First Defendant (**BNC**) and/or the Second Defendant (**Cuba**) of an act of a person purportedly consenting on behalf of BNC and/or Cuba to an alleged assignment of BNC's debt and/or related guarantee given by Cuba;



- 14.2. BNC's and/or Cuba's consent to and/or BNC's capacity to consent to an alleged assignment of BNC's debt and/or related guarantee given by Cuba;
 - 14.3. BNC's authority to consent on behalf of Cuba to an alleged assignment of BNC's debt and/or related guarantee given by Cuba;
 - 14.4. the authority of BNC's officials (including Mr Lozano, Ms Marti, Ms Zubeldía and Mr Fernández) to consent on behalf of BNC to and/or ratify an alleged assignment of BNC's debt and/or related guarantee given by Cuba; and
 - 14.5. the consequences of any lack of such consent, capacity and/or authority, and/or of the relevant act(s) not being attributable to BNC and/or Cuba.
15. The Defendants shall serve their expert report on Cuban law by 4pm on 27 May 2022.
 16. The Claimant shall serve its expert report on Cuban law by 4pm on 24 June 2022.
 17. The experts shall:
 - 17.1. by 8 July 2022 meet for the purposes of (i) identifying and narrowing the issues, if any, remaining between them; and (ii) where possible, reaching agreement on those issues; and
 - 17.2. by 15 July 2022 prepare and file a joint memorandum (i) identifying those issues on which they are agreed and those on which they disagree; and (ii) summarising their reasons for disagreeing.
 18. The parties may serve a short supplemental report each by 4pm on 27 July 2022.

Progress monitoring

19. The progress monitoring date is 29 July 2022. Each party is to provide a completed progress monitoring information sheet to the Commercial Court Listing Office at least 3 days before the progress monitoring date (with a copy to the other party).

Jurisdiction Trial

Trial date, scope and length

20. The estimated length of the Jurisdiction Trial is reconfirmed as 6-8 days, commencing on 10 October 2022, with pre-reading for 2 days on 5 and 6 October.

PTR



21. By 26 January 2022, the parties shall attend on the Commercial Court Listing Office to fix the PTR for ½ day in July 2022, if possible before the judge to whom the Listing Office intends to allocate the trial.
22. The parties shall agree (so far as possible) for the PTR, and the Court shall settle at the PTR, a trial timetable.

Trial bundles

23. The Defendants shall send to the Claimant a draft bundle index for the trial bundle by 4pm on 27 June 2022.
24. The Defendants shall send any comments on the draft index by 4pm on 8 July 2022.
25. The Defendants shall provide the trial bundle to the Claimant in electronic form only, by 4pm on 12 August 2022.
26. The parties shall use their best endeavours to agree a Cuban law bundle containing (i) all Cuban legislation and related materials relied upon by the parties, including all the Defendants' internal rules, resolutions and guidance to which reference has been made in these proceedings; and (ii) an agreed English translation of each document inserted immediately after its Spanish counterpart. The Cuban law bundle shall be provided by the Defendants to the Claimant in electronic form only, by 4pm on 12 August 2022.
27. The Defendants shall file with the Commercial Court Listing Office the trial bundle for the use of the trial judge on 4pm on 30 September 2022, in electronic form only unless a hard copy of some or all of the trial bundle is requested by the judge.

Pre-trial checklists

28. Each party is to file and serve a completed pre-trial checklist by 4pm on 23 September 2022.

Skeleton arguments

29. Skeleton arguments shall be served sequentially, with the Defendants serving their skeleton argument not later than 1pm on 29 September 2022, and with the Claimant serving its skeleton argument not later than 4pm on 30 September 2022.
30. The parties shall endeavour to agree (i) a chronology of main events, *dramatis personae* and reading list, to be provided to the trial judge by 4pm on 30 September 2022; and (ii)

a combined bundle of authorities in electronic copy (and in hard copy, if and to the extent requested by the trial judge) by 4pm on 4 October 2022.



Miscellaneous

31. Save as varied by this order or further order, the practice and procedures set out in the Admiralty and Commercial Courts Guide are to be followed.
32. Costs of this CMC shall be costs in the Defendants' CPR Part 11 application.
33. Liberty to restore the CMC.

Dated 26 November 2021