

Reasons for allowing or refusing permission to appeal

(including referral to the Court of Appeal (Civil Division))

The judge must complete this form on allowing or refusing an application for permission to appeal at a hearing or trial



Title of case/claim CL-2020-000092

Case/claim no

Heard/tried before (*insert name of judge*)

Cockerill J

Date of hearing/trial

23,24,25,26, 30, 31 January 2023, 1, 2 February 2023

Nature of hearing/trial

Jurisdiction challenge

Result of hearing/trial

The Court had jurisdiction to hear a CRF's claim for the enforcement of two sovereign debts against BNC. However, the court did not have jurisdiction to hear the claim brought against Cuba, which had guaranteed one of the debts.

Claimant's/Defendant's-application for permission to appeal

allowed

refused

Brief reasons for decision to allow or refuse appeal

(*to be completed by judge*)

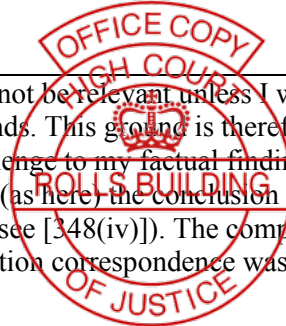
There is no real prospect of success (RPS) either individually or overall (success on at least two grounds is necessary for overall success on any of Grounds 1-4: Grounds 1-3 are academic if Ground 4 has no RPS and Ground 4 is academic if Grounds 1/2/3 have no RPS. Success in Ground 5 is also probably contingent on success in Ground 4).

This is not a "some other compelling reason case".

Grounds 1-2 (Articles 12 and 15 of the BNC Rules): There is no RPS. The overarching theme between the two grounds was that I was wrong to find that consent by BNC to an assignment was not a banking operation within the meaning of Article 15(1) or Article 12 of the BNC Rules. As to Article 15(1), I identified the key question at [323] – all the iterations of the argument hinge on that. As regards Article 15(1) I answered that question at [328] by reference to the lack of value of the relevant act. The Applicants seek to appeal the reasoning regarding Article 12 of the BNC rules on the basis that I used the wrong translation of the Cuban Law. There is no RPS when (i) the translation I used was one used by agreement between the parties up to and including opening submissions and (ii) evidence as to the connotations of the alternative translation (provided "live" albeit by excellent interpreters) is not available.

Both grounds fall within the ambit of *Perry v Lopag* [2023] UKPC 16 which states [13], [14] [15] [18] that an Appeal Court will rarely interfere with the Judge's finding of fact on foreign law.

The position is similar or *a fortiori* as regards the third Cuban law issue, **Ground 3: the authority of Mr Lozano and Ms Marti to act for BNC** in relation to consenting to the assignments. I held (without difficulty) that Article 40 and 41(a) of the BNC statutes meant that both these senior managers, appointed by decrees, were allowed to exercise the powers and functions of the Foreign Debt Office, which is the department of BNC authorised to deal with assignments of foreign debt. This ground is a clear attempt to re-argue findings of fact I have made and, as was highlighted above, *Perry v Lopag* [2023] UKPC 16 makes it clear that an Appeal Court will be unlikely to interfere. I therefore consider that there is no RPS.



Ground 4 (Ratification) is contingent - it cannot be relevant unless I was wrong on the third ground and either of the first and second grounds. This ground is therefore academic and there is no RPS. In any event, no RPS: this is a challenge to my factual findings with which the Court will be slow to interfere not least where (as here) the conclusion depends in part on assessment of the credibility of live evidence (see [348(iv)]). The complaints go nowhere – the pleading point is misconceived, and the pre-action correspondence was open and available to be given due weight.

Ground 5: Notice of assignment: This was a late (unpleaded not in LOI) issue taken very much in passing. The arguments are essentially a rerun of the arguments I considered and rejected (see [394]) and no RPS. Mannai relates to contractual requirements; this was a s 136 requirement, so outside the contractual regime. No RPS also because this point is logically contingent on my conclusion on ratification being found to be wrong.

There is therefore no real prospect of success.

Judge's signature

If permission to appeal is given the judge must also complete the reverse of this form



Do you consider the appeal should be referred to the Court of Appeal (Civil Division)

YES

NO

If Yes, please indicate which of the following criteria apply

- There appear to be conflicting authorities.
- There is a point of practice and procedure of significant importance.
- There is a point of general principle and importance in the development of the substantive law.
- A number of appeals on similar points suggests a theme trend is developing which the Court of Appeal needs to consider.

Additional Reasons