



Neutral Citation Number: [2023] EWHC 1105 (Comm)

Case No: CL-2020-000092

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS**  
**OF ENGLAND & WALES**  
**COMMERCIAL COURT (KBD)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 04/04/2023

**Before:**

**THE HONOURABLE MRS. JUSTICE COCKERILL, DBE**

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**Between:**

**CRF 1 LIMITED (CAYMAN ISLANDS)**

**Claimant**

**- and -**

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

**Defendants**

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**JAWDAT KHURSHID, KC** (instructed by **RBG Legal Services Ltd. t/a Rosenblatt**) for the **Claimant**  
**ALISON MACDONALD, KC** (instructed by **PCB Byrne LLP**) for the **Defendants**

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**APPROVED JUDGMENT**  
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**MRS. JUSTICE COCKERILL:**

1. This is by no means a straightforward exercise. The course that this litigation has taken before it got to trial and the result which has arrived at the end of trial each add their degrees of complication.
2. There has been quite a lot of debate between the parties since the draft judgment has been available as to the correct way forward. Matters have been shifting even up until the last day or so.
3. I will take matters in the following order. There is agreement on one thing and that is the costs of the bribery allegations. It is agreed that the bribery allegations, the costs of those, fall to be recovered by CRF on the indemnity basis. Now that does mean that there will be in any event a process of carving certain amounts out of the litigation costs for the purposes of making that approach.
4. We then have the question of the fact that CRF has been successful against BNC. Although there were issues which were lost in the course of that, all the main issues were won. Yet at the same time it has lost as against Cuba. Some of the same tangential issues were also lost but there was a determinative loss.
5. In relation to BNC, it seems to me that the order in principle should be that CRF is entitled to the costs of the application on the standard basis, to be assessed if not agreed, save as regards the costs of the bribery allegations which are to be on the indemnity basis. So the order in relation to the first application is relatively straightforward.
6. In relation to Cuba, one then has the question of how one deals with the costs of an application where Cuba won, but a significant portion of those costs are effectively costs which would have been incurred in the BNC application in any event and where most of those issues are ones which Cuba lost.
7. Now in the ordinary course of events, if there were not the separate BNC application, Cuba would have won and would get those costs. However, there are two features of note here. The first is that there is the parallel application and in that application all those issues have been won. The second is the further complicating factor of already being involved in carving out issue-based costs in relation to bribery. With the two things coming together, it seems to me that the more realistic approach on costs in relation to Cuba's success is to make an order that Cuba recover the costs of the issues on which it was successful.
8. That is predominantly what Mr. Khurshid has called "the 1976 issue" but also, in so far as they arise in relation to the Cuba case, the other more minor issues such as the 2020 request for consent and so forth.
9. In relation to 1976, that will cover not simply the expert evidence but any relevant disclosure and witness evidence. It will cover any other Cuba-specific disclosure and evidence. So there will need to be some reference, it seems to me, to the disclosure list of issues and potentially to the main list of issues.
10. The costs of the default judgment application will go off to the CMC.

11. We then get to payment on account of costs. This is where the issues on who was to pay really bit at this stage. Since I have now carved down what Cuba is going to be recovering, so Cuba is not recovering the costs of the entirety of the application, so you do not have that question of assignment of the costs of the two issues between the two applications. That will have an impact mathematically in terms of what would be sought which will need to be considered.

For proceedings, see separate transcript

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**(This Judgment has been approved by Mrs Justice Cockerill.)**