Neutral Citation Number: [2024] EWCA CIV 1409

Case No: CA-2023-001344

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)
Mrs Justice Cockerill
Claim No. CL-2020-000092

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 November 2024

Before:
LADY JUSTICE ASPLIN
LORD JUSTICE ARNOLD
and
LORD JUSTICE PHILLIPS

- -

Between:

CRF 1 LIMITED	**Claimant/ Respondent**
- and –	
(1) BANCO NACIONAL DE CUBA	**Defendant/ Appellant**
(2) THE REPUBLIC OF CUBA	**Defendant**

- -

Jawdat Khurshid KC and **Andrew Pearson**
(instructed by **Rosenblatt**) for the **Claimant/Respondent** ("CRF")
Alison Macdonald KC, Anton Dudnikov and Mark Belshaw
(instructed by **PCB Byrne LLP**) for the **Defendant/Appellant** ("BNC")

Hearing dates: 24 and 25 July 2024

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Approved Judgment

This judgment was handed down remotely at 2 pm on Tuesday 19 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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Lord Justice Phillips:

1. BNC is the principal debtor under two loan agreements executed in January 1984, the first with Credit Lyonnais and second with Istituto Banco Italiano. The loan agreements are governed by English law and contain provisions whereby BNC agrees to submit to the jurisdiction of the English courts and to waive any sovereign immunity. BNC's total indebtedness under the two loans ("the Debts"), including interest, exceeds €70 million.

2. The central issue on this appeal is whether the Debts were validly and effectively assigned to CRF in 2019.

3. On 19 April 2023 Cockerill J ("the Judge") made a declaration that the Debts had been validly assigned to CRF and accordingly dismissed BNC's challenge under CPR Part 11 to the jurisdiction of the English Courts. BNC now appeals that decision.

4. The Judge allowed a parallel Part 11 application by the Republic of Cuba in respect of a guarantee it gave of BNC's lability under the Istituto Banco Italiano loan. There is no appeal by CRF against that decision.

The essential facts

5. Each of the agreements provides, by clause 17, that the creditor and its successors and assigns are entitled to assign the creditor's rights and transfer its obligations under the agreement "with the prior consent of [BNC], such consent not to be unreasonably withheld".

6. By 2019 the benefit of the Debts had been validly assigned to and was held by the Industrial and Commercial Bank of China ("ICBC"). On 8 May 2019 ICBC requested that BNC give prior consent to the assignment of the Debts to CRF, a fund established for the purpose of acquiring and enforcing distressed Cuban sovereign debt.

7. On 13 June 2019 Londa Cariad Martí, the Manager of BNC's Foreign Debt Office[1], sent an email to ICBC stating that "We accept in principle the assignment from ICBC…to [CRF]…" and asking for necessary documentation. At the bottom of the email was her typed name, Londa C. Martí.

8. A Notice of Assignment was executed by ICBC and CRF on 31 July 2019, backdated to 13 June 2019. Thereafter CRF provided BNC with the "necessary documentation" referred to by Ms Martí. On 25 November 2019 Raul Eugenio Olivera Lozano, then BNC's Director of Operations, wrote on BNC's headed notepaper to confirm BNC's agreement to the Notice of Assignment. The letter was signed by Mr Lozano alone, with BNC's wet stamp.

9. On 11 December 2019 solicitors acting for CRF sent a letter of claim to BNC. On 30 December 2019 Rene Lazo Fernandez, the President of BNC, replied to that letter, referring to the assignment executed by ICBC in favour of CRF, explaining the difficult economic situation facing Cuba and that BNC had agreed to pay all creditors

[1] Appointed to that office on 1 August 2018 by Resolution No. 27/2018 of the President of BNC.

participating in the refinancing agreements in 1983-1985 on a *pari passu* basis, meaning it could not currently pay CRF.

10. CRF's solicitors responded on 14 January 2020, asserting that the debts were not subject to or affected by any of the refinancing agreements and demanding payment.

11. Mr Fernandez replied on behalf on BNC on 27 January 2020, reiterating that the "assigned receivables, although signed bilaterally are under the umbrella of the 1984 refinancing agreement…".

12. The claim form in these proceedings was issued on 18 February 2020. The CPR Part 11 applications were dated 26 May 2020. They were tried by the Judge over 8 days in January and February 2023.

The issues on the appeal

13. The Judge held, so far as relevant to the appeal, as follows:

    i) Ms Martí's email of 13 June 2019 was valid prior consent on behalf of BNC to the assignment of the Debts, rejecting BNC's contention that such consent required two "category A" signatures if it was to be an authorised act of BNC;

    ii) in the alternative, if Ms Martí's email was unauthorised by BNC, Mr Fernandez, on behalf of BNC, ratified her action by his letters of 30 December 2019 and 27 January 2020;

    iii) but if (contrary to her findings above) BNC did not provide valid prior consent, BNC did not withhold its consent for the purposes of clause 17 of the loan agreement. The Judge held that it was not appropriate to go on to consider whether any withholding would have been unreasonable;

    iv) notice of the assignments was effectively given to BNC.

14. BNC appeals the Judge's decision on Ms Martí's authority, ratification and validity of the notice of the assignments. By its Respondent's Notice, CRF contends (amongst other arguments referred to below) that the Judge was wrong not to find that, if BNC did not give prior consent, such consent was unreasonably withheld.

Was the 13 June 2019 letter authorised by BNC?

15. The Judge held at [223] and [232] that, assuming Ms Martí had the authority of BNC, the 13 June 2019 email was capable of being prior consent to assignment as a matter of fact. There is no appeal against that finding. The issue on appeal is whether her email bound BNC. It was common ground that that was a matter of Cuban law.

The relevant provisions of the law of Cuba

16. As the Judge explained at [305], the starting point is Article 59 of the Cuban Civil Code, which provides that a person will be appointed a voluntary representative of another when he is empowered to carry out acts on behalf of the other pursuant to a power of attorney, and a legal representative of the other when the authority of the other is delegated to him in a legal manner.

17. Specific provision is made in respect of BNC by Decree-Law No. 181 dated 23 February 1998. Articles 15 and 17 provide for delegation by the President of BNC to officials, translated as follows:

> "15. The President of [BNC], whilst exercising his functions, may grant the powers he deems necessary and delegate his faculties to other directors and functionaries of [BNC] …
>
> 17. In addition to the jurisdiction consigned to the aforementioned articles, the following apply, without prejudice to the remaining functions assigned to him by this Decree-Law and the Statutes:
>
> a) to issue resolutions, instructions and other requirements of an obligatory nature for [BNC] and its branches …
>
> c) to appoint the directors of [BNC], whose designation is not reserved to other senior management levels …
>
> f) to delegate his functions to other directors and functionaries of [BNC]."

18. Article 2 of Decree-Law No. 181 provides for the Board of Directors of BNC to enact its own Statutes, subject to approval by the Banco Central de Cuba. Pursuant to that provision, Resolution No. 1 of the BNC gave effect to BNC's Statutes, containing the following provisions as translated:

> "CHAPTER III
>
> ORGANISATION AND GOVERNMENT…
>
> MANAGEMENT LEVELS AND THEIR HEADS …
>
> Article 18: The President, when exercising his/her authority can grant the powers he deems necessary and delegate his/her authority to other managers and officials of the bank.
>
> SECOND AND THIRD MANAGEMENT LEVELS
>
> Article 40: Second and third level managers shall be in charge of the divisions and functions that are assigned to them and they shall be responsible for the direct management control and supervision of these.
>
> Article 41: The following common duties, powers and functions shall also be their responsibility.
>
> a) To be personally responsible for the completion of the tasks, and for exercising of the powers and functions of its division;
>
> b) Represent his/her division;…

> h) To issue binding instructions and other provisions within his/her sphere of competence; …
>
> CHAPTER IV
>
> DELEGATION OF AUTHORITY
>
> ARTICLE 45: Authority to exercise specific powers or perform specific functions shall be delegated according to the following precepts; …
>
> CHAPTER VII…
>
> EXTERNAL RELATIONS
>
> ARTICLE 54: In its external relations the Bank shall always be represented by its President, or by the manager or officer to whom he has delegated that responsibility.
>
> In addition, external relations can exist at the various levels of management by the respective managers, or authorized official. In such cases, they only commit their respective positions or the organizational units dependent on these except in the case of managers and officials given the authority by the bank to sign documents in in its name."

19. Further, pursuant to Articles 15 and 17(a) of Decree-Law 181 of 1998, the President of BNC made Resolution no. 10 of 2016, enacting Rules on Authorisation and Uses of Signatures ("the Signature Rules"). These provided (in translation) as follows:

> "CHAPTER I
>
> GENERAL PROVISIONS
>
> SECTION 1: Bank powers of attorney may be conferred on certain officials and employees of [BNC], based on their functions and responsibilities, through the granting of use of banking signatures, so that they may act in the name and on behalf of such Bank under the rules herein and thus enter into any relevant banking transaction.
>
> ….
>
> SECTION 3: Any signing authority shall be granted, revoked and amended by the President.
>
> SECTION 4: Signatories of [BNC] may be classified as "A", "B" or "C", and each such signatory shall have the authority described below. Signatories may sign severally, or jointly and severally.
>
> SECTION 5: Where a document is required to be signed by two signatories to bind the National Bank of Cuba to any transaction, the signature by the first signatory shall be deemed to mean a confirmation

that the relevant transaction has been fully reviewed, while the signature by the second signatory shall be deemed to confirm the legality, amount and date of execution of the transaction

….

CHAPTER II

AUTHORISATIONS AND USE OF SIGNATURES

….

SECTION 12: Two "A" and "B" joint signatures shall be required for all banking transactions that create an obligation for BNC, on the basis of the type of transactions and amount involved as described in Section 17 below.

….

SECTION 15: Both an "A" and a "B" joint signature, or two "A" or two "B" joint signatures shall in accordance with Section 17 below be required for the purposes of authorising and executing the following banking operations. …

d) to issue any comfort letters and guarantees;

e) to assign, endorse or order a protest of any bills;

…

j) to open and close accounts with other banks and of natural or legal persons located in Cuba or abroad;

k) to approve any accounting vouchers and notices related to any of the above transactions;

l) To carry out any other banking operation in accordance with international standards…

SECTION 17: A banking transaction where a signature by BNC is required (Section 15 above) shall be signed as followed:

…

USD 5,000,001.00 and above Two "A" signatures"

The President of BNC, as the highest executive officer and legal representative of the Bank, has sole signing authority with respect to any banking transaction, regardless of the amount.

The provisions of Section 15 above shall be construed in the light of the thresholds in this Section 17

> …
>
> FINAL PROVISIONS
>
> ….
>
> SECOND The Operations Management department shall keep a duly-updated registry of authorised signatories of [BNC]…"

20. BNC's book of authorised signatories included Ms Martí's signature, described as category A.

21. Also relevant is the BNC Handbook. At [89] the Judge recorded that the document's status was to some extent contentious, but that it was common ground that it was issued pursuant to the relevant provision of Cuban law and is intended to set out the relevant processes to be followed within BNC. At [336], however, the Judge noted that the Handbook "lacks legal status". Chapter 6 describes the operations carried out by the Foreign Debt Department, including the "Process for the Materialization of Assignments." The handbook notes that generally a communication is received from a bank, company or financial institution, explaining the intention to assign an amount of BNC debt to another entity. This request and its details are recorded, then the debt is verified by checks of the bank's records and requests for the production of certified documents (in particular as to the status of the assignee). The handbook then provides:

> "If there is a positive result in all the aforementioned checks (including verification by the Register of Debt Assignments reflecting the balances of each bank classified by number of loans and year of renegotiation in the case of bank debt) a tele, email, SWIFT or fax is sent to the foreign party, informing him that it is accepted "in principle" your request and that you must send us a set of original and two copies of the official documents of the assignment duly signed by the buyer and the seller. …
>
> When that document is received, it is checked:…
>
> The document is also sent to:
>
> • The legal department: they review the documents and inform the Foreign Debt Department, by means of a letter, if they are duly formalized in legal terms and if it is appropriate to proceed with the assignment according to the agreements, clauses and other details reflected in the documents.
>
> If the legal letter, telex or message, the acceptance in principle and signature control with all other documentation requested with the necessary requirements are already contained in the file, then the assignment is ready to be materialized. Its materialization consists in sending both the "assignor" and the "assignee" (assignor and assignee) a copy of the initial document duly signed by the Cuban side (containing two authorized signatures of [BNC]) and a letter giving our consent for the "purchase - sale", leaving within the file that will work

> in our archives, a copy of this, together with the original documentation. This file is given an assignment number.
>
> …
>
> Once the assignment is materialized, it is then registered in the Register of Debt Assignments to maintain control of the balances of each bank, company and financial institution and, if necessary, to reconcile with the records of the [BNC]..."

22. The Judge pointed out at [254] that there were no relevant "interpretations" or case law, so the exercise of considering the relevant Cuban law proceeded from the original source materials and the light that could be shed on them by the expert evidence, duly evaluated. The Judge heard evidence from Dr Juan Mendoza Díaz, Professor of Procedural Law at the University of Havana, on behalf of BNC, and from Ms Hosanna Rodriguez Calvo, a qualified (but not currently practicing) lawyer in Cuba, on behalf of CRF.

The Judge's analysis

23. The Judge addressed the question of authority from [301] onwards, identifying that the crux of the issue was whether, in order to have authority to give "prior consent" the consent had to be given in a particular form, with two signatures.

24. The Judge then identified the parties' very different approaches at [302]-[304]:

> "302. The Defendants' case is that:
>
> i) The BNC Rules regulate (i) the conditions for the exercise of BNC's power to conduct banking operations that fall within the scope of the Rules; and/or (ii) the authority of BNC officials to act in the name of and on behalf of BNC;
>
> ii) Approval of an assignment of BNC's debt (and, insofar as it is relevant, of a Cuban State guarantee) is a banking operation within the meaning of Article 15(l) and/or 12 and/or 17 of the BNC Rules, and thus requires two (in the case of Article 17, Category A) signatures;
>
> iii) The signature requirements imposed by the BNC Rules cannot be fulfilled by the application of a stamp or seal.
>
> 303. CRF, for its part, contended that:
>
> i) The President of BNC may delegate his power by appointing officials to positions within BNC and delegating his authority to those officials to perform acts inherent in their functions;
>
> ii) Mr Lozano and Ms Martí were so appointed to positions within BNC and the President of BNC delegated his authority to consent to the assignment of historic Cuban sovereign debt to them.

> 304. As can be seen from this summary of the parties' cases here the parties are a long way from each other conceptually as well as on the details."

25. The Judge then explained at [310] that she would first evaluate the route advocated by CRF, before passing on to consider the impact which the Signature Rules have on that approach.

26. At [314] the Judge noted that each of Mr Lozano and Ms Martí was on the face of it a delegate of the President of BNC, having been appointed, respectively, Director of Operations and Manager of the Foreign Debt Office by resolutions of the President. The question, she identified, was what that entitled them to do.

27. The Judge stated at [318] that, had it been necessary, she would have drawn adverse inferences against BNC as to the scope of Mr Lozano's and Ms Martí's mandates, given that BNC had not produced their employment contracts or other documentation defining their roles. But the point was immaterial because the Judge found at [319] that the position was still tolerably clear from BNC's Statutes as follows:

> "i) Articles 40 and 41(a) of the BNC Statutes mean that Mr Lozano and Ms Martí were authorised to exercise the powers and functions of the Foreign Debt Office. Each of them was responsible for the direct management, control and supervision of the Foreign Debt Office and of the functions assigned to that office. Moreover, as the Defendants' witnesses accepted, one of the common duties, powers and functions was to be personally responsible for the completion of the tasks, and exercising of the powers and functions of the Foreign Debt Office;
>
> ii) Articles 41(b) and 41(h) mean that Mr Lozano and Ms Martí were responsible for representing their division and issuing binding instructions and other provisions within his/her sphere of competence."

28. The Judge therefore concluded at [320] that, subject to any requirements of how they were to go about performing actions pursuant to their delegated authority, Mr Lozano and Ms Martí had authority to act for BNC in relation to consenting to the assignments.

29. From [321], in a section headed "BNC's Signature Rules", the Judge identified that the next question which arose was whether there are any requirements of Cuban law alleged which go to the actions of Ms Martí on 13 June 2019 (or Mr Lozano on 25 November 2019).

30. At [322] the Judge recorded BNC's contention that approval of an assignment is a banking operation within the meaning of Section 15(l) of the Signature Rules and thus requires two signatures, and therefore also falls within the meaning of Section 12 of the BNC Rules, again requiring two signatures. As the debts were valued above US$5m, two category A signatures were required. Ms Martí's email of 13 June 2019, of course, did not have any signatures, just her typed name.

31. Recognising at [323] that BNC's argument depends upon equating consent to an assignment with "a banking operation", the Judge recorded Ms Rodriguez's view that it was not, setting out her written evidence in relation to Section 12 to the effect that the

act of giving consent did not fall within that section because it did not create an obligation on BNC. It merely permits the existing creditor to assign its existing rights to a new creditor.

32. At [324] the Judge referred to the cross-examination of Ms Rodriguez, stating that she appeared to accept that an assignment of a debt was caught by the Signature Rules, at least in so far as they concerned assignments of debts by BNC. However, the Judge stated that:

> "..she was not asked, and did not accept, the proposition that consent to an assignment between a creditor and a third party was a banking operation which attracted a need for compliance with these rules."

33. The Judge at [325] rejected Professor Mendoza's view that the Signature Rules applied to all actions of BNC's authorised employees, given that Section 12 is clear that the two A/B signatures requirement is not a blanket obligation but rather one which is triggered by banking transactions which "create an obligation". At [326] the Judge stated that Professor Mendoza's approach seemed both impractical, as requiring a degree of formality and delay which would be odd in cases where a transaction effectively made no difference to the Banks's bottom line, and contrary to the understanding of those operating in BNC at the time.

34. At [327] the Judge pointed out that Section 15 specifically defines operations which require signatures, so the fact that certain operations within that section did not have a value did not undermine Ms Rodriguez's argument that consent to an assignment was not a banking operation within Section 12 because it did not create an obligation:

> "It was suggested that the fact that, if BNC has an empty account with another bank and wished to close it, that still requires two signatures, even though the value of the transaction is zero (as Ms Rodriguez accepted) affected this analysis. But this is to ignore the terms of Article 15 which specifically defined operations which require signatures - regardless of whether they are categorized for the purposes of Article 12 as "*banking transactions that create an obligation*". Article 15(j) stipulates that signatures are necessary "*to open and close accounts with other banks and of natural or legal persons located in Cuba or abroad*."

35. The Judge's conclusion therefore, at [328], was that consent to an assignment is not a banking operation within the meaning of Section 12 or Section 15(l) of the Signature Rules.

36. At [329] the Judge stated that it followed that there was nothing in the arguments on the Signature Rules which impacted on the actions of Ms Martí in giving prior consent by her email of 13 June 2019.

The arguments on appeal

37. BNC argued that the Judge's analysis of the Signature Rules, and in particular her conclusion in relation to Section 15(l), was wrong, submitting that it was based on a misunderstanding of the effect of that provision and of the evidence Ms Rodriguez gave

in respect of it. BNC submitted that giving prior consent to an assignment is a banking operation within Section 15(l), requiring two category A signatures in the case of the Debts, so the 13 June 2019 email sent by Ms Martí was not authorised by BNC. I will return to those arguments below.

38. CRF's first response, however, was that BNC had misunderstood the Judge's analysis and her decision. It contended that the Judge recognised that the authority of BNC to perform an act could be bestowed either through delegation by the President to a particular official in respect of matters within their remit, or by one or more officer complying with the Signature Rules, an alternative route by which the President conferred authority in respect of specified transactions. In relation to the email of 13 June 2019, the Judge held that Ms Martí had delegated authority (through her appointment as Manager of the Foreign Debt Office) to give prior consent to an assignment and (CRF argued) that signatures were not required for that action, contending that the Judge's consideration of the Signature Rules was primarily in relation to Mr Lozano's letter of 15 November 2019, formally documenting the consent to assignment, rather than giving prior consent. By its Respondent's Notice, CRF argued that, if that was not the Judge's analysis, her decision should be upheld on that basis.

(i) CRF's contention as to the Judge's reasoning

39. CRF placed much reliance upon a paragraph of the judgment at [246], in which the Judge said:

> "An argument was also deployed by reference to the supposed need for two signatures. However this is an argument which conflates two different issues. If consent comes at 13 June, the evidence as to two signatures, the requirements for it and (to the extent relevant) CRF's knowledge of it pertains to a later stage. That is reflected in the process prescribed by the BNC Handbook. There is no document or evidence which suggests that two signatures were ever required for this preliminary consent. The witness evidence relied upon by the Defendants as to the number of signatures ("Mr Lozano's mistake") pertains to the 25 November document".

40. CRF submitted that, taken with the Judge's later finding at [320] that Ms Martí had delegated authority to consent to the assignments, her finding that there was no requirement for two signatures at [246] was a complete answer to BNC's appeal.

41. In my judgment, however, it is CRF that has misunderstood the judgment in this respect. Paragraph [246] is within the section dealing with whether the 13 June 2019 email amounted to prior consent as a matter of fact assuming authority to bind BNC. The Judge made that plain at [222] and reached her conclusion on the factual question at [232]. She then dealt with further arguments as to why the 13 June 2019 email was not prior consent (as a matter of fact), including that prior consent required two signatures. At [246] the Judge rejected that contention as a matter of evidence (and not as a matter of Cuban law). If that is not clear enough from the context, the Judge made it crystal clear at the end of the section by stating at [250]:

> "This issue of prior consent is purely factual; it is the question which would be asked if everything took place according to English Law. At the next stages it is necessary to consider whether… Ms Martí/Mr Lozano's acts were authorized, which includes a consideration of whether consent as a matter of Cuban law required more than was given."

42. As appears from the extracts set out above, the Judge considered whether Ms Martí had actual authority to bind BNC in a section of the judgment starting at [301]. She held that Mr Lozano and Ms Martí did have delegated authority to consent to assignments at [320], but that was "subject to any requirements of how they were to go about performing actions pursuant to their delegated authority". The Judge next turned to consider the Signature Rules, concluding that, as consent to assignment was not a banking operation within Section 12 or Section 15(l), nothing in those rules required two signatures [328] and so there was nothing in them that impacted on the action of Ms Martí in giving prior consent.

43. I consider it clear, therefore, that the Judge's conclusion in relation to the Signature Rules was a step in her analysis and formed part of the ratio of her decision that the 13 June 2019 email was valid prior consent to assignment of the Debts. The Judge did not suggest that her consideration of the Signature Rules was in the alternative to her finding that Ms Martí had delegated authority. On the contrary, the Judge recognised that such authority might (and, implicitly, would) be subject to any requirement in the Rules as to how such authority was to be exercised.

44. It follows that, on the Judge's analysis, it is open to BNC to challenge her conclusion on the basis that she was wrong as to the meaning of "banking operation" in Section 15(l) of the Signature Rules.

(ii) The meaning of "banking operation" in Section 15(l)

45. BNC accepted that in determining the meaning of the Signature Rules, the Judge made findings as to the foreign law of a civil rather than a common law system. Further, she was doing so on the basis of her evaluation of the evidence of foreign law experts and translations of foreign language provisions, limiting the Judge's ability to draw upon her own considerable legal expertise. In those circumstances, and as set out in the Privy Council in *Perry v Lopag Trust Reg* [2023] UKPC 16, [2023]1WLR 3494, the case falls close to the end of the spectrum in which findings of fact in relation to foreign law were to be treated, on appeal, in the same way as findings of simple fact.

46. In that context, however, BNC submitted that this was a case where the relevant material comprised simply the translated text of the relevant provisions and a limited amount of expert evidence, such that there was no question of selectively "island-hopping" in a sea of evidence. BNC's case was that this Court could readily determine that the Judge had reached a conclusion which was not open to her on the evidence.

47. The Judge recorded at [322(i)] that BNC's first contention as to authority was that "[a]pproval of an assignment of BNC's debt is a banking operation within the meaning of [Section] 15(l) of the [Signature Rules] and thus requires two signatures" and concluded at [328(ii)] that consent to an assignment is not a banking operation within

the meaning of [Section] 15(l). However, in her analysis the Judge did not mention Section 15(l), apparently focusing primarily on Section 12.

48. This appears to reflect the approach taken by Ms Rodriguez in her written expert report, quoted by the Judge at [323], where she stated the following in relation to the Signature Rules:

> "8.48. In my opinion, Resolution 10/2016 [the Signature Rules] …does not apply to consents to the assignment of sovereign debt, for the following reasons.
>
> 8.49. Section 12 of Resolution 10/2016 states that two 'A' and 'B' signatures shall be required for all banking transactions that create an obligation for BNC, on the basis of the type of transaction and amount involved as described in Section 17 of Resolution 10/2016. Assignments do not, in my view, create an obligation within the meaning of Article 12. Therefore, the signature rules set out in Resolution 10/2016 do not apply to assignments.
>
> 8.50. The types of transaction are listed in Section 15 of the Resolution 10/2016. Section 15 states that both an "A" and a "B" joint signature, or two "A" or two "B" joint signatures are required, depending on the monetary value of the transaction as set out in Section 17, for the purposes of "*authorising and executing*" certain listed banking operations including operations "*(f) to borrow and/or grant any short, medium and long-term loans or financing*" or "*(g) to receive and authorise any sight and term deposits.*"
>
> 8.51 The relevant operations do not include the act of BNC giving its consent to an assignment for one or more of the following reasons:
>
> 8.51.1 The act of giving consent to an assignment is distinct from the assignment itself. The act of giving of consent to an assignment is the performance of an existing contractual obligation under an existing loan agreement. The act of consent, without more, does not create an obligation on BNC. It merely permits the existing creditor to assign its existing rights to a new creditor.
>
> 8.51.2 The assignment itself also does not create any new obligation for BNC or Cuba. The assignments only change the name of the creditor in relation to a pre-existing debt obligation.
>
> 8.51.3 The provision of consent to an assignment or the assignment itself does not have any monetary value."

49. It is apparent from the above that Ms Rodriguez's written evidence was addressing Section 12, expressing the view that consent to an assignment did not fall within that section because it did not create an obligation for BNC. She did not directly address Section 15(l). Her reference to Section 15 was to suggest that that section listed the

types of transaction which fell within Section 12. But as BNC pointed out to the Judge and on this appeal, certain of the transactions listed in Section 15 (e.g. closing a bank account or approving a voucher) might not involve BNC accepting an obligation, yet two signatures were required. As set out above, at [327] the Judge rejected the view that Section 15 was listing transactions which fell within Section 12, stating that Section 15 "specifically defined operations which require signatures".

50. In cross-examination, Ms Rodriguez was asked about Section 15(l) in the following exchanges:

> "Q. If we look at the next paragraph, (l), it says:
>
> "l) to carry out any other banking operation in accordance with international standards."
>
> So that covers any other banking operation which is not already listed in the paragraphs above; correct?
>
> A. Correct.
>
> Q. So what I would like to explore with you, please, first, is how these provisions might apply to an assignment of debt.
>
> I think we can agree that an assignment involves three parties: an assignor, who is the existing creditor; the assignee, who is the new creditor; and the debtor. Correct?
>
> A. Yes. Correct.
>
> Q. Now, let's assume that, in order for the assignment to be effective as against the debtor, the debtor's approval is required. So can we please make that assumption. If approval is given, then the obligation that was previously owed to the assignor is now owed to the assignee. So that's the hypothetical scenario I would like you to consider, please.
>
> A. Yes. Could you reformulate the question? I think you're referring to consent to the debt assignment: is that right?
>
> Q. Yes, that's right.
>
> A. Yes.
>
> Q. So in that scenario, the giving or withholding of approval to the assignment by the debtor is a banking operation within the meaning of 15(l), which we have looked at; do you agree?
>
> A. It is a banking operation - - well, that point (l) is a wide norm which could involve any banking operation in line with international practices.
>
> …. [an interruption by a technician]

> Q. So I'll start again.
>
> We were looking at 15(l) and we were considering the assignment scenario, and my question is: if something like approval of accounting vouchers and notices is a banking operation, approval of an assignment is likewise a banking operation, isn't it?
>
> A. Could you reformulate the question, because I didn't get it all with the two different aspects that you mentioned. Are you referring to (l) now?
>
> Q. Well - -
>
> A. To carry out a banking operation (inaudible) - -
>
> Q. Well, I am referring to (l), but I am also referring to (k), and I'll try to reformulate.
>
> A. Si.
>
> Q. If, under (k) something like approval of an accounting voucher or a notice constitutes a banking operation, then it follows, doesn't it, that under (l), approval of an assignment would likewise be a banking operation?
>
> A. According to the regulation, yes, it could be considered the same.
>
> Q. Yes. Well, it is the same. That is correct, isn't it?
>
> A. Yes."

51. CRF contended it was open to the Judge to find that Ms Rodriguez did not understand that she was being asked about consent to an assignment, but rather misunderstood that she was being asked about the assignment itself. I see no merit in that argument. The questioner was careful to ensure that Ms Rodriguez understood that the questions concerned the application of Section 15(l) to approval of an assignment (as opposed to the assignment itself) and Ms Rodriguez herself volunteered that he was referring to consent to an assignment. At the end of the passage Ms Rodriguez expressly and clearly confirmed that consent to an assignment would be considered to be a banking operation within Section 15(l). CRF suggested that this confirmation should be discounted due to the interruption recorded in the transcript, but that is untenable: the questioner restated the question very clearly and Ms Rodriguez gave her confirmation that approval of an assignment was a banking operation and then repeated her affirmation.

52. It follows that BNC is right in its submission that the Judge's analysis of both Ms Rodriquez's written evidence and of her oral evidence was mistaken. The former did not address Section 15(l) and, in the latter, Ms Rodriguez accepted that giving consent to an assignment was a banking operation.

53. Professor Mendoza's first expert report referred to Sections 15 and 17 of the Signature Rules and stated at paragraph 22 that purported consent to an assignment signed by only one person was ineffective, the joint signature being an essential requirement of

banking security for issuing consent and binding the BNC, especially in international transactions. In his second report at paragraph 88 Professor Mendoza clarified that:

> "…the effect of [Section] 15 of BNC Resolution 10/2016 is that it applied to all banking operations by BNC. In this sense, clause (l) of [Section]15 acts as a catch-all provision designed to cover all banking operations of BNC…"

54. The transcript of the cross-examination of Professor Mendoza records that he did not resile from that position.

55. The Judge rejected Professor Mendoza's approach, again referring not to Section 15(l), but to the wording of Section 12, imposing a requirement which is only triggered by a banking transaction which creates an obligation.

56. It follows that the Judge viewed the evidence of both experts through the lens of Section 12 of the Signature Rules, and did not appreciate that, in the end, both foreign experts were agreed that Section 15(l) applied to any banking operation, which included giving consent to an assignment.

57. I would add that it does not surprise me that the experts ultimately reached that agreed position. The core business of banks worldwide is lending and borrowing. Managing the bank's debt portfolio, including giving consent to an assignment by a creditor, would seem to be part of standard banking operations, particularly when viewed in an international context (an aspect of the wording of Section 15(l) which neither party emphasised). In the absence of any specific Cuban law material or learning on the point, it would be surprising if "banking operation" in Section 15(l) excluded that commonplace action taken by banks.

(iii) CRF's alternative basis for upholding the Judge's decision on authority

58. As the Judge found that Section 15(l) did not impose a two-signature requirement for officials in consenting to an assignment, she did not go on to consider (at least expressly) the effect on Ms Martí's delegated authority of that requirement not being met in the case of her 13 June 2019 email. CRF contends that the answer is that it had no effect.

59. The starting point is that, as the Judge found at [319] and is not challenged by BNC, Ms Martí had authority to consent to assignments in her role as manager of the Foreign Debt Department, such authority having been delegated by the President of BNC pursuant to his statutory power, specifically enacted by him in the BNC Statutes. The Judge referred to Articles 40 and 41, but the position is expressed most clearly in Article 54.

60. The Signature Rules are also expressed to be an exercise of the President's statutory power to delegate his authority to other officials of BNC. Section 1 states that:

> "Bank powers of attorney may be conferred on certain officials and employee of [BNC], based on their functions and responsibilities, through the granting of use of banking signatures, so that they may act

> in the name and on behalf of such Bank under the rules herein and thus enter into any relevant banking transaction."

61. It is therefore clear that the Signature Rules operate by conferring additional authority on officials to authorise transactions in accordance with the detailed provisions of Article 17 rather than imposing limits on their existing authority. The interrelationship between the two sources of authority is recognised expressly in the second part of Article 54, providing that the delegated authority of managers or officials is limited to committing their position or "units", except where the managers and officials are given authority by BNC to sign documents in its name.

62. It follows that the Signature Rules authorise two class A signatories to sign a consent to an assignment on behalf of BNC, but that is an addition to, rather than a restriction of, Ms Martí's delegated authority to give consent in her management role. No other formality requirement was identified in relation to the giving of such prior consent, in contrast with the ex post facto "materialization" of the approval which is stated in the BNC Handbook to require two signatures.

63. It does not appear that the expert evidence ultimately contradicted the above reading of the relevant provisions. The Judge recorded at [311] that Professor Mendoza's written evidence seemed to dispute the possibility of delegation other than via the Signature Rules, but that in oral evidence he (realistically) accepted that delegation could be done other than via the rules, recognising that the President of BNC may delegate by appointing officials to positions. The Judge noted at [312] the title of the Signature Rules does not seem to indicate that they are prescribing the scope of the power, merely setting out rules to operate on authorisations.

64. It follows, in my judgment, that the Judge's finding that Ms Martí's email of 13 June 2019 was sent with the authority of BNC should be upheld.

65. Given that conclusion, it is unnecessary to consider CRF's further alternative argument that BNC unreasonably withheld its consent to assignment of the debts.

Notice of assignment

66. The loan agreements are in the form of letters from the creditor banks, countersigned by BNC by way of acceptance. Each contains the following provision at clause 20A:

> "Each communication under this letter shall be made by telex otherwise in writing. Each communication or document to be delivered to any party under this letter shall be sent to that party at the telex number or address, and marked for the attention of the person (if any), from time to time designated by that party for the purpose of this letter. The initial telex number, address and person (if any) so designated by each party are set out under its name in Part I of this letter."

67. The notice of the assignment of the Debts was delivered to CRF's then current offices in Havana on 14 November 2019, for the attention of Ms Lozano and Ms Martí. Delivery was notarised and Mr Lozano subsequently confirmed acceptance of the documentation. The assignments were in due course registered by Ms Martí in BNC's Register of Debt Assignments.

68. BNC takes the point, rightly described by the Judge as unattractive, that the BNC offices to which the document was delivered, some 35 years after the loan agreements were executed in 1984, was not at the "initial address" given for BNC in the loan agreements. Nor was the document stated to be for the attention of the person initially named. BNC contended that, as no replacements had been designated by BNC, the communication requirements specified in loan agreements were not satisfied, such that notice of the assignments was ineffective.

69. The Judge dismissed the argument in paragraph [394] as follows:

> "The relevant clauses in the agreements did not on their true construction apply to the giving of notice of assignment under section 136 of the Law of property Act 1925. In any event, the clauses were complied with. Notice of the assignments were delivered to BNC…at BNC's offices in Havana, which were the place for delivery of letters to BNC…under the clauses in the agreements referred to because BNC…had indicated to market participants that that was where such letters should be delivered to."

70. BNC did not address its challenge to this finding in oral submissions, but relied on its written submissions.

71. The first point taken was that there was no evidence or underlying reasoning to support the Judge's finding of fact that BNC "had indicated to market participants" the new address for delivery. However, CRF had expressly pleaded that case at paragraph 46 of its Reply and there was ample evidence of other assignments of Cuban sovereign debt to justify the Judge's finding that BNC had informed participants in the market (including ICBC and CRF) of its new address for communications in respect of such debts. Further, the Judge made a finding at [139] that Mr Lozano had asked that the documentation (including the notice of assignments) be delivered to him at the new address [139]. I do not accept that the Judge's finding was irrational or not open to her on the evidence.

72. The second point taken by BNC was that the designation found by the Judge amounted to an oral variation of the loan agreements, contrary to clause 19B of each agreement. I see no merit in that argument given that clause 20A expressly provides for the designation of contact details from time to time, without stipulating any formality. Such designation was pursuant to the clause, not a variation of its terms.

73. Accordingly, I reject BNC's challenge to the validity of the delivery of the notice of the assignments. In view of that conclusion it is unnecessary to consider the merit of the Judge's finding that notice of assignment for the purposes of section 136 did not, in order to be valid and effective, have to comply with the contractual provision for giving notice under the relevant agreement.

Conclusion

74. As I would uphold the Judge's decision that the debts were validly assigned to CRF, I do not consider that it is necessary to address BNC's challenge to the Judge's contingent finding that, if the assignments were not valid, BNC ratified them by its subsequent correspondence.

75. I would dismiss the appeal.

Lord Justice Arnold

76. I agree.

Lady Justice Asplin

77. I also agree.