



Neutral Citation Number: [2020] EWHC 2051 (Comm)

Case Nos: CL-2019-000303, CL-2020-000304

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 24 July 2020

Before :

MR JUSTICE TEARE

Between :

DEUTSCHE BANK AG LONDON BRANCH

Claimant
(in the 2019 claim)

- and -

RECEIVERS APPOINTED BY THE COURT

Receivers
(in the 2019 claim)

CENTRAL BANK OF VENEZUELA

Claimant
(in the 2020 claim)

Defendant
(in the 2019 claim)

-and-

THE GOVERNOR AND COMPANY OF THE BANK OF ENGLAND

Defendant
(in the 2020 claim)

-and-

THE AD HOC ADMINISTRATIVE BOARD OF THE
CENTRAL BANK OF VENEZUELA

-and-

THE BOARD OF THE CENTRAL BANK OF VENEZUELA

Nicholas Vineall QC and Brian Dye (instructed by **Zaiwalla & Co.**) for the **Board of the Central Bank of Venezuela**

Andrew Fulton and Mark Tushingham (instructed by **Arnold & Porter**) for the **Ad Hoc Administrative Board of the Central Bank of Venezuela**

Anna Dilnot (instructed by **Allen & Overy LLP**) for **Deutsche Bank AG, London Branch**

Brian Kennelly QC and Isabel Buchanan (instructed by **Herbert Smith Freehills LLP**)

for **The Governor and Company of the Bank of England**

Felicity Toupe QC (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) for the **Receivers**

Hearing dates: **24th July 2020**

Ruling by MR JUSTICE TEARE

RULING 1 (12.11 pm)

1. The court has to rule on a dispute between the parties as to the declarations which should be made following the court's judgment. The declarations sought by the Guaido Board total four, and are set out in the draft order.
2. Let me deal first with number 1. This declaration concerns the recognition by Her Majesty's Government of Mr Guaido. The Guaido interests seek a declaration in these terms: Her Majesty's Government formally recognises Juan Guaido and not Nicolas Maduro as constitutional Interim President and head of state of Venezuela and has done so since 4 February 2019.
3. The declaration sought by the Maduro Board seeks to have added words to the effect that: the government has not recognised Mr Guaido as head of the government.
4. In my judgment, the declaration which should be made is that which has been sought by the Guaido interests. As Mr Fulton said, or submitted, and as indeed I think I said in my judgment, Her Majesty's Government has been careful not to say anything about the question of government, and in those circumstances the court should be cautious in saying anything about government.
5. The substance of the court's decision concerned what it was that Her Majesty's Government had recognised Mr Guaido as. And that was as constitutional Interim President and head of state of Venezuela. It seems to me that it would not be appropriate to say anything about the government issue when that was not dealt with in the judgment, and no submissions on it were made by Mr Fulton who did not seek any such declaration in relation to Mr Guaido.
6. So with regard to the first declaration, I am in favour of Mr Fulton's submission.
7. The second, third and fourth declarations are consequential upon the court's decision. They concern in declaration 2 the question whether the Guaido Board, rather than the Maduro Board, has power to represent the Central Bank of Venezuela in its dealings with financial institutions in England and Wales.
8. Declaration 3 concerns the question whether the new Special Attorney General (but for this purpose there is no distinction between the new and the old) has power to defend and represent the rights and interests of the Central Bank.
9. And the fourth declaration which, as I say, is consequential upon the court's ruling, is that the appointment by Mr Maduro of Mr Ortega as President of the Central Bank of Venezuela is null and void.
10. Mr Fulton says that these declarations follow as night follows day from the court's rulings. However, Mr Vineall has raised a point which I think it is fair to say was not raised before. He submits that there is a distinction between the court ruling that certain matters are non-justiciable and a ruling as to the merits of those points. He has referred to authority from Lord Wilberforce in *Buttes Gas*, to another Supreme Court case and I think to a recent Court of Appeal case, where a distinction of that nature appears to be drawn.
11. He says that in circumstances where these issues are non-justiciable, the appropriate response is for these actions to be stayed.
12. Mr Fulton responds that, as he puts it, this particular ship has sailed. This was a point which, if it was to be raised, ought to have been raised when the preliminary issues were debated. It was not raised, and he says that in those circumstances, there is an issue estoppel which prevents the Maduro Board from raising these points.

13. These are difficult issues for a consequential hearing on a Friday morning, and whilst I admire the confidence of Mr Fulton's submissions, I am not able to resolve them today. He may be right that there is nothing in the suggested distinction, he may be right that there is an issue estoppel, but those matters will have to be argued on another occasion when there is time.
14. So I will make the first declaration which is sought, but I do not feel able today to make declarations 2 to 4, nor, of course, do I say there should be a stay. That will all be part and parcel of the argument.

RULING 2 (12.40 pm)

1. On costs Mr Fulton seeks not only the costs of the two preliminary issues on which he has said he has won, but he also seeks the costs of the actions, the Deutsche Bank action and the Bank of England action, on the grounds that they are going nowhere. Either they will be terminated in Mr Fulton's favour, or there will be a stay and nothing else will happen.
2. So far as the costs of the preliminary issues are concerned, Mr Vineall accepts that his clients must pay the costs of the justiciability issue, but so far as the costs of the recognition issue are concerned, he submits that there should be no order as to costs, ie each side must bear their own costs, because, he says, the result of the recognition issue was a score draw.
3. The basis for that submission, which might take some observers by surprise, is that he says Mr Fulton was seeking a declaration that Her Majesty's Government had recognised Mr Guaido not only as the President and head of state, but also as head of government.
4. It appears to me that when these issues were formulated, as is apparent from the judgment of Mr Justice Knowles to which I was referred by Mr Fulton, that it was perfectly clear that Mr Fulton's argument concerned recognition as president and head of state. That was opposed by counsel then appearing for the Maduro Board. Counsel wished reference to be made to the government of Venezuela. In the event, Mr Justice Knowles framed the preliminary issue in terms of president and head of state and head of government.
5. In those circumstances, it was not at all surprising that in the pleadings and in the skeleton argument, it was said by Mr Fulton that the recognition extended to head of government, but, as I said in my judgment at the end of paragraph 36, where I referred to the pleadings and the written skeleton argument, this was based upon the proposition that the President was "entitled" to direct the action of the government.
6. When I asked Mr Fulton whether he had any case about the question of government, he said firmly and clearly that he did not. It does seem to me that the fair conclusion to be drawn is that Mr Fulton's argument only concerned the question of president and head of state.
7. On that issue, he won. I do not accept that it is right to describe the result, as Mr Vineall did, as a score draw. In those circumstances, Mr Fulton having won on both issues, his clients should have the costs of both issues.
8. So far as there being other costs which are part of the costs of the action and are not part of the costs of those issues, it seems to me that it is premature to make an order about them. They, it seems to me, may possibly be dependent upon the resolution of the dispute to which I referred earlier. I hope that is clear.
9. So those extra costs should be reserved.

RULING 3 (1.00 pm)

1. On this application, Mr Fulton seeks an order that "the rival boards be joined to the Deutsche Bank proceedings". This application is opposed by Mr Vineall. By "rival boards", Mr Fulton means the individuals who form those boards.

2. Mr Fulton is right to say that an order such as this was made in relation to the Bank of England case. I think, if my recollection is right, that that order was sought on behalf of the Bank of England.
3. Mr Fulton simply wishes the Deutsche Bank case to be brought in line with the Bank of England case, and he also points out that Mr Justice Knowles was prepared to proceed on the basis that the two boards were parties to the proceedings for the purposes of any order as to costs. And one can see, as one can with all of Mr Fulton's submissions, which are made with great force and clarity, that there may be something in that. But Mr Vineall points out that what is sought is an order that individuals, not in this country but in Venezuela, be made party to this action for the purposes of making them personally liable for these costs.
4. Ordinarily persons out of the jurisdiction would have to be served, and having been served, they would have to be given notice of this application and an opportunity to respond. Mr. Vineall said that he is instructed by the Central Bank of Venezuela by the route of the board appointed by Mr Maduro. And he says that the entity which instructed him. he says that he is not instructed by individuals. I cannot possibly, it seems to me, say against Mr Vineall that he in fact acts for those individuals if he tells me that he does not.
5. So I really feel unable to make the order sought by Mr Fulton. If he wishes to seek such an order, then he will have to issue and serve the appropriate application, so long as it continues to be opposed.

RULING 4 (1.15 pm)

1. On this application for permission to appeal, as I have already indicated, I am willing to grant permission on the justiciability issue, namely, the question on which I followed the opinion of Lord Sumption, namely, whether non-justiciability does not extend to Acts of State which were said to be unlawful in the country in which they took place. I hope the parties understand the limited issue to which I refer.
2. Mr Vineall also seeks permission to appeal on the recognition issue. He makes three submissions. The first is that the recognition of Mr Guaido does not exclude, as he puts it, a simultaneous recognition of Mr Maduro as the de facto president. It seems to me that there is no real prospect of success on that argument. Her Majesty's Government has spoken with clarity as to who it recognises as the President of Venezuela.
3. The second reason that Mr Vineall puts forward is what he calls the grave importance of the issues. No doubt the issues are of great importance, but merely because they are of great importance does not, it seems to me, justify the grant of permission where in my judgment there is no real prospect of success.
4. Thirdly it is said that the two issues are linked. No doubt they are, but if there is no real prospect of success on the recognition issue, there does not appear to me to be a reason for giving permission to appeal on that issue.
5. So I refuse permission to appeal on the recognition issue.