Neutral Citation Number: **[2020] EWHC 3317 (Comm)**

Case No: **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: **19 November 2020**

Before :

Mrs Justice Cockeril

- -

Between :

Banco Central De Venezuela	**Claimant**
- and -	
The Governor And Company Of The Bank Of England & Deutsche Bank AG	**Defendant**
-and-	
Central Bank of Venezuela	

- -
- -

Brian Dye, Jonathan Miller, Nicholas Vineall QC, Mubarak Waseem and Dan Sarooshi QC (instructed by **Zaiwalla & Co LLP**) for the **Claimant**
Andrew Fulton and Mark Tushingham (instructed by **Arnold & Porter Kaye Scholar (UK) LLP**) for the **Defendant**

Hearing dates: **19th November 2020**

- -

APPROVED RULING

Mrs Justice Cockerill **Thursday, 19 November 2020**

Ruling by **MRS JUSTICE COCKERILL**

RULING 1 (11.59 am)

1. Let me deal with the practical aspects first. I think, as you have both gathered, I am not minded to park this entirely. It seems to me that against a background where everybody is agreed that this is a matter which is suitable for expedition subject to the question of the impact of the Supreme Court, it is inestimably the best thing to do to see what progress we can sensibly and properly make in getting the case, as remitted, ready to be heard in event that that turns out to be the outcome.
2. With that in mind I think that it is appropriate that progress is made in drafting and, if appropriate, depending on the Supreme Court's timeline, sending a letter to the FCDO. I consider that it would be better for that letter to be finally settled after the pleadings have been formalised. So what I anticipate happening is that we do some work on a draft letter now and finalise it after those pleadings have been settled, because there may be something which comes out of that exercise which impacts on the formulation of the questions, in particular in relation to question 2 or Mr Fulton's question 3.
3. I entirely understand the points that Mr Fulton has made about how it would be undesirable for the genie to come out of the bottle in circumstances where the Supreme Court may say that it was inappropriate for the Court of Appeal to say that further questions should be asked.
4. So, depending, as I say again, on where the Supreme Court gets to during the time that we are finalising the letter and getting the pleadings updated, it may be that the appropriate thing to do is for that letter to go in a format which asks the Foreign and Commonwealth Office to prepare an answer for the court but potentially not to send it. I am not going to take a final view on that now because I think in this case two weeks, three weeks, which is the period of time we are looking at, can actually be quite a lot of time and there may be further developments, for example from the

Supreme Court. It may also be that Mr Fulton's clients decide to make a formal application for a stay.

5. But unless there is something clear coming out of either of those courses, my current intention would be to finalise and send the letter seeking for an answer to be prepared but not sent for a period of time, to allow us to see how the matter develops.
6. In relation to the formulation I am, broadly speaking, in favour of the more open formulation for which Mr Vineall QC has been advocating; subject to the rider that it does seem to me that we may want to ask the FCDO also to deal with broader dealings because there may be aspects of something which does not fall within questions 2 and 3 which may be of significance.
7. In relation to timeline on question 1, I think we are now agreed that the question should be posed in the: "Does Her Majesty's Government~..." format. I think Mr Vineall was prepared to concede "formally recognise".
8. I do take the view that in some way one needs to have an inclusion of Mr Guaidó within that question because, for example, while the overt recognition or non-recognition may be entirely binary, if one does get to the position where one is looking at *de facto*, the extent to which each of the candidates is exercising power could conceptually feed into the equation that the court has to solve. You may well tell me that is wrong as a matter of law but it seems to me it is a matter which may be capable of argument. So I am concerned that if one were not to include Mr Guaidó, one would be limiting the field of battle in a way which may prove regrettable in due course.
9. So that gives you some indications. I think there may be some finessing to be done in relation to splitting out what one might term formal recognition and the other factors where one is flagging [129] of the Court of Appeal's judgment more; so the factors which go to when the court has no alternative but to determine for itself, and the cross-references to particular paragraphs that one is asking the FCDO to look at. There may be some finessing to do there. I do anticipate and hope that

the parties can do a certain amount of working together with that in mind to produce a further draft which will, of course, have to be looked at in the light of where the pleadings go.

RULING 2 (12.42 pm)

1. Having heard what both parties have to say I am persuaded that the correct course, certainly at present, is to put a timetable in place to deal with effectively express and implied recognition in January (or something very close to January depending on just when it can be fitted in given what else is in the court's diary and so forth); So not to include in the STJ point, which on any analysis is going to extend the diary to at least March, will extend the hearing length.
2. Normally I might well be attracted by the idea of knocking the two points out at once. However, this is an unusual situation. We are looking at a very high degree of expedition. We are looking at highly unusual points and as Mr Vineall points out, the issue in relation to STJ decisions is one that it would be preferable that the court did not have to give a judgment on, unless it absolutely has to. If we go ahead towards a March date, we will be looking at a situation where the court is going to be looking at that, there is at least going to be preparation for that and argument about that, and that may be unnecessary.
3. I also have a degree of scepticism about the robustness of the timetable in relation to that, whereas one has a good degree of visibility in relation to the existing issues. It cannot be said that by just going with the existing issues the case is getting mired and is going nowhere, because there is an outcome which could bring this litigation to an end at the end of it and so it is a perfectly legitimate and proper way in which to triage the issues as they come before the court.
4. It follows that I am going to order that we (a) have expedition and (b) that we put in place a timetable towards those issues, with the question mark over the on-the-ground issue as to whether that is added to it.

5. I am sure the parties can liaise about exactly how that timetable works in the light of that indication and you may want to look, speak to Listing first, as to what window we can conceivably do and work from that.