

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

NML CAPITAL, LTD., AURELIUS CAPITAL
MASTER, LTD., ACP MASTER, LTD., BLUE
ANGEL CAPITAL I LLC, AURELIUS
OPPORTUNITIES FUND II, LLC, PABLO
ALBERTO VARELA, LILA INES
BURGUENO, MIRTA SUSANA DIEGUEZ,
MARIA EVANGELINA CARBALLO,
LEANDRO DANIEL POMILIO, SUSANA
AZQUERRETA, CARMEN IRMA
LAVORATO, CESAR RUBEN VAZQUEZ,
NORMA HAYDEE GINES, MARTA
AZUCENA VAZQUEZ, OLIFANT FUND,
LTD.,

Plaintiffs-Appellees,

v.

THE REPUBLIC OF ARGENTINA,

Defendant-Appellant.

Docket Nos. 12-4694, 12-105-cv (L),
12-109-cv (CON), 12-111-cv (CON),
12-157-cv (CON), 12-158-cv (CON),
12-163-cv (CON), 12-164-cv (CON),
12-170-cv (CON), 12-176-cv (CON),
12-185-cv (CON), 12-189-cv (CON),
12-214-cv (CON), 12-909-cv (CON),
12-914-cv (CON), 12-916-cv (CON),
12-919-cv (CON), 12-920-cv (CON),
12-923-cv (CON), 12-924-cv (CON),
12-926-cv (CON), 12-939-cv (CON),
12-943-cv (CON), 12-951-cv (CON),
12-968-cv (CON), 12-971-cv (CON)

MOTION TO CONSOLIDATE RELATED APPEALS

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The Interested Non-Party Intervenors-Appellants listed in Appendix A (collectively, the “Exchange Bondholder Group” or “EBG”) submit this Motion to Consolidate Related Appeals, seeking consolidation of the appeal bearing Docket Number 12-4694 with the captioned, related matters.

BACKGROUND

The appeals at issue arise from proceedings in the United States District Court for the Southern District of New York (Hon. Thomas P. Griesa) concerning the Republic of Argentina’s (the “Republic’s”) 2001 sovereign debt default. Between 1992 and 2001, pursuant to a Fiscal Agency Agreement (“FAA”), the Republic issued debt securities in the aggregate amount of approximately \$82 billion (the “FAA Bonds”). In 2001, the Republic defaulted on the FAA Bonds and has not since made any payments on them. Domestic Argentina law (the “Lock Law”) expressly bars any further payments on the FAA Bonds.

Following the Republic’s default, in 2005 and 2010 the Republic initiated exchange offers (the “Exchange Offers”) allowing holders of the FAA Bonds to replace those instruments with new, unsecured and unsubordinated external debt at a rate of 25 to 29 cents on the dollar (the “Exchange Bonds”). Over 91% of the holders of the FAA Bonds (including the EBG members) elected to participate in the Exchange Offers, allowing the Republic to restructure approximately \$74.5 billion of debt. To date, the Republic has fully honored its obligations to the holders of the Exchange Bonds (the “Exchange Bondholders” or “EBHs”), including the EBG. The EBG represents EBHs with total holdings of Exchange Bonds in excess of \$1 billion. Plaintiffs-Appellees refused to accept the 2005 and 2010 Exchange Offers, choosing instead to sue the Republic in an attempt to vindicate their rights under the FAA Bonds.

On December 7, 2011, the district court granted Plaintiffs-Appellees partial summary judgment, finding the Republic violated a *pari passu* clause contained in the FAA between the Republic and Plaintiffs-Appellees (the “December 7 Order”) See December 7 Order at 4-5. On February 23, 2012, the district court issued an Order requiring specific performance by the Republic and enjoining the Republic from paying the Exchange Bondholders (who were not a party to the district court proceedings), without previously or concurrently making “Ratable Payments” to Plaintiffs-Appellees (the “Injunctions”). See Injunctions ¶ 2. The Republic appealed both the December 7 Order and the Injunctions. On February 27, 2012 and March 15, 2012, this Court consolidated the twenty-six captioned appeals exclusive of Docket No. 12-4694 (which had not yet been filed) and designated *NML Capital, Ltd. v. Republic of Argentina*, No. 12-105, as the lead case.

On October 26, 2012, this Court issued an Order (the “October 26 Order”) partially affirming the district court’s Orders, but retaining jurisdiction while directing the district court to (i) supplement the record regarding the impact of the Injunctions on third parties; and (ii) clarify the “Ratable Payment Formula” under which the Republic was ordered to pay Plaintiffs-Appellees. On November 9, 2012, the district court held a scheduling conference and ordered Plaintiffs-Appellees to file briefs on November 13, 2012, the Republic and third parties (including the EBG) to file answering papers on November 16, 2012, and Plaintiffs-Appellees to file a reply on November 19, 2012.

On November 16, 2012, as directed by the district court, the EBG submitted a memorandum and supporting papers explaining numerous reasons why the Injunctions unlawfully infringed on their rights, and those of other third parties, and requesting vacatur of the

Injunctions. The EBG also moved the district court for leave to appear as interested non-parties and for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b).

On November 21, 2012, without holding an evidentiary hearing or oral argument, the district court issued two Opinions and an Order (the “November 21 Orders”). The November 21 Orders *expanded* the scope of the Injunctions by adopting amendments proposed by Plaintiffs-Appellees; ordered the Republic to escrow a payment of the full amount due to Plaintiffs-Appellees; and lifted a stay pending appeal of the Injunctions that had been in place since March 5, 2012. Moreover, the November 21 Orders made no factual findings regarding the Orders’ effects on third parties, but stated in conclusory fashion that the district court had considered arguments raised by third parties and *amicus curiae*. On November 27, 2012, the district court entered two additional orders, denying without explanation the EBG’s Rule 60(b) motion to vacate the Injunctions and its motion to appear as interested non-parties (the “November 27 Orders”).

On November 26, 2012, the EBG filed emergency motions in this Court, seeking *inter alia* leave to appear as Interested Non-Parties for the purpose of (i) seeking an emergency stay of the Injunctions pending appeal; and (ii) appealing the Injunctions insofar as they adversely affect third parties, including the EBHs. This Court granted the EBG’s motions and ordered an expedited briefing schedule for the appeal. The EBG timely filed a Notice of Appeal, and Docket No. 12-4694 was created. The EBG is currently listed as an “Intervenor” for Docket No. 12-105(L), and as an “Appellant” for Docket No. 12-4694.

ARGUMENT

By this motion, the EBG respectfully requests that this Court consolidate Docket No. 12-4694 with Docket No. 12-105(L) and its associated cases, with Docket No. 12-105 remaining as the lead case, and the EBG appearing as Interested Non-Party Appellants.

Consolidation of related appeals is appropriate “[w]hen the parties have filed separate timely notices of appeal,” Fed. R. App. P. 3(b)(2), and where “consolidation would be both efficient and equitable for the disposition of the appeals.” *Chem One, Ltd. v. M/W RICKMERS GENOA*, 660 F.3d 626, 642 (2d Cir. 2011). Consolidation of the appeals is appropriate here, because the issues involved in the EBG’s appeal, Docket No. 12-4694, will necessarily be decided by the Court in conjunction with the hearing scheduled for February 27, 2013 in Docket No. 12-105(L). Moreover, if consolidation is not ordered by this Court, and the Republic’s appeal is unsuccessful, the EBG may be unnecessarily exposed to irreparable harm while awaiting the outcome of its own, separate appeal. By contrast, consolidation will not prejudice Plaintiffs-Appellees or the Republic, but will expedite a final decision as to the enforceability of the Injunctions. Thus, consolidation of the appeals is in the interests of “both equity and judicial economy,” and the EBG’s motion should be granted. *Chem One*, 660 F.3d at 642 (quoting *Devlin v. Transp. Commc’ns Int’l Union*, 175 F.3d 121, 130 (2d Cir. 1999)).

CONCLUSION

Based on the foregoing, the EBG respectfully requests that the Court consolidate its appeal, *NML Capital, Ltd. v. Republic of Argentina*, No. 12-4694, with *NML Capital, Ltd. v. Republic of Argentina*, No. 12-105(L) and related appeals.

Dated: New York, New York
December 12, 2012

Respectfully submitted,

By: /s/ Sean F. O'Shea

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APPENDIX A

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The following interested non-parties are members of the Exchange Bondholder Group: Gramercy Funds Management LLC; Gramercy Argentina Opportunity Fund, Ltd.; Gramercy Distressed Debt Master Fund; Gramercy Distressed Opportunity Fund, Ltd.; Gramercy Distressed Opportunity Fund II, L.P.; Gramercy Emerging Markets Fund; Gramercy Local Currency Emerging Market Debt Master Fund; Gramercy Master Fund; Gramercy Opportunity Fund - Special Opportunities II Offshore SP; Gramercy Opportunity Fund – Special Opportunities II SP; Gramercy Opportunity Fund - Special Opportunities SP; Gramercy U.S. Dollar Emerging Market Debt Master Fund; and Gramercy Select Master Fund (collectively, “Gramercy”); MFS Diversified Income Fund; MFS Emerging Markets Debt Fund; MFS High Yield Opportunities Fund; MFS Emerging Markets Debt Local Currency Fund; MFS Global Bond Fund; MFS Multimarket Income Trust; MFS Charter Income Trust; MFS Meridian Funds – Emerging Markets Debt Fund; MFS Meridian Funds – High Yield Fund; MFS Meridian Funds – Global Bond Fund; MFS Meridian Funds – Emerging Markets Debt Local Currency Fund; MFS Investment Management Co. (Lux), S.a.r.l., on behalf of (i) MFS Investment Funds – Emerging Markets Debt Fund, and (ii) MFS Investment Funds – Emerging Markets Debt Local Currency Fund II; MFS Heritage Trust Company Collective Investment Trust – Emerging Markets Debt Fund; and MFS Emerging Markets Debt LLC (collectively, “MFS”); Brevan Howard Asset Management LLP and Brevan Howard Master Fund Limited (collectively, “Brevan Howard”); SW Asset Management, LLC and SWGCO Master Fund, Ltd. (collectively, “SW”); and AllianceBernstein L.P. on behalf of certain accounts managed by AllianceBernstein L.P. and its affiliates (collectively, “AB”).