

September 18, 2014

VIA ECF

Ms. Catherine O'Hagan Wolfe  
Clerk of Court  
United States Court of Appeals  
for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007

Re: *Aurelius Capital Master, Ltd. v. Republic of Argentina*, No. 14-2689 (2d Cir.)

Dear Ms. Wolfe:

Contrary to Citibank's claim in its September 17 letter, *Gucci America, Inc. v. Bank of China*, No. 11-3934-cv (2d Cir. Sept. 17, 2014) ("Op."), only undermines Citibank's position. *Gucci* reaffirmed that injunctions must be read according to their "four corners." Op. 46; *cf.* NML Br. 23-24. *Gucci* also reiterated that where a court has personal jurisdiction to enjoin a *defendant*, it may enter an injunction regardless of whether it also has "personal jurisdiction over nonparties," even though nonparties acting in concert with the defendant are "automatically" bound by Federal Rule 65(d). Op. 14-16; *cf.* NML Br. 37-39.

*Gucci* further illustrates why Citibank's appeal is procedurally flawed. In *Gucci*, the third party attempted to prove that an injunction conflicted with its foreign-law obligations in contempt proceedings before the district court. Op. 10-14. Raising defenses in contempt proceedings is precisely the course this Court prescribed when nonparties object to the enforcement of injunctions against them. NML Br. 6 (citing *NML II*, 727 F.3d 230, 243-44 (2d Cir. 2013)). This Court reserved judgment, however, on whether it could consider letters from foreign agencies submitted for the first time on appeal, Op. 12. Here, Citibank's foreign-compulsion claim rests entirely on such tardy and ersatz evidence; it presented zero proof of foreign compulsion below. Rather, it actively sought to frustrate discovery in the district court related to foreign compulsion.

*Gucci*'s comments regarding comity provide Citibank no support. Vacatur was required because the district court potentially lacked personal jurisdiction to enforce an injunction against a third party. Op. 13, 24-35. Here, U.S.-based Citibank *admits* that the district court has "power to enjoin ... Citibank Argentina." Corrected Reply 19-20. *Gucci*'s

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comity discussion was dicta. Op. 35 (“we need not reach this issue”). In any event, it has no bearing: Citibank’s alleged foreign obligations were contrived by the *defendant*, Argentina, to induce third parties’ aid in unlawfully evading an injunction affirmed by this Court. NML Br. 52-53. Comity does not require “permit[ting] Argentina’s threats to punish third parties to dictate the availability or terms of relief under Rule 65.” *NML II*, 727 F.3d at 242.

Sincerely,

/s/ Matthew D. McGill

Matthew D. McGill

*Counsel for Appellee NML Capital, Ltd.*

cc: Counsel of Record (via ECF)