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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 NML CAPITAL, LTD.,

4 Plaintiff,

5 v.

08 CV 6978 (PGG)

6 THE REPUBLIC OF ARGENTINA,

7 Defendant.

8 -----x

New York, N.Y.
September 19, 2014
4:42 p.m.

10 Before:

11 HON. THOMAS P. GRIESA,

12 District Judge

13 APPEARANCES

14 DAVIS POLK & WARDWELL

15 Attorneys for Defendant Citibank

15 BY: KAREN WAGNER

16 JAMES KERR

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1 (Case called)

2 THE COURT: Let's start by just putting on the record
3 what has happened today. An appeal was argued yesterday in the
4 Second Circuit and today the circuit issued an order, the next
5 to last paragraph of which says: We decline to find
6 jurisdiction because the order appealed from is a
7 clarification, not a modification of the amended February 23,
8 2012 order. However, nothing in this court's order is intended
9 to preclude Citibank from seeking further relief from the
10 district court.

11 And so, Ms. Wagner.

12 MS. WAGNER: Good afternoon, your Honor.

13 THE COURT: Can you go back to the lectern.

14 MS. WAGNER: I certainly can.

15 THE COURT: And Mr.?

16 MR. KERR: Kerr.

17 MS. WAGNER: James Kerr.

18 THE COURT: Go ahead.

19 MS. WAGNER: Okay. Your Honor, I'm assuming you're
20 interested in what we plan to do.

21 THE COURT: I'm interested in seeing if you are
22 seeking further relief.

23 MS. WAGNER: Your Honor, we will be seeking further
24 relief. Obviously, since we do not have any adversaries here,
25 we wouldn't discuss the substance so much. But our intention

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1 would be to move by order to show cause next week before your
2 Honor seeking for probably a motion for reconsideration and/or
3 reformation of the injunction to address its application to
4 Citibank and make arguments that had not been made previously,
5 as well as arguments that have been made previously.

6 As your Honor knows, we are facing a payment deadline
7 of September 30, so we are likely also to move for a stay.

8 THE COURT: A stay of what?

9 MS. WAGNER: A stay of the application of the
10 injunction to the payment to be made by Citibank on
11 September 30. But we haven't fully formulated -- we do not
12 have the papers yet and we haven't fully formulated our
13 position, but we intend to move next week.

14 THE COURT: Well, we can't discuss anything of
15 substance today. You're letting the Court know of your
16 intention.

17 I'd just like to ask you this. Maybe this is in the
18 record before me multiple times. I in effect permitted
19 Citibank to make an interest payment last summer, right?

20 MS. WAGNER: You permitted a payment on June 30, yes.

21 THE COURT: And I assume that payment was made.

22 MS. WAGNER: It was made.

23 THE COURT: And the effect of what I entered at that
24 time was that whatever permission I granted then was a one-time
25 permission and it was implicit it did not affect September 30

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1 or December 31, etc., right?

2 MS. WAGNER: You entered an order first, your Honor,
3 that said the injunction did not apply to Citibank, to payments
4 by Citibank on Argentine law bonds. And then you entered an
5 order toward the end of July that said a one-time payment was
6 permitted, and that is the order that went up on appeal.

7 THE COURT: What issue was appealed from?

8 MS. WAGNER: The issue on appeal was whether the order
9 that said the payment could only be a one-time payment,
10 whether -- I mean the court decided it was a request for
11 clarification rather than a modification.

12 THE COURT: What was the appeal? You appealed, right?

13 MS. WAGNER: We appealed on the same grounds that we
14 raised before your Honor, that we didn't think the order should
15 apply to us.

16 THE COURT: The February 23 order?

17 MS. WAGNER: Correct.

18 THE COURT: That was your grounds of appeal?

19 MS. WAGNER: Our grounds of appeal was that we thought
20 your Honor's original decision which said that for the reasons
21 we raised in our motion for clarification, we did not think the
22 injunction order applied to us. Your Honor agreed with us at
23 first, and then your Honor issued an order saying that
24 exclusion would only be effective for one payment and after
25 that, the order would apply to us. So we appealed on the

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1 grounds that we did not think the order should be applied to
2 us.

3 THE COURT: You mean the February 23.

4 MS. WAGNER: The February 23 order, yes.

5 THE COURT: Didn't a similar issue come up in 2013 or
6 is my memory wrong?

7 MS. WAGNER: We had moved in 2013 for clarification of
8 the February 23 injunctions, but your Honor declined to rule at
9 that time because those injunctions were on appeal.

10 THE COURT: So I didn't make any ruling at all --

11 MS. WAGNER: Not at that time, no, your Honor.

12 THE COURT: -- in 2013.

13 MS. WAGNER: Correct.

14 THE COURT: And did you come back this summer or did
15 some other party?

16 MS. WAGNER: We came back this summer. We came back
17 in May because the Supreme Court declined to grant certiorari
18 position on the injunction order and so the stay of that order
19 was lifted and it came into effect.

20 THE COURT: The stay of what order?

21 MS. WAGNER: The stay of the February 23 order.

22 So then we came back to you and said, okay, now this
23 is ripe, so would you please decide our application saying that
24 it should not be applied to Citibank's payments.

25 THE COURT: And I in effect granted that, did I not?

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1 MS. WAGNER: You granted it, yes.

2 THE COURT: Now, I asked you at the beginning but let
3 me ask you again. We will certainly have a hearing next week.
4 What is it that you wish to raise at that hearing?

5 MS. WAGNER: Your Honor, since we, like you, just
6 heard about the Second Circuit decision, we haven't totally
7 enveloped it. But it will be some of the original issues that
8 we raised before, and there will be a couple of new issues that
9 we believe have come up.

10 THE COURT: The before issues are what?

11 MS. WAGNER: There were some arguments, your Honor,
12 that Citibank, Citibank Argentina is a separate entity and
13 therefore should not be included in the injunction, that the
14 doctrine of act of state and the other doctrine of sovereign
15 compulsion would apply, that would also be a basis of
16 excluding, and those kinds of issues that we've argued before.

17 And there are a couple of new issues, your Honor.
18 Some of them you're somewhat familiar with and that is whether
19 the Argentine law bonds are subject to the injunction as a
20 matter of fact, as well as as a matter of law.

21 And then there was a decision handed down two days ago
22 by the Second Circuit that addresses a question of whether a
23 comity hearing must be held in a situation like this. We would
24 address that as well.

25 THE COURT: I'd like to say this and all the parties
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1 can get copies of this, but I think all parties should be
2 apprised of what I'm going to say.

3 It was my view and my intention to treat what we call
4 the Argentine law bonds as different from the bonds covered by
5 the February 23 order, and I think that was expressed in what I
6 issued.

7 And I think you agree with that, right?

8 MS. WAGNER: I certainly agree they should be treated
9 differently.

10 THE COURT: Now, look, the reason I'm making this
11 statement and you're the only one here, the only party
12 represented, whatever briefing goes on now should take into
13 account what I'm saying. And I would ask whoever is briefing
14 to heed what I'm saying and not confuse it. I'm repeating
15 myself.

16 It was my view and still is my view that the Argentine
17 law bonds issued in Argentina, payable in Argentina, subject to
18 Argentine law, are different from the bonds subject to the
19 February 23 order. And whether they're payable externally or
20 not, the factors I've talked about make them different.

21 Now, if the Court has the responsibility of dealing
22 with any issue about the payment due in Argentina September 30
23 or December 31, etc., then that will have to emerge from
24 requests to the Court and briefing to the Court as necessary.
25 But the parties should know that whatever issues there are

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1 about Citibank and Argentina, September 30 or December 31, it
2 is the view of the Court that what we're dealing with and what
3 your applications relate to are bonds that are different from
4 the bonds covered by the February 23 order.

5 So I'll await your order to show cause and we'll
6 certainly, I'm sure, be able to schedule a prompt hearing.
7 You're going to submit an order to show cause on Monday?

8 MS. WAGNER: We will do our very best to do that.
9 Yes, your Honor.

10 THE COURT: All right. I'll await that. Thank you.

11 MS. WAGNER: Thank you very much.

12 Just to be clear, if I understand, your Honor, the
13 transcript can be circulated to our adversaries as well?

14 THE COURT: Of today?

15 MS. WAGNER: Of today.

16 THE COURT: Of course.

17 MS. WAGNER: Thank you very much, your Honor.

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