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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 NML CAPITAL, LTD., et al.,
4 Plaintiffs,

5 v. 08 CV 6978 (TPG)

6 THE REPUBLIC OF ARGENTINA,
7 Defendant.

8 -----x

New York, N.Y.
September 29, 2014
3:12 p.m.

11 Before:

12 HON. THOMAS P. GRIESA,
13 District Judge

14 A P P E A R A N C E S

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1 (In open court; case called)

2 THE COURT: Mr. Cohen, I think it's your motion.
3 Would you like to speak to the motion.

4 MR. COHEN: Thank you, your Honor.

5 Robert Cohen from Dechert speaking today on behalf of
6 NML Capital and the other movants. Your Honor, we're here this
7 afternoon on a motion brought on by order to show cause seeking
8 that Argentina be held in contempt for its
9 continuing violations of this Court's orders and that
10 appropriate sanctions be imposed to coerce Argentina to come
11 into compliance with those orders.

12 Your Honor, this motion is not seeking sanctions to
13 compel Argentina to pay the money that is owed and that is
14 subject to your Honor's amended February 23 order as Argentina
15 has suggested it in its opposition papers. This motion is
16 designed to address the concerns that the plaintiffs have that
17 Argentina is and will continue to act in violation of what we
18 call the anti evasion portion of the amended February 23 order
19 by continuing to take steps to find ways to get around that
20 order.

21 If I may, your Honor, I'd like to recount for you the
22 steps we think Argentina has taken through as recently as last
23 week and remind your Honor of the directions and orders that
24 you have given in an attempt to address those violations and to
25 remind your Honor that you have, in fact, already found that

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1 all of the things that I am going to describe were in violation
2 of your Honor's orders. We're not asking for new findings.
3 Your Honor has already found that.

4 I also would like to address, your Honor, the concern
5 that you have expressed in the past and that we take very
6 seriously; that an order of contempt might have the effect of
7 driving Argentina away from the settlement table. It's our
8 fond hope that we will eventually be able to negotiate a
9 settlement of this dispute. But we know from the past three
10 months, since Special Master Pollack was appointed, that those
11 efforts have been unavailing and, in fact, your forbearance has
12 resulted only in Argentina repeatedly taking steps to violate
13 your orders.

14 Your Honor, the most recent violation, the one that
15 happened last week, was a "legal notice" published in the New
16 York Times, in the Wall Street Journal and other papers that
17 announced that Argentina had stripped Bank of New York of its
18 ability to conduct business in Argentina and invited exchange
19 bondholders to take steps to remove Bank of New York as the
20 trustee for the exchange bonds. That, we contend, your Honor,
21 was a direct violation of your order which prevents Argentina
22 from taking steps to violate the anti evasion provision.

23 Your Honor, Argentina's violations go back well more
24 than a year. What happened right after the Second Circuit
25 affirmed your Honor's order, the amended February 23 order, in

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1 August of last year, was that the President of Argentina went
2 on television in Argentina and announced that a plan was going
3 to be developed to evade this Court's order, to allow exchange
4 bondholders to receive payment on their bonds in Argentina.

5 THE COURT: To do what?

6 MR. COHEN: To receive payment, interest payments on
7 their bonds rather than through Bank of New York and New York
8 but rather in Argentina, to avoid the jurisdiction of this
9 Court.

10 You responded promptly, your Honor, and issued a
11 direction that said any such steps would be an evasion of this
12 Court's order and must not happen.

13 In June of 2014 when the Supreme Court denied
14 certiorari on Argentina's petition seeking review of the
15 amended February 23 order, Argentina's economy minister again
16 declared a nearly identical plan: Come to Argentina, get new
17 bonds, and we'll pay you in Argentina. He said to the exchange
18 bondholders: We must avoid the orders of the District Court in
19 New York.

20 Then at the end of June, your Honor -- I'm sorry.
21 Your Honor, you issued an order right after that statement that
22 said any such plan would be a violation of the amended
23 February 23 order. Of course, your Honor, the keystone of the
24 amended February 23 order is that if Argentina chooses to pay
25 the exchange bondholders -- doesn't have to but if it chooses

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1 to -- it must pay the plaintiffs in this case rateably, at the
2 same time or before.

3 Notwithstanding that very clear order, your Honor, at
4 the end of June Argentina purported to make a payment on the
5 exchange bonds without paying the plaintiffs in this case.
6 Fortunately, Bank of New York, who was the trustee, acted
7 appropriately, obeyed this Court's orders and refused to pass
8 along that money to the exchange bondholders.

9 But Argentina, in defiance of this Court's orders and
10 in defiance of representations made to the Supreme Court that it
11 would obey this Court's orders if certiorari was granted,
12 immediately violated that order by attempting to make the
13 payment without paying the plaintiffs in this case.

14 Since then, Argentina has instructed Bank of New York
15 to pass along the money that this Court has ordered that Bank
16 of New York hold. They wanted Bank of New York to pass that
17 money along to the exchange bondholders. And it's taken out
18 full-page ads instructing Bank of New York to act in such a
19 fashion.

20 On August 19 of this year, again, the President
21 announced that it was going to enact legislation to allow the
22 exchange bondholders to come to Argentina and get their money
23 and defy this Court's orders.

24 Emergency hearing was held two days later and your
25 Honor said that must not happen.

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1 Despite that instruction, on September 12 -- I believe
2 it was -- September 12 of this year, legislation was enacted in
3 Argentina that had the effect of removing Bank of New York or
4 purporting to remove Bank of New York and to provide a
5 mechanism for exchange bondholders to get paid.

6 If I may, your Honor, just read a small portion of the
7 legislation that was enacted. I'm reading from the publication
8 of the law that was in the Official Gazette of the Argentine
9 Republic. It's Exhibit 38 to my declaration in support of this
10 motion.

11 It's a law captioned "Sovereign Payment Debt
12 Restructuring." Chapter 1 is captioned "Local Sovereign
13 Payment of the Foreign Debt of the Argentine Republic. And
14 Chapter 2 says, "The means to safeguard receipt of payment by
15 the holders who joined the 2005 2010 sovereign debt
16 restructuring." And it says in part, "The implementing
17 authority for this law shall be authorized to adopt the
18 necessary measures to remove the Bank of New York Mellon as
19 trustee and appoint Nacion Fideicomisos SA in its stead."

20 Your Honor, what this law says is they're going to
21 remove Bank of New York and appoint an entity that is an
22 affiliate of a bank that is a hundred percent owned by
23 Argentina, in Argentina to act in effect as trustee on the
24 bonds.

25 Your Honor, it's our submission that the cumulative

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1 effect of these actions is indisputably a contemptuous and
2 punishable --

3 THE COURT: Can I interrupt you.

4 What is proposed, as I understand it, is to remove
5 Bank of New York Mellon as the indenture trustee and appoint
6 somebody else in Buenos Aires -- I don't know what they would
7 call them -- but anyway to do the necessary, let's say, in
8 Buenos Aires.

9 MR. COHEN: Yes, your Honor.

10 THE COURT: I further understand that this is really
11 contained in one of these legal notices that the new
12 official -- this is in the notice -- has obligations to
13 distribute the amounts paid; in other words, the interest would
14 then be paid in Argentina.

15 Now, it's also my understanding -- and maybe this goes
16 too far -- that really the proposal is to move the operation --
17 let's call it the operation of the -- what is necessary about
18 the bonds from New York to Argentina.

19 Is that something you -- am I saying something correct
20 or what do you --

21 MR. COHEN: I think that is the objective of the new
22 law, to find a mechanism by which exchange bondholders could
23 come and get -- come to Argentina and get paid. They also
24 would be able to exchange their bonds for new bonds, issued in
25 Argentina and payable in Argentina. That is what the law

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1 contemplates.

2 THE COURT: You go ahead with what you were speaking
3 of. Thank you.

4 MR. COHEN: Your Honor, I'd like to address the legal
5 standard that your Honor needs to consider in deciding whether
6 it's appropriate at this point to hold Argentina in contempt.

7 The standard is, I think, easily met here. If there's
8 an order that's been violated and it's clear and unambiguous,
9 and the proof of noncompliance is clear and convincing, and the
10 violator was not reasonably diligent in attempting to comply,
11 then the standard for contempt is met. I don't think there's
12 much argument here that all of those standards are easily met.

13 But there is an issue, I think, that lingers here and
14 that is whether there is anything in the Foreign Sovereign
15 Immunities Act that could restrict your Honor's ability to
16 issue a contempt order and impose a sanction.

17 I think the answer is no. There is -- the weight of
18 authority, cases that have considered whether or not district
19 courts have the authority, the inherent authority to issue
20 sanctions, find findings of contempt and issue sanctions
21 against sovereigns is that they do. Our brief lists I think
22 fifteen or so cases, district court, court of appeals cases
23 where sovereigns have been held in contempt and sanctions have
24 been imposed on them.

25 Argentina in its opposition argues that there's an

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1 international law precept that applies here. They cite --

2 THE COURT: A what?

3 MR. COHEN: An international law concept, a
4 convention. It's a convention that is not enforceable. It's a
5 convention that the U.S. is not a party to. And it has no
6 bearing on this case.

7 They argue that the United States government has
8 supported the position that district courts do not have the
9 authority. We cite five cases in which the U.S. Government has
10 appeared as amicus, expressed those views, and the courts have
11 said they need to -- they need not consider them. The district
12 court -- I'm sorry. The Court of Appeals for the District of
13 Columbia specifically said those views can be disregarded.

14 Your Honor, the Supreme Court recently in this case
15 advised -- held that the Foreign Sovereign Immunities Act goes
16 no further than the words it contains.

17 You may remember, your Honor, you found that you had
18 the authority to order discovery with respect to a sovereign's
19 assets anywhere in the world. Argentina argued that that was
20 beyond the scope of the FSIA and the government supported that
21 argument.

22 The Supreme Court in a decision by Justice Scalia said
23 you look to the statute. If it doesn't restrict the district
24 court's authority, there is no restriction. And went on to say
25 that the FSIA replaced the prior way in which foreign sovereign

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1 immunities decisions were made; that is, the executive could
2 weigh in and deference was given to the sovereign's views.
3 Justice Scalia said that ended 40 years ago. The statute's the
4 statute. And the views of the executive branch don't carry any
5 weight.

6 The Second Circuit has tacitly approved the issuance
7 of sanctions, monetary sanctions against the sovereign in the
8 Rafadain case in which a sanction had been imposed. The
9 sovereign sought to have that sanction vacated and the Second
10 Circuit affirmed.

11 But there are many district court judges in this court
12 who have imposed monetary sanctions against sovereigns, and not
13 just in the discovery context. For some reason Argentina
14 thinks that the discovery context cases don't carry much
15 weight. We're not sure why that should be the case. When a
16 party defies the court's orders with respect to discovery, it's
17 every bit as defiant as a failure to follow a court's orders in
18 some other context.

19 There are sanctions imposed, for example, when a party
20 reinstated board members of a company when the court had
21 removed them; issued an injunction removing board members and
22 it issued sanctions until those board members were removed.

23 In a case called Chabad, in the District Court in the
24 District of Columbia, the sanction was imposed because the
25 Russian Federation failed to turn over some artifacts that were

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1 the subject of an injunction to be delivered to the plaintiff
2 in that case and imposed monetary sanctions.

3 In those cases, your Honor, the sanction was \$50,000 a
4 day, which is what we suggest is the appropriate sanction here.
5 The question your Honor may be asking is: If I do this am I
6 really going to advance the ball much? Am I going to
7 jeopardize any settlement discussions? Is it the right thing
8 to do at this time?

9 And our view is that it's the right thing because
10 having refrained from issuing sanctions hasn't really worked.
11 We don't think it's going to get worse if you issue sanctions
12 because it's hard to imagine how it could get worse.

13 Common sense suggests that if the Court exercises its
14 authority, holds a party to its commitment to have its disputes
15 resolved in this court, participates in the litigation, loses,
16 has orders imposed, the Court needs to take steps, whatever
17 those steps may be, to assure that those parties respect the
18 orders of the court.

19 Argentina may or may not pay the sanctions. We hope
20 they will. But if they don't, your Honor, we may have to
21 suggest other nonmonetary sanctions that may coerce Argentina
22 into acting appropriately.

23 We also think it's important, your Honor, that you
24 take these steps now because there are a whole number of third
25 parties who are involved in the payment stream who are watching

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1 what's happening. We think it's very important that this Court
2 show that people may not ignore this Court's orders with
3 impunity. And it would be an important step.

4 THE COURT: Let me ask you this. We all know that
5 there can be orders issued by a court and the party against
6 whom the order is issued doesn't comply and then the Court
7 directs compliance or whatever. It is very seldom that you get
8 any issue about contempt of court, although there's certainly
9 many instances that any judge has where there can be failure of
10 compliance and a need to have some remedy.

11 Why does this situation now, in your view, justify
12 raising the level of whatever you call it to a contempt of
13 court?

14 MR. COHEN: Your Honor, because the repeated
15 violations of explicit directions to act or not to act in a
16 particular way have been ignored. Repeatedly.

17 You may not pay the exchange bondholders without
18 paying the plaintiffs. They did that.

19 You may not enact legislation. You may not take steps
20 to evade this Court's orders. They've done that.

21 The idea that merely doing as you have done with great
22 patience in the hope that they will respect this Court's orders
23 and that settlement will happen has simply not occurred.

24 And the Court, we believe, should use its power and
25 authority to take steps to tell Argentina that it can no longer

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1 act that way. And the way that courts do that when they get to
2 the point where you have a party who simply refused to obey is
3 to impose sanctions; find them in contempt and hold sanctions.

4 We think we have been more than patient with
5 Argentina. We have representations from counsel that there are
6 no such plans, nothing will happen, they're coming next week to
7 negotiate, all of which has, in fact, turned out not to be
8 true.

9 I think it's time for the Court to exercise its
10 authority and to tell Argentina that it really needs to change
11 its behavior.

12 THE COURT: Thank you very much.

13 MR. BOCCUZZI: Good afternoon, your Honor. Carmine
14 Boccuzzi, Cleary Gottlieb, for the Republic of Argentina.

15 As your Honor mentioned, contempt sanctions are very
16 seldom, in the extreme situation. And we do not believe that
17 they're warranted here either as a matter of law or the record
18 that your Honor has before you.

19 Just to take a step back and talk about where we are
20 in terms of the facts. The injunctions have, in fact, operated
21 and continue to operate as the plaintiffs intended them to
22 operate. The exchange bondholders have not received their
23 payment. And so the equal treatment that the plaintiffs wanted
24 is, in fact, the rule of the day.

25 And to answer some of Mr. Cohen said, there have been

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1 attempts -- your Honor is aware of them -- to resolve them.
2 But it's, as we've discussed in the past, a huge and difficult
3 problem. The pari passu injunction, obviously their logic
4 applies across the board. And your Honor has been seeing the
5 me-too applications coming in, the billions of dollars of
6 claims and judgments that are being asserted by folks holding
7 those claims and judgments saying me too, I get that too. You
8 couple that with the existence of the so-called RUFO clause,
9 which doesn't sunset until the end of the year, and we have
10 quite an intractable problem facing us.

11 Contempt is meant in this context, in the civil
12 context, to coerce or to compensate. It's not meant to punish.
13 And here the point is you're supposed to enter a sanction of
14 the kind that plaintiffs are demanding if, in fact, that could
15 coerce some result.

16 I don't see that as happening here. And what I think
17 what's going on is plaintiffs want to punish Argentina. But
18 that's not appropriate.

19 The way you see the punishment is that most of the
20 items on their list that Mr. Cohen recounted for you of
21 transgressions or alleged transgressions are things that
22 happened in the past. And they are things that are speeches by
23 the president of Argentina or members of her cabinet.
24 Obviously, again, I think it's common ground. This is a huge
25 situation for the Republic that it has to deal with as a

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1 sovereign state. It has macroeconomic ramifications. And so
2 just a politico or a speech or a bill or a law or an attempt by
3 a sovereign to deal with that can't be seen as something that
4 contempts can be ordered for.

5 Again, getting back to where things stand, the
6 exchange bondholders have not obtained their money. And so
7 Mr. Cohen, I think, is ignoring. We've said that as a matter
8 of law this is an extreme sanction when you think about it in
9 the context of international law and practice, when you think
10 about it in the context of the FSIA. Because it's really
11 targeted at those quintessential sovereign acts: Speeches,
12 legislation, as opposed to an actual evasion by the Republic of
13 Argentina.

14 THE COURT: Well, you know, I don't think that covers
15 the whole ground. I'm really glad to have this opportunity to
16 discuss this with you because we have not had such an
17 opportunity before. But what you -- as I understand it what is
18 proposed is to displace the indenture trustee and appoint
19 somebody in Buenos Aires and that that party, that official
20 will then pay the interest due to the exchanges of 2005 and
21 2010 without any recognition of the nonexchanges and so forth.
22 That's the problem.

23 It isn't rhetoric. It seems to me there's a very
24 concrete proposal to -- that would clearly violate the
25 injunction. So what I'm faced with is, unless you correct me,

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1 is a violation of the injunction in very concrete terms.

2 I'm not worried about rhetoric. But I'm worried about
3 violations.

4 Go ahead.

5 MR. BOCCUZZI: Thank you, your Honor.

6 As to that, again, we have to talk about clear and
7 convincing evidence of a violation that has occurred. Bank of
8 New York, in response to the legal notice, has informed the
9 Republic that it remains as trustee and will not cease being
10 the trustee until there's an order from this court saying it is
11 no longer the trustee.

12 Your Honor specifically entered paragraph four of the
13 amended injunctions, the so-called anti evasion provision, to
14 have something in place that third parties would look to if
15 there was an attempt to change the payment mechanism or do
16 other things. And we've seen again and again over the course
17 of the summer the third parties who have been in this courtroom
18 because they're not making a move unless they get a green light
19 from your Honor.

20 And so if you look at what they're asking for, they're
21 saying enter this order, find the Republic in contempt, order
22 hundreds of thousands of dollars, millions of dollars per year
23 in penalties, even though this case is all about the inability
24 of the Republic to pay their claims.

25 And so what they're asking your Honor is to add more

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1 money on top of that for something that's saying -- has not yet
2 happened but that they're afraid is going to happen.

3 Your Honor has said if the payment mechanism changed,
4 if there are different bonds the pari passu injunctions would
5 bite in effect any additional payment. So we're talking about
6 a lot of things in futuro.

7 And really for the contempt sanction they've got to
8 hone in on a violation that can be purged. And here there is
9 nothing that I can see that they have identified that can be
10 purged subject to the contempt sanction.

11 I really think what's going on here -- because this is
12 not the first time they've come in. Now they've made an actual
13 motion. They have a declaration. In the past they sent your
14 Honor letters, which is an improper procedure, saying give us
15 contempt. And they wanted to do that since the Supreme Court
16 denied cert back in June. And there was no basis for it then
17 and there is no basis for it now.

18 Obviously, they think it will be something good for
19 them to trump it and to put in their own advertisements and
20 their own rhetoric against the Republic, but I don't think that
21 is a proper exercise of the contempt power, putting aside the
22 threshold legal arguments that we've raised. It will only make
23 the situation worse. It will not help the situation at all in
24 terms of, hopefully, a resolution. Again, it doesn't help when
25 the state of play -- state of play is that the injunctions have

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1 been functioning.

2 So, I really want to take a step back. We've gotten
3 where we've gotten. Obviously, we have a large problem. We're
4 really in the land of an unprecedented situation. This has not
5 happened before in the context of a sovereign debt
6 restructuring.

7 These injunctions affect not just the Republic of
8 Argentina and its citizenry but it goes beyond to holders of
9 the performing debt, to the financial institutions, we've seen
10 are caught in the middle of this.

11 THE COURT: Let me interrupt.

12 When the Republic made the exchange offers in 2005 and
13 2010 most people accepted. So you have a lot of exchange bonds
14 and interest due on those bonds.

15 Now, it wasn't compulsory. Everybody did not accept.
16 And so what you were left with is a situation where a lot of
17 people have new bonds and they have certain assurances that
18 accompany those new bonds and so forth.

19 Then you have the people who did not accept. The
20 problem that has existed for a long time is this. It seems to
21 me that if the Republic had been responsible, the Republic
22 would have recognized that there was a problem here, and there
23 was a problem: How to deal with the people who did an
24 exchange. Not easy.

25 But the problem was exacerbated because what should

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1 have been done is that the Republic goes to representatives of
2 those people who did an exchange and tries to start working
3 something out. Problems have existed harder than that. And
4 instead of doing that, the Republic, in all kinds of rhetoric
5 and so forth simply said: We're not going to recognize. We're
6 not going to pay. We're not going to deal with that. That's
7 what has created the problem; to take a very important and
8 substantial amount of debt and try to say it doesn't exist and
9 we won't pay it and we call it vultures and all of that.

10 Why didn't the Republic say we have something to work
11 out? Why didn't they do that instead of doing everything
12 opposite to that that they could think of? That's the thing
13 that is bothersome.

14 MR. BOCCUZZI: The Republic, your Honor, I believe did
15 act responsibly. Let's not forget it took two debt
16 restructurings. They got 92 percent. The problem was there
17 was so much defaulted debt. That still leaves the claims of
18 these folks. And it's a lot. It's six billion in principal
19 only.

20 But that's not the result of the Republic acting
21 irresponsibly. That's the result of having a tragic financial
22 and economic collapse in 2001.

23 THE COURT: You're not addressing my question.

24 MR. BOCCUZZI: But to get to that any need now to deal
25 with this problem is -- we're talking about \$20 billion in

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1 defaulted principal and interest. And we're talking about the
2 RUFO clause that prevents any offer to that group until its sun
3 sets.

4 And so when we asked the Court back in June for more
5 time and these folks who told you a few years ago that time was
6 on their side, they'd be here for decades, all of a sudden six
7 months was too long. And so we're hamstrung.

8 THE COURT: I do not understand what you're saying
9 now.

10 MR. BOCCUZZI: The point is -- the point is, your
11 Honor, I'm just trying to refocus a little bit. Your Honor had
12 mentioned the Republic, how it had acted. And I was trying to
13 explain how it has been acting responsibly in the wake and as a
14 result of this financial collapse and a lot of defaulted debt
15 and the constraints on it. And the constraints on it are the
16 number of folks out there who are or who will demand pari passu
17 rights, the existence of its contractual restrictions on the
18 performing debt and just the timing situation we find ourselves
19 in.

20 This problem -- I just don't want it to be seen as, as
21 your Honor had said, acting responsibly or irresponsibly. The
22 Republic has acted as a responsible sovereign in trying to deal
23 with this situation and continues to try to act that way.

24 This case has obviously attracted the attention of
25 bodies throughout the world. There's a U.N. resolution

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1 concerning the need to come up with orderly debt resolution
2 processes. We mentioned that.

3 The reason why we mentioned that is to show the keen
4 sovereign interests at stake here and what it is we're dealing
5 with in the context. Because the context of today's motion is
6 that these folks want a finding of contempt, which is a very
7 serious thing. They want it found against a sovereign. And
8 they want daily fines imposed, a huge amount of money when
9 we're already talking about a huge amount of money that the
10 Republic has been trying to deal with.

11 And so in terms of the issue on the table today, I
12 would say that in the past your Honor has managed the
13 situation. When the June payment was made to Bank of New York,
14 your Honor said Bank of New York hold on to the money in your
15 account in Buenos Aires and there the money stays. So your
16 Honor's injunctions have functioned the way they were set up to
17 function. And they're so -- so I don't think the purging
18 mechanism, to impose a fine on the Republic, find it in
19 contempt until something changes doesn't make sense here
20 because the injunctions have, in fact, bit and these folks are
21 not getting their money while these folks don't get their
22 money.

23 So with that, your Honor, unless you have questions I
24 would end with that point. But I just think at the end of the
25 day contempt on this record, apart from being legally

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1 inappropriate, is just going to make matters worse. And your
2 Honor has kept an even keel to date and I would respectfully
3 ask that we continue in that frame and not make matters worse.

4 THE COURT: Thank you.

5 MR. COHEN: May I briefly respond?

6 THE COURT: Yes.

7 MR. COHEN: Your Honor, Mr. Boccuzzi suggests that the
8 sanctions we're asking for are designed to compel Argentina to
9 pay amounts that it simply can't pay. That's taking the eye
10 off of the ball that we are asking your Honor to consider. We
11 want Argentina to stop taking steps to evade the order. It's a
12 little ironic for counsel to argue that the injunction is
13 working notwithstanding his client's attempts to evade it.
14 We're lucky that we have Bank of New York who has refused to
15 comply. They have violated the orders. They just didn't get
16 away with it.

17 Your Honor, with respect to Bank of New York -- I
18 don't know if counsel has read the September 22 notice that was
19 in the Times, but it makes it clear that Argentina has taken
20 steps to make it impossible for Bank of New York to act as
21 trustee.

22 If I could just take a minute to read it. It says,
23 "Indeed by means of Resolution No. 437 of the Central Bank of
24 Argentina on August 25, the authorizations granted to the two
25 individuals who until then acted as sole representatives of

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1 Bank of New York Mellon in Argentina were revoked. Therefore,
2 since Bank of New York Mellon is neither licensed by the
3 Central Bank to operate as a financial institution in
4 Argentina, nor is it otherwise registered to render services as
5 trustee, nor is it duly authorized to act through local
6 representatives, said bank does not have a trustee or
7 representative office in Argentina as required under Section
8 5.8 of the trust indenture and accordingly it has ceased to be
9 eligible to serve as trustee."

10 They have taken steps to make it impossible for Bank
11 of New York to act as trustee.

12 What we would like as a sanction, that is what we
13 would like to see as a way to cure the contempt, is to
14 reinstate Bank of New York as the trustee.

15 Now, that has nothing to do with paying us the money
16 that's owed to us. It goes to the core of the injunction, and
17 it will eliminate the ability, at least in one way, to evade
18 that if Bank of New York is back in place.

19 There's a payment due tomorrow, your Honor.
20 September 30 there's a payment due. Are they going to pay Bank
21 of New York Mellon as trustee? Are they going to pay this
22 entity in Argentina even though they don't pay us?

23 Your Honor, this is a very serious matter. We think
24 sanctions are absolutely required to prevent the continued acts
25 of contempt that we are seeing from Argentina.

E9t9repc

1 THE COURT: Thank you all very much. Any other
2 attorney wish to --

3 MR. BOCCUZZI: May I just address that point, your
4 Honor?

5 THE COURT: Please do.

6 MR. BOCCUZZI: The Bank of New York has responded
7 to -- two points.

8 One. To be clear, the representative office of the
9 Bank of New York in Argentina is not the entity that performs
10 the trustee functions. That's performed out of New York, as I
11 understand it.

12 Number two. The Bank of New York has responded to the
13 legal notice and they've informed the Republic of Argentina
14 that they, in their view, are still the trustee and they will
15 continue to perform all of its obligations under the indenture
16 and governing law. And so in doing so cannot risk contempt by
17 defying the plain import of the injunctions.

18 So, what Mr. Cohen just said is very much disputed by
19 the Bank of New York. And, again, I think the sanction he's
20 asking for doesn't work there.

21 THE COURT: All right. Let me put my ruling on the
22 record.

23 Plaintiffs have moved to hold the Republic of
24 Argentina in civil contempt of court and has moved also for the
25 Court to impose sanctions.

E9t9repc

1 The Court holds that the Republic of Argentina is in
2 civil contempt of court. As far as the sanctions, the Court
3 will reserve decision on that for further proceedings.

4 What is the reason for the ruling I have made?

5 The legal framework setting out the obligations of the
6 various parties in this matter is contained in the February 23,
7 2012 injunction. I will not take time to go over the terms of
8 that. I will assume knowledge on the part of the lawyers here
9 and access to the information by others.

10 The problem is that the Republic of Argentina has been
11 and is now taking steps in an attempt to evade critical parts
12 of that February 23 order. That order is clear beyond question
13 that the Republic can only make payments of interest to its
14 exchange bondholders if it makes an appropriate payment to
15 those who did not exchange. That is the terms of that
16 injunction or order, whatever you call it.

17 Under the terms of what is in place, there is an
18 indenture trustee, Bank of New York Mellon. Also the
19 proceedings about the bond issue and the exchange bonds are
20 essentially to be in New York. And when the bonds were
21 originally issued it was, of course, held out that if there
22 were defaults, if there were problems, matters could come
23 before a court in New York. This was a selling point. People
24 knew that they would not have to go to Buenos Aires if there
25 was a problem.

E9t9repc

1 What the Republic of Argentina is attempting to do now
2 is essentially move the proceedings about the bonds to Buenos
3 Aires. And the purpose is to act in certain ways that are a
4 violation of the February 23 injunction. But the attempt is to
5 get a new trustee, a new location, so that the Republic can
6 make payments that are not authorized by the injunction. That
7 is what is going on. Documents, statements, all show exactly
8 what I am talking about.

9 I should be a little more specific about one point.
10 Maybe I've covered it, but I'll repeat. A very important
11 aspect of the February 23 injunction is that if and when the
12 Republic seeks to pay interest to the people have exchanged
13 bonds, then an appropriate payment must be made under what is
14 called the pari passu clause to those who did not exchange.

15 So the Republic has two basic obligations: One, to
16 the exchangers and one to the people who did not exchange. And
17 both have to be dealt with. One cannot be ignored or denied as
18 to dealing with it.

19 But what has happened is the Republic in various ways
20 has sought to avoid to not attend to, almost to ignore this
21 basic part of its financial obligations; that is, obligations
22 to the people who did not exchange.

23 What is now proposed by the Republic is to displace
24 the indenture trustee. What is proposed is to displace the
25 indenture trustee so that a new official will make the payments

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1 that are not allowed under the injunction of this Court and of
2 the Second Circuit.

3 I repeat. The purpose of displacing the indenture
4 trustee and having a new official located in Buenos Aires is so
5 that payments can be made of interest to the exchangers without
6 any payments or any recognition at all being made of the other
7 phase of the obligations; that is, the obligations to the
8 people who did not exchange and who have their bonds, bonds
9 issued by the Republic.

10 What I'm talking about is reflected in various public
11 documents. It's reflected in the proposed -- actually the
12 actual legislation. But let me say this. The legislation is
13 not something that sprung from the national congress. What
14 we're talking about is proposals and changes and actions that
15 come from the executive branch of the Republic of Argentina.

16 Two things are necessary this afternoon. One is this
17 Court to make a very clear holding that the proposals are
18 illegal: The proposal to displace the indenture trustee, the
19 proposal to move the affairs about these bonds to Argentina,
20 move them away from the United States; and the proposal to make
21 interest payments to the exchange bondholders without
22 recognizing the other very important part of the obligations of
23 the Republic and that is obligations to the people who did not
24 exchange and who have the bonds still. The Court holds and
25 rules that those steps, those proposed steps are illegal and

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1 cannot be carried out.

2 This brings me to the request made by plaintiffs to
3 hold the Republic in contempt of Court, civil contempt of
4 court.

5 We all know, the lawyers here and I know that to hold
6 a party in contempt of court is a rare thing. I was requested
7 to do so at an earlier stage and declined. But, the Court is
8 compelled to recognize that what is really the illegal conduct
9 of the Republic involving the attempt to unlawfully change and
10 depart from the provisions of the governing injunction, that
11 conduct and those intentions and purposes are -- they date back
12 a bit but they are going on. And of course the Court
13 contemplates that the Republic will obey the prohibitions that
14 have just been announced. But as of the current present time
15 the Republic has been at this, at these attempts to make
16 illegal changes in our structure. The Republic has been
17 engaged in it to the extent that I do believe that it is
18 appropriate to hold the Republic in civil contempt of court and
19 I so hold. The reasons I think are evident from what I have
20 said.

21 Now, on the issue of sanctions. I do not believe that
22 it is appropriate to deal with sanctions this afternoon. It is
23 perfectly appropriate for a court to hold a party in civil
24 contempt and reserve on sanctions and that is what I am doing.
25 We will work out a means for dealing with sanctions. And that

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1 I'm sure can be done by some scheduling work among the parties
2 and the court. But I am reserving on the issue of sanctions.

3 That concludes our proceeding of this afternoon.

4 (Adjourned)

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