

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NML CAPITAL, LTD.,		:
		:
	Plaintiff,	:
		:
vs.		:
		:
THE REPUBLIC OF ARGENTINA,		:
		:
	Defendant.	:
		:
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08 CIV. 6978 (TPG)

**MEMORANDUM OF LAW IN SUPPORT OF THE LADJEVARDIAN GROUP'S
MOTION TO INTERVENE AND IN OPPOSITION TO ARGENTINA'S MOTION TO
VACATE AND THE COURT'S INDICATIVE RULING
TO LIFT THE *PARI PASSU* INJUNCTIONS**

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Plaintiffs Mohammad Ladjevardian, Laina Corp., Baka N.V. and Johansooz Saleh in case number 06-cv-3276 (the “Ladjevardian Group”) also before this Court respectfully submit this Memorandum of Law in support of their Motion to Intervene and in opposition to Argentina’s motion to vacate and the Court’s Indicative Ruling to lift the *pari passu* injunctions to be heard by this Court on March 1, 2016 at 1:30 p.m. (Dkt. No. 889).

PRELIMINARY STATEMENT

The Ladjevardian Group seeks to intervene pursuant to Rule 24 of the Federal Rules of Civil Procedure for purposes of opposing Argentina’s motion to vacate (“Argentina’s Motion”) and the Court’s Indicative Ruling (the “Indicative Ruling”) to lift the *pari passu* injunctions. If the Court grants the motion to intervene, the Ladjevardian Group Intervenors request that this memorandum also serve as their opposition to Argentina’s Motion and the Indicative Ruling to be heard in connection with the Court’s Order on February 25, 2016 (Dkt. No. 889).

ARGUMENT

Because of the Court’s expediency in deciding this matter and for efficiency purposes, the Ladjevardian Group will not repeat the arguments expounded by others in opposition to Argentina’s Motion and the Indicative Ruling joins them in full.¹ In its Indicative Ruling, the Court has stated that “[u]ntil February 29, 2016, all FAA bondholders have the right to accept the terms of the Republic’s Proposal, and they are certainly free to make counteroffers.” *Id.* at 22. However, the Ladjevardian Group and other bondholders have not had any opportunity through

¹ The Ladjevardian Group also joins in the arguments made by other plaintiffs and proposed intervenors in opposition to Argentina’s Motion. Should the Court decline to grant this motion to intervene, the Ladjevardian Group requests that this brief be considered an *amicus curiae* brief in support of the other bondholders’ oppositions. The brief is filed in the lead case here, but also requests that none of the other injunctions be lifted in other cases for the same reasons.

the Special Master process or directly to participate in any negotiations or make counteroffers under this expedited deadline ahead of the Court's hearing on March 1, 2016 to consider lifting the injunctions, which is why they now move to intervene in this action.

The Ladjevardian Group is comprised of individual investors - family members - that purchased their bonds in the 1990s ahead of Argentina's 2001 default. One of the largest holders of the Ladjevardian Group is now in his nineties, paralyzed down one half of his body, and purchased the bonds with the expectation that the interest payments from them would help support him. After Argentina's default, they were forced to expend significant legal fees to obtain summary judgment in their favor against Argentina on June 15, 2007 (C.A. No. 06-cv-03276 Dkt. No. 17). Since that time, they have patiently waited with the expectation that Argentina would abide by its legal obligations under the bonds, including its equal payment to them and other bondholders under the *pari passu* clause, as well the Court's Orders.

However, since that time, for almost the past *decade* after securing their judgment, Argentina has continued to ignore all of its bondholders and refuses even at this point to engage in a fair, equitable negotiations or offers of settlement with them. Through the Court's Special Master process, Argentina has been able to take an unfair advantage over smaller, individual bondholders by taking a piece-meal approach to *how* – only through the Special Master - and *who* – only large holders like NML - it negotiates with to come to settlements. Meanwhile this process has left smaller bondholders, like the Ladjevardian Group, out in the cold with only the option of the take-it-or-leave-it “public” offer of 150% of the principle amount of their bonds or 70% of their claim (the “Offer”),² which does not compensate them for the years of lack of

² Despite announcing the terms of the Offer on February 17, 2016, it only gave bondholders through its press release until February 19, 2016 at 5pm EST to submit their claim if they wanted to receive a 27.5% discount, instead of 30% haircut to their claim.

interest.³ The Ladjevardian Group, like other smaller bondholders, has not been invited to be part of the Special Master's proceedings nor had the opportunity to directly negotiate with Argentina.

Meanwhile, Argentina through the Special Master has been able to limit its negotiations to large hedge fund bondholders, who have more leverage over Argentina through their injunctions and the ability to pay millions in legal fees that will likely leave them with a higher settlement value to individual, smaller bondholders. The Court issued a Rule 62.1 Indicative Ruling on February 19, 2015, stating its intention to lift the injunctions in place against Argentina. Before entering its Indicative Ruling as directed by Court of Appeals, the Court directed parties to submit any papers by February 29, 2016, ahead of its hearing on March 1, 2016. The Indicative Ruling states that Argentina "also reached out to plaintiffs who did not have injunctions in their actions," however, these efforts did not include the Ladjevardian Group and many other bondholders. It is unclear how Argentina is deciding who to "reach out to" or if it is Special Master's determination.⁴ *Id.* at 9.

In initially granting the injunctions for various bondholders, the Court recognized its basis to do so through the bonds' Fiscal Agency Agreement that included the *pari passu* clause that required that Argentina's obligations under them to *all* bondholders, not just large holders, would "rank *pari passu* and without preference among themselves" and that its payment obligations would "rank at least equally with all its other present and future unsecured and

³ Argentina's unilateral statement of the Offer was based on media coverage (through a press release) and Court filings, rather than a proper public filing to notify bondholders in their litigation, compliant with U.S. law, including Section 14(e) of the Securities Exchange Act of 1934, or through any negotiation directly with the Ladjevardian Group or other smaller bondholders.

⁴ The Court has excused the Special Master from disclosing his conflicts of interest pursuant to Fed. R. Civ. P. Rule 53 despite his representation of clients that invest in Argentina and are potentially adverse to the bondholders' interests.

unsubordinated External Indebtedness.” *Id.* at 2. However, unless the Ladjevardian Group and other remaining bondholders are given the same offer to settle their bond claims as NML and the other large holders, Argentina will again be in violation of the *pari passu* clause since it is making several different offers to various bondholders. The Court must again equally enforce its obligations and bondholders’ rights regardless of their size. The Ladjevardian Group therefore requests that it be given the same opportunity to accept Argentina’s offer as NML and other large holders.

Furthermore, lifting the injunctions on March 1st without any extension for small bondholders, like the Ladjevardian Group, to participate in the Special Master process or to negotiate with Argentina in any way will lead to the unfair, inequitable result of forcing the remaining bondholders because of their smaller size to accept the unfairly low Offer, despite their equal rights, own litigation and judgments. The Court states in its Indicative Ruling that “the circumstances have changed” because Argentina has demonstrated its “goodwill” in negotiations over only a few weeks’ time (January 13 to February) after ignoring its obligations for almost a decade and coming to a certain side agreements with large bondholders. However, it has continued to fail to engage with other smaller bondholders despite their judgments, including the Ladjevardian Group. Furthermore, Argentina has demonstrated for years its ability to evade its obligations to properly compensate its bondholders when facing legal judgments, which it will again be able to do without consequences if the injunctions are lifted without a final settlement of all outstanding bondholder claimants or at the least the opportunity for all bondholders to participate in negotiations.

As another condition of settlement, Argentina claims that it will repeal its “Lock Law” that prohibits any type of in-court, out-of-court or private settlement and the Sovereign Payment Law. The Court has stated that because of this condition and the Argentine Congress beginning

its session on March 1st, they provide the changed circumstances to warrant lifting the injunction. However, until Argentina actually repeals these laws, which could take time based on the democratic process and the session lasting until November, the Court should maintain the injunctions. The Court must exercise its discretion and equitable powers to ensure fundamental fairness and equal access to judgment for all parties by ensuring that a majority of the small bondholders are also able to participate equally in the settlements offered to the large holders, including NML. Lifting the injunctions before ensuring that other bondholders are given an opportunity to resolve their own claims would violate these fundamental concepts.

The Ladjevardian Group meets the requirements to intervene pursuant to Rule 24(a)(2). They are timely in filing this motion by February 29, 2016, as directed in the Court's Order following the Court of Appeals directive on February 25, 2016, indicating its hearing on March 1, 2016 before lifting the injunctions. Also they have an interest with bond holdings and judgments valued at nearly \$25 million. Their interests may be impaired if the injunctions are lifted, and they are not permitted to participate in the Special Master proceedings or directly negotiate with Argentina because they will be forced to accept the Offer without any alternative for seeking relief. They are not adequately represented because they are bondholders with judgments against Argentina, but do not have their own injunctions or millions of dollars to continue fighting Argentina to receive what they are owed. The Ladjevardian Group seeks to intervene for the limited purpose of responding to the Court's Indicative Ruling issued on February 19, 2016, on whether to lift the injunctions against Argentina. *See North Shore-Long Island Jewish Hospital System, Inc. v. MultiPlan, Inc.*, No. CV 12-1633, 2015 WL 777248, at *24 (E.D.N.Y. Feb. 13, 2015) (granting motion to intervene for limited purpose of discovery).

The Ladjevardian Group also meets the requirements under Rule 24(b) for permissive intervention because they raise a "defense that shares with the main action a common question of

law or fact.” In addition to their interests and whether they are adequately represented as reflected under Rule 24(a), the Court considers whether the intervenors will “significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.” *Jamie Music Publ’g Co. v. Roc-A-Fella Records, LLC*, No. 05 Civ. 9922, 2007 WL 1129333, at *2 (S.D.N.Y. Apr. 12, 2007).

As bondholders, the Ladjevardian Group, have an interest in this action and in particular the Court’s Order to vacate the injunctions, which are not adequately represented because they do not presently hold injunctions. They share common questions of law and fact because of they are seeking fair and adequate compensation for their bonds and lifting the injunctions at this stage is premature given Argentina’s prior conduct without certainty that it will treat the smaller bondholders equally. Lifting the injunctions will deprive the Ladjevardian Group and other smaller bondholders of any remedy or means of relief to ensure that the Court and Argentina will treat them equitably and fairly. Under Rule 24(a) or (b), the Court may permit the Ladjevardian Group to intervene to consider the interests of effected bondholders that do not presently hold injunctions. To do so will promote fair and equitable result for all bondholders, encourage settlement by allowing them to participate in the Special Master process or to directly negotiate with Argentina, and reduce additional, repetitive litigation before the injunctions are lifted or others are sought.

In the interests of justice and fairness, the injunctions should remain in effect until all bondholders, not only the large funds, are given an opportunity to participate in the Special Master process or negotiate directly with Argentina to resolve their claims.

CONCLUSION

The Ladjevardian Group respectfully requests that the Court grant their motion to intervene and accept this memorandum as further opposition to Argentina’s Motion to Vacate

and the Court's Indicative Ruling, or in the alternative, consider the arguments presented on an *amicus curiae* basis. They additionally request that they and all bondholders' claimants be permitted to participate in the Special Master process or to directly negotiate with Argentina before the injunctions are lifted.

Dated: February 29, 2016
New York, New York

Respectfully submitted,

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