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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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3 NML CAPITAL, LTD., et al.,
4 Plaintiffs,

5 v. 08 CV 6978 (TPG)

6 THE REPUBLIC OF ARGENTINA,
7 Defendant.

8 -----x

9 New York, N.Y.
10 August 8, 2014
3:05 p.m.

11 Before:

12 HON. THOMAS P. GRIESA,
13 District Judge

14

15 A P P E A R A N C E S

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1 (Case called)

2 THE COURT: The reason we are here today is because of
3 the two-page document entitled "Legal Notice" which appeared on
4 two pages of the Wall Street Journal and also of the New York
5 Times.

6 Last week, last Friday, we had a meeting, and I went
7 through at that time a complete statement of the obligations of
8 the Republic that are relevant to this matter. The Republic
9 had issued statements omitting relevant facts about its
10 obligations and, of course, that needed to stop.

11 It goes without saying that during that meeting I
12 warned that misleading statements by the Republic must cease,
13 and I put it upon counsel for the Republic to assist in seeing
14 that that was done. There were certain events of June 30 which
15 were covered and at least one statement or ruling issued by the
16 court, and I won't go into that. But what I was hoping is that
17 the parties would get back on the track of settlement
18 negotiations under the aegis of the special master who was
19 appointed to supervise or assist in such negotiations.

20 I want to say now, and I will repeat it at the end, it
21 is through settlement that obligations which need to be honored
22 can be honored; therefore, it is highly important that
23 settlement negotiations go forward and bear fruition. I was
24 hoping that that would take place.

25 However, on Thursday, August 7, a two-page write-up

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1 entitled "Legal Notice" appeared in the New York Times and the
2 Wall Street Journal. This so-called legal notice is false and
3 misleading, and the court could not let time go by without
4 making it publicly clear what has occurred, and that is the
5 reason the court called the session today on what is,
6 admittedly, somewhat short notice. Unfortunately, this notice
7 continues something which I thought should have ceased after
8 last Friday.

9 What the Republic has done over substantial time is to
10 make various public pronouncements which, on the face of it,
11 are supposed to describe the obligations of the Republic. But
12 these various pronouncements have regularly and systematically
13 omitted a vital part of the obligations of the Republic. The
14 Republic has discussed publicly in various ways the obligations
15 that it has to parties who exchanged their bonds for new bonds
16 of the Republic in 2005 and 2010. The Republic surely has
17 obligations to those exchangers, without any doubt; but, it
18 also has obligations to people who did not exchange and who
19 still have their judgments and who are judgment creditors on
20 those judgments.

21 There is no virtue in saying one kind of obligation is
22 more important than another. That would be a useless exercise.
23 The fact is, the Republic has these obligations and not just
24 one. And if the Republic puts out public information
25 describing only one and indicating this is all that the

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1 Republic has in the way of obligations, that is false and
2 misleading.

3 This kind of thing was discussed last Friday and,
4 naturally, the court warned against further false and
5 misleading public pronouncements or statements by the Republic,
6 and the court assumed that that warning would be heeded. Why
7 should it not be? Litigants come to this court all the time,
8 and it is not difficult to avoid false and misleading
9 pronouncements relative to a court case. That is naturally
10 done by most litigants and most attorneys. It is naturally
11 done, instinctively done. It has not been done here. I
12 thought that the discussion held last Friday would put an end
13 to the false and misleading public information which had been
14 put out by the Republic. I assumed that it would, and I asked
15 counsel for the Republic to monitor that. However, we have,
16 yesterday, a two-page newspaper spread in the New York Times
17 and in the Wall Street Journal, which constituted another, yet
18 another, false and misleading statement by the Republic about
19 its obligations.

20 I repeat: Yesterday in the two-page spread, published
21 obviously at the request of the Republic, in the Wall Street
22 Journal and The New York Times we had another false and
23 misleading description of the Republic's obligations.

24 The notice which was published in the press describes
25 the obligations of the Republic to parties who exchanged their

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1 bonds and received new bonds in 2005 and some in 2010. It goes
2 on to describe in detail how payment is to be made to those
3 exchangers under the relevant trust indenture. It omits,
4 however, except for some possible fragmentary notice, which I
5 don't recall at the moment, but it omits any description of the
6 obligation of the Republic to judgment creditors and it omits
7 any mention of the legal requirements now imposed by the
8 District Court and the Court of Appeals before payment can be
9 made on these obligations. The latter point is highly
10 important.

11 Both the District Court and the Court of Appeals
12 recognize that, because of certain contractual provisions,
13 particularly something called the pari passu provision, that
14 any payment made on any of these obligations must appropriately
15 cover all of the obligations. I say "appropriately," because I
16 am not going to try to get into a definition of the specific
17 requirements. But the basic point is there. Payment cannot be
18 made in part and still be called payment of the obligations.
19 Payment must deal, under the definition and requirement of the
20 District Court and the Court of Appeals, with the full range of
21 obligations.

22 This should not be surprising. If someone has a debt,
23 say, of \$10,000 and goes up to the creditor and says, Here, I
24 will give you \$8,000, it would not surprise anybody in this
25 gathering today to find out that that does not mean payment of

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1 the debt. It is very simple.

2 So payment of part is not payment of all. And payment
3 here must comply with certain requirements imposed by law,
4 imposed by the District Court and the Court of Appeals.

5 I think I have said this, but I want to make sure,
6 because I don't want to be abstract: The obligations of the
7 Republic, of course, include its obligations to its exchange
8 bondholders, but they also include obligations to those who did
9 not exchange, because exchange was not required. So the
10 obligations of the Republic also run to the parties who
11 exercised their rights and maintain their judgments and who
12 are, today, in the position of being judgment creditors, a
13 position hardly unimportant.

14 Now, there is also the requirement that any payment to
15 the exchangers must comply with requirements that arise under
16 what is called the pari passu clause or term. Let it be
17 remembered that we are dealing with contractual terms. We are
18 not dealing with something imposed by the court. We are
19 dealing with contractual terms. And who proposed and authored
20 those contractual terms? It was the Republic of Argentina.
21 And they did so in order to help market their bonds.

22 Now, therefore, when the so-called notice talks about
23 or asserts the proposition that the Republic has paid, that
24 proposition, as presented here, is false and misleading. The
25 Republic did pay money to the indentured trustee; and the

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1 indentured trustee, wisely and in accordance with the court
2 orders in existence, held and has held that money. But that
3 did not constitute payment within the terms specified under the
4 law as laid out by the District Court and the Court of Appeals.
5 Consequently, there has been no payment to the bondholders, to
6 the judgment creditors. There has been no payment.

7 Let me repeat: There has been no payment.

8 The reason for that is what I have explained a moment
9 ago; and, that is, payment must cover what is required under
10 the law and under the rulings of the District Court and the
11 Court of Appeals. That is the only way payment can be made,
12 and no such payment has been made.

13 To the extent that the so-called notice would lead a
14 reader to think that some kind of a payment has been made --
15 and that is one of the important points of this so-called
16 notice -- such a statement, such an implication, is false and
17 misleading.

18 Now, the court can only hope -- no, the court can do
19 more than hope. The court reiterates its direction to cease
20 and desist from false and misleading public pronouncements by
21 the Republic. That must be done. And again I am charging
22 counsel with responsibility for monitoring that. Again I issue
23 the warning and again I charge counsel.

24 I don't want to go farther than that because the
25 really truly important thing is to recognize that this matter

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1 will not be resolved without a successful settlement. Maybe
2 "successful" is not the right word. Without a settlement.
3 Obviously if the Republic paid everything it owed, it would be
4 in the position of the kind of judgment debtor which is often
5 found, which simply pays. The indications are that that will
6 not occur. The court understands that there may be reasons why
7 it will not occur, and that is why the court appointed a
8 special master to carry out and assist in settlement
9 negotiations, because in this case, there are issues which
10 deserve negotiation and which deserve resolution by settlement.
11 That, of course, leads to the point that if the parties and if
12 the attorneys wish to resolve this matter, there must be
13 negotiation of issues and there must be a settlement. And
14 there can be a settlement.

15 So this afternoon the court wishes to go no farther
16 than to reiterate what is in the order appointing the special
17 master, and that is that he is to supervise settlement
18 negotiations and the parties are to cooperate with him.

19 Surely there will be a cessation of false and
20 misleading statements by the Republic. Surely there will be a
21 cessation. If there is not, it will be necessary to consider
22 contempt of court. But the court earnestly, earnestly hopes
23 and desires that the matter will not get into that posture and
24 that negotiations can continue.

25 If anyone has any comments, please give them.

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1 MR. BLACKMAN: Thank you, your Honor. Jonathan
2 Blackman representing the Republic of Argentina.

3 As always, we appreciate what you have said. It will
4 certainly, as the court's earlier statements have been, be
5 conveyed to our client.

6 I have to say a couple of things.

7 One, the ad that the court referred to or the press
8 statements that the court referred to have not been prepared by
9 my firm, by me, by anyone associated with us, and we knew
10 nothing about them until I read them, probably the same time
11 your Honor did, in the New York Times yesterday. In fact, I
12 read them later because it wasn't until this hearing was
13 scheduled that I got to that page of the paper in my office as
14 a result of the hearing being scheduled.

15 I say that because the court needs to understand that
16 the Republic of Argentina is a state. The court knows that.

17 THE COURT: Is what?

18 MR. BLACKMAN: Is a state. A state takes positions,
19 makes decisions. They are not necessarily legal decisions.
20 They are decisions that are made without their lawyers. This
21 is a statement of its position, for better or worse, and I
22 can't say more than that.

23 If we are talking about statements, though, that are
24 false and misleading, I have to bring to the court's attention
25 the fact that this week, every day this week, an organization

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1 called American Task Force Argentina, which was created by
2 Ellie & Associates, which is the owner of the plaintiff NML and
3 funded by it, has put out on its Web site false and misleading
4 statements about me and about my law firm. It has put out
5 statements saying that we are responsible for Argentina's
6 default; that I personally have told the president of Argentina
7 to default.

8 The next one is entitled, "Should the Court Sanction
9 Cleary?" on the grounds that our legal representation of our
10 client in this case for the last 12 years somehow represents
11 sanctionable behavior.

12 The final one -- and I am going to bring these up to
13 your Honor so they can be put into the record -- shows me on
14 the body of a vulture saying that I am a vulture and my firm
15 are vultures because we are preying on Argentina and that
16 somehow this default occurred so that my firm and I could make
17 legal fees. That is false and misleading. It is also
18 reprehensible. It is outrageous. The people who prepared
19 that -- and I suspect I know who they are, but I'm not going to
20 stoop to their level and name them -- have acted in a way that
21 is malicious and evil, a way that no one -- no human being --
22 should act towards another human being. There have been high
23 tempers in this case, and obviously, the court knows, a great
24 deal of animosity between clients. But to attack a lawyer and
25 his law firm in that fashion personally, day after day, so that

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1 my family has to read this sort of stuff, just goes beyond any
2 bounds of human decency. It is just absolutely wrong and
3 improper.

4 I am going to hand up to the court copies of these
5 documents so that they can be put into the record, with the
6 court's permission, and I will hand a copy to counsel.

7 I regret having to bring up this subject, but I felt I
8 owed it to myself, I owed it to my firm, I owed it to my
9 family, and I owed it to our profession to do that. This kind
10 of stuff is far more damaging to the fabric of the court and
11 our profession than anything that's been discussed.

12 As far as the substance, which is what we should all
13 stick to, Argentina has made it clear that it does want to
14 engage with all of its creditors, judgment creditors, other
15 holdout creditors, and of course it wants to service its
16 obligations, which no one questions exist, to the exchange
17 bondholders. I won't repeat all the reasons why that is a huge
18 challenge and why, thus far, those efforts have not borne
19 fruition. Of course they need to continue in some fashion.

20 I would just ask the court to keep in mind, in doing
21 that, that the government of Argentina, my client, has to be a
22 government. It has to make statements on matters that are of
23 intense public interest to Argentina. And those statements,
24 for better or worse, are not always -- not even often -- what
25 lawyers would draft if they had any role in drafting them.

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1 They are statements made, just like our president makes
2 statements, just like the president of any other country makes
3 statements. I would just ask the court to appreciate them in
4 that context and not let what is essentially, if I can call it
5 that, a side issue -- because everyone knows what these
6 injunctions say and what they do and the effect they have had,
7 including the banks who have been before your Honor -- not let
8 that side issue divert us or make the temperature rise further
9 from what should be the main event, which is trying to resolve
10 this very difficult situation.

11 Thank you.

12 THE COURT: I am very glad that you made clear that
13 you and your firm did not play a role in drafting this
14 so-called notice. That is a fact that is highly important.

15 On the other points you have made, I deeply regret any
16 personal attacks or disparagement upon you.

17 When the different elements that have been discussed
18 are put on the scale, so to speak, it is impossible for me to
19 neglect the fact that I presided over this case for about a
20 dozen years. I sat on this bench over and over, pointing out
21 the fact that the Republic of Argentina had obligations here
22 which it was ignoring, it was issuing misleading statements
23 about, but basically was ignoring. I urged that those
24 obligations be honored despite the fact that, under the
25 circumstances that existed during those years, I had no ability

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1 to compel the Republic to honor those obligations. But I
2 appealed to the Republic as a matter of honor, honesty, to
3 honor those obligations. That appeal was not responded to in
4 the slightest degree in a positive manner, not the slightest.

5 Years went by. NML and other plaintiffs sought to
6 find assets in the United States they could recover against,
7 and those efforts were unsuccessful. But the Republic did not
8 honor its basic obligation, but hid behind the fact that it was
9 a distant republic at that time and was shielded as a matter of
10 law.

11 Things changed when a new concept was introduced into
12 the case, which I won't get into the technicalities, but a new
13 concept introduced into the case called the *pari passu* doctrine
14 in 2010. This finally compelled the Republic to recognize and
15 to begin to deal with its obligations. That process is going
16 on and hopefully that process will lead to settlement. So what
17 cannot be forgotten is that for a dozen years or more the
18 Republic was not compelled to and did not do anything to honor
19 its legal obligations.

20 Entirely apart from what occurred in court, apart from
21 what I knew anything about, it may be that attacks were made on
22 Mr. Blackman. I don't really say "it may be." I credit
23 Mr. Blackman. That was wrong. Without excuse. And what I am
24 saying now is not an excuse, but it is, when people with just
25 causes go year after year after year, as NML and Aurelius,

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1 etc., did year after year after year, without any recognition
2 of their legal rights, it may very well be that frustration
3 develops and behavior that is wrong occurs.

4 All of that occurred outside of the knowledge and
5 responsibility of the court. Mr. Blackman had every right to
6 bring it up today.

7 But, as he himself recognizes, it is not a matter
8 which can interfere in any way with the real motion that must
9 take place in this case, and that is the movement towards a
10 settlement. There are people who are being harmed by the
11 present circumstances, and settlement is necessary to eliminate
12 that harm. That is what we want to focus on now, and nobody
13 denies that.

14 So let us stick to the resolution of the issues before
15 the court. Let us avoid any further false and misleading press
16 releases or statements by the Republic, and let us continue
17 with the process of settling this case. That is what will
18 assist real human beings.

19 Thank you.

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