UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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NML CAPITAL, LTD., et al.,

Plaintiffs,

v. 08 CV 6978 (TPG)

THE REPUBLIC OF ARGENTINA,

Defendant.

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New York, N.Y.
August 1, 2014
11:00 a.m.

Before:

HON. THOMAS P. GRIESA,

District Judge

APPEARANCES

DECHERT LLP
Attorneys for Plaintiff NML Capital, Ltd.
BY: ROBERT A. COHEN

FRIEDMAN KAPLAN SEILER & ADELMAN LLP
Attorneys for Interested Parties Aurelius Capital Partners and Blue Angel
BY: EDWARD A. FRIEDMAN
DANIEL B. RAPPORT

GIBSON DUNN & CRUTCHER LLP
Attorneys for Plaintiff NML Capital, Ltd.
BY: MATTHEW D. MCGILL

APPEARANCES

MILBERG LLP
Attorneys for Varela plaintiffs
BY: MICHAEL C. SPENCER

DAVIS POLK & WARDWELL LLP
Attorneys for Citibank
BY: KAREN E. WAGNER

LATHAM & WATKINS LLP
Attorneys for the Euro Bondholders
BY: CHRISTOPHER J. CLARK

REED SMITH LLP
Attorneys for The Bank of New York Mellon, as Indenture Trustee
BY: ERIC A. SCHAFFER
EVAN K. FARBER

LEVI LUBARSKY & FEIGENBAUM LLP
Attorneys for JPMorgan Chase Bank N.A.
BY: ANDREA LIKWORNIK WEISS

MORGAN LEWIS & BOCKIUS LLP
Attorneys for Clearstream Banking
BY: MARY C. PENNISI

GREENFIELD STEIN & SENIOR LLP
Attorneys for Euroclear Bank
BY: PAUL T. SHOEMAKER

GOODWIN PROCTER LLP
Attorneys for Plaintiff
Olifank Fund Ltd
BY: ROBERT D. CARROLL

APPEARANCES

CLEARY GOTTLIEB STEEN & HAMILTON LLP
Attorneys for Defendant
BY: CARMINE BOCCUZZI, JR.

JONATHAN I. BLACKMAN
CARMEN CORRALES
DANIEL POLLACK
Special Master

(In open court; case called)

THE DEPUTY CLERK: In the matter of NML Capital v. The Republic of Argentina.

THE COURT: Good morning everyone.

I felt that in view of the events this week there should be a meeting in court to clarify where we go from here. This week the Republic of Argentina did not make the payments of interest to what we refer to as the exchange bondholders. That meant that there was no invocation of the pari passu provision and certain requirements which would have to be carried out if the payment to the exchange bondholders had been made. Such payment was not made.

Now, whether that is called a default in language which bears upon the interests of insurance companies, etc., that is not a matter that I want to get into as far as definition and linguistics. The main thing is the payment of interest was not made to the exchange bondholders. However, the obligations of the Republic of Argentina remain, and I say "obligations," plural, and I want to come back to that. But what occurred this week did not distinguish or reduce the obligations of the Republic of Argentina. We did not have a bankrupcy proceeding or an insolvency proceeding or anything which would remove or change the obligations.

Now, the Republic has issued public statements which have been highly misleading and that must be stopped and I am

counting on their counsel, Cleary Gottlieb, to monitor that and to stop that or help stop that by giving good advice to their client.

What I have in mind is this: The Republic has two basic contractual obligations, debt obligations. Two. Not one, but two. The first is the obligation to the parties who exchanged their bonds for new bonds and those exchanges occurred in 2005 and 2010. The second obligation is the obligation to the parties who did not make exchanges, who I believe either have judgments or are entitled to judgments and for shorthand purposes today I will call them "judgment creditors." The obligation to the judgment creditors is their -- I almost, and then I stopped myself, I almost talked about something like the importance of the substantiality. That is not anything for the Court to discuss. These are obligations, judgment creditor obligations, and they are there. So the Republic has two kinds of obligations that are essential for purposes of the discussion now: first, the obligation to the exchange bondholders; and, second, the obligation to the judgment creditors.

Now, what has occurred in recent times are public statements of one kind or another in which the Republic talks about its willingness and desire to pay its debts, but in those public statements only one of the debts is talked about. Maybe there is some indirect cryptic reference to something else, but

the thing that is talked about are the obligations to the exchange bondholders, and the Republic lays emphasis on its willingness and desire to pay those exchange bondholders, obviously pay the interest to them. All of that, as presented by the Republic in public statements, is highly misleading.

In the first place, half-truths are not the same as the truth. People who take an oath on the witness stand swear to tell the whole truth. So half-truths are false and misleading and that is what has been going on in the public releases of the Republic of Argentina. The Republic has talked about, with considerable emphasis and so forth, its readiness and willingness to make payment of its debt, but all it is talking about is the payment to the exchange bondholders. To put it in simple language, that is a half-truth. Half-truths do not comply with the law, which requires disclosure of facts. Any disclosure of facts about the obligations of the Republic of Argentina must talk about the two obligations that the Republic has. Anything short of that is false and misleading, and I am counting on the counsel for the Republic to take steps to stop the false and misleading material issued by the Republic. Obviously the Republic can disagree with the Court, can criticize the Court. I am talking about factual misrepresentations, and that must stop.

Now, I want to go into a little history. The reason I am doing it is that in the history of this litigation, which

goes back 10 or so years, the law has been applied. Why do I even talk about such a thing? The reason is to make sure that we have a little idea of the history of the application of the law in the case and that we continue applying the law in the case. Maybe that does not need to be said, but I think a little history would be in order.

After the default in around 2002, judgments were entered pursuant to the agreement that such agreements would be entered in the event of a default. So there were people to whom the Republic owed money who had rights accruing at that time and certain rights were reduced to judgments, some not quite so soon and so forth. But there were the creditors who had their rights that accrued at the time of what is admittedly a default that occurred around 2002. What occurred after that was various efforts by the plaintiffs to recover on their judgments and this took the form of efforts to find what could be considered to be assets of the Republic and efforts to in effect execute on those assets. One prominent illustration of that was the fact that -- I think I have this right, if not subject to minor correction -- the Central Bank had a deposit with the Federal Reserve of about a hundred million dollars and the plaintiffs sought to recover that and apply it to their judgments, contending that the Central Bank was the alter ego of the Republic and so forth. I held in favor of the plaintiffs and I was reversed by the Court of Appeals. So that

effort failed.

Other efforts were made through the years to find assets which could be taken and applied to the judgments, and on each occasion the Republic invoked the law in order to defeat those efforts. The Republic was in court with briefs and arguments invoking the law to defeat the efforts of the plaintiffs to recover on their judgments either in the District Court or the Court of Appeals or both. The Republic was largely successful. More than largely. I think it was successful except in one small instance. The reason I mention this is that the Republic was in court repeatedly over those years invoking the law. There was no name calling. There was simply a professional process in several cases, several instances to brief and argue the law and the facts in a thoroughly professional way.

Now, a major change occurred, and I think it started around 2010, and that is that the plaintiffs invoked what is known as the pari passu theory or clause or whatever it was, meaning that if the Republic was making payments to certain

classes of creditors, the pari passu clause required some payment under that clause or that theory to the plaintiffs. I won't try to get into technicalities or definitions or ratios or anything, but that was the basic idea. If the Republic was making payments to exchange bondholders, the pari passu clause or concept required some payment pari passu to the plaintiffs.

The District Court held that the pari passu concept did indeed apply under the existing contractual arrangements as they were phrased and drafted and the Court of Appeals affirmed. This produced a very large change in the handling of the various claims of the various parties.

Unfortunately during the eight or ten years or so before the appearance in our discussions of the pari passu clause, the Republic had treated the judgment creditor debt as basically nonexistent. There were statements of high officials, and I think there was even some legislation in the Argentine Congress, to the effect that debt would not be paid. This was most unfortunate because it was lawless. The judgment debts were valid debts validly entered pursuant to the original contractual provisions in the bonds. So to treat those judgment debts in the way the Republic did was lawless. But we arrived at a new regime with the pari passu matter being a very important part of the consideration of the parties and the Court, so things changed.

On November 21, 2012, the Court entered an order carrying out previous rulings of the Court and rulings of the Court of Appeals in which there was a provision carrying out what I described, and in the form of a provision, that in the event of payment by the Republic to the exchange bondholders of interest or principal, there would need to be payment under the pari passu provision to the plaintiffs.

Now, I have talked about the Republic's reliance on the law and I didn't really need to do that, but the thing that to be emphasized is that the law was put into effect in dealing with the relationship between the Republic and its bondholders on the one hand and the plaintiffs with their rights under the pari passu concept on the other hand. That sounds awfully complicated, but basically what is required is to deal with two sets of rights. Obviously people who exchanged their bonds and should be paid interest by the Republic have their rights; but the people who have a judgment or judgment creditors and have judgments have their rights. Judgments confer rights. Should that need to be said? Yes, it needs to be said because the Republic in both practice and in public statements has attempted to ignore that.

Now, what was going to be done with the various

obligations of the Republic and the rights of other parties? What was to be done with all of that? There weren't going to be anymore judgments. We're not dealing with new lawsuits. We're dealing with recovery on judgments in lawsuits or recovery on settlement agreements. So what was going to be done? Well, if the Republic had wanted and had been able to pay off all of its obligations, that would have ended things there, but that was not going to happen. Consequently, it was evident that the only thing that would resolve the problems created by the various rights and obligations was an attempt to

reach a settlement. It was the only avenue.

I should say I got word somehow that the Republic wanted to send up a delegation to meet with me about settlement. Well, as a judge, I could not do that because I might be talking about settlement one day and having to make a ruling the next day. So it is out of the question for me personally to get involved in settlement. But the idea of settlement was of course a good one. What I did was to appoint a special master to deal with settlement discussions, Daniel Pollack. He has done so. He has worked with the parties for some weeks now to try to work out a settlement. He is a highly competent attorney and, despite some absolutely fallacious references in some forms of the press, he is completely impartial. If he weren't, I would remove him or I would have never appointed him. But he is completely impartial and has demonstrated his impartiality in trying to work with the parties to come up with a settlement.

No settlement was arrived at as of this week, as of June 30, not for want of a great deal of hard work on the part of the Special Master. Where does that leave us? It leaves us to keep going. The debts are not extinguished. There is no bankruptcy, no insolvency proceeding. The debts are still there. The obligation and really the desirability of having interest payments made to the Republic's exchangers is there. The obligation and really the desirability of dealing with the

lawfully acquired judgment debts or the lawfully acquired judgments -- judgments -- all of that should be dealt with. It can't be left hanging. What is to happen, another 10 years of irresolution? No.

Consequently, I want to make it clear that the order appointing Daniel Pollack as special master is still in effect. The requirement of the parties to cooperate with him contained in that order is still in effect, and nothing that has happened this week has removed the necessity for working out a settlement and working with Mr. Pollack to effectuate such a settlement.

Everyone in this court knows that sometime somehow these issues will be settled. That is what happens in the legal world. But it is very important to proceed as promptly as possible with that. It is important to get the people who are owed interest on their exchange bonds, get them paid. It is important to have the rights of the judgment creditors taken care of. But it is not a matter of saying, as the Republic does, We're ready to pay the interest to the exchangers, as if that were the end of the story. It is not the end of the story. There is law which comes into play, law which comes into play which imposes certain requirements. The Court of course is not going to depart from the law, but within the law there can be a settlement.

So the purpose of the Court is simply to keep going in

the work that is necessary to resolve the issues and not stop.

MR. BLACKMAN: Your Honor, Jonathan Blackman on behalf of the Republic of Argentina. We appreciate everything that the Court has said. I assure the Court, and anyone who is listening, that the Republic of Argentina is committed to a process of dialogue. We agree with the Court that ultimately a settlement is the only way to resolve all of this. I want to make some remarks to just put the Republic's position on this into perspective for the Court.

First, the Court mentioned and defined the class, if you will, "judgment creditors." That group, which is often called "holdouts," actually consist of persons who hold judgments and persons who have claims but do not yet have judgments. I think when your Honor said everyone is already here, unfortunately that is not true. This week alone two new complaints were filed by holdouts. In those complaints, among other things, there were requests to enforce their alleged pari passu rights. So we have said from the beginning that what is needed is a resolution not just with these plaintiffs -- obviously there needs to be a resolution with them -- but with the entire group of holdouts whose claims are roughly estimated with interest at approximately $20 billion and all of of them are at least asserting the same pari passu rights. What makes it so difficult is your Honor said that pari passu meant "some payment," but unfortunately the Court's ruling, as affirmed by

the Court of Appeals, makes some payment equal 100 percent payment. We all know that 100 percent can't be a settlement, but that is a quite heavy hammer to be wielding and it needs to be somehow addressed in the context of a settlement discussion. That is one major issue and one major constraint on the settlement process.

The other is the RUFO clause, which we have discussed.

The fact that for the Republic even to make any offer to the holdout universe until the end of this year would trigger RUFO rights on behalf of that other group that the Court mentioned, the exchange bondholders. As the Court rightly said, the Republic has obligations to them, and those obligations until the end of the year are not simply to pay interest when due, but also to respect the RUFO clause. So we really have a situation where the old image of upper and nether millstone crushing is very real, because we have engaged with the Special Master over the last weeks in extensive discussions, the Minister of Economy of Argentine has come New York several times, the Attorney General of Argentina has come to New York several times, and these are unprecedented actions in the world of sovereign debt. The government of Argentina has sought to find a solution in the time available, which is really very short. Given the global and potential pari passu claim (upper millstone) and the RUFO (nether millstone), we couldn't get there; but we intend in good faith to pursue this dialogue,

which has to be a dialogue that actually does resolve all of this. It is not enough to say, Well, let's just sort of reach an agreement, even if we could, with these four plaintiffs. It has to be global and it has to involve all of the debt, including obviously meeting obligations to the exchange bondholders and also dealing with pending and an everyday increasing number of claims in this court and claims that have not been brought. Everyone I think is going to do their best to get there.

I have to raise another point, which is supported and instructed by my client to do so, so I will do so. These are the instructions of the Republic of Argentina. At the end of the discussions on Thursday, the Special Master issued a press release, which I think was unfortunate. It was unlike other press releases, obviously not in consultation of the parties and certainly not in consultation with my client. The Republic of Argentina believes that it does not give a full picture of the situation and that it was frankly harmful and prejudicial to the Republic in its impact on the market, in the situation that it created for other persons such as holders of credit default swaps. That has caused deep concern, which I have been instructed to convey to the Court. Obviously a dialogue with an intermediary appointed by the Court has to be one that is conducted with full confidence and openness, and I have been instructed to inform the Court that the Republic of Argentina

no longer has that confidence in the process as currently constituted under the Special Master and would ask the Court to consider other means of facilitating dialogue because dialogue

is critically important. The dialogue does require trust. It is the trust that brought the Minister of Economy here on several occasions and has been in, I think, almost daily contact with the Special Master and has brought the Attorney General here. We need to have a feeling of confidence in going forward with this process to which the Republic is very much committed.

Thank you.

THE COURT: You made very valid points, which we all take very seriously. Before I respond any further, I will be back to you, Mr. Blackman.

MR. COHEN: Robert Cohen from Dechert for plaintiff NML. For these purposes, I am speaking for all of the plaintiffs.

We were going to come here this morning, your Honor, and ask you to do exactly what you have directed, that the negotiations that have been conducted by Special Master Pollack continue. We're hopeful that a resolution can be reached. Mr. Pollack has managed after 13 years to get the parties in the same room. Only in the last three days did that happen, notwithstanding about four weeks of discussions. We actually sat in the same room with the Minister of Economy and had a

dialogue. The only reason that the Republic has now objected to continuing with Mr. Pollack is the press release that merely recorded the facts. He reflected the circumstances and the fact that default has occurred. The Republic wants to characterize these events as a technical default because they attempted to make an illegal payment to the Bank of New York. The fact is, and the world knows, that they are in default. To choose another mediator at this crucial moment would derail what we think has been effective negotiations. We urge you not to replace the Special Master. We think that any difficulties can be overcome very quickly.

With respect to the other issues that Mr. Blackman has raised that we need to deal with, the whole universe of other issues, I think we ought to let the Special Master resolve the matters that are before him and we have a strong expectation that the rest will follow if we can do that.

Thank you.

THE COURT: Let me respond to both of you. I know of nothing that the Special Master has done except to negotiate with the parties and he has made progress. Something had to be said to the public. If the word "default" was used, well, it can hardly be said to be inaccurate when payments were due to exchange bondholders, payments of interest, and such payments were not made. So it is hardly anomalous to call that a default.

What I have done today, and Mr. Blackman was very gracious about indicating the cooperation to do what I talked about, and that is regardless of what happened at midnight or didn't happen at midnight Wednesday, or whenever the day was, regardless of that, regardless of whether it is called a default or not, regardless of that, the important thing -- the important thing -- is that the obligations remain and have to be dealt with. That is the essential thing. There is no reason whatever to even contemplate bringing somebody in as a new special master. I am not sure that Mr. Blackman even voiced such a thing, but I suppose it was implied. That would be about as poor a way to administer a court as I could even conceive.

Now, if -- I am sure this is true -- Mr. Blackman is talking about the desires of his client to negotiate in good faith, the only sensible way to do that is to go forward in the path that has been started, and let's cool down any ideas of mistrust or whatever. What can be trusted is facts. What can be trusted is proposals. What can be trusted is recommendations. That is what is important. This is not a personality contest or anything like that. This is a matter where substance is important and substance is difficult. So let's get back to work on matters of substance, and I will expect to hear that you are back to work.

With that, we will adjourn our hearing.

MR. COHEN: Thank you, your Honor.

THE COURT: Wait a minute. One minute. One minute. I think I left something out.

I have signed a jointly proposed order and copies are available. Thank you.

MR. FARBER: Your Honor, what is the subject matter of the order?

THE COURT: Regarding Clearstream and Euroclear.

MS. WEISS: Your Honor, before the Court adjourns, may I be heard briefly on behalf of J.P. Morgan with respect to the order that the Court has signed?

THE COURT: Sure.

Sit down everybody, please.

MS. WEISS: Thank you, your Honor. My name is Andrea Weiss. I represent J.P. Morgan.

J.P. Morgan has also filed a letter request for clarification with respect to the Court's orders relating to the payment of the Argentine local law U.S. dollar bonds. The order that the Court signed today would permit Citibank, Euroclear, and Clearstream to pay on those bonds. However, the order that the Court signed does not give J.P. Morgan that permission. In fact, it limits payment to Citibank, Euroclear, and Clearstream. J.P. Morgan is a downstream payer and will get some portion of those funds, and we would request that the

Court make clear in an order that downstream payers of the

Argentine local law U.S. dollar bonds can be paid.

THE COURT: Let me say this: I will be back in the office on Monday. Be in touch with my law clerk about what you need. That is all I can say. I don't want to do anything more today.

MS. WEISS: We'll do that, your Honor. We'll try to submit a proposed order on consent.

THE COURT: Thank you.

MS. WEISS: Thank you.

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