



## Make 'Em Pay! Sovereign Nation Or Not

On June 16, 2014, the United States Supreme Court ruled that the Foreign Sovereign Immunities Act doesn't forbid or limit post-judgment discovery in aid of execution.<sup>1</sup> Indeed, there is nothing wrong with a judgment creditor seeking discovery in a supplemental proceeding of a sovereign nation's bank accounts and other assets, even if some of the information may not be used.<sup>2</sup> The high court set aside any arguments from both Argentina and the United States Government that the Foreign Sovereign Immunities Act prohibited this type of discovery. In addition, the Supreme Court refused to reverse the order from the Second Circuit Court of Appeals of New York prohibiting Argentina and its agents from disbursing payments to the holders of newly issued, restructured debt unless and until they disburse payments to the holdouts of their pro-rata share of what is owed.<sup>3</sup>

The victory for hedge fund investors who previously refused to accept restructuring of the debt provides precedent for emerging-market bond investors to pressure sovereign nations on future debt restructuring efforts. At least in this instance, holding out may pay off for the holders of approximately \$1.5 billion in distressed debt purchased for pennies on the dollar.<sup>4</sup>

In 2001, Argentina defaulted on approximately \$95 billion of sovereign debt.<sup>5</sup> The vast majority of the defaulted bond holders agreed to accept restructuring of the debt; however, certain distressed debt investors purchased the defaulted bonds for pennies on the dollar and held out - refusing to accept a deal for restructuring payments.<sup>6</sup> Now, thirteen years later, pursuant to New York law, the United States Supreme Court forces Argentina to either pay the pro-rata share owed to the holdouts or risk defaulting on the newly restructured bonds for at least \$500 million in interest payments due on June 30, 2014.<sup>7</sup> Unlike the 92% of bondholders of the defaulted Argentine bonds that accepted

---

<sup>1</sup> See *Republic of Argentina v. NML Capital, Ltd.*, No. 12-842, 2014 WL 2675854, \* (S.Ct. June 16, 2014).

<sup>2</sup> *Id.* at \*6.

<sup>3</sup> See *Exchange Bondholder Group v. NML Capital, Ltd., et al.*, No. 13-991, 2014 WL 655504 (S.Ct. June 16, 2014).

<sup>4</sup> Ken Parks, Nicole Hong & Brent Kendall, [Supreme Court Sides With Holdout Creditors in Argentina Debt Case](http://online.wsj.com/articles/u-s-supreme-court-rejects-argentina-appeal-in-sovereign-debt-case-1402926119), Wall St. J. Markets (June 16, 2014, 9:19 p.m. ET), <http://online.wsj.com/articles/u-s-supreme-court-rejects-argentina-appeal-in-sovereign-debt-case-1402926119>.

<sup>5</sup> Peter Coy, [Argentina's Debt Appeal Dies at U.S. Supreme Court](http://businessweek.com/printer/articles/208203-argentinas-debt-appeal-dies-at-u-dot-s-dot-supreme-court), Bloomberg Businessweek (June 19, 2014), <http://businessweek.com/printer/articles/208203-argentinas-debt-appeal-dies-at-u-dot-s-dot-supreme-court>.

<sup>6</sup> Daniel Fisher, [Supreme Court Hands Billionaire Paul Singer A Victory Over Argentina](http://www.forbes.com/sites/danielfisher/2014/06/16/supreme-court-hands-billionaire-paul-singer-a-victory-over-argentina), Forbes Magazine (June 16, 2014, 11:12 AM), <http://www.forbes.com/sites/danielfisher/2014/06/16/supreme-court-hands-billionaire-paul-singer-a-victory-over-argentina>.

<sup>7</sup> Ken Parks, Nicole Hong & Brent Kendall, *supra* note 4.

restructuring deals in 2005 and in 2010 for approximately \$0.30 on the dollar, Paul Singer and NML Capital, Ltd. may receive a higher payout for their post-judgment execution efforts.<sup>8</sup>

Ironically, many distressed debt nations receive relief from United States taxpayers in the form of aid from the Federal Government. In other words, American citizens may indirectly be paying these hedge fund investors instead of the actual judgment debtor - Argentina - paying through its own direct assets<sup>9</sup>, but additional discovery may prove useful to these hedge fund investors. Over the last thirteen years, the judgment creditors detained the 103 meter-long sailing ship ARA Libertad by injunction, grounded the Tango 01, Argentina's presidential airplane, sought 105 million dollars of Argentina's foreign exchange reserves, seized approximately 23 million dollars of Argentina's Banco Hipotecario, and pursued Christina and Nestor Kirchner, Argentina's President and her husband, along with 136 members of Argentina's administration, forcing disclosure of their personal accounts.<sup>10</sup>

Regardless of recovery, the United States Supreme Court sets precedent for hedge fund and institutional investors alike that it will uphold the law concerning a judgment creditor's ability to collect information for judgment execution through supplemental proceedings - even if your judgment is against a sovereign nation. Make 'em pay Paul.

**If you have any questions or need further information, please contact:**

Joseph T. King in Tampa at (813) 367-5750 or [jking@burr.com](mailto:jking@burr.com) or your Burr & Forman attorney with whom you regularly work.

---

<sup>8</sup> Peter Coy, *supra* note 5.

<sup>9</sup> Amy Goodman and Juan Gonzalez, Argentina Alleges Extortion After Supreme Court Sides with Vulture Funds Preying on Sovereign Debt, Democracy Now! - Interview of Eric LeCompte, (June 19, 2014), [http://www.democracynow.org/2014/6/19/argentina\\_alleges\\_extortion\\_after\\_supreme\\_court](http://www.democracynow.org/2014/6/19/argentina_alleges_extortion_after_supreme_court).

<sup>10</sup> Agustino Fontevecchia, The Real Story Of How A Hedge Fund Detained A Vessel In Ghana And Even Went For Argentina's 'Air Force One', Forbes Magazine, (October 5, 2012, 6:50 PM), <http://www.forbes.com/sites/afontevecchia/2012/10/05/the-real-story-behind-the-argentine-vessel-in-ghana-and-how-hedge-funds-tried-to-seize-the-presidential-plane>.