

U.S. Court Ratifies Central Bank BCRA Immunity



Buenos Aires, September 1 (RHC)-- Argentina obtained a favorable ruling in its long-term legal conflict with the so-called “vulture” funds on Monday, as a previous decision from New York Judge Thomas Griesa which opened the door for Central Bank’s assets to be seized as compensation to the plaintiffs was reversed on appeal, the Buenos Aires Herald Reported on Tuesday.

The second U.S. Circuit Court of Appeals in New York overturned a 2013 ruling denying a bid by the Central Bank (BCRA) which said courts should dismiss claims arguing that it was a mere “alter ego” of the country, and thus liable to have its property confiscated if Griesa’s order to pay the “vulture” funds in full was not followed. More than \$1.4 billion is owed to these funds according to the judge.

Griesa had previously held the BCRA had waived its right to “sovereign immunity,” and as a result creditors could move forward with a lawsuit seeking to have the “alter ego” status officially declared.

The ruling had been sought by bondholders including NML Capital, which is a unit of Paul Singer’s Elliott Management, as well as Kenneth Dart’s EM Ltd, both of whom sought to go after funds the BCRA held in foreign jurisdictions.

But a three-judge panel reversed that call on Monday, saying sovereign immunity was still on the table and could thus still be invoked to avoid liability, directing Griesa to dismiss the case.

“We hold that the District Court erred in 1) imputing Argentina’s waiver of sovereign immunity based on an alter-ego theory and 2) applying the commercial-activity exception to the Central Bank’s use of its account with the Federal Reserve Bank of New York,” the ruling said.

According to both Griesa’s and the Appeals Court’s reading of U.S. jurisdiction, there was precedent set by the U.S. Supreme Court saying that “any property in the United States of an agency of a foreign state engaged in commercial activity in the United States shall not be immune from execution upon a judgment entered by a court of the United States.”

But in contrast to Griesa’s opinion, the appellate tribunal said Monday that the Central Bank had not engaged in the kind of commercial activity that is relevant to that U.S. Supreme Court ruling, and thus concluded that sovereign immunity should not be waived.

Griesa had initially given way to NML’s arguments, which said that the fact that Argentina bought and held part of its foreign currency reserves in New York constituted commercial activity, while the Appeals Court replied that it would have made no difference if Argentina held those funds elsewhere.

Despite winning this battle, Argentina is still facing an up hill conflict, as the main ruling from Judge Griesa — which says the country is blocked from repaying any of its debt until the seven percent of non-restructured bondholders from 2002 default are paid in full — still stands.

Circuit Judge Jose Cabranes wrote that the court’s ruling is not intended to allow Argentina to “continue shirking the debts it has the ability to pay, although we suspect that this will be a predictable and unfortunate outcome of our decision.”

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