
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

xxxxxxxxx GmbH, Individually And on Behalf of All Others Similarly Situated, !	:	02 Civ. 5699 (TPG)
Plaintiff,	:	**ORDER**
- against -	:	
REPUBLIC OF ARGENTINA,	:	
Defendant,	:	

This is a motion for class action certification, Defendant, the Republic of Argentina, opposes the motion. The motion is granted,

This is the second motion to obtain approval for class action treatment. In the first motion there were additional plaintiffs, and they sought to represent holders of 68 series of Argentine bonds payable in. six different currencies. The motion was denied in an opinion dated May 12, 2003. The court held that the proposed class, was too large, too diverse, and too vaguely defined for there to be a manageable class action.

It should also be noted that in another action, Applestein v. The Republic of Argentina. (02 Civ, 4124), class action treatment was denied in an opinion also dated May 12, 2003. Among other things the complaint in that

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action did not sufficiently define how many series of bonds were to be involved in the action.

The New Class Action Motion in the Urban Case The Amended Class Action Complaint names one plaintiff as the proposed class representative, This plaintiff is a German company, owned by xxxxxxxx a German businessman.. Plaintiff is the owner of bonds from two series:

> Republic of Argentina bonds, issued January 30, 1997, due Januaiy 30, 2017, bearing interest at 11 3/8% per year;
>
> Republic of Argentina bonds, Issued April 7, 1999, due April 7, 2017, bearing interest at 11 3/4% per year.

PJaintiff owns $ 1,000,000 worth of bonds of the first series and $145,000 worth of bonds of the second series,

Attached to the complaint are the prospectuses for the two series of bonds. The prospectus for the first, series shows that it involves bonds in the face amount of U.S. $2,000,000,000, The prospectus for the second series shows that it involves bonds in the face amount of U.S, $1?500S000,000.

The complaint defines the proposed class as all persons who, on or

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before July 22, 2002 (the date on which the action was filed), purchased bonds in either series and who hold the bonds continuously through the date of "any judgment as to liability[1]" in the action. The complaint asserts that the members of the class are so numerous that joinder of all members is impracticable, although the exact number of class members is unknown to plaintiff at the present time.

There are allegations about the December 2001 moratorium on bond obligations declared, by the Republic. There are also allegations regarding consent to service of process in New York City, the applicability of the laws of the State of New York, and the waiver of sovereign immunity, all of which allegations are based on the October 19, 1994 Fiscal Agency Agreement attached to the complaint.

Discussion

The Republic opposes the new class action motion, as it did the earlier motion in this case and the motion in Apple&tein. The Republic urges that class action treatment should still be denied, despite the narrowing of the proposed class to holders of bonds in only two series of U.S., dollar bonds. The Republic expresses concern that once class action treatment is granted in one action, there will be a "run" on proposals for class actions, which at least would

eventually be unmanageable. The Republic points out that there is a total of 140 series of Argentine bonds. The Republic urges' that the only really effective way to resolve a sovereign, dbbt crisis, such as the one presented here, is through voluntary debt restructuring. The Republic contends that to the extent bond litigation is expanded from suits by individual bondholders (some of which are pending, in this court) into one or more class actions, this will serve as a disincentive to participating, in the debt restructuring effort and will interfere with thsit effort,

Aside from these broad objections, the Republic raises certain matters of detail about the manageability of the proposed class action, including what it believes to be the lack of any proper way to give notice to class members,

All these issues merit serious consideration. In addition, it has occurred to the court, as discussed with counsel at the hearing on the motion, that while narrowing the class definition may be necessary for management purposes, there is some anomaly in granting class action treatment to a small fraction of the universe of those who are suffering defaults on their Argentine bonds.

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Having weighed these various considerations, the court has determined that plaintiff in this case has proposed a clas$ action which complies with the applicable law, and that it would be improper to deny plaintiff and the proposed class the benefit of that law,

The court has before it certain actions in which individual bondholders are asserting their legal rights. These actions are being: processed, as they must be under the law, In the view of the court, there is no basis for ruling that a properly defined, class action should not be similarly entertained by the court pursuant to the law governing class actions.

That this action complies with the requirements of Fed. R. Civ. P. 23 is clear and requires little discussion* The class is sufficiently numerous for class action treatment. The questions of law and fact upon which liability depends are common to all members of the class, since liability depends on contractual terms applicable to all bonds. Plaintiff, being a bondholder, has claims typical of those of the class by virtue of being subject to the same contractual terms. There is no reason to doubt that plaintiff can act as a proper representative, and his attorneys have a record of experience in comparable litigation.

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What has been said covers the requirement of Rule 23(a), With regard to Rule 23(b), the court needs to find, in addition to what is required under 23{a), that one of thr^e alternative conditions is satisfied, The part of Rule 23(b) relevant to the present case is Rule 23(b)(3), which provides that class action treatment is appropriate where:

> (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in, individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action,

It is clear that the questions of law and fact common to the members of the class predominate over any individual questions. As already described, all questions relating to liability are common. Questions as to the type of relief will also be common. The remaining individual issues about the quantum of relief can undoubtedly be resolved by the processing of claims, which need not be unduly complex. As to the superiority of a class action to

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other procedures, the court notes the following,. As indicated earlier, certain bondholders prefer to bring their own individual actions, and have done so. But for those who wish to *be* part of this proposed class action, it is reasonable for them to believe that it is superior to their bringing individual actions. For those who do not wish to be a part of the present class action, they will have an opportunity to make that choice,

What has just been said takes care of items (A) and (B). As to item (C), there is surely nothing desirable about having the claims of the members of the proposed class spread around in different courts.

Regarding item (D), the court does not see that there will be any particular difficulties in management, now that the class has been defined to relate to two series of bonds. At least, there would appear to be no greater difficulty than occurs in other large class actions. The court does not agree with the Republic that notice will present an insuperable difficulty. Although it may be necessary to go through an institution, or even more than one institution, to reach the actual bondholders, this is apparently accomplished in order to make payments of interest, and the same should be true for giving notice of the action.

As noted earlier, the complaint proposes that the class should consist of all persons who, on or before July 22, 2002 (the date when this action was commenced), purchased bonds in either of the two series and who hold those bands continuously through the date of "any judgment as to liability" in this fiction. This is a reasonable definition, subject to one clarification, The reference should be to "final judgment" rather than a judgment merely as to liability.

The Republic claims that the class is too fluid because the bonds are bought and -sold in the secondary market. But there is no reason to believe that such purchases and sales would affect a substantial portion of the bonds that would be involved in this class action. In any event, persons who buy or sell the bonds after July 22, 2002 would not be part of the class> and there should be no great difficulty in determining who is thus disqualified.

The court wishes to add the .following comment as to how the action will proceed, The court is required, under Rule 23(c)(2), to give notice to class members, offering them an opportunity to "opt out." But the court also has discretion under Rule 23(d) to require class members to come forward affirmatively and "present claims.[M] In fact, the need to do this at some appropriate time is obvious because no judgment can. be rendered without the

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presentation of such claims. It would be the intention of the court in this case to accelerate the claim procedure as much as possible, in order to arrive at a definite determination of who is participating in the class action. For one thing, it is,desirable in order to provide information to those negotiating the restructuring as to who has chosen the class action litigation route and who has not.

Conclusion

The motion for class action treatment is granted, The class will consist of holders of the U.S. $2,000,000,000 bond series and the ILS, $1,500,000,000 bond series described above, who purchased their bonds prior to July 22, 2002 and who hold their bonds continuously until the time of the final judgment in this action.

SO ORDERED.

Dated; New York, New York
December 30, 2003

THOMAS P. GRIESA
U.3.D.J,

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