

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MICHAEL SCHMIDT, KLAUS BOHRER,
UTE KANTNER, and U.V.A. VADUZ,

Plaintiffs,

-against-

THE REPUBLIC OF ARGENTINA,

Defendant.

09 Civ. 7059 (TPG)

OPINION

Plaintiffs are the beneficial owners of certain bond indebtedness issued by defendant, the Republic of Argentina (the “Republic”), on which the Republic defaulted in December 2001. Plaintiffs are suing to recover amounts due to them as a result of the default and have simultaneously moved for leave to amend their complaint and for summary judgment. The Republic has no objection to the Plaintiffs’ amendment or to the entry of summary judgment.

The motions are granted.

FACTS

The bond indebtedness at issue is governed by: (i) the Subscription Agreement dated as of February 5, 1996 (the “February Subscription Agreement”); (ii) the Subscription Agreement dated September 18, 1996 (the “September Subscription Agreement”); (iii) the Subscription Agreement dated June 12, 1996 (the “June Subscription Agreement”); (iv) the Subscription Agreement dated November 17, 1998 (the “1998 Subscription Agreement”); (v) the Bond Purchase Agreement dated March 6, 1997 (the “1997 Bond Purchase Agreement”); (vi) the Subscription Agreement dated November 5, 1999 (the “1999 Subscription Agreement”); (vii) the Offering Circular dated June 20, 2000 and amended on October 6, 2000 (the “Offering Circular”); (viii) the Information Memorandum dated November 14, 1995 (the “November Memorandum”) and (ix) the Supplemental Information Memorandum,

dated December 12, 1995 (the “December Memorandum”) (collectively, “Bond Agreements”).

As recently noted by the Second Circuit and this Court, the Republic “explicitly waived its sovereign immunity to suit in United States courts” over the German Bonds. *Capital Ventures Int’l v. Republic of Argentina*, 552 F. 3d 289, 291 (2d Cir. 2009); *see also Capital Ventures Int’l v. Republic of Argentina*, 2010 U.S. Dist. LEXIS 32072 (S.D.N.Y. Mar. 31, 2010). Further, this Court has already found that the Court has personal jurisdiction over Argentina even in regard to the German Bonds. *Capital Ventures Int’l*, 2010 U.S. Dist. LEXIS 32072, at *6-8.

On December 24, 2001, Argentina declared a moratorium on payments of principal and interest on the external debt of the Republic. The Court refers to its previous opinions for a description of the circumstances of these defaults *Lightwater Corp. Ltd. v. Republic of Argentina*, No. 02 Civ. 3804, 2003 WL 1878420, at *2 (S.D.N.Y. Apr. 14, 2003); *Applestein v. Province of Buenos Aires*, No. 02 Civ. 1773, 2003 WL 1990206, at *1 (S.D.N.Y. Apr. 29, 2003). On or about August 4, 2009 and August 7, 2009, plaintiffs sent notices to various fiscal agents of the Republic of Argentina, providing notice of an event of default, demanding payment on certain bonds governed by the Bond Agreements, and declaring the principal amount of the other debt securities governed by the Bond Agreements to be immediately due and payable. Since declaring the moratorium, Argentina has further defaulted by failing to make any payment of interest or principal on any of its foreign debt, including the Bonds here at issue.

The bonds that are the subject of this action, and the amounts of beneficial interests owned by plaintiffs, are listed in the following tables.¹

¹ The court notes the distinction between bonds and beneficial interests. In some previous opinions, the court has simply referred to the plaintiffs as owners of “bonds,” when in fact plaintiffs are technically owners of “beneficial interests in bonds.” The Republic actually issues “a bond” to a

TABLE 1

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|---|--|
| <u>Plaintiff Bond Holder or Beneficial Owner:</u> | MICHAEL SCHMIDT |
| <u>Face Value:</u> | DM 20,000 |
| <u>ISIN:</u> | DE0001308609 |
| <u>Date Of Issuance:</u> | February 6, 1996 |
| <u>Date Of Maturity:</u> | February 6, 2003 |
| <u>Interest Rate/Payable:</u> | 10.25% |
| <u>Date Of Purchase:</u> | Before December 2001 |
| <u>Notice of Acceleration:</u> | August 7, 2009 |
| <u>Contract Documents:</u> | Subscription Agreement, dated as of February 5, 1996 (the "February Subscription Agreement") |
| <u>Evidence of Ownership Proffered:</u> | Account Statements from LBBW Luxemburg S.A. dated as of September 6, 2010 |

depository. The depository, in some form, issues "participations" to brokers, who sell "beneficial interests" to purchasers. These beneficial interests are identified by reference to the underlying bond (CUSIP or ISIN number or both; date of issuance and maturity; rate of interest) and the principal amount of the beneficial interest. This distinction is discussed more fully in *Million Air Corp. v. Republic of Argentina*, No. 04-1048, 2005 WL 2656126 (S.D.N.Y. Oct. 17, 2005).

TABLE 2.

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|---|---|
| <u>Plaintiff Bond Holder or Beneficial Owner:</u> | KLAUS BOHRER |
| <u>Face Value:</u> | DM 2,000,000 |
| <u>ISIN:</u> | DE0001340917 |
| <u>Date Of Issuance:</u> | September 19, 1996 |
| <u>Date Of Maturity:</u> | September 19, 2016 |
| <u>Interest Rate/Payable:</u> | 12% |
| <u>Date Of Purchase:</u> | Before December 2001 |
| <u>Notice of Acceleration:</u> | August 4, 2009 |
| <u>Contract Documents:</u> | Subscription Agreement dated as of September 18, 1996 (the "September Subscription Agreement"). |
| <u>Evidence of Ownership Proffered:</u> | Account Statements from Credit Suisse dated as of September 7, 2010 |

TABLE 3.

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|---|---|
| <u>Plaintiff Bond Holder or Beneficial Owner:</u> | UTE KANTNER |
| <u>Face Value:</u> | DM 100,000 |
| <u>ISIN:</u> | DE0001325017 |
| <u>Date Of Issuance:</u> | May 20, 1996 |
| <u>Date Of Maturity:</u> | May 20, 2011 |
| <u>Interest Rate/Payable:</u> | 11.75% |
| <u>Date Of Purchase:</u> | Before December 2001 |
| <u>Notice of Acceleration:</u> | August 4, 2009 |
| <u>Contract Documents:</u> | Subscription Agreement dated as of June 12, 1996 (the "June Subscription Agreement"). |
| <u>Evidence of Ownership Proffered:</u> | Account Statements from Cortal Consors BNP Paribas dated as of September 7, 2010 |

TABLE 4.

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|---|--|
| <u>Plaintiff Bond Holder or Beneficial Owner:</u> | U.V.A VADUZ |
| <u>Face Value:</u> | DM 3,000,000 |
| <u>ISIN:</u> | DE0001340909 |
| <u>Date Of Issuance:</u> | September 19, 1996 |
| <u>Date Of Maturity:</u> | September 19, 2003 |
| <u>Interest Rate/Payable:</u> | 9% |
| <u>Date Of Purchase:</u> | Before December 2001 |
| <u>Notice of Acceleration:</u> | August 7, 2009 |
| <u>Contract Documents:</u> | Subscription Agreement dated as of September 18, 1996 (the "September Subscription Agreement") |
| <u>Evidence of Ownership Proffered:</u> | Account Statements from Deutsche Bank. dated as of September 3, 2010 |

TABLE 5.

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| <u>Plaintiff Bond Holder or Beneficial Owner:</u> | U.V.A VADUZ |
| <u>Face Value:</u> | DM 5,000,000 |
| <u>ISIN:</u> | DE0001767101 |
| <u>Date Of Issuance:</u> | November 19, 1998 |
| <u>Date Of Maturity:</u> | November 19, 2008 |
| <u>Interest Rate/Payable:</u> | 9% |
| <u>Date Of Purchase:</u> | Before December 2001 |
| <u>Notice of Acceleration:</u> | August 7, 2009 |
| <u>Contract Documents:</u> | Subscription Agreement dated as of November 17, 1998 (the "1998 Subscription Agreement") |
| <u>Evidence of Ownership Proffered:</u> | Account Statements from Deutsche Bank. dated as of September 3, 2010 |

TABLE 6.

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|---|---|
| <u>Plaintiff Bond Holder or Beneficial Owner:</u> | U.V.A VADUZ |
| <u>Face Value:</u> | DM 4,250,000 |
| <u>ISIN:</u> | DE0001904308 |
| <u>Date Of Issuance:</u> | March 18, 1997 |
| <u>Date Of Maturity:</u> | March 18, 2004 |
| <u>Interest Rate/Payable:</u> | 7% |
| <u>Date Of Purchase:</u> | Before December 2001 |
| <u>Notice of Acceleration:</u> | August 7, 2009 |
| <u>Contract Documents:</u> | Subscription Agreement dated as of March 6, 1997 (the "1997 Bond Purchase Agreement") |
| <u>Evidence of Ownership Proffered:</u> | Account Statements from Deutsche Bank. dated as of September 3, 2010 |

TABLE 7.

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|---|---|
| <u>Plaintiff Bond Holder or Beneficial Owner:</u> | U.V.A VADUZ |
| <u>Face Value:</u> | €250,000 |
| <u>ISIN:</u> | DE0003527966 |
| <u>Date Of Issuance:</u> | October 21, 1999 |
| <u>Date Of Maturity:</u> | October 21, 2002 |
| <u>Interest Rate/Payable:</u> | 9.25% |
| <u>Date Of Purchase:</u> | Before December 2001 |
| <u>Notice of Acceleration:</u> | August 7, 2009 |
| <u>Contract Documents:</u> | Subscription Agreement dated as of November 5, 1999 (the “1999 Subscription Agreement”) |
| <u>Evidence of Ownership Proffered:</u> | Account Statements from Deutsche Bank. dated as of September 3, 2010 |

TABLE 8.

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|---|---|
| <u>Plaintiff Bond Holder or Beneficial Owner:</u> | U.V.A VADUZ |
| <u>Face Value:</u> | €250,000 |
| <u>ISIN:</u> | DE0002466208 |
| <u>Date Of Issuance:</u> | June 20, 2000 |
| <u>Date Of Maturity:</u> | June 20, 2003 |
| <u>Interest Rate/Payable:</u> | 9% |
| <u>Date Of Purchase:</u> | Before December 2001 |
| <u>Notice of Acceleration:</u> | August 7, 2009 |
| <u>Contract Documents:</u> | Offering Circular dated as of June 20, 2000 and amended on October 6, 2000 (the “Offering Circular”) |
| <u>Evidence of Ownership Proffered:</u> | Account Statements from Deutsche Bank. dated as of September 3, 2010 |

TABLE 9.

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| <u>Plaintiff Bond Holder or Beneficial Owner:</u> | U.V.A VADUZ |
| <u>Face Value:</u> | DM 500,000 |
| <u>ISIN:</u> | DE0001300200 |
| <u>Date Of Issuance:</u> | November 14, 1995 |
| <u>Date Of Maturity:</u> | November 14, 2002 |
| <u>Interest Rate/Payable:</u> | 10 .5% |
| <u>Date Of Purchase:</u> | Before December 2001 |
| <u>Notice of Acceleration:</u> | August 7, 2009 |
| <u>Contract Documents:</u> | Information Memorandum dated as of November 14, 1995 (the "November Memorandum") and the Supplemental Information dated as of December 12, 1995 (the "December Memorandum"). |
| <u>Evidence of Ownership Proffered:</u> | Account Statements from Deutsche Bank. dated as of September 3, 2010 |

DISCUSSION

This Court has already granted summary judgment in other case to plaintiffs seeking to collect on the Republic's defaulted bonds issued under German Law. *Capital Ventures Intl. v. Republic of Argentina*, 05 cv. 4085, Dkt No. 185 (September 7, 2010). Pursuant to a decision of the United States Court of Appeals for the Second Circuit in *Capital Ventures International v. Republic of Argentina*, 552 F.3d 289, 291 (2d Cir. 2009) this Court has jurisdiction over this matter and Argentina has waived sovereign immunity with regard to German bonds; see *Capital Ventures Intl. v. Republic of Argentina*, 2010 U.S. Dist. Lexis 32072. Only standing and proof of ownership need to be discussed in connection with the present motion.

In *Fontana v. Republic of Argentina*, 415 F.3d 238 (2d Cir. 2005), and *Applestein v. Province of Buenos Aires*, 415 F.3d 242 (2d Cir. 2005), the Second Circuit has held that an owner of a beneficial interest, such as plaintiffs here, must receive authorization from the registered holder of the bond before it may sue, but that such authorization may be granted subsequent to the filing of a lawsuit. Alternatively, the Republic may waive the authorization requirement.

The Republic has agreed to waive objections based on lack of authorization where the court makes a finding of current ownership. See Transcript, March 28, 2006, *Cilli v. Republic of Argentina*, No. 04-6594.

Here, plaintiffs have adequately demonstrated through their account statements that they owned their beneficial interests as of September 2010. There is no evidence of any change of ownership thereafter.

Finally, Federal Rule of Civil Procedure 15(a)(2) provides that leave to amend should be "freely" given "when justice so requires." Where Plaintiffs proposed amendment is merely the correction of a clerical error in the value of one of the bonds and the Republic has

not objected to Plaintiffs motion for leave to amend, Plaintiffs are granted leave to amend the Complaint and the Second Amended Complaint is deemed as filed simultaneously with the entry of this order.

CONCLUSION

The motions for leave to amend and for summary judgment are granted. Judgment will be entered for the principal amount of the bonds issued under the : (i) the Subscription Agreement dated as of February 5, 1996 (the "February Subscription Agreement"); (ii) the Subscription Agreement dated September 18, 1996 (the "September Subscription Agreement"); (iii) the Subscription Agreement dated June 12, 1996 (the "June Subscription Agreement"); (iv) the Subscription Agreement dated November 17, 1998 (the "1998 Subscription Agreement"); (v) the Bond Purchase Agreement dated March 6, 1997 (the "1997 Bond Purchase Agreement"); (vi) the Subscription Agreement dated November 5, 1999 (the "1999 Subscription Agreement"); (vii) the Offering Circular dated June 20, 2000 and amended on October 6, 2000 (the "Offering Circular"); (viii) the Information Memorandum dated November 14, 1995 (the "November Memorandum") and (ix) the Supplemental Information Memorandum, dated December 12, 1995 (the "December Memorandum") (collectively, "Bond Agreements"), plus accrued interest.

Settle judgment.

SO ORDERED.

Dated: New York, New York
September 7, 2011



THOMAS P. GRIESA
U.S.D.J.

