

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NML CAPITAL, LTD.,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

Case No. 1:14-mc-01237 (RCL)

Hon. Royce C. Lamberth

**PLAINTIFF NML CAPITAL, LTD.'S REPLY IN FURTHER SUPPORT OF
EMERGENCY MOTION TO COMPEL COMPLIANCE WITH SUBPOENA**

For Its Reply In Further Support Of Its Motion to Compel Compliance With Subpoena,
Plaintiff NML Capital, Ltd. ("NML") submits the accompanying Reply Declaration of Dennis H.
Hranitzky.

Dated: November 6, 2014

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REPLY DECLARATION OF DENNIS H. HRANITZKY

Pursuant to 28 U.S.C. § 1746, I, Dennis H. Hranitzky, declare as follows:

1. I am a member of Dechert LLP, counsel for NML Capital, Ltd. (“NML”), the Plaintiff in the above-captioned action.
2. I make this Reply Declaration in further support of NML’s Emergency Motion to Compel non-party César Guido Forcieri, an Argentine national currently residing in the United States, to produce documents and appear for a deposition in compliance with a subpoena served by NML on September 10, 2014 (the “Subpoena”) and specifically to address the factual representations contained in the November 5, 2014 Declaration of Gregory S. Bruch (“Bruch Decl.”) and the Opposition to NML’s Emergency Motion to Compel.
3. Mr. Bruch asserts that Mr. Forcieri satisfied his obligations in connection with the Subpoena by his participation in an informal meeting with NML’s lead counsel and my partner, Robert Cohen of Dechert LLP, and an investigator retained by NML, conducted on the afternoon of October 30, 2014 (the “October 30 Interview”). However, as explained below, Mr. Forcieri

was not fully candid during the meeting and therefore did not fulfill his obligations under the agreement between NML and Mr. Forcieri with respect to his compliance with the Subpoena.

4. As an initial matter, I feel compelled to address Mr. Bruch's assertion that NML was somehow disingenuous or acted improperly in failing to mention the fact that the October 30 Interview took place. *NML did not disclose the fact of the October 30 Interview because NML had agreed, at the insistence of Mr. Bruch and his partner Sandra Hanna, that it would "keep the fact of the meeting confidential."* Email dated October 23, 2014 annexed as part of Ex. 1 to the Bruch Decl. Although neither Mr. Bruch nor Ms. Hanna explained their motivation for demanding that NML do so, I understood it to be that Mr. Forcieri wished to minimize the likelihood that someone other than NML, after learning of the meeting, would argue that by answering NML's questions, Mr. Forcieri waived his privilege against self-incrimination. Having explicitly agreed not to argue that Mr. Forcieri had waived his Fifth Amendment privilege, neither NML (nor I) wished to be accused of gutting the purpose of the agreement by making it possible for some other person to take that position. *This is the sole reason neither NML nor I mentioned the October 30 Interview in NML's moving papers.*

5. In any case, I was as forthcoming as I felt I could be in describing the parties' negotiations regarding Mr. Forcieri's compliance with the Subpoena. In paragraph 41 of my November 4, 2014 Declaration, I did make a non-specific reference to the parties' efforts to "resolve the subpoena by other means."

6. I also feel compelled to point out that, in his opposition papers, Mr. Bruch quotes only the first part of the email correspondence describing the terms of the deal the parties reached regarding the October 30 Interview. The excerpt quoted in the opposition comes from an email I sent to Ms. Hanna at 12:32 p.m. on October 23rd. However, the negotiations

continued after that time and did not conclude until October 27th at 6:25 p.m., when NML clarified that “if Mr. Forcieri is not cooperative, NML may seek judicial intervention,” (email to Sandra M. Hanna, dated October 27, 2014, 4:00 pm, included in Ex. 1 to the Bruch Decl., and that “what we mean by cooperative is that he provides any information he has that it [sic] responsive to the subpocna. If it appears to us that he is withholding information, we will conclude that he is not being cooperative. But I assure you that my clients are honorable people, and that they will not take the position that your client is not cooperative without good reason.” *Id.* (email to S. Hanna dated October 27, 2014 at 5:51 p.m.). At 6:25 p.m. on October 27th, Ms. Hanna agreed to those terms. *Id.* (email to D. Hranitzky, dated October 27, 2014 at 6:25 p.m.)

7. NML does not contest that, as Mr. Bruch states in his Declaration, the October 30 Interview lasted more than two hours, that Mr. Forcieri purported to answer all of the questions posed to him, and that he did not refuse to answer any questions. Bruch Decl. ¶¶ 13-14. However, upon comparing the information provided by Mr. Forcieri at the interview with information NML obtained from other sources, it became apparent to NML that Mr. Forcieri was withholding information during the October 30 Interview. This is what I was referring to when I said in paragraph 41 of my November 4, 2014 Declaration that “by the afternoon of October 30, 2014, it had become apparent that the parties were at an impasse...”

8. On Monday, November 3, 2014, Robert Cohen and I spoke with Mr. Bruch by phone to inform him that we believed Mr. Forcieri had withheld information during the October 30 Interview, that NML therefore did not consider Mr. Forcieri to have been “cooperative” as required under the parties agreement, and that NML intended to seek judicial intervention if Mr. Forcieri did not agree to appear for a deposition. During that discussion, Mr. Cohen outlined three subject areas in particular as to which we believe Mr. Forcieri withheld information.

9. First, in November 2012, Forcieri was named the Argentine representative to the World Bank. While Mr. Forcieri served in that role, in October 2013, the Argentine government settled five claims in the International Centre for Settlement of Investment Disputes (“ICSID”) arbitration system, which is administered under the auspices of the World Bank. The settlement was signed by Amado Boudou, who was Argentina’s Acting President while President Cristina Fernández Kirchner recovered from brain surgery. Gramercy Advisors, Boudou’s alleged collaborator in a scheme to reopen the debt swap, had acquired at least two of these ICSID claims months earlier in June 2013. During our interview, Mr. Forcieri said he was totally unaware of the fact that Gramercy had acquired these ICSID claims (in advance the settlement) while he was the World Bank representative, and denied having any knowledge about this event before he was informed of the fact during the interview. He claimed to be unaware that Gramercy had acquired two of the ICSID claims, despite the fact that he said President Kirchner instructed him that *one of his most important obligations as the Argentine World Bank representative was to settle Argentina’s cases before the World Bank so that the country could receive loans from the organization*. Mr. Forcieri said that settling the ICSD claims was one of the World Bank’s primary preconditions for normalizing Argentina’s relationship with the Bank. Because Mr. Forcieri also said he had followed the ICSID matters in the newspaper during the time period at issue, Mr. Cohen directed Mr. Forcieri’s counsel to an October 18, 2013 article in Clarín, a major Argentine newspaper, describing Gramery’s purchase of the ICSID claims.

10. Second, Mr. Forcieri founded three businesses—called Petro de la Costa, Action Media, and Rock Argentina—along with a long-time associate and accused Ciccone accomplice of Boudou named Juan Carlos López. All three firms have been identified by investigators and journalists within Argentina as suspected channels for money laundering activity undertaken by

or on behalf of Boudou. One of them, Rock Argentina, received loans worth hundreds of thousands of dollars from Banco Macro, a prominent Argentine bank with history of close ties to the government. During the interview, Mr. Forcieri explained that these businesses were small and unprofitable enterprises he operated as “hobbies,” that he did not place any money into these businesses, that he eventually transferred the businesses “to a friend” for nominal consideration, and had no idea what happened to them afterwards. He also denied knowledge of the loans from Banco Macro to Rock Argentina, a music promotions company, and claimed that although he provided knowledge and personal effort to Rock Argentina, he received no payment. During the November 3 call, Mr. Cohen drew Mr. Forcieri’s counsel’s attention to a publication in Argentina’s Official Gazette indicating that each of these three businesses was founded with significant start-up capital totaling \$15,000—a fact directly contrary to Mr. Forcieri’s claim that he did not have a monetary interest in the ventures.

11. Finally, Mr. Forcieri stated during the October 30 Interview that he had not followed Argentina’s 2010 sovereign debt exchange and knew little about it because Hernán Lorenzino, who was the Secretary of Finance, and not Boudou, oversaw the exchange. This also struck NML as incredibly implausible, given that the 2010 debt exchange was arguably the most significant matter overseen by the Argentine Ministry of the Economy at that time, and that Lorenzino reported directly to Boudou—for whom Mr. Forcieri served as chief of staff at the Ministry of the Economy while the 2010 debt exchange was going on.

12. In response to Mr. Cohen’s explanation of these three matters as to which Mr. Forcieri appeared not to have been truthful at the October 30 Interview, Mr. Bruch stated, in words or substance, that Mr. Forcieri would neither provide any additional information to NML, nor correct or clarify any of the responses he had given during the interview.

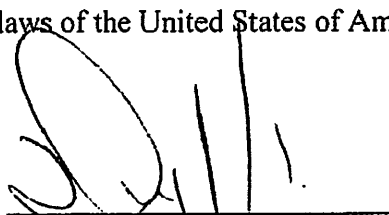
13. In order to allow NML sufficient time to seek court intervention before Mr. Forcieri's planned November 8 departure from the United States, Mr. Cohen informed Mr. Bruch during our November 3 telephone conversation that NML would need confirmation that Mr. Forcieri would appear for a deposition before leaving the United States by noon on November 5. At roughly noon on November 5, I received Mr. Bruch's letter stating "[i]t is our position that [Mr. Forcieri] has already fully complied with his obligations under the Subpoena." It was at that point that NML determined that the negotiations had reached an impasse and moved forward with the filing of the motion to compel.

14. Finally, I must correct an error in paragraph 41 of my November 4, 2014 Declaration. At the end of the penultimate sentence of that paragraph, I stated that by the afternoon of October 30, 2014, it had become apparent to NML that Mr. Forcieri "was not willing to appear for deposition or make any further production of documents." In fact, this fact did not become apparent until I received Mr. Bruch's November 4, 2014 letter. In any case, this error is immaterial to NML's motion, as the parties had reached an impasse before NML brought the instant motion to compel.

15. In sum, the inconsistencies described above in Mr. Forcieri's statements at the October 30 Interview described above make apparent that it was entirely reasonable for NML to determine that Mr. Forcieri did not fulfill his obligations with respect to his compliance with the Subpoena. For this reason, together with those set forth in NML's prior submissions, NML respectfully request that the Court Order Mr. Forcieri to immediately appear for a deposition and to prevent him from leaving the country until he has done so.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: November 6, 2014



Dennis H. Hranitzky