

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MILLION AIR CORP., :
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 Plaintiff, : 04 Civ. 1048 (TPG)
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 - against - : **OPINION**
 :
 THE REPUBLIC OF ARGENTINA, :
 :
 Defendant. :
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Plaintiff Million Air Corp. is the beneficial owner of certain bond indebtedness issued by defendant The Republic of Argentina. The Republic defaulted on such indebtedness in December 2001 during a profound fiscal crisis. Plaintiff is suing to recover amounts due to it as a result of the default and has moved for summary judgment.

The motion is granted.

FACTS

The bond indebtedness at issue is governed by a Fiscal Agency Agreement dated October 19, 1994 (the "1994 FAA"). The 1994 FAA is the same agreement that governed the bond indebtedness on which this court granted summary judgment to the plaintiffs in Lightwater Corporation Ltd. v. Republic of Argentina, No. 02 Civ. 3804, 2003 WL 1878420 (S.D.N.Y. Apr. 14, 2003). Section 22 of the 1994 FAA states that the Republic waives sovereign immunity and consents to jurisdiction in any state or federal court in the borough of Manhattan in the City of New York. The 1994 FAA provides that

the Republic's obligations on the bonds are unconditional and that failure to make any payment of principal or interest for 30 days after the applicable payment date constitutes an event of default. A declaration by the Republic of a moratorium on the payment of principal or interest on its public external indebtedness is an event of default as well. Paragraph 12 of the FAA provides for acceleration of principal if there is a failure to pay interest or a moratorium. If either of these events occurs,

each holder of Securities and such Series may by such notice in writing declare the principal amount of Securities of such Series held by it to be due and payable immediately

As will be described shortly, there has been some lack of clarity as to exactly what it is that plaintiffs in these Argentine bond cases actually own. However, in the Republic's brief on the present motion, dated September 7, 2004, the Republic stated that when the FAA speaks of "Securities of such Series," it is speaking of bonds, *including the bonds held by plaintiff in this action.*

On December 24, 2001 the Republic 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, 2003 WL 1878420, at *2; Applestein v. Republic of Argentina, No. 02 Civ. 1773, 2003 WL 1990206, at *1 (S.D.N.Y. Apr. 29, 2003). On February 9, 2004, the attorney for plaintiff sent notices to Bankers Trust Company, the

Fiscal Agent of The Republic of Argentina, declaring the principal amounts of the debt securities held by plaintiff to be immediately due and payable.

The bonds that are the subject of this action are listed hereafter.

Also listed are the amounts of the beneficial interests owned by plaintiff. The court notes the distinction between bonds and beneficial interests. This is the first in the series of summary judgment opinions in the Argentine bond litigation to deal with this distinction. Heretofore, the court has simply referred to the plaintiffs as owners of "bonds." Indeed, in its earlier brief on this motion, the Republic referred to plaintiffs as owning "bonds" and spoke of the "Securities," described in the FAA, as "bonds." It must be now understood that this reference actually means "beneficial interests in bonds."

The first time this distinction was discussed – or at least discussed with any thoroughness – was at a hearing held on September 13, 2005. The following is a brief summary of what was explored at great length at that hearing. The Republic actually issues "a bond" to a 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.

The following tables contain the necessary identifying information regarding plaintiff's beneficial interests in bonds.

Table 1.

<u>Plaintiff Beneficial Owner:</u>	Million Air Corp.
<u>Face Value:</u>	U.S. \$ 212,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AN0; ISIN No. US04114AN02
<u>Date Of Issuance:</u>	October 9, 1996.
<u>Date Of Maturity:</u>	October 9, 2006.
<u>Interest Rate/Payable:</u>	11 %
<u>Date Of Purchase:</u>	November 17, 2003.
<u>Acceleration:</u>	February 9, 2004.
<u>Contract Documents:</u> (FAA; FRB; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from Puente Administradora de Inversiones as of June 30, 2004.

Table 2.

<u>Plaintiff Beneficial Owner:</u>	Million Air Corp.
<u>Face Value:</u>	U.S. \$ 107,000.00
<u>CUSIP No., ISIN No., BB No.:</u>	CUSIP No. 040114AR1; ISIN No. US04114AR16
<u>Date Of Issuance:</u>	January 30, 1997.
<u>Date Of Maturity:</u>	January 30, 2017.
<u>Interest Rate/Payable:</u>	11.375 %
<u>Date Of Purchase:</u>	November 17, 2003.
<u>Acceleration:</u>	February 9, 2004.
<u>Contract Documents:</u> (FAA; Indenture; Offering Prospectus; Certificates, etc.)	FAA dated October 19, 1994.
<u>Evidence of Ownership Proffered:</u> (Account Statements; Letters; Notarized Statements, etc.)	- Account statement from Puente Administradora de Inversiones as of June 30, 2004.

DISCUSSION

This Court has already granted summary judgment in other cases to plaintiffs seeking to collect on the Republic's defaulted bonds issued under the October 19, 1994 FAA. This has occurred in Lightwater, supra, and other cases. Only certain specific issues need to be discussed in connection with the present motion.

Standing and Ownership

In the two opinions 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 plaintiff 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 now agreed to waive objections based on lack of authorization where a plaintiff provides confirmation slips or other proof of purchase for any purchase of beneficial interests on or after the default date of December 24, 2001, and where the court makes a finding at an appropriate time of current ownership.

Here, plaintiff has adequately demonstrated through its account statements that it acquired the beneficial interests in November 2003, and still

owned them as of June 30, 2004. There is no evidence of any change of ownership thereafter.

Acceleration of Principal

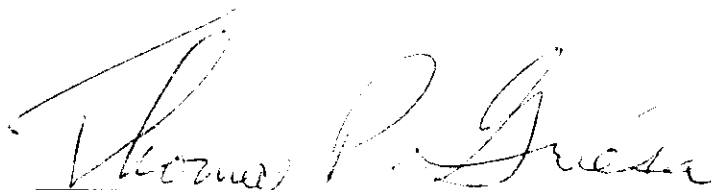
The Republic argues that plaintiff has not effected acceleration of the principal, as it claims to have done. The Republic argues that acceleration of principal can only occur at the behest of holders of 25% or more of the principal amount of securities of a series. This is incorrect. Under Paragraph 12 of the FAA, where a default in the payment of interest or a default by declaring a moratorium occurs, "each holder" may give notice and declare principal due and payable immediately, and such notice will cause the acceleration unless the default has been cured or other conditions have been fulfilled, which are not relevant here.

CONCLUSION

Plaintiff's motion for summary judgment is granted. Judgment will be entered for the principal amount of the bonds plus accrued interest.

SO ORDERED.

Dated: New York, New York
October 14, 2005



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