

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: (SUMMARY ORDER). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 5th day of November, two thousand nine.

PRESENT:

ROGER J. MINER,
JOHN M. WALKER, JR.,
REENA RAGGI,

Circuit Judges.

SILVIA SEIJAS, EMILIO ROMANO, RUBEN WEISZMAN, ANIBAL CAMPO, MARIA COPATI, AURELIUS CAPITAL PARTNERS LP, AURELIUS CAPITAL MASTER, LTD., PIER LUIGI CATTO, COSTANTINO CATTO, GIUSEPPE CATTO, MACROTECNIC INTERNATIONAL CORPORATION, JORGE MARCELO MAZZINI, ALBERTO HABER VALERIO PIACENZA, COMPANIA CALITECNIO S.A., HEINRICH PETER ZUM FELDE, EZEQUIEL HERNAN BAACLINI, PATRICIA RUTH CARONNA, CLAUDIA AURORA SABATINI BARTRA, JOSE ALBERTO LANDI, SALVADOR SADDEMI, MARIA TERESA LEPONE, HERNAN TABOADA, SUSANA FRASCA DE LAURIA, NORBERTO PABLO GIUDICE,

SUSANA LAURIA, JORGE MANUEL TABOADA,
MARIA DEL CARMEN ESCUDERO, ENRIQUE
COHEN, ESTRELLA BETY ROSAS DE COHEN,
DEBORA REINA COHEN, CORBINS TRADE S.A.,
KINBURG TRUST S.A., LUIGI GIOCOMAZZI,
LUCIANA PEDROLI, PATRIZIA GIACOMAZZI,
MICHELLE STAGNITTO, CLAUDIO MIGUEL
MATHEOU, HUGO MASINI, GUILLERMO
DOMATO, IMPERIAL BYLIDOL, S.A., DARIO
ALBERTO PARDAL, PAULA MASTRONARDI,
HORACIO ALBERTO VAZQUEZ, JUAN JOSE
RIZZO, ANA VALERIA BARAVALLE,

Plaintiffs-Appellees,

v.

Nos. 08-2847-cv,
08-2864-cv (con),
08-2922-cv (con),
08-2926-cv (con),
08-2943-cv (con)

THE REPUBLIC OF ARGENTINA,

Defendant-Appellant.

APPEARING FOR APPELLANT:

JONATHAN I. BLACKMAN (Carmin D.
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on the brief), Cleary Gottlieb Steen & Hamilton
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APPEARING FOR APPELLEES:

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Appeal from the United States District Court for the Southern District of New York
(Thomas P. Griesa, *Judge*).

UPON DUE CONSIDERATION of the judgments entered on April 18, 2008, April 22, 2008, and April 25, 2008, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the case is REMANDED for further proceedings.

Defendant the Republic of Argentina (“Argentina”) appeals a grant of injunctive relief in favor of plaintiffs, judgment creditors, which bars it from transferring its interest in certain of its own global bonds presently held in trust by Caja de Valores S.A. (“Caja”), an Argentine financial institution, and allegedly on deposit at the Depository Trust Corporation (“DTC”) in New York. Argentina argues that the injunctions must be vacated because they are not supported by the requisite findings. It further asserts that the Uniform Commercial Code, see N.Y. U.C.C. § 8-112(c), and the Foreign Sovereign Immunities Act (“FSIA”), see 28 U.S.C. § 1609, preclude the awarded relief as a matter of law. We assume the parties’ familiarity with the facts and record of prior proceedings, which we reference only as necessary to explain our ruling.

The district court initially granted the relief here at issue in the form of ex parte temporary restraining orders (“TROs”) signed on April 18, 22, and 25, 2008. See Fed. R. Civ. P. 65(b)(2). Each TRO states that “Argentina, its servants, employees, agents, representatives, and any person acting in concert with them (including, without limitation,

[Caja)]¹ are restrained and enjoined, pursuant to Fed. R. Civ. P. 65(b), from issuing any instruction to [Caja], or to any other person, to transfer, sell, pledge, loan or otherwise encumber or alienate the [bonds] held by [Caja] at [DTC].” On April 30, 2008, the district court held a hearing as to whether the TROs should be converted into preliminary injunctions. It reserved decision, continuing the TROs in the interim, so that on May 23, 2008, they automatically converted to preliminary injunctions. See Fed. R. Civ. P. 65(b)(2); In re Criminal Contempt Proceedings Against Crawford, 329 F.3d 131, 137-38 (2d Cir. 2003) (noting that TRO extended beyond the time limit of Rule 65(b) is treated as preliminary injunction). It is from these TROs/preliminary injunctions that Argentina now appeals.

We review a grant of a preliminary injunction for abuse of discretion. Doninger v. Niehoff, 527 F.3d 41, 47 (2d Cir. 2008). A district court abuses its discretion if it “applies legal standards incorrectly or relies upon clearly erroneous findings of fact, or proceed[s] on the basis of an erroneous view of the applicable law.” Capital Ventures Int’l v. Republic of Argentina, 443 F.3d 214, 222 (2d Cir. 2006) (internal quotation marks omitted). Argentina submits that the district court’s injunctive orders are unsupported by any required findings and must, therefore, be vacated.

The law permits a preliminary injunction to issue only where the moving party demonstrates “(1) a likelihood of irreparable harm in the absence of the injunction; and (2) either a likelihood of success on the merits or sufficiently serious questions going to the

¹ One of the TROs omits this parenthetical.

merits to make them a fair ground for litigation, with a balance of hardships tipping decidedly in the movant’s favor.” Doninger v. Niehoff, 527 F.3d at 47. A court deciding a preliminary injunction motion “must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” Winter v. Natural Res. Def. Council, Inc., 129 S. Ct. 365, 376 (2008) (internal quotation marks omitted); see also id. at 378, 382 (identifying abuse of discretion where lower courts “addressed [the relevant] considerations in only a cursory fashion”); Munaf v. Geren, 128 S. Ct. 2207, 2219 (2008) (identifying abuse of discretion where reviewing court “searche[d] the opinions below in vain for any mention of a likelihood of success as to the merits”); Weitzman v. Stein, 897 F.2d 653, 658 (2d Cir. 1990) (vacating preliminary injunction where district court had made “no findings whatsoever”).

We agree with Argentina that continued preliminary injunctive relief in this case presently is unsupported by the requisite findings. At the April 30, 2008 hearing, the district court expressly reserved decision on the issuance of a preliminary injunction, explaining:

I could not say today on the record that is before me, as much as I understand of it – and I have not mastered it at all completely, but I couldn’t say today, I couldn’t rule today that the Republic of Argentina has no interest in what is on deposit or what is on the books of DTC. I couldn’t say that. I couldn’t rule that way. On the basis of what you have said in the last few minutes, it seems to me that there are questions.

....

I will have to be very frank with you. I don’t know whether discovery is needed or me doing a more thorough job on the papers before me.

....

But I certainly will reserve decision, and whatever restraining order or whatever I have signed thus far will remain in effect until I make a decision.

Tr. Oral Arg. at 46 (Apr. 30, 2008). While a district may continue a TRO for a brief time, once that time passes, the court must make the findings required to support a preliminary injunction in order to grant ongoing relief. See Fed. R. Civ. P. 65(b)(2); Pan Am. World Airways, Inc. v. Flight Eng'rs' Int'l Ass'n, PAA Chapter, 306 F.2d 840, 842 (2d Cir. 1962) (“There is no statutory authority for . . . indefinite, successive extensions of temporary restraining orders.”); see also Fed. R. Civ. P. 52(a)(2) (“In granting . . . an interlocutory injunction, the court must . . . state the findings and conclusions that support its action.”). Because the district court’s quoted remarks do not – and were not intended to – “inform[] us as to its underlying rationale” for a preliminary injunction, much less “discipline its approach to the case before it,” we cannot uphold continued injunctive relief on this record. Inverness Corp. v. Whitehall Labs., 819 F.2d 48, 51 (2d Cir. 1987).

The district court’s statement nevertheless suggests the existence of serious merits questions, and the record reflects the possibility that vacating the injunctions would impose undue hardship on plaintiffs, who might thus be deprived of a significant opportunity to execute on their judgments. Accordingly, we do not vacate the injunctions; instead, we “remand the case to the district court for an explanation” as to the propriety of a preliminary injunction. Id.

To Argentina’s contention that no remand is warranted because the relief sought is

precluded as a matter of law by N.Y. U.C.C. § 8-112(c) and the FSIA, we observe that, consistent with “our settled practice,” we “allow the district court to address arguments in the first instance.” Farricielli v. Holbrook, 215 F.3d 241, 246 (2d Cir. 2000); accord Frontera Res. Azerbaijan Corp. v. State Oil Co. of Azerbaijan Republic, 582 F.3d 393, 401 (2d Cir. 2009) (remanding for determination whether Azerbaijani state oil company was state agent for purposes of due process analysis).

For the reasons stated, we REMAND the case with the challenged orders intact, and we instruct the district court to undertake the necessary analysis for a preliminary injunction within ten days of this order or to vacate these temporary orders without prejudice to granting equitable relief in the future upon appropriate findings.

FOR THE COURT:
CATHERINE O’HAGAN WOLFE, Clerk of Court

By: _____