

Second Circuit Holds That Argentinean National Bank Is Not Alter Ego of Argentina

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The US Court of Appeals for the Second Circuit recently affirmed a decision from the United States District Court for the Southern District of New York, holding that **Banco de la Nación Argentina (BNA) was not Argentina's alter ego** and, therefore, that BNA's assets could not satisfy the judgment that plaintiffs obtained against Argentina relating to the **country's default on its sovereign debt**.

Plaintiffs sought to satisfy their judgment against Argentina from BNA's assets. The District Court granted BNA's motion for summary judgment, finding that BNA was an "agency or instrumentality of a foreign state" as defined by the Foreign Sovereign Immunities Act (FSIA), and also denied plaintiffs' motion for jurisdictional discovery. Plaintiffs argued that BNA was subject to the "alter ego" exception of the FSIA, asserting that BNA "is so extensively controlled by [Argentina] that a relationship of principal and agent is created."

The Second Circuit upheld the District Court's ruling. The Second Circuit considered four allegations concerning BNA's potential "alter ego" relationship with Argentina: (1) Argentina appointed and removed BNA's directors, (2) BNA made favorable loans to individuals and corporations that were in Argentina's political interests, (3) BNA made loans to Argentina in violation of its governing charter, and (4) BNA's financial records were not transparent. The Second Circuit held that the District Court had properly determined that all of these allegations, even if true, did not mean that BNA was Argentina's "alter ego," as opposed to an agency or instrumentality of a foreign state. The Second Circuit also held that because of the "comity concerns implicated by allowing jurisdictional discovery from a foreign sovereign", plaintiffs would have to show "a reasonable basis for assuming jurisdiction" before discovery would be permitted. Because it found that plaintiffs' allegations did not create this basis, it affirmed the District Court's order.

Seijas v. Republic of Argentina, No. 11–1714–cv, 2012 WL 5259030 (2d Cir. Oct. 25, 2012).

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