IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Webuild S.p.A., f/k/a Impregilo S.p.A. *Plaintiff*, v. Argentine Republic *Defendant*.	**Civil Action No.** 1:21-cv-2464 (RBW)

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR JUDGMENT ON THE PLEADINGS OR, IN THE ALTERNATIVE, SUMMARY JUDGMENT

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Plaintiff Webuild S.p.A. ("Webuild" or "Plaintiff"), by and through its undersigned counsel, respectfully submits this memorandum of points and authorities in support of its motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure ("FRCP") 12(c) or, in the alternative, summary judgment pursuant to FRCP 56 and Local Rule 7.

I. PRELIMINARY STATEMENT

Plaintiff filed this action more than three years ago, seeking the recognition and enforcement of a more than $20 million arbitral award (the "Award"), ECF No. 1-1, against Defendant the Argentine Republic ("Argentina"). The Award resulted from an arbitration conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, November 18, 1965, 575 U.N.T.S. 159 (the "ICSID Convention" or the "Convention"), ECF No. 1-4, to which both the United States and Argentina are parties.

Recognition and enforcement of arbitral awards rendered pursuant to the ICSID Convention is straightforward. Under Article 54 of the Convention, each Contracting State is obligated to "recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State." ICSID Convention, art. 54(1), ECF No. 1-4. Under 22 U.S.C. § 1650a ("Section 1650a"), the U.S. statute implementing Article 54 of the Convention, an ICSID award is entitled to "the same full faith and credit as if [it] were a final judgment of a court of general jurisdiction of one of the several States." 22 U.S.C. § 1650a(a). U.S. courts may not "examine an ICSID award's merits, its compliance with international law, or the ICSID tribunal's jurisdiction to render the award." *Valores Mundiales, S.L. v. Bolivarian Republic of Venezuela*, 87 F.4th 510, 515 (D.C. Cir. 2023) (internal quotation marks and citation omitted).

In its answer to Plaintiff's complaint, Argentina asserts as its **sole** defense that "Webuild's claims, including interest claims, are barred all or in part by the applicable statute of limitations and/or prescription period." Answer to Complaint, ¶ 47, ECF No. 21. As Argentina recognizes, however, *see id.* at ¶ 47 n.1, the Court already rejected that defense in its Order and Memorandum Opinion denying Argentina's motion to dismiss under FRCP 12(b)(6). *See* ECF Nos. 19, 20. Accordingly, the Court must recognize and enforce the Award in accordance with Article 54 of the ICSID Convention and Section 1650a.[1] Because no material fact is in dispute, and because Plaintiff is entitled to judgment as a matter of law, the Court should enter judgment on the pleadings pursuant to FRCP 12(c) or, in the alternative, grant summary judgment pursuant to FRCP 56.

II. BACKGROUND

A. Plaintiff's Investment in Argentina

In October 1999, Plaintiff (formerly known as Impregilo S.p.A.), as part of a consortium of international companies (the "Consortium"), won a water and sewage contract for an area covering seven municipalities within the Province of Buenos Aires (the "Province"). Award, ¶¶ 13-14, ECF No. 1-1. The Consortium subsequently formed and funded AGBA, an Argentine company, which executed a concession contract with the Province for the provision of water and sewage services (the "Concession Contract"). *Id.*

In May 2001, AGBA alerted the Province's Minister of Public Works and Services that it was facing considerable difficulty in obtaining payment for its services from customers. *Id.* ¶ 21.

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1 As explained below, the Court has subject-matter jurisdiction over this action pursuant to two provisions of the Foreign Sovereign Immunities Act (the "FSIA"): the arbitration exception, 28 U.S.C. § 1605(a)(6); and the waiver exception, 28 U.S.C. § 1605(a)(1).

In January 2002, Argentina "pesified" utilities contracts, including the Concession Contract, at parity level and froze tariffs. *Id.* ¶¶ 28-30. In February 2002, Argentina prevented AGBA from billing work charges, and in August 2002 it suspended AGBA's right to interrupt water service to customers who had not paid their bills. *Id.* ¶¶ 31, 39. In July 2006, Argentina terminated the Concession Contract. *Id.* ¶ 48.

B. The Arbitration

On May 23, 2007, Plaintiff commenced an ICSID arbitration against Argentina by filing and serving on Argentina a Request for Arbitration under the Argentina-Italy Bilateral Investment Treaty (the "BIT") and the ICSID Convention. *See* Request for Arbitration, ECF No. 1-6. On July 25, 2007, the ICSID Secretary-General registered the Request for Arbitration. Award, ¶ 1, ECF No. 1-1. The arbitration proceeded in accordance with the ICSID Convention and ICSID Arbitration Rules. *See id.* ¶¶ 1-11. The selection of the Tribunal was completed on May 27, 2008. *Id.* ¶ 3. The Tribunal consisted of Judge Hans Danelius (appointed by the Chairman of the ICSID Administrative Council), Judge Charles N. Brower (appointed by Plaintiff), and Professor Brigitte Stern (appointed by Argentina). *Id.* ¶ 2.

The Tribunal received briefing and evidence from Plaintiff and Argentina, including submissions in which Argentina objected to the jurisdiction of the Tribunal. *See id.* ¶¶ 5-11. From May 4 to 6, 2009, the Tribunal held a hearing on jurisdiction at ICSID's seat in Washington, D.C. *Id.* ¶ 6. From March 9 to 18, 2010, the Tribunal held a hearing on the merits in Paris. *Id.* ¶ 8. On April 15, 2011, the arbitral proceedings were closed. *Id.* ¶ 11.

C. The Award Holding Argentina Liable for Breaching the BIT

On June 21, 2011, the Tribunal issued the Award. *Id.* at 3. It dismissed each of Argentina's jurisdictional objections (except to the extent that the third objection concerned contractual breaches which did not at the same time involve violations of Argentina's obligations under the BIT). *Id.* ¶¶ 79-109, 137-140, 173-189, § VI(A). On the merits, the Tribunal held that "Argentina, by failing to restore a reasonable equilibrium in the concession, aggravated its situation to such an extent as to constitute a breach of its duty under the BIT to afford a fair and equitable treatment to [Plaintiff's] investment." *Id.* ¶¶ 331. *See also id.* § VI(C).

The Tribunal awarded Plaintiff US$ 21,294,000 in compensatory damages for Argentina's breach of the BIT. *Id.* ¶ 381, § VI(E). The Tribunal also awarded Plaintiff interest on that amount, "compounded annually at the rate of 6% as from July 11, 2006 until the date of payment." *Id.* ¶¶ 382-384, § VI(E).

D. The Denial of Argentina's Annulment Application

On October 19, 2011, Argentina filed an application with ICSID to annul the Award and stay its enforcement. *See* Decision of the *Ad Hoc* Committee on the Application for Annulment, ¶ 1, ECF No. 1-7. An *ad hoc* annulment committee was formed, composed of Mr. Rodrigo Oreamuno (President), Mr. Eduardo Zuleta, and Ms. Teresa Cheng (the "*Ad Hoc* Committee"). *Id.* ¶ 5. On March 19 and 20, 2013, the *Ad Hoc* Committee held a hearing on the annulment application at ICSID's seat in Washington, D.C. *Id.* ¶ 12. On December 18, 2013, the *Ad Hoc* Committee closed the annulment proceeding. *Id.*

On January 24, 2014, the *Ad Hoc* Committee issued a unanimous decision dismissing in its entirety Argentina's annulment application and terminating the stay of enforcement. *Id.* ¶ 222(i), (ii).

E. Enforcement Proceedings

Under Article 53 of the ICSID Convention, the Award became immediately binding on Argentina on the date it was issued (June 21, 2011). ICSID Convention, art. 53, ECF No. 1-4. More than 13 years later, the Award remains wholly unpaid.

On September 20, 2021, Plaintiff filed its Complaint in this Court requesting an order and judgment recognizing and enforcing the Award. Complaint, ECF No. 1. On August 8, 2022, Argentina moved for dismissal of the Complaint pursuant to FRCP 12(b)(6) "for failure to state a claim because the action is time-barred." Motion to Dismiss, ECF No. 9 at 6. On November 19, 2024, the Court issued a Memorandum Opinion holding that "the Complaint is not time-barred," ECF No. 19 at 23, and an Order denying Argentina's motion to dismiss, ECF No. 20.

On December 3, 2024, Argentina filed its Answer to Plaintiff's Complaint. Answer to Complaint, ECF No. 21. The only defense asserted by Argentina in its Answer is that "Webuild's claims, including interest claims, are barred all or in part by the applicable statute of limitations and/or prescription period." *Id.* ¶ 47.

III. ARGUMENT

The Court should enter judgment on the pleadings pursuant to FRCP 12(c) or, in the alternative, summary judgment pursuant to FRCP 56, because no material fact is in dispute and Plaintiff is entitled to judgment as a matter of law under Article 54 of the ICSID Convention and Section 1650a, which provides that "[t]he pecuniary obligations imposed by . . . an [ICSID] award

shall be enforced" and "given the same full faith and credit" as a judgment of a state court. 22 U.S.C. § 1650a(a) (emphasis added).

A. The Court Has Jurisdiction to Recognize and Enforce the Award

In its Answer to Plaintiff's Complaint, Argentina does not dispute that the Court has subject-matter jurisdiction over this action. *See* Answer, ECF No. 21. Two of the FSIA's exceptions to foreign sovereign immunity apply here. *First*, the Court has subject-matter jurisdiction under the FSIA's arbitration exception, because Argentina consented to arbitrate this dispute when it ratified the BIT. *Second*, the Court also has subject-matter jurisdiction under the FSIA's waiver exception, because Argentina impliedly waived its immunity from jurisdiction in any action seeking enforcement of an ICSID award when it ratified the ICSID Convention, a multilateral convention which requires each Contracting State to recognize and enforce an ICSID award issued against any other Contracting State.[2]

1. The Court Has Subject-Matter Jurisdiction Under the FSIA's Arbitration Exception

The Court has jurisdiction under the FSIA's arbitration exception, which permits an action against a foreign state to "confirm an award" made pursuant to an agreement "by the foreign state," "with or for the benefit of a private party," to "submit to arbitration all or any differences," if the "award is . . . governed by a treaty," such as the ICSID Convention, that is "in force for the United States" and that "call[s] for the recognition and enforcement of arbitral awards." 28 U.S.C. §1605(a)(6). As the D.C. Circuit recently reaffirmed, jurisdiction exists under the arbitration

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2 Argentina also does not dispute that the Court has personal jurisdiction over it pursuant to 28 U.S.C. § 1330(b), which provides that "[p]ersonal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have [subject-matter] jurisdiction . . . where service has been made under section 1608 of this title." Argentina waived any objection to personal jurisdiction by failing to raise it in its motion to dismiss or its Answer. *See* Fed. R. Civ. P. 12(h)(1)(A)-(B).

exception if three "jurisdictional facts" exist: "'(1) an arbitration agreement, (2) an arbitration award, and (3) a treaty potentially governing award enforcement.'" *NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain*, 112 F.4th 1088, 1100 (D.C. Cir. 2024) (quoting *Chevron Corp. v. Ecuador*, 795 F.3d 200, 204 & n.2 (D.C. Cir. 2015)). All three jurisdictional facts are present here.

First, Plaintiff's acceptance of Argentina's standing offer to arbitrate in the BIT created an arbitration agreement between the Parties that satisfies the requirement of an arbitration agreement in Section 1605(a)(6). *See, e.g.*, *Chevron*, 795 F.3d at 205-06 (holding that Chevron's acceptance of Ecuador's "standing offer to arbitrate" in the bilateral investment treaty between the U.S. and Ecuador satisfied the requirement of an arbitration agreement in Section 1605(a)(6)). Article 8(3) of the BIT, which provides that "each Contracting Party hereby irrevocably consents in advance to submit any dispute [with an investor of the other Contracting Party] to arbitration," ECF No. 1-5 at 7, "operates as 'a unilateral offer to arbitrate' by each sovereign to investors of the other signatory countr[y]." *NextEra*, 112 F.4th at 1102 (quoting *BG Grp., PLC v. Republic of Argentina*, 572 U.S. 25, 50 (2014)); *see also* Award, ¶¶ 167-169 (noting that Argentina "provided its consent to ICSID jurisdiction in this case through the open invitation made to Italian investors in the BIT"), ECF No. 1-1. Plaintiff accepted Argentina's unilateral offer to arbitrate "by 'filing . . . a notice of arbitration.'" *NextEra*, 112 F.4th at 1102 (quoting *BG Grp.*, 572 U.S. at 42); *see* Request for Arbitration, ¶¶ 68-69 (noting that Argentina "consented to ICSID jurisdiction when it signed and ratified the BIT with the Italian Republic" and stating that Plaintiff "hereby again reiterates its written consent to the submission of the dispute described herein for settlement by binding arbitration to ICSID"), ECF No. 1-6.

In addition, Article 8 of the BIT independently satisfies the requirement of an arbitration agreement in Section 1605(a)(6) because it constitutes a "completed" arbitration agreement between Argentina and Italy "for the benefit of" each other's investors. *See NextEra*, 112 F.4th 1101 (holding that "an arbitration provision in an investment treaty can both (1) constitute an agreement 'for the benefit' of a private party; and (2) give rise to a separate agreement 'with' a private party"). Article 8 provides that a dispute between an investor and one of the Contracting Parties "may be referred to international arbitration" by the investor, which "may choose to refer the dispute . . . to . . . [t]he International Centre for the Settlement of Investment Disputes." BIT, ECF No. 1-5 at 7. Argentina and Italy thus agreed to arbitrate disputes with each other's investors, and "[t]hat agreement is 'for the benefit' of [each] signatory's investors, and therefore satisfies the FSIA's arbitration exception." *NextEra*, 112 F.4th at 1103.

Second, the Award satisfies the requirement of an arbitration award in Section 1605(a)(6), because it was rendered by an arbitral tribunal and obligates Argentina to pay Plaintiff more than US$ 20 million. *See* Award, ¶ 381, § VI(E), ECF No. 1-1.

Third, the ICSID Convention satisfies the requirement of a "treaty potentially governing award enforcement." *See NextEra*, 112 F.4th at 1100. As discussed above, Article 54(1) of the Convention requires the United States to recognize and enforce the Award as if it were a final judgment of a state court. ICSID Convention, art. 54(1), ECF No. 1-4; *see von Pezold v. Republic of Zimbabwe*, No. 23-7109, 2024 WL 4763943, at *2 (D.C. Cir. Nov. 13, 2024) (per curiam) (holding that the ICSID Convention satisfies the requirement of a "treaty governing award enforcement").

2. The Court Has Subject-Matter Jurisdiction Under the FSIA's Waiver Exception

The Court also has subject-matter jurisdiction under the FSIA's waiver exception, which provides that a foreign state is not immune from jurisdiction in any case "in which [it] has waived its immunity either explicitly or by implication." 28 U.S.C. § 1605(a)(1). To waive immunity by implication, a state need only "indicat[e] its amenability to suit" in U.S. court. *Princz v. Fed. Republic of Germany*, 26 F.3d 1166, 1174 (D.C. Cir. 1994). Amenability to suit may be demonstrated through a state indicating (1) "a subjective intent to waive immunity"; (b) "an act that objectively can be interpreted as exhibiting an intent to waive immunity"; or (c) "tak[ing] acts that forfeit its right to immunity, irrespective of whether it has intended to do so." *Cabiri v. Gov't of Republic of Ghana*, 165 F.3d 193, 202 (2d Cir. 1999).

The D.C. Circuit has held that when a foreign state ratifies a treaty that "contemplate[s] arbitration-enforcement actions in other signatory countries, including the United States," it has "waive[d] its immunity from arbitration-enforcement actions" under the FSIA. *Tatneft v. Ukraine*, 771 F. App'x 9, 10 (D.C. Cir. 2019) (waiver exception applies to award enforcement action under New York Convention); *see also Creighton Ltd. v. Gov't of State of Qatar*, 181 F.3d 118, 123 (D.C. Cir. 1999) (same). Because the ICSID Convention contemplates enforcement of ICSID awards in any of its Contracting States, including the United States, this Court repeatedly has held that a foreign state's ratification of the ICSID Convention operates as a waiver of its immunity from jurisdiction in any action to recognize and enforce an ICSID award. *See, e.g.*, *ConocoPhillips Petrozuata B.V. v. Bolivarian Republic of Venezuela*, 628 F. Supp. 3d 1, 7 (D.D.C. 2022); *Process & Indus. Devs. Ltd. v. Fed. Republic of Nigeria*, 506 F. Supp. 3d 1, 11 (D.D.C. 2020), *aff'd on other grounds*, 27 F.4th 771 (D.C. Cir. 2022); *Stati v. Republic of Kazakhstan*, 199 F. Supp. 3d

179, 190 (D.D.C. 2016). Argentina thus waived its immunity from jurisdiction in this action when it ratified the ICSID Convention.

B. The Court Should Grant Plaintiff's Motion for Judgment on the Pleadings

FRCP 12(c) provides that "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Under this rule, judgment on the pleadings is appropriate "if the moving party demonstrates that no material fact is in dispute and that it is entitled to judgment as a matter of law." *Peters v. Nat'l R.R. Passenger Corp.*, 966 F.2d 1483, 1485 (D.C. Cir. 1992) (internal quotation marks and citations omitted).

Plaintiff is entitled to judgment on the pleadings because (1) no material fact is in dispute and (2) the Court already has rejected the **sole** defense that Argentina asserts in its Answer. As the D.C. Circuit explained in *Valores*, this Court is "'not permitted to examine an ICSID award's merits, its compliance with international law, or the ICSID tribunal's jurisdiction to render the award.'" 87 F.4th at 515 (quoting *Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela*, 863 F.3d 96, 118 (2d Cir. 2017)). Rather, the Court "may do no more than examine the [award's] authenticity and enforce the obligations imposed by the award." *Mobil Cerro*, 863 F.3d at 102. *See also, e.g.*, *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, 414 F. Supp. 3d 94, 101 (D.D.C. 2019) (same). As a result, "[a]fter the complaint is filed and service effected, the award-creditor may file a motion for judgment on the pleadings, for instance, or a motion for summary judgment." *Mobil Cerro*, 863 F.3d at 118.

Plaintiff filed an authenticated copy of the Award with its Complaint. *See* ECF No. 1-1 at 2. Argentina does not dispute the Award's authenticity in its Answer. *See* Answer, ECF No. 21. Instead, Argentina's sole defense to the recognition and enforcement of the Award is that

"Webuild's claims, including interest claims, are barred all or in part by the applicable statute of limitations and/or prescription period." *Id.* ¶ 47. As Argentina recognizes, however, *see id.* ¶ 47 n.1, the Court already rejected that defense its Order and Memorandum Opinion denying Argentina's motion to dismiss under FRCP 12(b)(6). *See* ECF Nos. 19, 20. Because no material fact is in dispute, and because the Court already has rejected the sole defense to recognition and enforcement asserted by Argentina in its Answer, the Court should grant Plaintiff's motion for judgment on the pleadings.

C. In the Alternative, the Court Should Grant Plaintiff's Motion for Summary Judgment

In the alternative, the Court should grant summary judgment under FRCP 56, which provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material for purposes of summary judgment only if it "might affect the outcome of the suit under the governing law," and a dispute is genuine only if "the evidence presents a sufficient disagreement to require submission to a jury." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 243, 248 (1986).

As discussed above, no material fact is in dispute. Plaintiff has established, and Argentina does not dispute, that: (1) Argentina, Italy, and the United States are parties to the ICSID Convention, Pl.'s Stmt. Material Facts ¶ 3; (2) the Award was rendered pursuant to the ICSID Convention, is authentic, and requires Argentina to pay Plaintiff US$ 21,294,000, plus interest, *id.* ¶¶ 8-10; (3) Argentina has not paid any portion of the Award, *id.* ¶ 13; and (4) the *Ad Hoc* Committee issued a unanimous decision dismissing in its entirety Argentina's application to annul the Award and terminating the stay of enforcement, *id.* ¶ 12. As discussed above, Plaintiff is

entitled to judgment as a matter of law because the Court already has rejected the sole defense to recognition and enforcement asserted by Argentina in its Answer. Accordingly, the Court should grant summary judgment recognizing and enforcing the Award.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant its motion for judgment on the pleadings or, in the alternative, summary judgment.

Date: January 8, 2025

Respectfully submitted,

/s/ Thomas C.C. Childs

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