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Can Arbitral Awards Be Enforced Against Embezzled Sovereign Assets?

Brian Asher (Asher Research) · Thursday, May 22nd, 2025

To enforce arbitral awards against recalcitrant sovereign debtors, creditors have occasionally resorted to searching for assets embezzled from sovereigns and seeking to attach them. But two recent cases – *Commissions Import Export SA v. Republic of the Congo, et al.* and *Casa Express Corp. v. Bolivarian Republic of Venezuela* – show that any creditors adopting this approach in the US will face an obstacle. In both cases, federal district courts held that assets misappropriated from a sovereign debtor are immune from attachment by the sovereign’s creditors. Both courts reasoned that even if such assets belong to the sovereign, they are out of its control and thus not in use by the sovereign for a commercial activity, as required for attachment under the [Foreign Sovereign Immunities Act](#). But, despite these setbacks, an earlier case from [Elliott Management’s dispute with Argentina](#) suggests that investigations of embezzled sovereign assets can still play an effective role in creditors’ public relations and negotiating strategies.

This post summarizes *Commissions Import Export SA v. Republic of the Congo, et al.* and *Casa Express Corp. v. Bolivarian Republic of Venezuela* and analyzes their implications for creditors with awards against sovereign debtors. The post then summarizes a discovery dispute from Elliott Management’s litigation against Argentina – captioned as *NML Capital Ltd. v. Republic of Argentina* – to analyze the potential value of pursuing embezzled sovereign assets despite the recent difficulties for creditors of the Republic of the Congo and Venezuela.

Commissions Import Export SA v. Republic of the Congo, et al.

In April 2019, [Global Witness](#) and [The New York Times](#) reported that Claudia Sassou-Nguesso, the daughter of the Republic of the Congo’s president, had apparently embezzled millions of dollars and then used them to buy a \$7.1 million Manhattan apartment. Days later, Commissions Import Export SA (“Commisimpex”) [petitioned](#) for turnover of this apartment in partial satisfaction of two judgments derived from arbitration awards against the Republic of the Congo. But in May 2023, the court [dismissed](#) this petition on several bases, including that the apartment was not in commercial use by the Republic of the Congo.

The court found that although the apartment was alleged to be in commercial use by Sassou-Nguesso and Ecree LLC, the company that held title to it, this alleged commercial use could not be imputed to the Republic of the Congo:

Courts across the country have strictly interpreted Section 1610 to require that the foreign sovereign *itself* use the subject property for a commercial activity. [emphasis in original] . . . Courts have rejected attempts to impute a third party's use of the relevant property to the sovereign.

The court [granted](#) Commisimpex leave to amend its turnover petition, and in an [amended petition](#) it made two new allegations. First, it alleged that Ecree was an *alter ego* of the Republic of the Congo, and second, it alleged that Sassou-Nguesso was an agent of the Republic of the Congo such that her use of the apartment could be imputed to the sovereign. In its previous opinion and order [dismissing](#) the turnover petition, the court did not address any *alter ego* allegation but was skeptical that Sassou-Nguesso was an agent of the sovereign, finding that her “use of the Condo appears to be a ‘private’ act and not one that may be ‘attributable to [her] government.’”

Before the court could rule on renewed motions to dismiss by both Sassou-Nguesso and Ecree, the US government [filed](#) a civil forfeiture complaint against the apartment, and the turnover proceeding was [stayed](#). Thus, the court has not ruled on the *alter ego* or principal-agent arguments that Commisimpex made in its amended turnover petition. However, even if these arguments were to succeed, creditors may only use similar arguments when high-ranking officials or their relatives have embezzled assets. In many cases, others embezzle public funds without plausibly acting as *alter egos* or agents of a sovereign.

Casa Express Corp. v. Bolivarian Republic of Venezuela

Such is the alleged case of Raul Gorrin Belisario, a Venezuelan on US Immigration and Customs Enforcement's “[Most Wanted](#)” list for charges of money laundering and violating the Foreign Corrupt Practices Act. In December 2020, a [superseding indictment](#) in the Southern District of Florida alleged that Gorrin paid bribes totaling hundreds of millions of dollars to Venezuelan officials in exchange for currency trading contracts that brought him hundreds of millions of dollars in illicit profits. The Department of the Treasury's Office of Foreign Assets Control (“OFAC”) has also [sanctioned](#) Gorrin as well as several companies in the US controlled by him.

In September 2021, a judgment creditor of Venezuela named Casa Express Corp. [petitioned](#) to attach eight properties in Florida owned by companies that OFAC alleged were controlled by Gorrin. Casa Express alleged that Gorrin had bought these properties with funds misappropriated from Venezuela and that therefore, the properties were attachable by the country's creditors. But in April 2024, the court [dismissed](#) Casa Express's petition on several bases, including that the properties were not in commercial use by Venezuela.

Casa Express unsuccessfully argued that the property of a sovereign debtor should be available for attachment if a third party uses it for commercial activity, but [on appeal](#), it has abandoned this argument. Instead, Casa Express is relying on a [law](#) enacted by Venezuela's opposition-controlled National Assembly in 2022. Under this law, creditors of Venezuela can pursue embezzled public funds with the approval of Venezuela's opposition-appointed special attorney general.

Casa Express argues that the special attorney general assigned it Venezuela's right to sue Gorrin's companies and that this assignment constitutes a commercial use of the companies' assets by Venezuela. The district court [decided](#) that no assignment had in fact occurred and that, even

assuming it had, such assignment would not constitute commercial use of the properties by Venezuela. Both decisions have been [challenged](#) on appeal, which has been fully briefed in the 11th Circuit but not yet decided.

It does not appear that any other creditors have sought to attach embezzled Venezuelan assets in the US based on the National Assembly's 2022 law. The 11th Circuit's forthcoming decision in this case may clarify under what circumstances, if any, creditors can avail themselves of this law.

NML Capital Ltd. v. Republic of Argentina

A case from Elliott Management's 15-year [dispute](#) with Argentina suggests that the pursuit of embezzled sovereign assets is best understood as a source of leverage over a debtor rather than a means to monetize a judgment directly.

In April 2014, NML Capital Ltd., the affiliate of Elliott Management that held judgments against Argentina, [petitioned](#) to compel production from 123 Nevada companies. These companies had allegedly helped launder Argentine funds embezzled by Lazaro Baez, an associate of then-President Cristina Fernandez. NML Capital also [subpoenaed](#) more than a dozen banks for information on Baez, and it [received](#) responsive records from many of them.

In its [petition](#) to compel production from the Nevada companies, NML Capital cited the Argentine Criminal Code to argue, "[i]f Baez is convicted of embezzlement, any funds traceable to that activity will constitute property of Argentina that is potentially available to satisfy NML's \$1.7 billion in judgments." In August 2014, the court [granted](#) NML Capital's motion to compel. In March 2015, the court [granted](#) additional motions to compel production from other nonparties connected to Baez. In this second order, the court noted that to obtain discovery from a nonparty, a judgment creditor need only make a threshold showing of "reasonable suspicion" that the information sought will be relevant.

The issue that has frustrated creditors in the two cases discussed above – the immunity of embezzled assets from attachment given the sovereign's inability to use them for commercial activity – did not arise in this case. NML Capital only sought discovery based on the possibility that Baez might be convicted of embezzlement and that any assets traced to that embezzlement would become Argentine assets.

In February 2021 – long after Elliott Management settled its dispute with Argentina – Baez was [convicted](#) of money laundering in an Argentine court, but the chance that NML Capital would locate his assets in the US and attach them after his conviction on Argentine embezzlement charges was always low. Rather, the search for information on Baez's assets was a means of pressuring the Argentine government. Efforts by NML Capital to investigate Baez's assets were [covered](#) in Argentine media throughout 2014 and 2015, as Argentina prepared for presidential elections in late 2015. And subsequent [reporting](#) in Argentina showed that the country's lawyers kept government officials abreast of developments in NML Capital's investigation of Baez.

Conclusion

As the cases discussed above show, even if the attachment of embezzled assets will often be impossible, a creditor might still have reason to investigate such assets. Such an investigation, however, will not be effective in every case. For example, a creditor of Venezuela would be mistaken in trying to imitate the approach of NML Capital for two reasons. First, Argentina's [foreign exchange reserves](#) were more than enough to pay its defaulted debts, meaning that the country could [settle](#) with its creditors if and when it was forced to do so. In contrast, Venezuela has foreign exchange reserves of [less than \\$15 billion](#) and defaulted debts [exceeding \\$150 billion](#), meaning that it cannot repay its creditors no matter the leverage they exert. Second, as the change of government following Argentina's 2015 elections showed, its government still needed to be sensitive to public opinion. In Venezuela, Nicolas Maduro governs despite having [lost](#) the country's most recent presidential election, and it is doubtful that creditors can influence Maduro by investigating the obvious corruption of his government.

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