

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CHICKPEN, S.A.,

Plaintiff,

v.

BOLIVARIAN REPUBLIC OF
VENEZUELA,

Defendant.

Case No. 1:21-cv-00597

COMPLAINT

Plaintiff Chickpen, S. A. (“Chickpen”), by and through undersigned counsel, Sanchez Fischer Levine, LLP, hereby sues Defendant Bolivarian Republic of Venezuela (“Venezuela”), and alleges as follows:

NATURE OF THE ACTION

1. Chickpen is the beneficial owner of interests in two-dollar denominated debt securities issued by Venezuela (each a “Debt Security,” collectively the “Debt Securities”).

The Global Bonds

2. The first Debt Security, 13.625% global bonds due 2018, ISIN No. US922646AT10, CUSIP No. 922646AT1 (the “Global Bonds”), was issued in 1998, with a follow-on offering in 2004, pursuant to a Fiscal Agency Agreement dated as of August 6, 1998 (the “1998 FAA”) among Venezuela, Banco Central de Venezuela and The Chase Manhattan Bank.

3. The Global Bonds obligated Venezuela to repay principal in full on August 15, 2018 (the Global Bonds’ Maturity Date”).

4. Until full repayment of the principal, whether on the Global Bonds' Maturity Date, as required, or later, the Global Bonds obligated Venezuela to pay interest on principal semi-annually in arrears, on February 15 and August 15 of each year, at a rate of 13.625% *per annum*.

5. Beginning with interest payments due on February 15, 2018, however, Venezuela has failed to make any of the required interest and principal payments on the Global Bonds, and thus is in breach of its obligations under the Global Bonds.

The Global Note

6. The second Debt Security, 7.00% global note due 2018, ISIN No. USP97475AD26, CUSIP No. P97475AD2 (the "Global Note"), was issued in 2001, and amended on September 1, 2003, pursuant to the Fiscal Agency Agreement dated July 25, 2001 (the "2001 FAA") among Venezuela, Banco Central de Venezuela, Deutsche Bank AG and Deutsche Bank Trust Company.

7. The Global Note obligated Venezuela to repay principal in full on December 1, 2018 (the "Global Note's Maturity Date").

8. Until full repayment of the principal, whether on the Global Note's Maturity Date, as required, or later, the Global Note obligated Venezuela to pay interest on principal semi-annually in arrears, on December 1 and June 1 of each year, at a rate of 7.00% *per annum* until full repayment of the note.

9. Beginning with the interest payments due on December 1, 2017, however, Venezuela has failed to make any of the required interest and principal payments on the Global Note, and thus is in breach of its obligations under the Global Note.

10. In this action, Chickpen seeks to recover from Venezuela its damages, as a beneficial owner of interests in the two Debt Securities resulting from Venezuela's breaches.

THE PARTIES

11. Chickpen is a company organized and existing under the laws of Panama, with its principal place of business in Panama.

12. Venezuela is a “foreign state” as defined in 28 U.S.C. § 1603.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1330(a) because Venezuela is a foreign state that, in both the 1998 FAA and the 2001 FAA, among other places, explicitly and unconditionally waived sovereign immunity with respect to actions such as the instant action (referred to in each FAA as a “Related Proceeding”) arising out of the respective FAAs and any debt securities or interest payments appertaining thereto, and is, therefore, not entitled to immunity under 28 U.S.C. §§ 1605-07 or under any applicable international agreement.

14. This Court has personal jurisdiction over Venezuela because, in the 1998 FAA and the 2001 FAA, among other places, Venezuela irrevocably submitted itself to the jurisdiction of this Court in any Related Proceeding.

15. Pursuant to the 1998 FAA and 2001 FAA, Venezuela appointed the Consul General of Venezuela, or, in the Consul’s absence or incapacity, any official of the Consulate of Venezuela, which currently maintains offices at 7 East 51st Street, New York, New York 10022, as its authorized agent for service of process.

16. By their terms, both the 1998 FAA and 2001 FAA are to be governed by, and interpreted in accordance with, the laws of the State of New York without regard to principles of conflicts of law.

17. Venue is proper in this district because, in both the 1998 FAA and the 2001 FAA, Venezuela consented to and waived any objection to venue in this Court with respect to any

Related Proceeding. Venue is also proper under 28 U.S.C. § 1391(f)(1) because a substantial part of the events or omissions giving rise to this claim occurred in this District.

FACTUAL ALLEGATIONS

Chickpen's Beneficial Interests in the Debt Securities

18. The Debt Securities are “book-entry securities” registered in the name of Cede & Co. (“Cede”), as the nominee of the Depository Trust Company (the “DTC”).

19. Financial institutions, called “participants,” maintain accounts with the DTC through which they hold interests in such book-entry securities.

20. Investors, such as Chickpen, in turn own beneficial interests in such book-entry securities through the participant financial institutions.

21. Through that ownership structure, Chickpen owns a beneficial interest in the Global Bonds in the principal amount of \$1,285,000.00, and a beneficial interest in the Global Note in the principal amount of \$11,599,000.00.

22. Those beneficial interests entitle Chickpen to \$175,081.25 as its proportionate share of each semi-annual interest payment Venezuela is required to make on the Global Bonds, \$1,285,000.00 as its proportionate share of the principal Venezuela is required to repay on the Global Bonds, \$1,217,895.00 as its proportionate share of each semi-annual interest payment Venezuela is required to pay on the Global Note, and \$11,599,000.00 as its proportionate share of the principal Venezuela is required to pay on the Global Note.

23. Although Chickpen, like every other investor in the Debt Securities, is not a direct holder of the Debt Securities, the relevant FAAs contemplate that beneficial owners such as Chickpen will, upon Cede’s authorization, be entitled to take any action that Cede would be

entitled to take as the holder of the relevant Debt Security, including, as here, suits for non-payment of money owed.

24. Chickpen has received the appropriate authorizations.

Venezuela's Default on the Global Bonds

25. The applicable terms and conditions of the Global Bonds required Venezuela to pay interest on principal, semi-annually, on February 15 and August 15 of each year, at a rate of 13.625% *per annum*.

26. One such semi-annual interest payment was due on February 15, 2018.

27. Venezuela failed to make that interest payment, both on its due date and at any time thereafter.

28. Venezuela was required to make another semi-annual interest payment on the Global Bonds on August 15, 2018.

29. Venezuela failed to make that interest payment, both on its due date and at any time thereafter.

30. Further, the applicable terms and conditions of the Global Bonds required Venezuela to repay all outstanding principal on the Global Bonds' Maturity Date (August 15, 2018).

31. Venezuela failed to make any repayment of principal, both on the Global Bonds' Maturity Date and at any time thereafter.

32. Chickpen, as the beneficial owner of an interest in \$1,285,000.00 in principal of the Global Bonds, has a claim for damages of at least \$1,460,081.25 as a result of Venezuela's failure to make these required interest and principal payments, representing its proportionate share of the interest and principal Venezuela, in breach of its obligations, has failed to pay on the Global Bonds.

33. In addition, more than 30 days having elapsed since the above-detailed payment failures, each has ripened into an “Event of Default” under the applicable terms and conditions governing the Global Bonds.

34. As such, the applicable terms and conditions governing the Global Bonds require Venezuela to pay all of Chickpen’s reasonable and documented out-of-pocket expenses, including reasonable counsel fees and court costs, incurred in connection with any “reasonable investigation of any such Event of Default or the enforcement of the Securities.”

35. Accordingly, in addition to the damages alleged above, Venezuela owes Chickpen the costs and attorney’s fees for preparing and bringing this action.

Venezuela’s Default on the Global Note

36. The terms and conditions of the Global Note to pay interest on principal semi-annually in arrears, on December 1 and June 1 of each year, at a rate of 7.00% *per annum*.

37. One such interest payment was due on December 1, 2017.

38. Venezuela failed to make that interest payment, both on its due date and at any time thereafter.

39. Venezuela was required to make another interest payment on the Global Note on June 1, 2018.

40. Venezuela failed to make that interest payment, both on its due date and at any time thereafter.

41. Further, the applicable terms and conditions of the Global Note required Venezuela to repay all outstanding principal on the Global Note on the Global Note’s Maturity Date (December 1, 2018).

42. Venezuela failed to make any repayment of principal, both on the Global Note's Maturity Date and at any time thereafter.

43. Chickpen as the beneficial owner of an interest in \$11,599,000.00 in principal of the Global Note, has a claim for damages of at least \$12,816,895.00 as a result of Venezuela's failure to make these required interest and principal payments, representing its proportionate share of the interest and principal Venezuela, in breach of its obligations, has failed to pay on the Global Note.

44. In addition, more than 30 days having elapsed since the above-detailed payment failures, each has ripened into an "Event of Default" under the applicable terms and conditions governing the Global Note.

45. As such, the applicable terms and conditions governing the Global Note require Venezuela to pay all of Chickpen's reasonable and documented out-of-pocket expenses, including reasonable counsel fees and court costs, incurred in connection with any "reasonable investigation of any such Event of Default or the enforcement of the Securities."

46. Accordingly, in addition to the damages alleged above, Venezuela owes Chickpen the costs and attorney's fees for preparing and bringing this action.

The Debt Securities Continue to Accrue Interest Per Annum

47. The applicable terms and conditions of the Global Bonds provide, in sum and substance, that interest on principal will continue to accrue at 13.625% *per annum* until the principal is repaid in full, whether on its maturity date or later.

48. That obligation is set forth in the form registered security attached as an exhibit to the 1998 FAA, which form governs, under Section 1(c) of the 1998 FAA, unless otherwise provided in an "Authorization" delivered by the Minister of Finance of Venezuela.

49. Upon information and belief, the Minister of Finance of Venezuela has not delivered an “Authorization” with respect to the Global Bonds that alters the relevant language of the form registered security.

50. In the Global Note, the provision for the continuing accrual of interest after maturity date until full repayment of principal is set forth in the applicable terms and conditions of the Global Note, which provide in pertinent part that Venezuela will redeem the Global Note at par on December 1, 2018, and that if, “upon due presentation,” “the Issuer shall fail to redeem the [Global Note] when due, interest shall continue beyond the due date until actual redemption of the [Global Note]”

51. Upon information and belief, “due presentation” of the Global Note for redemption has been made and refused.

52. Alternatively, if “due presentation” has not been made, it is excused on the ground of futility.

53. By virtue of these provisions of the Debt Securities, Chickpen is entitled to recover additional damages through the date of this pleading in the amount of at least \$429,921.74, representing accrued interest at 13.625% *per annum* on the \$1,285,000.00 in unpaid principal of the Global Bonds, and at least \$1,750,160.22, representing accrued interest at 7.00% *per annum* on the \$11,599,000.00 in unpaid principal of the Global Note.

FIRST CLAIM FOR RELIEF
(For Breach of Contract on the Global Bonds)

54. Chickpen hereby re-incorporates each and every allegation in paragraphs 1 through 53 as fully set forth herein.

55. The Global Bonds matured on August 15, 2018, at which time the entire principal amount of the Global Bonds became due and payable.

56. Upon maturity, Venezuela failed to pay the principal amount of the Global Bonds.

57. Further, as detailed above, Venezuela also has failed to pay interest due on the Global Bonds.

58. By reason of the foregoing, Venezuela has breached its contractual obligations under the Global Bonds and is liable to Chickpen, as the owner of a beneficial interest in the Global Bonds in the principal amount of \$1,285,000.00, for damages in an amount to be determined at trial, but not less than \$1,890,002.99 representing Chickpen's proportionate share of unpaid principal and interest on the Global Bonds through the date of this pleading, together with pre-judgment interest, and Chickpen's costs and attorney's fees incurred in this action.

59. Chickpen has been authorized to bring this action as a beneficial owner of the Global Bonds.

**SECOND CLAIM FOR RELIEF
(For Breach of Contract on the Global Note)**

60. Chickpen hereby re-incorporates each and every allegation in paragraphs 1 through 53 as fully set forth herein.

61. The Global Note matured on December 1, 2018, at which time Venezuela was required to redeem the Global Note at par.

62. Upon maturity, however, Venezuela failed to redeem the Global Note at par.

63. Further, as detailed above, Venezuela also has failed to pay interest due on the Global Note.

64. By reason of the foregoing, Venezuela has breached its contractual obligations under the Global Note and is liable to Chickpen, as the owner of a beneficial interest in the Global Note in the principal amount of \$11,599,000.00, for damages in an amount to be determined at trial, but not less than \$14,567,055.22 representing Chickpen's proportionate share of unpaid

principal and interest on the Global Note through the date of this pleading, together with pre-judgment interest, and Chickpen's costs and attorney's fees incurred in this action.

65. Chickpen has been authorized to bring this action as a beneficial owner of the Global Note.

REQUEST FOR RELIEF

WHEREFORE, Chickpen demands judgment against Venezuela as follows:

1. On the First Claim for Relief, awarding money judgment to Chickpen in an amount to be determined at trial, but not less than \$1,890,002.99, together with pre-judgment and post-judgment interest, and Chickpen's costs and attorney's fees incurred in this action.
2. On the Second Claim for Relief, awarding money judgment to Chickpen in an amount to be determined at trial, but not less than \$14,567,055.22, together with pre-judgment and post-judgment interest, and Chickpen's costs and attorney's fees incurred in this action.
3. Such other and further relief as the Court shall deem just and proper.

Dated: January 22, 2021

SANCHEZ FISCHER LEVINE, LLP
1200 Brickell Avenue, Ste. 750
Miami, Florida 33131
Tel.: (305) 925-9947

By: /s/ David M. Levine
David M. Levine, Esq.
Email: dlevine@sfl-law.com
Secondary: eservice@sfl-law.com

Attorney for Plaintiff