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United States Supreme Court Confirms Availability of Civil RICO as International Award Enforcement Tool: Do Recalcitrant Debtors Now Risk Treble Damages Awards in the United States?

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On 22 June 2023, the Supreme Court of the United States issued [an opinion](#) in the combined cases of *Yegiazaryan v. Smagin et al.* and *CMB Monaco v. Smagin et al.*, Case Nos. 22-381 & 22-383 (U.S.). The case resolves divergent lower appellate rulings in the United States over whether a non-U.S. domiciliary may sustain a private right of action under the Racketeer Influenced Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961-68, and confirms that RICO is an available tool for non-U.S. award creditors whose international arbitral awards have been recognized and reduced to judgment in the United States, but who then find their efforts to execute on those U.S. judgments frustrated through a prohibited pattern of racketeering activity.

The RICO Statute & the *RJR Nabisco* Decision

RICO is a federal law in the United States enacted in 1970 that essentially prohibits multiple participants comprising an “*enterprise*” from engaging in certain behavior through “*a pattern of racketeering activity*,” or conspiring to commit such violations. 18 U.S.C. § 1962. “[R]acketeering activity” refers to commission of certain specifically enumerated criminal predicate acts like murder, robbery, extortion, bribery, obstruction of justice, mail or wire fraud, money-laundering, and others. 18 U.S.C. § 1961(1). The statute provides for both criminal penalties, and civil remedies. Importantly, these civil remedies include a private right of action, whereby a private plaintiff is entitled to “*threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee*” for “[a]ny person injured in his business or property by violation of” RICO’s substantive provisions. These expansive remedies have made RICO an attractive claim for plaintiffs in a variety of contexts.

One critical limitation on the RICO statute’s reach, however, is the requirement to articulate a “*domestic injury*.” As the Supreme Court of the United States explained in *RJR Nabisco, Inc. v. European Community*, 579 U.S. 325 (2016), this requirement derives from the presumption against extraterritoriality—i.e., the principle of statutory construction that “[a]bsent clearly expressed congressional intent to the contrary federal laws will be construed to have only domestic application,” *id.* at 335. Consequently, the requisite element of an “*injur[y] to business or*

property” for a private right of action under 18 U.S.C. § 1964(c) must be read as requiring a “domestic injury to [] business or property.” 579 U.S. at 346.

But as the Supreme Court’s *RJR Nabisco* decision presciently noted: “*The application of this rule in any given case will not always be self-evident, as disputes may arise as to whether a particular alleged injury is ‘foreign’ or ‘domestic.’*” *Id.* at 354. Indeed. And this fertile area for dispute soon resulted in a “Circuit split” between the approaches taken by, on the one hand, the Ninth and Third Circuit Courts of Appeals, and the Seventh Circuit Court of Appeals on the other. The former chose a totality-of-the-circumstances approach to determining the situs of an injury to intangible business interests. See *Humphrey v. GlaxoSmithKline*, 905 F.3d 694, 706-707 (3d Cir. 2018) (declining to deem the plaintiff’s residence or principal place of business as dispositive); *Smagin v. Yegiazaryan*, 37 F.4th 562, 570 (9th Cir. 2022) (same). By contrast, the latter took a bright-line rule approach that invariably located such injuries at the domicile of the plaintiff. *Armada (Sing.) PTE Ltd. v. Amcol Int’l Corp.*, 885 F.3d 1090, 1094-95 (7th Cir. 2018) (“[A] party experiences or sustains injuries to its intangible property at its residence, which for a corporation like Armada is its principal place of business”).

The Smagin Decision

The *Smagin* case thus presented an opportunity for the Supreme Court to resolve these divergent approaches authoritatively. The case arose from a dispute over a joint real estate venture between Vitaly Smagin and Ashot Yegiazaryan that resulted in a London-seated arbitration and a USD 84 million award in Smagin’s favor. Since Yegiazaryan, at the time of the award, was living in California, Smagin sought and obtained recognition and enforcement of the award in the United States District Court for the Central District of California. After reducing the award to judgment, the California federal court also issued an injunction freezing Yeghiazaryan’s assets.

Yegiazaryan, however, allegedly embarked on a scheme to avoid this asset freeze by (i) creating a “complex web of offshore entities to conceal the funds;” (ii) “direct[ing] those in his inner circle to file fraudulent claims against him” to obtain collusive “sham judgments” that would encumber his assets; and (iii) “hiding his assets in the United States through a system of ‘shell companies’ owned by family members.” *Yegiazaryan v. Smagin*, 599 U.S. ____ (2023), *Slip Op. at 3*. And, after the Central District of California held him in contempt of court for failing to comply with its post-judgment orders barring him from taking actions to prevent collection of the judgment, Yegiazaryan, to avoid having to comply with the contempt order, “falsely claimed he was too ill, and submitted a forged doctor’s note to the District Court.” Later, when Smagin sought to obtain evidence from the doctor in question, Yegiazaryan “used ‘intimidation, threats, or corrupt persuasion’” to get the doctor to avoid service of the subpoena. *Id.*

Smagin subsequently filed a RICO action, alleging a conspiracy “to frustrate Smagin’s collection of the California judgment through a pattern of wire fraud and other RICO predicate racketeering acts, including witness tampering and obstruction of justice.” *Id.* at 4. But Yegiazaryan moved to dismiss the claims, asserting that these allegations did not plead a U.S. injury, as required by *RJR Nabisco*, because Smagin, a Russian domiciliary, necessarily suffered any financial injury resulting from the non-payment outside of the United States. The thrust of Yegiazaryan’s argument was thus that no non-U.S. award creditor could ever adequately plead a violation of RICO based on interference with the right to execute upon a judgment enforcing an international arbitral award.

The Supreme Court, however, rejected this argument. Writing for the majority, Justice Sotomayor explained that courts need to look at all of the “*circumstances surrounding the alleged injury*” including, in circumstances like these, “*the nature of the alleged injury, the racketeering activity that directly caused it, and the injurious aims and effects of that activity.*” *Id.* at 8-9. “*If those circumstances sufficiently ground the injury in the United States, such that it is clear the injury arose domestically, then the plaintiff has alleged a domestic injury.*” *Id.* at 10. Applying those facts to the case at hand, the Court reasoned a plaintiff’s interests in a “*California judgment against . . . a California resident . . . directly injured by racketeering activity either taken in California or directed from California, with the aim and effect of subverting . . . rights to execute on that judgment in California*” sufficed to show domestic injury for purposes of RICO. *Id.* at 11.

Implications for Award Enforcement in the United States

In rejecting a bright-line rule that would bar non-U.S. award creditors from using RICO as an award enforcement tool, the Supreme Court has now made available a powerful tool for curbing extreme tactics to avoid payment of arbitral awards, at least where a sufficient U.S. nexus exists.

However, it is important to realize that there remain real limitations on the ability of award creditors to plausibly allege U.S. RICO claims in service of efforts to collect on an international arbitral award. *First*, as a general matter, efforts to resist enforcement of an arbitral award ordinarily will not rise to the level of a RICO violation; only when they cross the line into an illegal pattern of racketeering activity that satisfies the substantive requirements of the RICO statute will they be actionable. That said, undoubtedly, the treble damages remedy and the additional pressure it offers will tempt award creditors into testing such claims in future, including potentially against potentially deep-pocketed alleged “co-conspirators” in resisting enforcement, such as banks, law firms, and other financial services providers.

Second, RICO continues to require a domestic injury; a totality of the circumstances test will open the courthouse doors for non-U.S. plaintiffs, but they will still need to show substantial U.S. connections—for example, “*domestic activity to avoid collection, including allegedly creating U.S. shell companies to hide . . . U.S. assets,*” intimidating U.S.-based witnesses, or submitting false evidence to U.S. courts. *Id.* at 10.

Conclusion

The Supreme Court has put award debtors facing enforcement proceedings in the United States on notice: if they attempt to frustrate effective execution of international awards through aggressive guerilla tactics that cross the line into an illegal pattern of racketeering activity, they risk multiplying their existing liability. It is now clear that the treble damages remedy that RICO affords plaintiffs can, in appropriate circumstances, be used as a powerful tool by non-U.S. award creditors to ensure effective enforcement of their international arbitral awards in the United States.

David, along with his colleagues Andreas Frischknecht and James Hosking of Chaffetz Lindsey LLP, represented Professor George A. Bermann as amicus curiae in support of Respondent Vitaly

Ivanovich Smagin before the Supreme Court in this matter. The views and opinions expressed herein are purely the author's, and do not necessarily reflect those of his colleagues, the Chaffetz Lindsey firm, Professor Bermann, or Chaffetz Lindsey's clients.


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