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U.S. Supreme Court Holds Plaintiffs May Use RICO to Enforce Foreign Arbitral Awards

In a January 17, 2023 [Client Alert](#),¹ we addressed the U.S. Supreme Court's decision to grant *certiorari* in *CMB Monaco v. Smagin* and *Yegiazaryan v. Smagin*, two cases which concern the use of the Racketeer Influenced and Corrupt Organizations Act ("RICO") to enforce foreign arbitral awards. RICO provides a civil cause of action to "[a]ny person injured in his business or property" through racketeering activity, which includes fraud, bribery, money laundering, and embezzlement. 18 U.S.C. §§ 1961(1), 1964(c). A presumption against extraterritoriality applies to RICO, such that a foreign plaintiff must prove a "domestic injury" to its business and property – *i.e.*, an injury in the U.S. – in order to support a RICO action. The Supreme Court has not previously defined the circumstances in which an injury to intangible property constitutes a "domestic injury."

The key issue in both cases, *CMB Monaco v. Smagin* and *Yegiazaryan v. Smagin*, was whether a foreign plaintiff's injury to intangible property, such as the failure to pay an arbitral award or court judgment, constitutes a "domestic injury" for the purposes of a RICO action.

On June 22, 2023, the Supreme Court issued its decision in both cases, holding that a plaintiff has a "domestic injury" when the circumstances surrounding the injury indicate that the injury arose in the U.S.,² and rejecting a "bright-line rule" according to which economic injury to foreign plaintiffs must always be deemed to occur abroad. Applying this approach to the facts at hand, the Supreme Court ruled that the plaintiff's allegations of interference with the enforcement of a California judgment – through acts of racketeering taken in or directed from California by a California resident – were sufficient to state a "domestic injury" for RICO purposes.³

The Court's reasoning suggests that, where a party has obtained recognition of a foreign arbitral award through a judgment of a U.S. court, attempts to frustrate enforcement of that judgment can in certain circumstances constitute a "domestic injury" even if the plaintiff is not



based in the U.S. and some of the relevant conduct occurred abroad. While this opens the door for RICO lawsuits by foreign award creditors, plaintiffs must still allege a sufficient pattern of racketeering activity to implicate RICO. Moreover, in adopting a flexible and case-specific approach, the Supreme Court has left open the question of which factors may be relevant to the establishment of a “domestic injury” for RICO purposes and how those factors are to be weighed against one another. These issues remain to be decided in future cases.

FACTUAL BACKGROUND

As explained in our prior alert, in 2014, Vitaly Smagin, the respondent in both cases, won an \$84 million arbitration award against the petitioner, Ashot Yegiazaryan, which Yegiazaryan, a resident of California, refused to pay. Smagin filed an enforcement action in the Central District of California seeking to confirm and enforce the award, which the District Court granted in addition to issuing an initial asset freeze for Yegiazaryan’s assets. Yegiazaryan subsequently employed a series of tactics to frustrate Smagin’s collection efforts in California.

For example, while proceedings before the District Court were ongoing, Yegiazaryan received a \$198 million settlement to satisfy an unrelated arbitration award. In order to avoid the District Court’s asset freeze, Yegiazaryan accepted the money through the London office of an American law firm headquartered in Los Angeles. He then created a web of offshore entities to conceal the funds before ultimately transferring the money to a bank account with CMB Monaco. Yegiazaryan further directed individuals in his inner circle to file fraudulent claims against him in foreign jurisdictions in order to obtain sham judgments that would encumber the \$198 million and block Smagin’s access to it. Around the same time, he hid his U.S. assets through a system of U.S. shell companies owned by family members, also to avoid paying creditors like Smagin.

After the District Court granted Smagin’s motion for summary judgment on his petition to enforce the award, it issued several post-judgment orders preventing Yegiazaryan and those acting at his direction from preventing collection on the judgment. When the District Court later found Yegiazaryan in contempt of court for failing to comply with those orders, he falsely claimed that he was too ill to comply with the contempt order and submitted a forged doctor’s note to the District Court to support his claim. When Smagin indicated he would seek to depose the doctor who allegedly authored the note, Yegiazaryan used “intimidation, threats, or corrupt persuasion”⁴ to keep the doctor from accepting service of the subpoena.

In 2020, Smagin brought a civil suit under RICO to enforce the District Court’s judgment enforcing the award. The District Court dismissed the RICO action on the basis that Smagin failed to show a “domestic injury” as required by the Supreme Court’s decision in *RJR Nabisco Inc. v. European Community*, 579 U.S. 325 (2016). The District Court’s analysis centered on the fact that Smagin is a resident and citizen of Russia, and therefore experienced the loss from Yegiazaryan’s actions in Russia (and not in the U.S.). The Ninth Circuit reversed, rejecting the District Court’s residency-based approach in favor of a context-specific approach, concluding that Smagin had pleaded a domestic-injury because he alleged that his efforts to enforce a California judgment against a California resident were thwarted by a pattern of racketeering activity that largely occurred in California and was designed to prevent enforcement of the judgment in California.

THE SUPREME COURT’S ANALYSIS

The Court started its analysis by noting that the parties had advanced competing approaches to the domestic injury inquiry. The petitioners asked the court to adopt a bright-line rule, like the Seventh Circuit’s, under which the plaintiff’s place of residence determined its place of injury. In contrast, Smagin supported the Ninth Circuit’s context-based approach which turns largely on the facts alleged in the complaint.



The Supreme Court rejected the “bright-line rule” and upheld the Ninth Circuit’s approach, holding that whether a plaintiff had alleged a “domestic injury” for the purposes of RICO was a context-specific inquiry that largely depended on the facts alleged in a complaint. In particular, “courts should look to the circumstances surrounding the alleged injury to assess whether it arose in the United States.”⁵ If those circumstances sufficiently ground the injury in the U.S., then the plaintiff will have alleged a domestic injury. The Court noted that this ruling comported with its prior determination in *RJR Nabisco* that the domestic-injury requirement did not bar foreign plaintiffs from suing under RICO.

For purposes of the case at hand, the Court reasoned that although it may be true that in some sense that Smagin has felt his economic injury in Russia, “focusing solely on that fact would miss central features of the alleged injury.”⁶ It had to look at “the nature of the alleged injury, the racketeering activity that directly caused it, and the injurious aims and effects of that activity.”⁷ The circumstances surrounding Smagin’s injury made “clear” that the injury arose in the U.S. As discussed above, much of the alleged racketeering activity at issue took place in the U.S. Yegiazaryan took domestic action to avoid collection, including “allegedly creating U.S. shell companies to hide his U.S. assets, submitting a forged doctor’s note to a California District Court, and intimidating a U.S.-based witness.”⁸ Moreover, the injurious effects of the racketeering were largely felt in California because the rights that the California judgment provided to Smagin existed only in California.⁹

The Court concluded that “Smagin’s interests in his California judgment against Yegiazaryan, a California resident, were directly injured by racketeering activity either taken in California or directed from California, with the aim and effect of subverting Smagin’s rights to execute on that judgment in California.”¹⁰

IMPLICATIONS OF THE DECISION

The Supreme Court’s decision in *CMB Monaco v. Smagin* and *Yegiazaryan v. Smagin* has opened the door to foreign plaintiffs bringing RICO claims to enforce foreign arbitral awards. The question of whether plaintiffs will be successful will largely depend on the facts at hand and the Court’s decision has made clear that this is a contextual, fact-intensive inquiry. Thus, whether RICO may assist foreign plaintiffs in enforcing arbitral awards in the U.S. will depend on the case’s alleged U.S. connections. As to the exact level of connection required, the Court has not set out such guidance and it remains to be seen how *Yegiazaryan* will be applied in practice by the lower courts.

¹ <https://www.kslaw.com/news-and-insights/the-us-supreme-court-agrees-to-decide-cases-regarding-whether-and-when-non-us-plaintiffs-may-use-rico-to-enforce-foreign-arbitral-awards>

² *Yegiazaryan v. Smagin*, 599 U.S. __ (2023), p. 14.

³ *Id.*

⁴ *Id.* at 3.

⁵ *Id.* at 8.

⁶ *Id.* at 10.

⁷ *Id.* at 8–9.

⁸ *Id.* at 10.

⁹ *Id.* at 11.

¹⁰ *Id.* at 11.

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