

U.S. Supreme Court Authorizes Foreign Plaintiffs To Use Domestic RICO Statute In Aid Of Enforcement Of Arbitral Awards In The United States

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On June 22, 2023, the United States Supreme Court in *Yegiazaryan v. Smagin*¹ held that courts must apply a context-specific, rather than a “residency-based” bright-line rule,² in determining whether a foreign plaintiff has pleaded a “domestic injury” sufficient to sustain a claim under the Racketeer Influenced and Corrupt Organizations Act (“RICO”).³ This decision confirms that foreign parties who seek to enforce an arbitral award in the United States may use RICO in an effort to collect – and potentially obtain treble damages and attorneys’ fees, as permitted under the statute – on an arbitral award where there has been domestic conduct that allegedly injures the foreign party’s ability to enforce.

While the Supreme Court’s decision adds a potentially powerful tool for the enforcement of arbitral awards in the United States, it remains to be seen how lower courts will apply the Supreme Court’s decision in practice, particularly since – as the Supreme Court acknowledged – “no set of factors can capture the relevant considerations for all cases.”⁴

If you have any questions, please reach out to your regular firm contact or the following authors:

LONDON

Christopher P. Moore
+44 20 7614 2227
cmoore@cgsh.com

Paul C. Kleist
+44 20 7614 2209
pkleist@cgsh.com

NEW YORK

Ari D. MacKinnon
+1 212 225 2243
amackinnon@cgsh.com

Katie L. Gonzalez
+1 212 225 2423
kgonzalez@cgsh.com

Stanislaw Krawiecki
+1 212 225 2687
skrawiecki@cgsh.com

¹ See *Yegiazaryan v. Smagin*, No. 22-381, No. 22-383, 2023 WL 4110234 (2023).

² *Id.* at *7.

³ 18 U.S.C. §§ 1961-68.

⁴ *Yegiazaryan v. Smagin*, 2023 WL 4110234, at *7.

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Overview Of RICO

RICO imposes criminal liability on persons who engage in a “pattern of racketeering activity—a series of related predicates that together demonstrate the existence or threat of continued criminal activity.”⁵ The predicate acts that may be used to demonstrate a RICO claim include dozens of specified state and federal offenses, including wire fraud, witness tampering, and obstruction of justice, that together can constitute a pattern of racketeering activity.⁶ Section 1964(c) of RICO creates a private civil cause of action that allows “[a]ny person injured in his business or property by reason of” a RICO violation to sue in federal court and recover treble damages, costs, and attorneys’ fees.⁷

The Supreme Court held in *RJR Nabisco v. European Community*, 136 S.Ct. 2090 (2016), that this private right of action extends only to “a domestic injury to business or property and does not allow recovery for foreign injuries.”⁸ Acknowledging that “[t]he application of this rule in any given case will not always be self-evident,” the Supreme Court declined to define what could constitute a “domestic injury.”⁹

Since this decision, three federal circuit courts have interpreted what constitutes a “domestic injury” as required by RICO, with different results. The Second Circuit ruled that where a plaintiff’s *tangible* property allegedly injured by RICO-violative activity was located in the United States at the time of the injury, “the injury is domestic” even “if the plaintiff himself resides abroad.”¹⁰ Reviewing this issue in a case involving *intangible* property, the Third Circuit explained that in deciding whether “domestic injury” exists, “the applicable factors depend on the plaintiff’s allegations; no one factor is presumptively

dispositive.”¹¹ In contrast, the Seventh Circuit created a categorical rule that “a party experiences or sustains injuries to its intangible property at its residence,” which would preclude foreign plaintiffs from being able to sue under RICO for any harm to intangible property (such as rights or ownership interests).¹² As further described below, the Supreme Court’s latest decision in *Yegiazaryan v. Smagin* resolves these differences, and situates intangible rights created by a U.S. judgment in the United States.

Background To The Case

The *Yegiazaryan v. Smagin* case arose out of a dispute between business partners Vitaly Smagin and Ashot Yegiazaryan, and a joint real estate venture in Moscow. Smagin alleged that between 2003 and 2009, Yegiazaryan misappropriated the investment by stealing Smagin’s shares in the investment and later moved to California to avoid criminal prosecution in Russia. In 2014, Smagin won an arbitral award against Yegiazaryan following an LCIA arbitration seated in London, and was awarded over US \$84 million in damages (the “London Award”).

Unbeknownst to Smagin, after the London Award was issued, Yegiazaryan won an unrelated arbitration for approximately US \$198 million. Thereafter, Yegiazaryan allegedly sought to conceal these funds and avoid any potential recovery by Smagin, including by creating offshore entities to hold the funds outside of California, transferring the funds to an account with foreign bank CMB Monaco, and using family members in the United States to hide the assets, including by bringing sham claims against him in foreign jurisdictions in order to obtain judgments to encumber the US \$198 million.

⁵ *RJR Nabisco v. European Community*, 136 S. Ct. 2090, 2096-97 (2016).

⁶ See 18 U.S.C. §§ 1961-62.

⁷ See *id.* § 1964(a).

⁸ *RJR Nabisco*, 136 S. Ct. at 2111.

⁹ *Id.*

¹⁰ *Bascuñan v. Elsaca*, 874 F.3d 806, 821-22 (2d Cir. 2017).

¹¹ *Humphrey v. GlaxoSmithKline PLC*, 905 F.3d 694, 707 (3d Cir. 2018).

¹² *Armada (Sing.) PTE Ltd. v. Amcol Int’l Corp.*, 885 F.3d 1090, 1091 (7th Cir. 2018).

Smagin petitioned to confirm the London Award pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”) in the U.S. District Court for the Central District of California. Smagin’s petition to enforce was granted in 2016.¹³ The district court ordered Yegiazaryan to pay US \$92 million (including interest) and to abstain from preventing collection on the judgment.¹⁴ When Yegiazaryan refused to comply with the order, Smagin brought suit in the district court against Yegiazaryan, CMB Monaco, and ten other defendants, alleging violations of RICO’s Section 1964(c), claiming that defendants all worked together as an “enterprise” covered by RICO, and under Yegiazaryan’s direction coordinated to “frustrate Smagin’s collection on the California judgment [enforcing the London Award] through a pattern of wire fraud and other RICO predicate racketeering acts, including witness tampering and obstruction of justice.”¹⁵

The district court dismissed, finding that Smagin failed to plead “domestic injury” required by *RJR Nabisco* because Smagin resided in Russia and therefore experienced the harm stemming from inability to collect on the California judgment enforcing the London Award in Russia.¹⁶

Smagin appealed, and the Ninth Circuit reversed. The Ninth Circuit rejected a residency-based bright-line rule, which situated injury to intangible property – Smagin’s rights stemming from the California judgment – at Smagin’s residency in Russia. Instead, the Ninth Circuit adopted a “context-specific” approach and concluded that Smagin adequately plead domestic injury by alleging racketeering activity

that “occurred in, or was targeted at, California,” and “was designed to subvert” enforcement of the California judgment.¹⁷

Yegiazaryan sought *certiorari* review before the U.S. Supreme Court.

The Supreme Court’s Decision

In a 6-3 opinion written by Justice Sotomayor, the Supreme Court affirmed the Ninth Circuit’s decision, agreeing with its “context-specific inquiry” and holding that a plaintiff alleges a domestic injury for purposes of RICO’s Section 1964(c) when the circumstances surrounding the injury indicate it arose in the United States.¹⁸

In so doing, the Court relied on its precedent in *RJR Nabisco*, which “point[s] toward a case-specific inquiry that considers the particular facts surrounding the alleged injury.”¹⁹ This focus on the injury “not in isolation, but as the product of racketeering activity,” led the Court to conclude that a “case-specific analysis that looks at the circumstances surrounding the injury” should be employed to determine whether the injury is “sufficiently ground[ed]” in the United States, such that “it is clear the injury arose domestically.”²⁰ The Court declined, however, to provide a “set list of factors” to guide this case-by-case assessment, noting that “RICO covers a wide range of predicate acts and is notoriously ‘expansive’ in scope,” and therefore “what is relevant in one case to assessing whether the injury arose may not be pertinent in another.”²¹

Turning to the facts of the case, the Court concentrated on two factors pointing to the existence of a domestic injury: (1) where the alleged racketeering activity occurred; and (2) the

¹³ *Smagin v. Yegiazaryan*, No. CV 14-9764-R, 2016 WL 10704874, at *2 (C.D. Cal. Mar. 17, 2016).

¹⁴ *See id.*; *Smagin v. Yegiazaryan*, No. 2:14-CV-09764-R, 2016 WL 11676607, at *4 (C.D. Cal. Nov. 14, 2016), *aff’d*, 733 F. App’x 393 (9th Cir. 2018).

¹⁵ *Yegiazaryan v. Smagin*, 2023 WL 4110234, at *1.

¹⁶ *See Smagin v. Yegiazaryan*, 37 F.4th 562, 566 (9th Cir. 2022), *cert. granted*, 143 S. Ct. 645 (2023), and *cert.*

granted sub nom. CMB Monaco v. Smagin, 143 S. Ct. 646 (2023).

¹⁷ *Id.* at 567-70.

¹⁸ *Yegiazaryan v. Smagin*, 2023 WL 4110234, at *9.

¹⁹ *Id.* at *7.

²⁰ *Id.*

²¹ *Id.*

situs of the “injurious aims and effects of the activity.”²²

The Court found that because Smagin alleged that Yegiazaryan directed the enterprise from his residence in California, and “much of the alleged racketeering activity that caused the injury occurred in the United States,” then even if some parts of the scheme occurred abroad, the fraudulent activity had its source and was mostly carried out through “domestic actions” in the United States.²³ Similarly, the alleged scheme was directed not at Smagin in Russia, but rather involved acts that were taken in or directed from California, with the aim and effect of subverting the rights of Smagin (a California resident) to execute on the California judgment.²⁴ The Court also determined that “the injurious effects of the racketeering activity largely manifested in California.”²⁵

In conducting this analysis, the Court declined to focus on Smagin’s residence (Russia), or on the seat of the underlying arbitration (United Kingdom), and instead considered the rights created by the California judgment that enforced the arbitral award. According to the Supreme Court, “[t]he rights that the California judgment provides to Smagin,” such as the right to seize assets or the right to post-judgment discovery, “exist only in California.”²⁶ Consequently, because “Smagin alleges he was injured in California because his ability to enforce a California judgments in California against a California resident was impaired by racketeering activity that largely occurred in or was directed from and targeted at California,” Smagin had sufficiently pled a “domestic injury” for the RICO private right of action.²⁷

Justice Alito, joined by Justice Thomas in full and in part by Justice Gorsuch,²⁸ dissented, noting that the majority opinion “resolves very little” and “offers virtually no guidance to lower courts, and [] risks sowing confusion in our extraterritoriality precedents.”²⁹

Practical Implications

The Supreme Court’s decision may make the United States a more attractive forum for judgment creditors, who will now potentially have at their disposal new remedies to battle unlawful efforts to frustrate enforcement of arbitral awards in the United States. It also creates a new risk for third parties that could be involved in alleged schemes designed to avoid payment on arbitral awards. The decision, however, leaves open in what circumstances there will be a “domestic injury” that would permit the use of RICO-based remedies.

The Supreme Court’s decision authorizes foreign parties to use a new tool in attempting to collect in the United States on arbitral awards issued anywhere in the world. This decision may incentivize parties to seek enforcement of their arbitral awards in the United States, so that they may convert the award to a U.S. state judgment and seek to recover under a RICO claim, which provides additional advantages in recovery, such as treble damages and attorneys’ fees. Moreover, parties seeking to enforce arbitral awards may seek to rely upon this decision in an effort to impose liability on a wide range of third parties on the theory that they have allegedly violated RICO by aiding in unlawful efforts to frustrate the enforcement of a judgment within the United States.

While the Supreme Court’s decision identifies a new tool for foreign parties to use when seeking

²² *Id.* at *7.

²³ *Id.* at *8.

²⁴ *Id.* (noting that the “central purpose” of the scheme was “frustrating enforcement of [the] California judgment”).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at *7.

²⁸ Justice Gorsuch joined in Part I of the dissent.

²⁹ *Id.* at *9.

to enforce arbitral awards in the United States, the application and practical effect of this decision remain uncertain. The Supreme Court's conclusion in *Yegiarzaryan v. Smagin* may be limited to the unique facts of that case, which involved a U.S.-based award debtor and overt efforts to prevent the enforcement of his California judgment recognizing the London Award. It is unclear how lower courts will apply this decision in differing circumstances, particularly since the Supreme Court expressly declined to provide a set of factors to guide lower courts' analysis as to when a domestic injury exists for purposes of RICO's private right of action.

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