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Client Alert

U.S. Supreme Court Approves Foreign Plaintiff's Use of Civil RICO in Connection with Enforcement of Foreign Arbitral Awards

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On June 22, 2023, [a 6-3 Opinion issued in *Yegiazaryan v. Smagin*, No. 22-381](#), the U.S. Supreme Court held that a plaintiff—whether located in the United States or abroad—may use the Racketeer Influenced and Corrupt Organizations Act (“RICO”) to enforce a foreign arbitral award in the United States, provided that the plaintiff can demonstrate that it suffered a “domestic injury” in the United States. Known more frequently for criminal prosecutions, RICO also provides civil litigants a powerful tool to remedy injury to business or property caused by a “pattern of racketeering activity” perpetrated by an “enterprise” of at least two distinct persons or entities. See 18 U.S.C. §§ 1961–1968. Prevailing plaintiffs under RICO are statutorily entitled to recover “threefold the damages” actually sustained—known as treble damages—and reasonable attorneys’ fees. 18 U.S.C. § 1964(c).

Before last week’s Opinion, the U.S. Supreme Court had limited a private party’s ability to pursue a RICO suit based on extraterritorial conduct. In *RJR Nabisco, Inc. v. European Community*, 579 U.S. 325, 346 (2016), the Supreme Court concluded that RICO violations under 18 U.S.C. § 1962 may be based on foreign predicate acts where the statutes underlying those acts apply extraterritorially, but that the private right of action under 18 U.S.C. § 1964(c) permits an extraterritorial civil RICO suit only where the plaintiff suffered a “domestic injury to business or property” (*i.e.*, an injury in the United States).

A conflict arose among the circuit courts, however, as to what exactly constitutes a “domestic injury” for purposes of civil RICO. Some U.S. Circuit Courts of Appeal examined the analysis based on a totality-of-the-circumstances, fact-based inquiry; other Circuits, by contrast, had adopted a rigid, bright-line rule that looked at the plaintiff’s residence. See Slip op. at 2. Resolving this conflict in *Yegiazaryan*, the Supreme Court declined to adopt a bright-line rule and instead opted for a more flexible facts and circumstances test. Writing for the six-justice majority, Justice Sonia Sotomayor concluded that the RICO plaintiff had alleged a domestic injury because the RICO defendants’ activities were devised to prevent enforcement of a California court judgment confirming a foreign arbitral award.

As a result of this ruling, foreign parties seeking to enforce foreign arbitral awards based purely on foreign conduct or other foreign judgments may bring a civil RICO claim, and benefit from its broader remedies including treble damages and shifting attorneys’ fees, to remedy unlawful activity that is intended to frustrate judgment enforcement and collection efforts in the United States.

Background

The RICO plaintiff in this action (Vitaly Smagin) previously had accused the defendant (Ashot Yegiazaryan) of engaging in fraud against him, stealing his shares in a joint real estate venture, while both resided in Russia. To avoid a Russian criminal indictment, Yegiazaryan fled to California in 2010. In 2014, Smagin won a substantial London-seated arbitration award against Yegiazaryan, but Yegiazaryan refused to pay. Smagin then filed an enforcement action in the U.S. District Court for the Central District of California. The U.S. District Court issued injunctive relief freezing certain Yegiazaryan assets in California. Yegiazaryan, however, resorted to a “complex web of offshore entities” and shell companies to conceal his assets, and directed others in his inner circle to file fraudulent claims against him that he would not oppose in foreign jurisdictions, in an attempt to block Smagin’s access to Yegiazaryan’s assets. After the District Court issued post-judgment orders to prevent Yegiazaryan and those acting at his direction from further frustrating Smagin’s collection efforts, Yegiazaryan asserted false claims of illness to avoid a contempt of court finding, and then attempted to prevent witnesses from testifying in the case through intimidation and threats.

This culminated in a RICO suit that Smagin filed in 2020, alleging that Yegiazaryan and his co-conspirators, including a bank based in Monaco, engaged in a pattern of racketeering activity—including wire fraud, witness tampering, and obstruction of justice—intended to frustrate Smagin’s collection efforts in California. The district court dismissed the RICO claims on the ground that Smagin had failed to plead a “domestic injury,” because Smagin was a Russian resident and his injury (the loss resulting from his inability to collect on the arbitral award) was experienced in Russia. The Ninth Circuit Court of Appeals reversed, instead adopting a “context-specific” approach that relied more heavily on the fact that the alleged pattern of racketeering activity occurred in or targeted California and was “designed to subvert” a California court judgment.

The U.S. Supreme Court’s Decision

The Supreme Court affirmed the Ninth Circuit ruling that a context-specific inquiry is appropriate to determine whether an alleged injury is “domestic.” The Court instructed lower courts to “look to the circumstances surrounding the alleged injury to assess whether it arose in the United States.” Slip op. at 8. Among other things, the Court looked at the “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. The Court also noted, however, that “no set of factors can capture the relevant considerations for all cases.” *Id.* at 10. Notably, while the Court emphasized that Yegiazaryan’s racketeering efforts were aimed at frustrating a California court’s judgment, it did not adopt a bright-line rule that location of the court in question is dispositive for determining the location of the alleged injury.

Justice Alito dissented, joined by Justice Thomas and (in part) Justice Gorsuch. The dissent reasoned that the Court’s opinion gave little guidance to lower courts on what principles should be applied to determine whether an injury is domestic. Due to the difficulty in designing a workable test, the dissent would have dismissed *certiorari* as improperly granted.

Practical Impact

The Supreme Court’s holding in *Yegiazaryan* will make the United States a more attractive forum for judgment creditors, who will now be able to bring a civil RICO suit to remedy unlawful efforts to frustrate the enforcement of international arbitration awards in the United States. There remains, however, considerable uncertainty as to what injuries will be determined to be “domestic” under the RICO statute, applying the facts-and-circumstances test in *Yegiazaryan*. The Supreme Court provided little guidance on what other factors lower courts should weigh in determining whether the domestic injury requirement has been satisfied. Because an injury is generally understood to be an invasion of a legally protected interest (see, e.g., Restatement (Second) of Torts § 7(1) (1965)), the jurisdiction under which intangible rights arise (such as rights to enforce a judgment) may figure prominently in future judicial analyses

applying *Yegiazaryan*. Thus, it seems likely that impairment of an executing court's judgment may be weighed heavily, even if some racketeering activity takes place outside of the United States, so long as there is a sufficient nexus to the United States.

The *Yegiazaryan* decision will likely also affect litigants'—and especially foreign litigants'—choice of forum. In accordance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly known as the “New York Convention”), prevailing parties in international arbitrations may seek to have their awards recognized and enforced before the national courts of those 165+ jurisdictions (including the United States) that have ratified the Convention. *Yegiazaryan* can provide, in the appropriate circumstances, a significant incentive for a litigant—including those with few if any ties to the United States—to try to enforce a foreign arbitral award in the United States.

Although the allegations in *Yegiazaryan* were extreme, questionable efforts to undermine the enforcement of a U.S. judgment confirming an arbitral award are not uncommon. Plaintiffs will likely attempt to characterize those efforts as unlawful predicates in an effort to assert RICO claims that could merit treble damages and attorneys' fees. RICO plaintiffs will likely also seek to add RICO defendants other than the judgment debtor—such as financial institutions, lawyers, accountants and other third parties—that the RICO plaintiffs will claim conspired or knowingly aided in the efforts to frustrate judgment enforcement. *Yegiazaryan*, therefore, may prove to have a practical chilling effect on recalcitrant award debtors, by potentially limiting the pool of third parties that might otherwise assist award debtors in shielding assets or taking other actions in contravention of the award debtors' obligations under the award.

Although an uptick in civil RICO claims related to enforcement proceedings as a result of *Yegiazaryan* is likely, nothing in the Supreme Court's ruling alters the high pleading and evidentiary standard that a plaintiff must meet to pursue civil RICO claims. Thus, while the United States has long been an important jurisdiction for judgment enforcement and collection, given the central role that the United States plays in the global financial markets, the Supreme Court's ruling in *Yegiazaryan* is expected to make U.S. courts an even more attractive forum for litigants, including those with few or no ties to the United States, to pursue recovery of arbitration awards and foreign judgments.

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