

Enforcing a Foreign Arbitration Award against a Foreign Party under RICO

Publications

May 2023

On April 25, 2023, the U.S. Supreme Court heard argument on whether a foreign plaintiff can state a civil claim under the Racketeer Influenced and Corrupt Organizations Act (“RICO”) against a foreign defendant based on actions related to the enforcement of a foreign arbitration award. The two consolidated cases are *Yegiazaryan v. Smagin*, No. 22-381, and *CMB Monaco v. Smagin*, No. 22-383.

The case stems from interesting facts. Vitaly Smagin, a Russian citizen, filed suit against Ashot Yegiazaryan, another Russian who fled to California more than a decade ago, among other defendants. The lawsuit alleged that Ashot and others defrauded Smagin in Russia. In 2010, Russian authorities criminally indicted Ashot and his brother Artem Yegiazaryan for the alleged fraud. Smagin also commenced a civil arbitration proceeding against Ashot in London, eventually securing a US \$84 million arbitration award against Ashot.

Smagin sought to enforce his award in California but, according to him, Ashot schemed to hide assets through shell companies and move funds around to avoid paying the judgment. In 2020, the US District Court ordered Ashot and others acting on his behalf to “immediately cease all actions . . . that would prevent, hinder, or delay [Smagin’s] ability to collect”; the court also issued an order prohibiting Ashot from further modifying a trust or the administration of a bank account without court approval. The court later found Ashot in contempt for violating these orders.

Against this backdrop, Smagin filed the instant case, bringing two claims under RICO, on the basis that Ashot and the other defendants harmed the California judgment in Smagin’s favor. To have statutory standing, a civil RICO plaintiff must show that (1) his alleged harm qualifies as injury to his business or property and (2) his harm was by reason of the RICO violation (requiring proximate causation). *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) (citations omitted). Further, under *RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325 (2016), the plaintiff must allege and prove a domestic injury to his business or property. *See id.* at 566–67.

In considering the question of standing, the Ninth Circuit Court of Appeals determined that, “for purposes of standing under RICO, the California Judgment exist[ed] as property in California.” *Id.* Thus, “the alleged harm to [Smagin’s] rights under the California Judgment constitute[d] a domestic

injury.” *Id.* In coming to this conclusion, the Court of Appeal recognized it was deepening a circuit split, with the Second, Third, and Ninth Circuits on one side, and the Seventh Circuit on the other. *See id.* at 568.

Should the U.S. Supreme Court agree with the Second, Third, and Ninth Circuits’ approach, foreign parties seeking to enforce foreign arbitration awards in the US against reluctant parties sheltering their assets may have powerful new leverage -- the RICO statute allows recovery of treble damages, costs, and attorneys’ fees. A decision is expected later this year.

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