

# Client Alert: US Supreme Court Permits Foreign Plaintiff To Bring RICO Suit for US Acts To Frustrate Enforcement of an International Arbitral Award

## Publications

July 20, 2023

By: Ali I. Alsarraf, Kenneth Beale, Elizabeth A. Edmondson, James Rogers

The US Supreme Court has opened the door for foreign plaintiffs to sue under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), which provides treble damages and attorneys’ fees, to assist enforcement of an international arbitral award where the defendant attempts to frustrate enforcement of the award in the United States. On June 22, 2023, in a 6-3 opinion in *Yegiazaryan v. Smagin* and *CMB Monaco v. Smagin*, the Court held that a foreign plaintiff suing under RICO can suffer a domestic injury—as required by the Court’s prior ruling in *RJR Nabisco, Inc. v. European Community*, 579 U.S. 325, 346 (2016)—when the circumstances surrounding the injury indicate it arose in the United States. The Court concluded that the “domestic-injury” inquiry is “context specific,” and that courts should look at “the nature of the alleged injury, the racketeering activity that directly caused it, and the injurious aims and effects of that activity.” The Court resolved a circuit split, rejecting a bright-line rule that strictly barred foreign plaintiffs from satisfying the domestic-injury requirement by virtue of their foreign residence. This decision has the following implications:

- Foreign judgment creditors holding international arbitration awards will increasingly look to enforce those awards in the United States.
- The prospect of facing treble damages under a RICO claim will cause judgment debtors to carefully consider their approach to resisting the payment of any judgments.
- Banks and other third parties are at risk of being subjected to a RICO suit for assisting judgment debtors in their efforts to frustrate enforcement of awards.
- Lower courts will provide further clarity on the contours of the “context specific” inquiry, but judgment creditors will likely need to take certain specific steps to ultimately assert a successful RICO claim, including first confirming their awards and judgments in U.S. courts, and

establishing the judgment debtor's pattern of unlawful evasion of collection of the award or judgment.

### Summary of Opinion

The case arose from a collapsed real estate project in Moscow between Russian businessmen Vitaly Smagin and Ashot Yegiazaryan. In 2014, Smagin won an \$84 million arbitration award in London for Yegiazaryan's misappropriation of investment funds from their joint real estate venture. To confirm and collect on the award, Smagin, who lives in Russia, filed an enforcement action in the Central District of California against Yegiazaryan, who had fled to Beverly Hills, California, in 2010 to escape criminal charges in Russia. Smagin successfully petitioned the District Court to issue a temporary protective order and preliminary injunction freezing Yegiazaryan's assets in California. But Yegiazaryan took measures to avoid the asset freeze. In May 2015, after receiving a \$198 million settlement in an unrelated proceeding, Yegiazaryan accepted the funds through the London office of an American law firm, created "a complex web of offshore entities to conceal the funds," and ultimately transferred the money to a foreign bank, CMB Monaco. He also had friends file fraudulent claims against him in foreign jurisdictions to obtain "sham judgments that would encumber the \$198 million, thereby blocking Smagin's access to it." At the same time, Yegiazaryan was also hiding his US-based assets through a system of shell companies owned by his family.

In March 2016, the District Court granted Smagin's motion for summary judgment to confirm his arbitral award and entered judgment against Yegiazaryan for \$92 million, including interest. The court also issued several orders barring Yegiazaryan from preventing collection of the judgment. Finding that Yegiazaryan failed to comply with its orders, the District Court found Yegiazaryan in contempt. Yegiazaryan sought to avoid complying with the contempt order by submitting a forged doctor's note claiming he was too ill. He then used "intimidation, threats, or corrupt persuasion" to get the doctor to avoid service of a subpoena from Smagin, who sought to depose the doctor, a California resident.

In 2020, Smagin brought a civil RICO suit against Smagin and CMB Monaco, alleging that the defendants worked at Yegiazaryan's direction to frustrate Smagin's collection of the District Court's judgment through a pattern of wire fraud and other RICO predicate acts, such as witness tampering and obstruction of justice. The District Court dismissed Smagin's complaint on the ground that Smagin failed to adequately plead a domestic injury as required by *RJR Nabisco*, largely based on Smagin's Russian residence and citizenship, finding that he was injured in Russia due to experiencing the loss from his inability to collect on his judgment in Russia.

The Ninth Circuit reversed, rejecting the Seventh Circuit's "rigid, residency-based test for domestic injuries involving intangible property," and adopting a "context-specific" approach, similar to the Second and Third Circuits. The court concluded that Smagin adequately pleaded a domestic injury based on the allegations that Smagin's "efforts to execute on a California judgment in California against a California resident were foiled by a pattern of racketeering activity that largely 'occurred in,

or was targeted at, California’ and was ‘designed to subvert’ enforcement of the judgment in California.”

In the opinion written by Justice Sonya Sotomayor, the Court affirmed the Ninth Circuit, holding that “a context-specific inquiry is most consistent with this Court’s decision in *RJR Nabisco*,” and that “the context here makes clear Smagin has alleged a domestic injury.” The Court agreed with Smagin and the Ninth Circuit that the domestic-injury inquiry for RICO “is a context-specific inquiry that turns largely on the particular facts alleged in a complaint.” The Court directed that “courts should look to the circumstances surrounding the alleged injury to assess whether it arose in the United States,” which “means looking at the nature of the alleged injury, the racketeering activity that directly caused it, and the injurious aims and effects of that activity.”

The Court then found that Smagin’s allegations sufficiently stated a domestic injury for his RICO suit. In finding that “the circumstances surrounding Smagin’s injury make clear it arose in the United States,” the Court noted that much of the racketeering activity that caused Smagin’s injury, which Smagin described as his inability to collect his judgment, took place in California. The Court acknowledged that some components of the racketeering scheme occurred abroad but noted that even those were devised and carried out through acts in California with the purpose of frustrating the enforcement of a California judgment. The Court relied heavily on the fact that the racketeering scheme was directed at thwarting Smagin’s rights under the California judgment, which rights existed only in California. According to the Court, “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.”

In rejecting the bright-line rule proposed by the petitioners—that an injury in intangible property occurs where the plaintiff is located—the Court pointed to a hypothetical that would produce results counter to comity and far afield from any reasonable interpretation of domestic application of RICO. The Court stated that under the bright-line rule, a *foreign* owner of a brick-and-mortar business in the United States could not bring a RICO suit even if an American RICO organization burned the business down, whereas a US-based owner could. According to the Court, “[t]here is no evidence Congress intended to impose such a double standard, especially because doing so runs its own risks of generating international discord.”

The dissent, written by Justice Samuel Alito and joined by Justices Clarence Thomas and Neil Gorsuch, criticized the majority’s approach as “offer[ing] virtually no guidance to lower courts, and [risking] sowing confusion in our extraterritoriality precedents.” The dissent would have dismissed the writ of certiorari as improvidently granted to allow the circuit courts to further develop the factors that guide a civil RICO domestic-injury inquiry for intangible claims.

\* \* \*

Jenner & Block lawyers are experienced in enforcing foreign awards and handling RICO suits. If you have any questions regarding the issues raised in this alert, please feel free to contact the Jenner & Block lawyers listed below.

## **Related Attorneys**



**Ali I. Alsarraf**

Special Counsel  
aalsarraf@jenner.com  
+1 312 840 7376



**Kenneth Beale**

Partner  
kbeale@jenner.com  
+1 202 637 6380



**Elizabeth A. Edmondson**

Partner  
eedmondson@jenner.com  
+1 212 891 1606



**James Rogers**

Partner

[jrogers@jenner.com](mailto:jrogers@jenner.com)

+44 330 060 5463

**Related Capabilities**

Business Litigation

International Arbitration

© 2026 Jenner & Block LLP. Attorney Advertising. Jenner & Block LLP is an Illinois Limited Liability Partnership including professional corporations. This publication, presentation, or event is not intended to provide legal advice but to provide information on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact [dataprotection@jenner.com](mailto:dataprotection@jenner.com).

**Stay Informed**

