US SUPREME COURT OPENS NEW PATH TO ASSIST FOREIGN AWARD CREDITORS SEEKING TO ENFORCE ARBITRAL AWARDS

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US Litigation and Dispute Resolution Judicial Opinion Summary

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In its opinion of 22 June 2023 in *Yegiazaryan v. Smagin*,[1] the US Supreme Court ruled that a foreign award creditor may bring claims under the Racketeer Influenced and Corrupt Organizations Act (RICO)[2] related to the enforcement of an arbitral award in the United States, adopting a "context-specific" test. Resolving a split in authority among the US Circuit Courts of Appeals, the Supreme Court found in applying this approach in the *Smagin* case that the injury suffered by the foreign plaintiff related to alleged interference with a US judgment enforcing a foreign arbitral award, and therefore a RICO claim could be asserted.

Smagin and Yegiazaryan were parties to an arbitration in London that resulted in a multimillion-dollar arbitral award in favor of Smagin. While Smagin and Yegiazaryan were both Russian nationals and the real estate joint venture underlying the arbitral dispute concerned property in Russia, Yegiazaryan lived in California. For that reason, Smagin sought to enforce his award in federal court in California, which ultimately entered judgment against Yegiazaryan based upon the award.

Through a web of transactions and shell companies, Yegiazaryan allegedly attempted to conceal his assets, which could be used to pay the judgment. Smagin ultimately filed a civil RICO suit, under which treble damages and attorneys' fees are available, alleging that Yegiazaryan had conspired with a number of entities, including law firms and banks, to commit *inter alia* wire fraud as part of a scheme to thwart enforcement of Smagin's judgment.

Yegiazaryan argued that Smagin could not plead he suffered a "domestic injury" as required by Supreme Court precedent,[3] arguing that Smagin's injury occurred in Russia because he is a Russian citizen. The district court dismissed the case for substantially that reason. The Ninth Circuit, however, reversed the district court on appeal, finding that in the context of the civil RICO claim as a whole, Smagin's harm was suffered in California because his right to enforce a California judgment was impeded and the conspiracy occurred substantially within California.

In a 6–3 opinion authored by Justice Sotomayor, the Supreme Court adopted the context-specific test applied by the Ninth Circuit. The Supreme Court stated that courts should assess "the nature of the alleged injury, the racketeering activity that directly caused it, and the injuries aims and effects of that activity" in order to determine if the injury arose in the United States. In the instant case, the Supreme Court found that under the context-specific approach, Smagin clearly alleged domestic injury because Yegiazaryan took numerous actions within the United States to avoid collection of the California judgment and that to the extent the enforceability of Smagin's California judgment was hindered by Yegiazaryan and his co-conspirators, that harm was suffered in California.

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The decision thus expands the avenues for foreign award creditors to enforce arbitral awards in the United States where the award debtor has tried to evade its payment obligations. The Supreme Court's ruling also serves as a warning for law firms and banks who assist clients in evading arbitral awards and judgments.

FOOTNOTES

[1] Yegiazaryan v. Smagin, No. 22-381, 2023 WL 4110234 (U.S. June 22, 2023).

[2] 18 U.S.C. § 1961 et seq.

[3] *See* RJR Nabisco, Inc. v. European Cmty., 579 U.S. 325 (2016).

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