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U.S. Supreme Court Confirms that Foreign Companies Can Use a Powerful Tool to Enforce International Arbitration Awards

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The U.S. Supreme Court recently confirmed that foreign companies looking to enforce international arbitration awards have a powerful tool at their disposal: a U.S. statute targeting organized criminal activity. In ***Yegiazaryan v. Smagin***, the Court held that foreign companies can sue in U.S. courts under the Racketeer and Influenced Corrupt Organizations Act—commonly referred to as "RICO" —those who help a losing party commit fraud or other illegal acts in order to avoid an arbitral award.

If you win an international arbitration and want to enforce the award, you must first go to court and seek a judgment recognizing and enforcing the award against the losing party. Typically, you'd do so in a state where the losing party has assets. But what if you get a judgment from a U.S. court enforcing an arbitration award, only to find that the losing party has hidden or transferred its assets out of the U.S.?

That's where RICO might provide an avenue for recovery. RICO prohibits economic activities that are connected to "racketeering activity," which is broadly defined to include a long list of criminal acts—including, for example, wire fraud, theft of trade secrets, and counterfeiting. Although primarily a criminal statute, RICO also provides for a private, civil cause of action allowing "any person injured in his business or property by reason of" a RICO violation. Importantly, a party bringing a civil RICO suit can go after anyone conspiring in the conduct that caused injury, and, if the suing party wins, it is entitled to collect triple damages and attorney's fees.

In the case before the Court, a Russian citizen and resident (Smagin) won an $84 million international arbitration award against a Russian citizen now living in California (Yegiazar
The arbitration concerned the misappropriation of investment funds from a real estate joi

venture in Moscow. Since Yegiazaryan lived in California and had assets there, Smagin asked a federal district court in California to issue a judgment enforcing the arbitral award. The court issued an asset freeze order and a judgment, as well as several orders prohibiting Yegiazaryan and his agents from preventing collection of the judgment. But that's exactly what they did anyway: with the help of his bank and others, Yegiazaryan managed to hide and then transfer out of the U.S. nearly $200 million.

Smagin responded by filing a civil RICO suit in federal district court against Yegiazaryan, his bank, and multiple others, alleging they had conspired to prevent Smagin from collecting the judgment enforcing his arbitral award—by, for example, using shell companies to hide and transfer assets, and intimidating witnesses. But the district court determined that Smagin had failed to allege a "domestic injury," which is required to succeed on a civil RICO claim. The court concluded that because Smagin resided in Russia, that's where he suffered the injury of being unable to collect his judgment. Hence there was no "domestic injury," because the injury had not occurred in the U.S.

The U.S. Court of Appeals for the Ninth Circuit reversed, and the Supreme Court affirmed. The Supreme Court held that what matters is where the RICO injury "arises," not where it is "felt." In this case, Smagin had adequately alleged a domestic injury because he had tried to collect a judgment issued by a U.S. court in California against a California resident, but was prevented from doing so by racketeering activity that either happened in California or targeted California. The Supreme Court also noted that Smagin's rights under the judgment—for example, to get post-judgment discovery and to seize assets—only existed in California, further confirming that Smagin's injury was a "domestic" one.

Although the Supreme Court's decision has broader implications, it has obvious significance for foreign companies seeking to enforce international arbitration awards in the U.S. At the same time, losing parties attempting to avoid the enforcement of international arbitral awards in the U.S. by illegitimate means—as well as their agents, such as their banks—now do so at significant monetary risk.

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