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SCOTUS Confirms Civil RICO Liability for US Acts to Frustrate US Enforcement of Foreign Arbitration Award and Relieves Hurdles for Parties Seeking Arbitration

Introduction

On June 22, 2023, the U.S. Supreme Court issued its decision in *Yegiazaryan v. Smagin*, No. 22-381, affirming the Ninth Circuit's holding that allowed a foreign plaintiff to sue under the Racketeer Influenced and Corrupt Organizations Act ("RICO") based on acts in the United States attempting to frustrate enforcement of an arbitration award in the United States, against assets located here. Separately, on the following day, the Court reversed the Ninth Circuit with its decision in *Coinbase, Inc. v. Bielski*, No. 22-105, holding that an appeal on the question of arbitrability should stay district court proceedings. Both cases resolved splits between the federal circuit courts related to matters of arbitration.

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Summary of Opinions

The *Yegiazaryan* decision resolves a circuit split between the Ninth and Seventh Circuits on the issue of identifying a domestic injury that is required for a private civil RICO suit. Here, the Supreme Court held that for any civil remedies under 18 U.S.C. Section 1964, a "context-specific inquiry that turns largely on the particular facts alleged in the complaint" can determine whether a plaintiff can claim the required "domestic injury." *Slip op.* at 8. This inquiry will require courts to look specifically at the "circumstances surrounding the alleged injury to assess whether it arose in the United States." *Id.* at 3. Petitioner, Ashot Yegiazaryan, argued for a more bright-line rule based on the plaintiff's residence, but the Court rejected that approach—which was preferred in the Seventh Circuit—as categorically barring all foreign plaintiffs from making such claims under RICO, which was inconsistent with Supreme Court precedent.

The dispute arose in Russia, where Yegiazaryan allegedly stole shares belonging to Respondent, Vitaly Smagin, from their joint real estate venture in Moscow. Yegiazaryan allegedly fled to California to avoid criminal fraud charges, but Smagin later won an arbitration award in London against Yegiazaryan for over \$84 million due to the misappropriation of his investment in the joint venture. After Yegiazaryan refused to pay, Smagin filed an action in the Central District of California to confirm and enforce the arbitration award, thus prompting the court to freeze Yegiazaryan's California assets. Yegiazaryan received a separate \$198 million settlement award in an unrelated arbitration proceeding and, in an effort to evade the asset freeze, allegedly then sought to conceal the funds through a "complex web of offshore entities," sham judgments in foreign jurisdictions, and shell companies owned by family members in the United States. *Slip op.* at 3. Smagin ultimately filed a civil RICO suit against Yegiazaryan due to these fraudulent efforts. While the district court dismissed the case on the ground that Smagin had failed to allege a domestic injury, the Ninth Circuit reversed, finding that the alleged pattern of racketeering activity, which largely occurred in California by a California resident and was "designed to subvert" the enforcement of the California judgment, amounted to a domestic injury. *Id.* at 2. The Supreme Court affirmed, finding that a context-specific inquiry "is most consistent" with the Court's decision in *RJR Nabisco, Inc. v. European Community*, 579 U.S. 325 (2016) "and because the context here makes clear Smagin has alleged a domestic injury." *Id.* at 5, 9.

In *Coinbase*, the Supreme Court held that "[a] district court must stay its proceeding while an interlocutory appeal on the question of arbitrability is ongoing." *Slip op.* at 1. In doing so, the Court reversed a Ninth Circuit decision and settled a circuit split.

Plaintiffs in *Coinbase* brought a putative class action against the Company, alleging that Coinbase failed to restore funds that were fraudulently taken from users' accounts. The user agreement at issue contains an arbitration provision, but the district court denied Coinbase's motion to compel arbitration. In response, Coinbase filed an interlocutory appeal to the Ninth Circuit and moved to stay the district court's proceedings until the resolution of the arbitrability issue. The Ninth

Circuit ruled against Coinbase, “declin[ing] to stay the District Court’s proceedings pending appeal.” *Slip op.* at 1. In a 5–4 decision, the Supreme Court reversed the Ninth Circuit’s decision, relying on the principle from *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982) “that a district court should not exercise jurisdiction over those aspects of the case that are involved in the appeal” (citation omitted). *Id.* at 3, 4. The Supreme Court held that in this case, the question on appeal was “whether the case belongs in arbitration or instead in the district court.” *Id.* at 3, 4. Justice Brett Kavanaugh, writing for the majority, noted that “common practice reflects common sense” and added that “many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost” “[i]f the district court could move forward with pre-trial and trial proceedings while the appeal on arbitrability was ongoing.” *Id.* at 5, 6.

Key Takeaways

Based on these back-to-back decisions by the Supreme Court, below are some key takeaways for parties seeking to resolve arbitration or enforce arbitral awards:

- The *Yegiazaryan* holding, by making civil RICO available against those who seek through criminal schemes to avoid US enforcement of arbitration awards, may make the United States a more attractive venue for parties seeking to enforce an arbitral award.
- Particularly in situations in which a party seeks to avoid enforcement of an award by an arbitration tribunal, RICO now appears to provide an alternative method of enforcing an award if the movant can show that such avoidance actions in the United States satisfy the elements of RICO and are “designed to subvert” an otherwise final and binding award.
- The *Coinbase* decision relieves certain hurdles that a party faces in attempting to compel arbitration in accordance with the terms of an agreement and, in doing so, potentially increases the efficiency of arbitration proceedings going forward—even where one party asserts that an arbitration provision is not binding and attempts to litigate.

For any further questions on the implications of these rulings, please feel free to contact your usual Ropes & Gray attorneys or one of the authors.