

Wine Co. Shareholder Must Hand Investor \$29M, Judge Says

By **Shayna Posses**

Law360 (June 4, 2018, 7:46 PM EDT) -- A Florida federal judge slapped a controlling shareholder in a Chilean wine company with a \$28.7 million judgment Monday, after finding for a Delaware-based investor in its dispute seeking to confirm an arbitration award stemming from the soured business venture.

The final judgment for investor EGI-VSR LLC comes after U.S. District Judge Robert N. Scola Jr. on Thursday rejected controlling shareholder Juan Coderch's efforts to dismiss the petition to confirm a Chilean arbitration award, which the American company said he had been dodging service of in multiple countries to avoid coughing up the money.

The judge first declined to upset a Brazilian court's determination that Coderch was properly served in the country, which is where his brother allegedly said he was living when EGI-VSR tried to enforce the award in Chile. The Viña San Rafael SA controlling shareholder points to no legal authority indicating that the Florida federal court should review a Brazilian court's determination that service of process was properly carried out under Brazilian law, the judge held.

"Nevertheless, even if the respondent's challenge were proper, he has not presented strong and convincing evidence that the process undertaken in Brazil was improper or insufficient," the judge said, adding, "There was ample evidence presented to the Brazilian court to substantiate its finding that the respondent was evading service."

After rejecting Coderch's motion to quash service of the petition, Judge Scola rejected the shareholder's challenge to EGI-VSR's request for confirmation of the award, declaring his arguments "misplaced."

For example, Coderch asserted that the award isn't recognizable under Florida's Uniform Out-of-Country Foreign Money Judgment Recognition Act, which governs the enforcement of foreign judgments in the state. The statute defines "out-of-country judgments" as judgments by a foreign state granting or denying the recovery of a monetary sum, so, Coderch contended, since the arbitrator in this matter detailed how to calculate the amount owed without actually doing the math, the award isn't recognizable, according to the opinion.

But Judge Scola wasn't swayed, saying the shareholder hasn't cited any authority showing that the final award qualifies as a judgment under the Uniform Act and the court isn't persuaded that it should because the award was handed down by an arbitrator, not a foreign state.

The dispute stems from an agreement in which EGI-VSR said it would buy 4.2 million preferred shares of stock in Viña San Rafael, a private company that produces and distributes wines. Eventually, EGI-VSR bought more than 7.5 million shares for a total investment of about \$17 million, which gave it a minority interest in the wine company, according to the investor.

Under the terms of the agreement, a breach by controlling shareholders would trigger a put-right for EGI-VSR that would require the controlling shareholders to buy all of the investor's shares. After a series of issues, EGI-VSR exercised that right in October 2009 and invoked an arbitration clause in the agreement, the investor said.

A Chilean arbitrator determined that the controlling shareholders had indeed violated several sections of the agreement and ordered them to buy EGI-VSR's shares in January 2012, according to the investor.

However, EGI-VSR alleged, its efforts to enforce the award led to the investor chasing Coderch across several countries. In January 2015, the investor filed the present Florida federal court petition seeking to confirm the award under the Panama and New York conventions and get an order setting forth the total price Coderch should pay, but subsequently secured a stay as it attempted to serve him, court filings said.

EGI-VSR said it tried to enforce the award in Chile, but Coderch's brother swore to the court that he could not be served because he was living in Brazil. The bailiff then tried to serve him at his apartment in Brazil, only to be told by the doorman that he was directed by Coderch's wife to tell all bailiffs that he lived abroad, according to EGI-VSR.

After some more back and forth, the investor went to the Superior Judicial Tribunal in Brazil, which found that he had been properly served under that country's laws. Judge Scola subsequently reopened the Florida federal court case in October, according to court filings.

In response, Coderch asserted that he hadn't been properly served and that the award couldn't be confirmed as EGI-VSR has calculated it, but he failed to win over the judge Thursday. The shareholder has provided no reason to take up, let alone overturn, the Brazilian court's decision that he was actively evading service, and his arguments against confirmation are no more availing, Judge Scola held.

The judge concluded that Coderch hasn't shown that any of the Panama Convention's exceptions to confirming an arbitration award apply, nor is there any weight to his contention that the judgment EGI-VSR seeks relies on improper calculations, as the investor simply followed the procedure laid out in the final award.

Coderch promptly objected to the investor's proposed final judgment Friday, saying, "Confirming the arbitral award entails ordering specific performance to purchase shares in Viña San Rafael, not issuing a judgment for a sum of money upon which EGI may attempt to execute."

But the judge nonetheless issued a final monetary judgment.

Andrew W. Vail told Law360 on Monday that the court's order and judgment further demonstrate that Coderch cannot hide from his legal obligations to EGI-VSR or the law.

"We will continue to pursue Coderch and others involved in his conduct like his brother and family as appropriate until justice is done," he said.

The attorney noted that there are ongoing proceedings in other forums against Coderch and other respondents in the arbitration in connection with EGI-VSR pursuing the award.

Representatives for Coderch didn't immediately return requests for comment Monday.

EGI-VSR is represented by Detra Shaw-Wilder of Kozyak Tropin Throckmorton LLP and Andrew W. Vail of Jenner & Block LLP.

Coderch is represented by Kevin P. Jacobs, Gregory J. Trask, Rayda Alemán and Christopher King of Homer Bonner Jacobs.

The case is EGI-VSR LLC v. Coderch, case number 1:15-cv-20098, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Carolina Bolado. Editing by Alyssa Miller.