

Brazilian Superior Court of Justice holds that recognition of a foreign award is not barred by a concurrent action filed in Brazil

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Recently, the Brazilian Superior Court of Justice (“STJ”) ruled that the recognition of a foreign award is not barred by the simple existence of a concurrent lawsuit with the same subject matter in Brazil. With this ruling, the STJ rejected an argument that it used to accept in the past: that the recognition of a foreign award would harm the sovereignty of the Brazilian jurisdiction.

Our law firm, RFOR – Rayes, Fagundes & Oliveira Ramos, filed a request on behalf of an American company for the recognition of four awards issued by the United States District Court for the Southern District of New York which enforced the arbitration clause included in a commercial agreement entered into between our client and a Brazilian company.

Subject to massive daily fines, the Brazilian company was ordered by the US court to submit itself to the arbitration in course before an arbitral tribunal in Miami, Florida. The Brazilian company was also ordered not to proceed with a lawsuit it had filed in Brazil based on the same commercial agreement and arguing invalidity of the same arbitration clause.

Apart from not complying with the orders issued by the US court, the Brazilian company opposed to the recognition of such awards by the STJ. Such recognition is a requisite for the execution, in Brazil, of the fines established as penalties against the Brazilian company for not submitting itself to the arbitration. The Brazilian company alleged the existence of the lawsuit with the Brazilian court and argued that the Brazilian jurisdiction on the case should be protected and that a foreign award on the same subject matter should not be recognized. The STJ rejected the argument and held that the judgment of the request for recognition of the awards rendered by the US court must proceed.

The STJ itself referred to this ruling as one of its most relevant decisions and thoroughly announced it on its website (see here), followed by other media outlets in Brazil. It is indeed a very important ruling, since it strengthens protection of international arbitration and brings prestige to foreign awards in Brazil. As a result, a higher degree of legal security is now provided to foreign investors, which certainly helps attract foreign investments to Brazil.