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The Taxonomy of Arbitral Awards: The Ninth Circuit Finds an Arbitrator’s Order Unenforceable in *Castro v. Tri Marine Fish Co.*

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I. INTRODUCTION

Michael Castro fell down a set of stairs on the *F/V Captain Vincent Gann* while working at sea as a deckhand on the vessel and seriously injured his knee.¹ Although he requested to be returned to the vessel’s home port of American Samoa so he could seek medical treatment in Hawaii, vessel owner Tri Marine transported Castro to his native Philippines.² There, Castro underwent surgery, treatment, and physical therapy, all of which was paid for by Tri Marine in addition to the sailor’s monthly maintenance.³ Several months later, doctors diagnosed Castro’s father with kidney cancer that would likely be fatal without surgery, and in order to raise money for the procedure, Castro negotiated a settlement of his disability claims with Tri Marine through one of its agents in the Philippines.⁴ Although the parties give different accounts of the negotiation meeting, Castro ultimately signed an agreement releasing Tri Marine from all liability arising from his injury and pertaining to his right to future maintenance and cure in exchange for a monetary settlement.⁵ The Tri Marine agent subsequently brought Castro to the lobby of an office building where a maritime voluntary arbitrator met the parties, reviewed the paperwork, issued a one-page order recognizing the settlement as duly signed and not contrary to law, and dismissed the “case” with prejudice.⁶

1. *Castro v. Tri Marine Fish Co.*, 921 F.3d 766, 771, 2019 AMC 931, 932-33 (9th Cir. 2019).

2. *Id.*

3. *Id.*

4. *Id.* at 771-72, 2019 AMC at 933-34.

5. *Id.* at 772, 2019 AMC at 934.

6. *Id.* at 772-73, 2019 AMC at 934.

Subsequently, when Castro learned that his initial surgery had not been successful and that he would require additional surgery to properly fix his knee, he sued Tri Marine in Washington state court to cover the costs of the additional procedures.⁷ After removing the case to federal court, Tri Marine submitted a motion to confirm the Philippines arbitrator's award as a foreign arbitral award, which would preclude Castro from receiving further payments.⁸ Castro's motion to remand was denied, and the district court confirmed the order, dismissing the case.⁹ The United States Court of Appeals for the Ninth Circuit *held* that, although courts give deference to foreign arbitral awards, the arbitrator's order confirming a previously reached settlement agreement did not constitute an arbitral award subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). *Castro v. Tri Marine Fish Co.*, 921 F.3d 766, 777, 2019 AMC 931, 942 (9th Cir. 2019).

II. BACKGROUND

The backdrop of any claim involving the enforcement of a foreign arbitral award is the New York Convention.¹⁰ This convention, adopted by the United Nations Economic and Social Council on June 10, 1958, and acceded to by the United States in 1970, governs "the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought."¹¹ The underlying goal of the New York Convention is "to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries."¹² For example, in *Scherk v. Alberto-Culver*, the Supreme Court held that the agreement of the parties to arbitrate a dispute arising from their international commercial transaction, namely, a transfer of cosmetic trademarks, must be enforced by federal courts.¹³ There, the Court reasoned that arbitration agreements, like forum selection clauses,

7. *Id.* at 773, 2019 AMC at 935.

8. *Id.*

9. *Id.*

10. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3 (entered into force June 7, 1959) [hereinafter New York Convention].

11. *Id.* art. I(1).

12. *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974).

13. *Id.* at 519-20.

provide certainty and are a necessary element in international trade and commerce.¹⁴ The New York Convention not only encourages such enforcement of foreign arbitral agreements but also provides a very limited role for the judiciary to deny awards resulting from foreign arbitration. Under article V of the New York Convention, a court may refuse to recognize such an award only if the resisting party is able to prove one of seven specific defenses.¹⁵

The deference to foreign arbitral awards provided by the New York Convention is analogous to that required by the Federal Arbitration Act (FAA) towards domestic arbitral awards.¹⁶ The New York Convention and the FAA are so similar, in fact, that the United States Court of Appeals for the Ninth Circuit, in the case of *Polimaster Ltd. v. RAE Systems, Inc.*, stated that “[w]hen interpreting the defenses to confirmation of an arbitration award under the New York Convention, we may look to authority under the FAA.”¹⁷ The court made this comparison in refusing to enforce an arbitral award because the appellant met the burden of showing a ground for refusal under article V of the New York Convention, which provides a defense where “the arbitral procedure was not in accordance with the agreement of the parties.”¹⁸

Although the New York Convention and the FAA are the bases upon which courts must judge claims concerning foreign and domestic arbitral awards, the first question a court must ask is whether they apply at all, which is an interpretive question requiring de novo review.¹⁹ This applies to the interpretation of statutes, as in the case of *CVS Health Corp. v. Vividus, LLC*, where the Ninth Circuit addressed, and answered in the negative, the question of “whether the FAA allows an arbitrator to order a third party to produce documents as part of pre-hearing discovery.”²⁰ A similar inquiry and interpretation is required in the case of treaties, as the Ninth Circuit demonstrated in *Hosaka v. United Airlines, Inc.*, where the court held that a federal court did not have the power to dismiss the claims of injured airline passengers under the doctrine of *forum non conveniens*

14. *Id.* at 519.

15. New York Convention, *supra* note 10, art. V(1).

16. 9 U.S.C. §§ 201-208 (2018).

17. *Polimaster Ltd. v. RAE Sys., Inc.*, 623 F.3d 832, 836 (9th Cir. 2010) (citing *Parsons & Whittemore Overseas Co., Inc. v. Societe Generale de L’Industrie du Papier*, 508 F.2d 969, 974 (2d. Cir. 1974)).

18. New York Convention, *supra* note 10, art. V(1)(d); *Polimaster Ltd.*, 623 F.3d at 836.

19. *Castro v. Tri Marine Fish Co.*, 921 F.3d 766, 773, 2019 AMC 931, 936 (9th Cir. 2019).

20. *CVS Health Corp. v. Vividus, LLC*, 878 F.3d 703, 706, 708 (9th Cir. 2017).

because the Warsaw Convention did not allow for the application of that doctrine.²¹

The inquiry before a court, however, may involve the interpretation of a term contained in the New York Convention or the FAA, and in such a case, the court will apply common meaning and sense.²² The Supreme Court followed this method in *Green Tree Financial Corp.-Alabama v. Randolph*, stating that “[b]ecause the FAA does not define ‘a final decision with respect to an arbitration’ or otherwise suggest that the ordinary meaning of ‘final decision’ should not apply, we accord the term its well-established meaning.”²³ The American Law Institute (ALI) may also provide helpful interpretative guidance. Particularly when there is a question concerning an international commercial arbitration agreement, a court may turn to the ALI’s recent Restatement (Third) U.S. Law of International Commercial Arbitration, which provides useful definitions of key terms that are undefined in either the New York Convention or the FAA.²⁴ For example, included among the fundamental definitions are the following:

- (a) An “arbitral award” is a decision in writing by an arbitral tribunal that sets forth the final and binding determination on the merits of a claim, defense, or issue regardless of whether that decision resolves the entire controversy before the tribunal. . . .
- (b) An “arbitral tribunal” is a body consisting of one or more persons designated directly or indirectly by the parties to an arbitration agreement and empowered by them to adjudicate a dispute that has arisen between or among them.
- (c) “Arbitration” is a dispute resolution method in which the disputing parties empower an arbitral tribunal to decide a dispute in a final and binding manner.²⁵

Such black-letter definitions are a useful starting point, but at least one journal article has taken a more philosophical approach to defining

21. *Hosaka v. United Airlines, Inc.*, 305 F.3d 989, 993 (9th Cir. 2002).

22. *Castro*, 921 F.3d at 774, 2019 AMC at 936.

23. *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 86 (2000) (citing *Evans v. United States*, 504 U.S. 255, 259-60 (1992)).

24. RESTATEMENT (THIRD) U.S. LAW OF INT’L COMMERCIAL ARBITRATION § 1-1 (AM. LAW INST., Tentative Draft No. 2, 2012). Although the entire Restatement has not been formally approved by ALI membership, Tentative Draft No. 2, which contains the relative sections, has been approved. See *Discussion of Restatement of the Law Third, The U.S. Law of International Commercial Arbitration*, 2012 A.L.I. PROC. 143 (2012).

25. RESTATEMENT (THIRD) U.S. LAW OF INT’L COMMERCIAL ARBITRATION § 1-1(a)-(c).

arbitration as a concept. In their article on consent awards, Yaraslau Kryvoi and Dmitry Davydenko state:

[T]he tribunal must be dealing with a genuine disagreement to have jurisdiction. Where parties appoint an arbitral tribunal after a settlement to merely record the settlement in the . . . award, there is no “difference” between the parties to resolve; the parties have already settled the dispute. A “difference” is a necessary precondition of an “award” in the sense of the New York Convention.²⁶

This highlighting of the fact that a “difference” or “dispute” is a prerequisite for an arbitration proceeding to take place is pertinent for a court attempting to determine whether an arbitration happened and whether or not to enforce an arbitral award. Moreover, this description is helpful to differentiate arbitral awards from consent awards, which derive from the reduction of settlement agreements, which have been reached during arbitration, into arbitral awards. As Margaret L. Moses points out in *The Principles and Practice of International Commercial Arbitration*, international arbitral rules often allow arbitrators to issue consent awards.²⁷ However, the time *when* a settlement is reached is material to whether or not such settlement can be converted into a consent award.²⁸ According to Kryvoi and Davydenko, “Timing is important for a settlement agreement to become an award. Usually a consent award becomes possible after a tribunal has been constituted Otherwise the tribunal will have no right to render a consent award.”²⁹ This formulation leaves open the possibility that when the parties reach a settlement agreement before submitting to an arbitration proceeding, they no longer have a dispute, and, therefore, no arbitration can take place nor can the settlement agreement be converted into an arbitral award as a consent agreement.

III. COURT’S DECISION

In the noted case, the Ninth Circuit addressed a fundamental issue concerning the nature of arbitration.³⁰ In deciding whether to affirm a district court’s confirmation of an arbitrator’s order recognizing a

26. Yaraslau Kryvoi & Dmitry Davydenko, *Consent Awards in International Arbitration: From Settlement to Enforcement*, 40 BROOK. J. INT’L L. 827, 854 (2015).

27. MARGARET L. MOSES, *THE PRINCIPLES AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION* 205 (3d ed. 2017).

28. See Kryvoi & Davydenko, *supra* note 26, at 842–43.

29. *Id.*

30. *Castro v. Tri Marine Fish Co.*, 921 F.3d 766, 771, 2019 AMC 931, 932 (9th Cir. 2019).

settlement agreement, the court began by asking a basic threshold question: was this order a foreign arbitration award at all?³¹ The court held that there was no arbitral award, which would have been entitled to enforcement under the New York Convention.³² First, the court found that there was no dispute between the parties when they approached the arbitrator, and, therefore, there was nothing to arbitrate.³³ Second, the so-called arbitration consisted of nothing more than a haphazard, informal meeting in an office building lobby, which was inconsistent with three previous arbitration agreements signed by the parties.³⁴ Finally, this makeshift proceeding defied even the arbitral rules of the forum issuing the order.³⁵

First, the court began its search for an arbitral award to enforce in this case by looking to the New York Convention and its implementing legislation.³⁶ The purpose of this legislation is to promote the enforcement of foreign arbitration agreements and awards.³⁷ Before enforcement, however, the first inquiry is whether or not the protections of the New York Convention apply at all.³⁸ The Ninth Circuit is the first court to address this question when considering the enforcement of an arbitral award because, surprisingly, the term “arbitral award” has not been defined in the New York Convention, the FAA, or in other federal court decisions.³⁹ Common sense and helpful definitions provided in a recent draft of the ALI’s restatement on international arbitration suggest that an “arbitral award” is a decision made by an “arbitral tribunal,” which is a body composed to adjudicate a dispute through arbitration.⁴⁰ Arbitration itself is characterized as a method of alternative dispute resolution.⁴¹ It follows that the existence of a *dispute* between parties is a necessary prerequisite for the conducting of arbitration proceedings and the issuance of an arbitral award. Since the parties in the instant case had already resolved their dispute through a settlement agreement before approaching an arbitrator,

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 773, 2019 AMC at 935-36 (citing 9 U.S.C. §§ 201-208 (2018)).

37. *Id.*, 2019 AMC at 935.

38. *Id.*, 2019 AMC at 936.

39. *Id.* at 773-74, 2019 AMC at 936.

40. *Id.* at 774, 2019 AMC at 936-37 (citing RESTATEMENT (THIRD) U.S. LAW OF INT’L COMMERCIAL ARBITRATION § 1-1(a)-(c) (AM. LAW INST., Tentative Draft No. 2, 2012)).

41. *Id.*, 2019 AMC at 937.

there was, by definition, no arbitration and, thus, no arbitral award for the defendant to have relied on in the court below.⁴²

Second, the court noted that the parties in this appeal had made three prior arbitration agreements, namely, those contained in their employment agreement, the advance payment receipt, and the executed release, all of which provided for arbitration in American Samoa and subjection to the procedural rules of that locality.⁴³ The purported arbitration in this case, however, took the form of an impromptu meeting in the crowded lobby of a building in Manila.⁴⁴ This supports the appellant's claim that he was unaware that this meeting was actually an arbitration proceeding and also syllogistically addresses the court's fundamental inquiry concerning the existence of an arbitral award: arbitration proceedings require the consent of both parties.⁴⁵ Because the appellant did not know this was an arbitration, he could not have consented to it; therefore, there was no arbitration proceeding or arbitral jurisdiction.⁴⁶ Moreover, although the appellant could have waived his right to have his dispute arbitrated in American Samoa, there was nothing in his conduct to suggest such a waiver and the election of the Philippines as a forum.⁴⁷

Finally, beyond the fact that the parties never agreed that the Philippines would be the arbitral forum, the procedures followed in the proceeding did not, in any event, conform to Philippine procedural rules of arbitration, which violates the doctrine that an arbitrator should act according to the law of the arbitral seat.⁴⁸ Contrary to Philippine arbitral procedure, the parties did not sign and submit a submission agreement to voluntary arbitration nor did they participate in an initial conference, joint formulation of ground rules, or pleadings.⁴⁹ This lack of compliance with the rules of even an improper forum corroborates the finding that no arbitration proceeding from which an arbitral award could derive took place.⁵⁰

42. *Id.* at 774-75, 2019 AMC at 937-38 (citing Kryvoi & Davydenko, *supra* note 26, at 854).

43. *Id.* at 775, 2019 AMC at 938-39.

44. *Id.*, 2019 AMC at 939.

45. *Id.* (quoting RESTATEMENT (THIRD) U.S. LAW OF INT'L COMMERCIAL ARBITRATION § 1-1, Reporters' Note d and cmt. b).

46. *See id.*

47. *Id.*

48. *Id.* (citing RESTATEMENT (THIRD) U.S. LAW OF INT'L COMMERCIAL ARBITRATION § 1-1 cmt. c).

49. *Id.* at 775-76, 2019 AMC at 939.

50. *Id.* at 776, 2019 AMC at 939.

There are three caveats that follow upon the Ninth Circuit's finding that the arbitrator's order was not an arbitral award that would require enforcement under the New York Convention. First, although the parties did not participate in a valid arbitration proceeding, it may have been possible for the appellee to attempt to enforce the settlement agreement as a matter of contract law.⁵¹ Second, the court emphasized the timing issue and stated that its decision does not call into question the propriety of "consent awards," whereby an arbitrator reduces a settlement reached by the parties during arbitration into an arbitral award.⁵² This common practice is approved of by the court and illustrated by two cases cited favorably by the appellee, in each of which the parties initiated arbitration, reached a settlement, and then subsequently received a consent award.⁵³ Third, the court noted that its emphasis on proper form in arbitration proceedings was no mere frivolity.⁵⁴ The distinguishing characteristic of arbitration as a method of alternative dispute resolution is that it binds parties to the proceeding and prevents either side from withdrawing.⁵⁵ It is not possible to recognize orders that derive from other proceedings employing more collaborative means of dispute resolution as arbitral awards.⁵⁶

IV. ANALYSIS

The Ninth Circuit was correct in its methodical analysis and refusal to enforce the purported arbitral award in the noted case. This decision provides an exemplary model of judicial review for other circuits to follow in future cases. Rather than presumptively enforcing an order simply because it bears the signature of a foreign arbitrator, the Ninth Circuit's example encourages a court to step back and take a broad, clear-sighted view of the facts with the warning that "when it looks, swims, and quacks like an arbitral award," it, nevertheless, may be "an arbitral award in name only."⁵⁷ Indeed, in taking this initial step to investigate the nature of the

51. *Id.*, 2019 AMC at 939-40.

52. *Id.*, 2019 AMC at 940.

53. *Id.*, 2019 AMC at 940-41 (first citing *United States v. Sperry Corp.*, 493 U.S. 52, 56-57 (1989); and then citing *Transocean Offshore Gulf of Guinea VII Ltd. v. Erin Energy Corp.*, No. CV H-17-2623, 2018 WL 1251924, 2018 U.S. Dist. LEXIS 39494 (S.D. Tex. Mar. 12, 2018)).

54. *Id.*, 2019 AMC at 941.

55. *Id.* (citing RESTATEMENT (THIRD) U.S. LAW OF INT'L COMMERCIAL ARBITRATION § 1-1 cmt. c (AM. LAW INST., Tentative Draft No. 2, 2012)).

56. *Id.* (citing RESTATEMENT (THIRD) U.S. LAW OF INT'L COMMERCIAL ARBITRATION § 1-1, Reporters' Note c).

57. *Id.* at 771, 2019 AMC at 932.

arbitral award at issue, the court was able to infer that there was no arbitral award to enforce because no arbitration took place. The conclusion that no arbitration took place, in turn, is logical based on the court's assessment that a necessary ingredient and prerequisite for arbitration is the existence of a dispute. This conclusion is consistent with arbitration's plain definition and categorization as a method of dispute resolution.

The *Shorter Oxford English Dictionary*, for example, defines "arbitration" as "[t]he settlement of a dispute or debate by an arbitrator."⁵⁸ More to the point, in a legal setting, *Black's Law Dictionary* defines the term as "[a] dispute-resolution process in which . . . neutral third parties . . . resolv[e] the dispute."⁵⁹ Additionally, the ALI in a recent restatement draft states that "'[a]rbitration' is a dispute resolution method in which the disputing parties empower an arbitral tribunal to decide a dispute in a final and binding manner."⁶⁰ Although this key term was not defined in either the New York Convention or the FAA,⁶¹ the above definitions make clear that one of the essential elements of the definition of arbitration is the pre-existence of a dispute that needs to be settled. This highlights the Ninth Circuit's insightfulness in pursuing a plain understanding of terms and asking whether a dispute existed in the noted case that could have produced an enforceable arbitral award.

Further, the court's logic is highlighted by the characterization of arbitration as a form of alternative dispute resolution.⁶² As the name of the category suggests, if arbitration is a form of *alternative* dispute resolution, it must be an alternative to another method. This other, more conventional manner of deciding disputes, is traditional litigation before a judge.⁶³ Even a traditional trial court, however, according to the Article III Case or Controversy Clause of the United States Constitution, is only able to hear a case where the parties are in controversy and have a dispute.⁶⁴ It stands

58. *Arbitration*, THE SHORTER OXFORD ENGLISH DICTIONARY (4th ed. 1993).

59. *Arbitration*, BLACK'S LAW DICTIONARY (11th ed. 2019).

60. RESTATEMENT (THIRD) OF THE U.S. LAW OF INTERNATIONAL COMMERCIAL ARBITRATION § 1-1.

61. *Castro*, 921 F.3d at 774, 2019 AMC at 936.

62. *See id.* at 776, 2019 AMC at 941 (citing RESTATEMENT (THIRD) U.S. LAW OF INT'L COMMERCIAL ARBITRATION § 1-1, Reporters' Note c) (contrasting arbitration with other forms of alternative dispute resolution).

63. *See* *Sunshine Min. Co. v. United Steelworkers of Am.*, AFL-CIO, CLC, 823 F.2d 1289, 1293 (9th Cir. 1987) (discussing the scope of judicial review concerning an arbitrator's decision and stating that "[b]ecause arbitration is an *alternative* to the judicial resolution of disputes, this extremely low standard of review is necessary to prevent the 'judicialization' of the arbitration process").

64. U.S. CONST. art. III, § 2, cl. 1; *see also* *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (describing standing as an indicator "serv[ing] to identify those disputes which are

to reason that if the parties must have a dispute before they can avail themselves of the traditional court system, a dispute similarly must be apparent before that same system will allow the parties to make use of an alternative method of resolution. Similarly, if a court decides that a plaintiff lacks standing to bring a lawsuit against a defendant, the court cannot subsequently send the parties to arbitrate the same matter before an arbitral body. The Ninth Circuit's wisdom is evident in addressing this basic matter of jurisdiction as it applies in the realm of alternative dispute resolution.

Moreover, the court's decision is correct because it is consistent with the purposes of the existing law, as embodied in the New York Convention and its enacting legislation. The New York Convention is an international agreement that is intended to encourage commerce through the promotion of stability and unifying standards.⁶⁵ Although one might argue that extreme deference to all orders purporting to be arbitral awards provides a great amount of predictability at the enforcement stage, this deferential attitude makes the situation much less predictable for parties at the contracting stage. There is an intolerable amount of inconsistency when fishermen cannot be certain that the arbitration agreements contained in their employment contracts and settlement agreements will be enforced as written, in the settled forum with the agreed-upon choice of law.

Such inattention to details of form not only contradicts the principles of mutual understanding that are a basis of contract law in general but is also contrary to the nature of arbitration as a consent-based form of dispute resolution.⁶⁶ A party cannot consent to arbitration without the certainty that the forum and procedures they assent to will be honored. Without this consent the arbitrator or arbitral tribunal will have no jurisdiction to arbitrate.⁶⁷ Additionally, arbitration that takes place in a forum that was not agreed upon and which does not follow the agreed procedure cannot have one of arbitration's key features, which is finality.⁶⁸

In short, the Ninth Circuit's decision in the noted case is likely to have a positive impact not only towards better contract making, where

appropriately resolved through the judicial process." (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990))).

65. See *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974).

66. *Castro*, 921 F.3d at 775, 2019 AMC at 938 (citing RESTATEMENT (THIRD) U.S. LAW OF INT'L COMMERCIAL ARBITRATION § 1-1, Reporters' Note d).

67. See *id.*

68. See *United Transp. Union v. BNSF Ry. Co.*, 710 F.3d 915, 931 (9th Cir. 2013) ("[I]n order to protect the finality of arbitration decisions, courts must be slow to vacate an arbitral award" (citing *Dogherra v. Safeway Stores, Inc.* 679 F.2d 1293, 1297 (9th Cir. 1982))).

parties can be more certain that the arbitration clauses they consent to will be legitimately enforced, but also towards better labor practices. It is questionable whether the New York Convention should apply to seamen's employment contracts at all.⁶⁹ However, whether or not arbitration agreements continue to be used and enforced in such contracts following *Castro*, there is hope that fishermen, and other workers, will at least have better access to the method of dispute resolution for which they bargained.

V. CONCLUSION

There is a line between deference and complaisance. It is unfortunate that submission to the requirements of the New York Convention has led to the blind enforcement of orders that are arbitral awards in name only. Here, the Ninth Circuit reminds federal courts to remain alert and take a more discerning view of the matters before them. By defining the term arbitral award, looking into the nature of arbitration itself, and applying the results of its inquiry to the facts at hand, the court provides an exemplary methodology. Other courts would do well to follow this example and look more skeptically at "arbitral awards," refusing to enforce not only awards that fall under one of the New York Convention's seven defenses but also those that do not derive from valid arbitration proceedings.

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69. See generally Jarred Pinkston, *New York's Unwelcoming Harbor: The New York Convention's Inapplicability to Claims Arising from Seamen's Employment*, 3 B.Y.U. INT'L L. & MGMT. REV. 233 (2007).

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