

Eleventh Circuit Finds Removal Jurisdiction Is Included Within Federal Subject-Matter Jurisdiction Under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards



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Tuesday, May 21, 2019

In 2001, Del Monte International GmbH and Inversiones y Procesadora Tropical INPROTSA, S.A. entered into an agreement for the production, packaging, and sale of MD-2 pineapples, a variety of pineapple that Del Monte had developed and which subsequently became the most popular pineapple in the world. The contract included an agreement to arbitrate as well as an agreement that, upon termination of the contract, INPROTSA would either destroy or return its stock of pineapples to Del Monte. However, when the agreement expired in 2013, INPROTSA sold the MD-2 pineapples to third parties rather than destroy or return them to Del Monte.

Del Monte initiated arbitration and was ultimately awarded approximately \$26 million and an injunction against INPROTSA's continued sale of the MD-2 pineapple. INPROTSA filed a petition to vacate the award in Florida state court. Del Monte removed the case to federal court and filed a combined motion to dismiss the petition to vacate and cross-petition to confirm the award. After some "procedural detours," the district court granted Del Monte's cross-petition to confirm the award.

INPROTSA appealed, arguing that the district court lacked subject-matter jurisdiction under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, among other issues. INPROTSA argued that there are only two causes of action that may be brought under 9 U.S.C. § 203, the jurisdictional provision of the statute implementing the Convention: (1) an action to compel arbitration; and (2) an action to confirm an arbitral award. According to INPROTSA, because a petition to *vacate* an arbitral award is not one of the recognized causes of action, the federal court did not have subject-matter jurisdiction over the case.

INPROTSA conceded that the district court had *removal* jurisdiction under 9 U.S.C. § 205, but argued that the scope of the court's removal jurisdiction was not coterminous with that of its subject-matter jurisdiction. Effectively, INPROTSA argued that federal courts should be required to remand any case removed to federal court under § 205 that did not also have a federal jurisdictional basis under § 203.

The Eleventh Circuit disagreed on all counts. First, the court held that the Convention does not provide an "exhaustive list of actions and proceedings falling under the Convention" such that the court must inquire whether the action is one of the two types recited above. Rather, the relevant inquiry for the court is whether the action or proceeding "falls under the convention." The court stated that an action or proceeding falls under the Convention for purposes of § 203 when the action "sufficiently relate[s] to an agreement or award subject to the Convention, such that the agreement or award could conceivably affect the outcome of the case."

Second, although the court agreed with INPROTSA that removal jurisdiction was not necessarily coterminous with subject-matter jurisdiction, the court nevertheless determined that Congress intended to provide a federal forum for resolving issues implicating the Convention. The court reasoned that it would "make little sense for Congress to specifically authorize removal of cases over which the federal courts would lack subject-matter jurisdiction. ... It makes far more sense to conclude Congress intended § 203 to be read consistently with § 205 as conferring subject-matter jurisdiction over actions or proceedings sufficiently related to agreements or awards subject to the Convention."

[*Inversiones y Procesadora Tropical INPROTSA, S.A. v. Del Monte Int'l GmbH*](#), 921 F.3d 1291 (11th Cir. 2019).

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