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Opinion

SUPERIOR COURT OF JUSTICE OPENS BRAZILIAN COURTS' DOORS TO THE ANNULMENT OF A FOREIGN ARBITRAL AWARD.
Vancouver, November 25th 2026

The Tribunal Superior de Justiça de Brazil decision REsp 2.224.272/SP represents a significant contribution to the development of international arbitration, particularly regarding the scope of party autonomy and the interpretation of Article V(1)(e) of the New York Convention.

In my view, the most compelling aspect of this decision is the recognition that the arbitral seat and the jurisdiction competent to hear annulment proceedings do not necessarily have to coincide. Where the parties have expressly agreed on a different forum and have chosen the law of that jurisdiction to govern the arbitration (lex arbitri), their agreement may legitimately determine the competent judicial authority.

This interpretation gives meaningful effect to the parties' contractual arrangements rather than allowing traditional territorial considerations to override their express intentions. It also highlights the importance of distinguishing between the law governing the merits of the dispute and the procedural law governing the arbitration, a distinction that may have decisive jurisdictional consequences.

Equally important, the STJ adopted a balanced approach. Its decision does not open the door to indiscriminate challenges to foreign arbitral awards or undermine the supervisory role of the arbitral seat. Rather, it recognizes a carefully circumscribed possibility supported by the New York Convention and the parties' own choices.

Ultimately, I consider this a welcome and progressive development. It reinforces the principle that party autonomy is not merely the foundation upon which arbitration is established; it should also be respected when determining the judicial framework governing the validity of the resulting award. The decision is a reminder that, in international arbitration, the parties' freedom to choose should not be confined to the commencement and conduct of the proceedings but may also extend to the judicial authority entrusted with reviewing their outcome.