CONTRACTS--COLLECTIVE BARGAINING — FEDERAL DISTRICT COURT IMPROPERLY DISMISSED ALL CLAIMS BY PROFESSIONAL ATHLETE WHEN STATE CLAIMS MAY NOT HAVE BEEN PRE-EMPTED BY THE LABOR MANAGEMENT RELATIONS ACT DUE TO THEIR LACK OF DEPENDENCE ON THE COLLECTIVE BARGAINING AGREEMENT— *Sprewell v. Golden State Warriors: National Basketball Association*, 266 F.3d 979 (9th Cir. 2001), *reh'g en banc denied*, 275 F.3d 1187 (9th Cir. 2001)

I. INTRODUCTION

Can the governing body of a professional athletic league, along with an athlete's professional team, take disciplinary actions that exceed the boundaries of state law possibly damaging the athlete's future, while using federal legislation to preclude extensive review? This is the precise question Latrell F. Sprewell ("Sprewell") asked after being subjected to an alleged negative media campaign and discipline by both the Golden State Warriors and the National Basketball Association ("NBA"). However, after the alleged career damaging, negative media campaign, one reporter noted (in reference to Sprewell's new home), "the city is clutching him tightly, the way he once did P.J. Carlesimo's neck, only this is a romantic, lip-lock kind of embrace.[1] Latrell Sprewell is choking from New York's affection. Imagine that."[2] This statement came less than one month after Sprewell had been reinstated by the league's executive office in New York.[3] He missed a total of 68 games the season after he choked Carlesimo, the head coach of the Golden State Warriors.[4]

According to some sources, Sprewell, who at the time was 28 years old, had "a history of not being able to get along with teammates, coaches and management alike."[5] Oddly enough, this is the same player who after being reinstated and traded to the New York Knicks, was commended by his coach, Jeff Van Gundy, who stated, "He works hard, he plays hard, and

1. Shaun Powell, *Being a Player is the Thing. (New York Knicks' Latrell Sprewell (Brief Article)*, THE SPORTING NEWS, Feb. 22, 1999, at 8.
2. *Id.*
3. *NBA Reinstates Sprewell*, UPI, Jan. 22, 1999, LEXIS.
4. *Id.*
5. *Id.*

he plays unselfishly. So he's actually very easy to coach."[6]

How could this be the same person who struggled to convince the league's commissioner, David Stern, and the players' union chief, Billy Hunter, that "he will be able to control his anger both on and off the court in the future" so that he could play professional basketball once again?[7] Perhaps, it was these differing opinions that led to Sprewell filing a suit in Federal District Court against both the Golden State Warriors and the National Basketball Association.[8]

Considering the numerous claims made by Sprewell among multiple areas of law, this case note is intended to map the attempt of a professional athlete to bring suit in federal court against his team and the league in which he participated, while trying to circumvent preclusive federal legislation. This note will attempt to separate and explain Sprewell's sorted claims while focusing on the more substantive issues.

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6. John Brennan, *The Real Sprewell Interview*, THE SPORTING NEWS, Feb. 26, 2001, at ??. Gregg Popovich, who was an assistant coach at Golden State during Sprewell's tenure, agreed with Van Gundy. *Id.* "Every Practice, every game, he competes to the 'nth' degree." *Id.* "He's basically a shy person who doesn't seek out the limelight and doesn't give anybody any trouble." *Id.*

7. *NBA Reinstates Sprewell*, *supra* note 3. During his suspension, Sprewell lost $6.4 million in pay over the course of the 68 games, but still had $17.3 million remaining on his contract. *Id.*

8. Sprewell v. Golden State Warriors: National Basketball Ass'n, No. C-98-2053-VRW, 1999 U.S. Dist. LEXIS 3875, at *1 (N.D. Cal. March 26, 1999). Sprewell's original suit contained eleven claims:

(1) vacatur of the arbitrator's opinion pursuant to § 301 of the Labor Management Relations Act ("LMRA");
(2) intentional interference with freedom to make and enforce contracts pursuant to 42 U.S.C. § 1981;
(3) conspiracy to violate plaintiff's freedom to make and enforce contracts pursuant to 42 U.S.C. § 1985(3);
(4) monopolization in restraint of trade pursuant to 15 U.S.C. § 1 et seq;
(5) interference with prospective economic advantage;
(6) intentional interference with contractual relations;
(7) breach of contract;
(8) breach of fiduciary duty, duty of loyalty and duty of good faith and fair dealing;
(9) civil conspiracy;
(10) discrimination, boycotting, blacklisting, and refusing to buy from, sell to or trade with plaintiff on the basis of race pursuant to Cal. Civil Code § 51.5; and
(11) unfair business practice pursuant to Cal. Bus and Prof Code §§ 17200 and 17500.

Id. at *4-5.

II. THE SPREWELL STORY, FROM THE "INCIDENT" ITSELF, ALL THE WAY TO THE NINTH CIRCUIT.

A. The Final Outcome of Sprewell's Appeal.

Pursuant to Sprewell's claim, the Ninth Circuit affirmed the district court's dismissal of the claims of alleged violations pursuant to § 301 of the Labor Management Relations Act, 29 U.S.C. § 185,[9] 42 U.S.C. § 1981,[10] 42 U.S.C. § 1985(3),[11] California's Unruh Act,[12] and a common law violation of fair procedure.[13] However, the court reversed and remanded for further proceedings the district court's dismissal of Sprewell's claims of intentional interference with contract and business relations, civil conspiracy, and unfair business practices.[14]

B. Statement of Facts and the Procedural History of Sprewell's Appeal

Latrell F. Sprewell joined the National Basketball Association in 1992 as a player with the Golden State Warriors.[15] P.J. Carlesimo became the team's new head coach in June of 1997.[16] The relationship between the two began amicably, but deteriorated to the point that both the Warriors and Sprewell agreed that trading Sprewell might be a good decision.[17]

During practice on December 1, 1997, the downward spiral of Sprewell and Carlesimo's relationship hit a low point.[18] After telling Sprewell to pass the basketball, Carlesimo then criticized him for not putting enough speed on it.[19] As a result of a reiteration of the same criticism, Sprewell slammed the ball on the ground and directed various expletives at Carlesimo.[20] Upon Carlesimo's response in similar fashion,

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9. *See infra* text accompanying note 39.
10. *See infra* text accompanying note 99.
11. *See infra* text accompanying note 100.
12. *See infra* text accompanying note 105.
13. Sprewell v. Golden State Warriors, 266 F.3d 979, 993 (9th Cir. 2001).
14. *Id.* Subsequently, both Sprewell and the NBA petitioned the Ninth Circuit for rehearing en banc. Sprewell v. Golden State Warriors, 231 F.3d 520 (9th Cir. 2001), *reh'g denied* 275 F.3d 1187 (9th Cir. 2001). "Judge Trott has voted to deny the petitions for rehearing en banc, and Judges D.W. Nelson and Thompson so recommend." *Id.* at 1188.
15. *Sprewell*, 266 F.3d at 984.
16. *Id.*
17. *Id.*
18. *Id.*
19. *Sprewell*, 266 F.3d at 984.
20. *Id.* After slamming the ball, Sprewell directed at Carlesimo, "get out of my face, get . . . out of here and leave me . . . alone." *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *2. Carlesimo responded, "you're . . . out of here." *Id.*

Sprewell "lunged" at Carlesimo wrapped his hands around his neck, pushing him backward saying, "I will kill you!"[21]

After other players and coaches removed Sprewell's hands from Carlesimo's neck, Sprewell left for the locker room further yelling, "trade me, get me out of here, I will kill you."[22] Later that day, Sprewell returned to the practice floor and further confronted Carlesimo.[23] Although being restrained by other coaches, Sprewell was still able to throw multiple punches at Carlesimo, one that grazed his cheek, and another that grazed his shoulder.[24] Even as he was leaving, Sprewell was heard yelling, "I will kill you!"[25]

Following this incident, the Warriors initially suspended Sprewell for a minimum of ten games, while reserving the right to terminate his contract.[26] The Warriors subsequently exercised that right and terminated the remainder of Sprewell's contract.[27] After conducting an independent investigation of the matter, the NBA suspended Sprewell for a full year.[28]

Challenging both the termination of his contract and the suspension, Sprewell filed a grievance pursuant to the arbitration provisions of the NBA Collective Bargaining Agreement (CBA).[29] Following a nine-day hearing conducted by an arbitrator, which consisted of twenty-one witnesses, over fifty exhibits, and more than 300 pages of pre and post-hearing briefs, the dual punishment from both the NBA and the Warriors were found to be acceptable.[30]

Although the arbitrator found the respective punishments acceptable pursuant to the CBA, he did find: "1. The Warriors' termination of Sprewell's contract was not supported by just cause because after the Warriors' initial suspensions of Sprewell, any residual interest of the Warriors was absorbed by the NBA's investigation of the matter, [and] 2. The NBA's suspension should be limited to the 1997-98 season."[31]

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21. *Sprewell*, 266 F.3d at 985.

22. *Id.*

23. *Id.*

24. *Id.* The blow to the shoulder may have resulted from Sprewell trying to free himself from the restraints. *Sprewell*, 266 F.3d at 985.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Sprewell*, 266 F.3d at 985.

29. *Id.* Because Article XXXI, § 1 of the CBA mandates arbitration of "any dispute involving the interpretation or application of this agreement or the provisions of a Player Contract, this matter was submitted to grievance arbitrator, John D. Feerick." *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *3.

30. *Sprewell*, 266 F.3d at 985.

31. *Id.* Prior to the incident in question, the Warriors had already completed 14 games of the

Pursuant to the actions taken by the NBA and the Warriors, as well as the outcome of the arbitration hearings, Sprewell filed suit on May 20, 1998.[32] The suit was subsequently dismissed by the District Court without prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6).[33] In his amended complaint, Sprewell alleged:

> (1) A request for vacatur of the arbitrator's opinion pursuant to section 301 of the Labor Management Relations Act; (2) intentional interference with freedom to make and enforce contracts pursuant to 42 U.S.C. § 1981; (3) conspiracy to violate freedom to make and enforce contracts pursuant to 42 U.S.C. § 1985(3); (4) conspiracy to interfere with the arbitral process by producing false evidence; (5) violation of common law right to fair procedure; (6) interference with prospective economic advantage; (7) interference with contractual relations; (8) violation of California's Unruh Act; (9) civil conspiracy; and (10) unfair business practices pursuant to California Business and Professional Code §§ 17200 and 17500.[34]

After Sprewell's filing of the amended complaint, the court found it to be Sprewell's "second baseless complaint," dismissed all claims with prejudice,[35] and ordered Sprewell's attorneys to pay the NBA's and Warriors' attorney's fees pursuant to Rule 11 of the Federal Rules of Civil Procedure.[36] "The NBA and the Warriors maintain that their actions were justified under the CBA and that Sprewell's state law claims fall within the preemptive penumbra of Section 301."[37] Following this outcome, Sprewell filed an appeal in the Ninth Circuit and asked that it reverse the

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regular season. *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *2.

32. *Sprewell*, 266 F.3d at 985.

33. *Id.* Since the case was dismissed without prejudice, Sprewell's counsel was instructed to sign any subsequently filed amended complaint in accordance with FED. R. CIV. P. 11. *Id. See infra* note 153 and accompanying text.

> Rule 12. Defenses and Objections – When and How Presented-By Pleading or Motion-Motion for Judgment on Pleadings; (b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (6) failure to state a claim upon which relief can be granted.

FED. R. CIV. P. 12(b)(6).

34. FED. R. CIV. P. 12(B)(6). "On August 31, 1998, plaintiff (Sprewell) filed his first amended compliant, signed by counsel." *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *5. "The Amended complaint is substantially similar to the original." *Id.* It dropped "the antitrust and breach of contract claims," restated "the breach of fiduciary duty claim as a claim for 'common law right to fair procedure' and" introduced "a new claim that defendants 'conspired to interfere with the arbitral process by producing false evidence'." *Id.* at *5-6.

35. *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *26.

36. *Sprewell*, 266 F.3d at 985.

37. *Id.* at 986.

finding of the district court.[38]

C. The Ninth Circuit's Analysis of Sprewell's Appeal.

1. Sprewell's Attempt to Vacate the Arbitrator's Award.

The first count of Sprewell's claim asked the district court to vacate the findings of the Arbitrator pursuant to § 301 of the Labor Management Relations Act, 29 U.S.C. § 185 et seq.[39] The major precedent in this area of law came into being on June 20, 1960.[40] It was on this day that The United States Supreme Court handed down three cases that have since been collectively referred to as the *Steel Workers Trilogy*.[41]

The first two entries into the trilogy of cases, *American Manufacturing Co.*[42] and *Warrior & Gulf Navigation Co.*,[43] both involved the arbitration of grievances.[44] In both cases, respectively, the Court first held that it should give deference to the arbitration award, then "adopted the view that even 'frivolous claims' should be arbitrated."[45] Furthermore, the Court held that "since parties could not foresee every contingency that might arise under a collective bargaining agreement, arbitration would be the basis for resolving unforeseen disputes."[46]

The third and final installment of the trilogy, *Enterprise Wheel & Car Corp.*, eliminated any ambiguity in the scope of review by the Court into arbitration awards.[47] It could appear that the Court simply extended the

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38. *Id.* at 985.

39. *Id.* "A national policy of encouraging the use of voluntary arbitration to settle disputes arising from the terms of collective bargaining agreements was established by the Labor Management Relations Act of 1947 ("LMRA"). Section 301(a) of the act authorized federal courts to hear disputes arising from collective bargaining agreements. The ramifications of Section 301, however, carry far beyond a mere procedural grant of jurisdiction to federal courts." Jerry W. Markham, *Judicial Review of an Arbitrator's Award under Section 301(a) of the Labor Management Relations Act*, 39 TENN. L. REV. 613 (Summer 1972).

40. Markham, *supra* note 39, at 615.

41. *Id.* Collectively, the three cases consist of United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960), United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960), and United Steelworkers v. Enter. Wheel & Car Corp., 363 U.S. 593 (1960). *Id.*

42. 363 U.S. 564 (1960).

43. 363 U.S. 574 (1960).

44. Markham, *supra* note 39, at 615.

45. *Id.* (citing *American Mfg. Co.*, 363 U.S. at 568).

46. Markham, *supra* note 39, at 615-616. "Thus, arbitration became the means for resolving the unforeseeable by molding a system of private law that could provide a solution to contractual problems." *Id.* at 616 (citing *American Mfg. Co.*, 363 U.S. at 580-581).

47. United Steelworkers v. Enter. Wheel & Car Corp., 363 U.S. 593 (1960). Justice Douglas' opinion held:

An arbitrator is confined to interpretation and application of the collective bargaining

arbitration to be part of the collective bargaining agreement, therefore, "the Court would not interfere unless the arbitrator clearly deviated from the commission given to him by the parties."[48] Pursuant to this trilogy analysis, the *Sprewell* court reviewed the arbitrator's decision and identified four exceptions under which a court can vacate that decision.[49] It is upon these four exceptions, all of which were denied by the Court, that Sprewell mounted his first claim.[50]

a. The arbitration award must draw its essence from the CBA.

Sprewell's first attempt to vacate the arbitrator's award arose from the idea that the award did not draw from the essence of the CBA.[51] Specifically, Sprewell contended that the multiple punishments[52] should not have been approved by the arbitrator under the provision of the CBA that subjects players "to disciplinary action for just cause by his Team or by the Commissioner."[53]

According to the Ninth Circuit, an arbitration award will only be set aside in egregious cases where the award ignored the plain language of the contract.[54] Pursuant to the *Steel Workers* trilogy, the *Sprewell* Court posited, "regardless of whether we would reach the same conclusion advanced by the arbitrator, we must defer to the arbitrator's decision on the grounds that he was, at the very least, 'arguably construing or applying the contract'."[55] In reviewing the arbitrator's decision, the court found the

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> agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.

Id. at 597.

48. Markham, *supra* note 39, at 617.

49. *Sprewell*, 266 F.3d at 986. The four exceptions listed by the court are as follows: "(1) when the award does not draw its essence from the collective bargaining agreement; (2) when the arbitrator exceeds the scope of the issues submitted; (3) when the award runs counter to public policy; and (4) when the award is procured by fraud." *Id.*

50. *Id.*

51. *Id.*

52. Sprewell alleged punishments from the NBA and from the Golden State Warriors. *Sprewell*, 266 F.3d at 986.

53. *Id.* Sprewell contends that the arbitrator failed to read the word "or" in the disjunctive. *Id.* Not only did Sprewell contend that the arbitrator failed to read the "plain and unambiguous" meaning of the CBA, but that he also rewrote it. *Id.* Additionally and equally unsuccessfully, Sprewell contends that the arbitrator erroneously applied the language of the collective bargaining agreement employed by the National Football League, which uses different language than the NBA. *Sprewell*. 266 F.3d at 986.

54. *Id.* at 986-987 (citing Stead Motors of Walnut Creek v. Auto. Machinists Lodge, 886 F.2d 1200, 1205-06, n.6 (9th Cir. 1989)).

55. *Sprewell*, 266 F.3d at 987 (citing United Paperworkers Int'l Union v. Misco, Inc., 48 U.S.

detailed and logical explanations of his reading of the CBA to be an ample showing that they were drawn from its essence.[56]

b. The arbitrator must not exceed the scope of its authority.

Sprewell next attempted to vacate the arbitrator's award by claiming that the arbitrator exceeded the scope of his authority, as he was merely required to either uphold or reject the suspension.[57] According to the court, this claim was insufficient because there is no language in the CBA to support Sprewell's conclusion.[58] Consequently, the Court felt that there was no reason to overturn the finding of the district court or the arbitrator on this issue.[59]

Sprewell's case was supported by *Textile Workers Union v. American Thread Co.*,[60] where the Fourth Circuit found that an arbitrator had gone outside the record and that there was no evidence to support his decision.[61] The arbitrator had attempted to assess the appropriateness of the penalty levied, ultimately finding it too severe.[62] The *American Thread* Court determined that the arbitrator violated the scope of his authority and limited its authority to determining "the employee's guilt, not the fairness of the penalty."[63]

As *American Thread* was decided in 1961, a year after and somewhat in conflict with *The Steelworkers Trilogy*, it has ultimately been criticized

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29 (1987))

56. *Id.* The arbitrator specifically noted:

(1) the CBA provision upon which Sprewell relies was not intended to deal with the issue of multiple disciplines, but rather, was designed to emphasize "the imperative of just cause in reviewing the matter of discipline" - thus illustrating that the word "or" was likely chosen without careful consideration of its implications;

(2) the CBA does not include the word "either," which would have supported the conclusion that the penalties were intended to be mutually exclusive; and

(3) as demonstrated by the NFL's CBA, "had the parties here intended by contract to limit discipline with respect to the same matter to a team or the Commissioner, but not both, one would have expected some expression in the CBA as to which has primacy."

Id.

57. *Sprewell*, 266 F.3d at 987. As noted earlier, the arbitrator reduced Sprewell's suspension by the NBA from one year to the remainder of the season.

58. *Id.*

59. *Id.*

60. 291 F.2d 894 (4th Cir. 1961).

61. Markham, *supra* note 39, at 623.

62. *Id.* D.M. Arrowood was employed by the American Thread Company, prior to being discharged for waste. *American Thread*, 291 F.2d at 895. The arbitration award was overturned when the court found it "perfectly clear that the arbitrator, without evidentiary support in the instant case. . .in total disregard of the provisions. . .requiring that he confine himself strictly to the facts submitted in the hearing, the evidence before him and the terms of the contract." *Id.* at 901.

63. Markham, *supra* note 39, at 623.

for its interference with the arbitrator's role.[64] A few years later, the Fourth Circuit again was confronted with the similar issue in *Lynchburg Foundry Co. v. United Steelworkers Union,*[65] and appeared to retreat from its stance.[66] Lynchburg Foundry brought suit under § 301 to vacate an arbitration award after the arbitrator established guilt, yet reinstated employment.[67] After reversing the district court, the Fourth Circuit reinstated the arbitrator's award, "holding that the contract did not expressly forbid the arbitrator from fashioning such an award and that under the *Enterprise* standard, a court has no business overruling an arbitrator's construction of a collective bargaining agreement merely because the court's own interpretation of the contract conflicts with that of the arbitrator."[68]

The Fourth Circuit is not alone in its decision[69] to give substantial deference to an arbitrator in accordance with the standard that was ultimately set in *Enterprise Wheel.*[70] Deference to an arbitrator has become such a well-established principle that the court rejected Sprewell's contention on this point with seemingly little analysis.[71] Even the district court felt that the arbitrator's "interpretation is irrefutably based upon the text of the CBA."[72]

c. Arbitration awards cannot run counter to public policy.

Sprewell's third attempt to vacate the arbitrator's award was based California's public policy against race-discrimination.[73] The court noted two public policy grounds that can be used to vacate an arbitrator's award.[74] Specifically, the court stated that it must find: "(1) that an explicit, well defined and dominant policy exists here and (2) that the

64. *Id.* at 624.

65. Lynchburg Foundry Co. v. United Steelworkers Union, 404 F.2d 259 (4th Cir. 1968).

66. Markham, *supra* note 39, at 624.

67. *Lynchburg Foundry*, 404 F.2d at 260. For failing to keep accurate records, Fred Jones, an employee with seventeen years seniority, was fired. *Id.* "The arbitrator found that Jones did engage in 'culpable conduct' but that the sanction of discharge was not justified in the circumstances." *Id.*

68. Markham, *supra* note 39, at 624 (citing *Lynchburg Foundry*, 404 F.2d at 288).

69. *See* Markham, *supra* note 39, 620-31.

70. The Ninth Circuit in *Sprewell* cited the United States Supreme Court in *Enterprise Wheel*, 363 U.S. at 596-97, stating that the "arbitrator should be given substantial latitude in fashioning a remedy under a CBA." *Sprewell*, 266 F.3d at 987.

71. *See Sprewell*, 266 F.3d at 987.

72. *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *9.

73. *Sprewell*, 266 F.3d at 987. Again, Sprewell disputes the upholding of dual punishments by the Warriors and the NBA, only this time stating that the arbitrator "simultaneously spread the virus of racial animus plaguing those penalties." *Id.*

74. *Id.*

policy is one that specifically militates against the relief ordered by the arbitrator."[75] Because the arbitrator had held that Sprewell's punishment was appropriate, and within the language of the CBA by virtue of the "uniquely egregious nature of Sprewell's misconduct," the court did not conclude that public policy militated against the award.[76]

According to the United States Supreme Court decision in *United Paperworkers International Union, v. Misco, Inc.*,[77] "[a] court's refusal to enforce an arbitrator's award under a collective bargaining agreement because it is contrary to public policy is a specific application of the more general doctrine, rooted in the common law that a court may refuse to enforce contracts that violate law or public policy."[78] While classifying the case as a common law of contracts dispute, the Supreme Court in *Misco* stated, "this doctrine has served as the foundation for occasional exercises of judicial power to abrogate private agreements."[79]

According to David M. Glanstein,[80] the need to find a violation of a clear and well-defined public policy has made vacating an arbitrator's award very difficult on public policy grounds.[81] Unfortunately for Sprewell, Ninth Circuit legal precedents do not make it the best venue to make a challenge on public policy grounds.[82]

In his discussion of *Stead Motors v. Automotive Machinists Lodge No. 1173*[83] and the Ninth Circuit's interpretation of *Misco*, Glanstein felt that the court's deference to arbitrators' awards may have gone too far.[84] The court in *Stead Motors* concluded that arbitrators were entitled to 'nearly unparalleled' deference due to their unique role as non-judicial decision makers for the contracting parties, and determined that the court had no basis to overrule the arbitrator's judgment that termination was

75. *Id.* (citing United Food & Commercial Workers Int'l Union v. Foster Poultry Farms, 74 F.3d 169, 174 (9th Cir. 1995)).

76. *Sprewell*, 266 F.3d at 987.

77. United Paperworkers Int'l Union, v. Misco, Inc., 484 U.S. 29 (1987).

78. *Id.* at 42. (citing W.R. Grace & Co. v. Rubber Workers, 461 U.S. 757, 766 (1983); Hurd v. Hodge, 334 U.S. 24, 34-35 (1948)).

79. *Misco*, 484 U.S. at 42.

80. David M. Glanstein was an attorney for the NBA Player's Association from 1997-1999 and practices labor and employment law and sports law in New York, NY. David M.Glanstein, *A Hail Mary Pass: Public Policy Review of Arbitration Awards*, 16 OHIO ST. J. ON DISP. RESOL. 291 (2001).

81. Glanstein, *supra* note 80, at 334

82. *Id.* at 313.

83. 886 F.2d 1200 (9th Cir. 1989) (en banc). Stead Motors dealt with issues of public safety. *Id.* at 1202. In that case, an auto mechanic was fired for failing to adequately tighten lug nuts on the wheels of cars on more than one occasion. *Id.* Although the arbitrator did find that this amounted to reckless behavior, he felt termination was too harsh of a penalty. *Id.* at 1203.

84. Glanstein, *supra* note 80, at 313.

unwarranted.[85] Under the Ninth Circuit's approach, "even the most glaring disparity between an arbitrator's decision as to an employee's discipline and his actual conduct could not be challenged as violating public policy absent some express proscription against the terms of an arbitrator's award."[86]

According to Glanstein, "[c]ourts may vacate on public policy grounds, awards reinstating employees who create physical danger to themselves or others. . .employees likely to repeat sexually harassing conduct, or awards reinstating chronically negligent medical employees."[87] Typically, claims brought to vacate an arbitration award on public policy grounds focus on reinstatement of discharged employees.[88] Considering the unique and unprecedented nature of his claims, Sprewell's failure "to allege any facts sufficient to establish racial animus on the part of either defendant,"[89] has therefore, "failed to demonstrate that the public policy of California militates against the enforcement of the arbitration award.[90]

d. An arbitration award cannot be procured by fraud.

Sprewell's fourth attempt to vacate the arbitrator's award was based on claims of fraud.[91] Citing *A.G. Edwards & Sons, Inc., v. William F. McCollough*,[92] the district court in *Sprewell* acknowledged the three instances where arbitration awards can be vacated due to fraud.[93] The *A.G.*

85. *Id.* at 311-312 (citing *Stead Motors*, 886 F.3d at 1205-06).

86. *Id.* at 313. "This raises a virtually insurmountable barrier to challenges based on the public policy exception and ignores the potential danger to the public or to those in the workplace potentially created by an individual's continued employment." Glanstein, *supra* note 80, at 313.

87. *Id.* at 334.

88. Ann C. Hodges, *Judicial Review of Arbitration Awards on Public Policy Grounds: Lessons from the Case Law*, 16 OHIO ST. J. ON DISP. RESOL. 91, at 92. *See generally*, Glanstein, *supra* note 80; Arlus J. Stephens, *The Sixth Circuit's Approach to the Public-Policy Exception to the Enforcement of Larbor Arbitration Awards: A Tale of Two Trilogies?*, 11 OHIO ST. J. ON DISP. RESOL. 441 (1996); Scott Barbakoff, *Application of the Public Policy Exception for the Enforcement of Arbitral Awards: There is No Place Like "The Home" in Saint Mary Home Inc. v. Service Employees Intn'l Union, District 1199*, 43 VILL. L. REV. 829 (1998).

89. *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *10. The District Court further stated, "Moreover, plaintiff's allegation of racial animus, even if well founded, simply does not articulate a public policy that specifically militates against suspension of an employee who violently attacks his employer." *Id.* at *11.

90. *Sprewell*, 266 F.3d at 987.

91. *Id.* at 987-988. Sprewell raised each of the following claims with the arbitrator: "(1) that the NBA's investigation was incomplete and inaccurate; (2) that some of the players' recollection of the events differed from the NBA report; (3) that the investigators destroyed handwritten notes of telephone interviews; and (4) that photographs detailing Carlesimo's injuries were doctored." *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *11-12.

92. A.G. Edwards & Sons, Inc., v. McCollough , 967 F.2d 1401 (9th Cir. 1992).

93. *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *11.

Edwards court held that "in order to justify vacating an award because of fraud, the party seeking vacation must show that the fraud was (1) not discoverable upon the exercise of due diligence prior to the arbitration, (2) materially related to an issue in the arbitration, and (3) established by clear and convincing evidence."[94]

In the instant case, Sprewell presented the same fraud allegations to the Ninth Circuit that had been previously ruled upon by the arbitrator and was therefore denied "a second bite at the apple."[95] This theory was applied in the Ninth Circuit in *Dogherra v. Safeway Stores, Inc.*,[96] upon which the Supreme Court of the United States denied Certiorari.[97] For this reason, the appellate court in *Sprewell* felt that it was not necessary to revisit this issue.[98]

5. Sprewell's Attempt to Plea Facts Sufficient to Sustain Federal Claims of Racial Discrimination.

In the instant case, Sprewell's federal claims fell under the Civil Rights Act, 42 U.S.C. § 1981[99] and 42 U.S.C. § 1985(3).[100] The complaint

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94. *A.G. Edwards*, 967 F.2d at 1404.

95. *Sprewell*, 266 F.3d at 988 (citing A.G. Edwards 967 F.2d at 1403).

96. Safeway Stores, Inc. v. Dogherra , 679 F.2d 1293 (9th Cir. 1982).

97. Safeway Stores, Inc. v. Dogherra, 459 U.S. 990 (1982).

98. *Sprewell*, 266 F.3d at 988.

99. *Sprewell*, 266 F.3d at 988. According to the Civil Rights Act, 42 U.S.C. § 1981, Equal rights under the law:

> (a) Statement of Equal rights: All persons within the jurisdiction of the United States shall have the same right in every State Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind and no other.

42 U.S.C. § 1981(a) (2002).

100. *Sprewell*, 266 F.3d at 989. 42 U.S.C. § 1985, Conspiracy to interfere with civil rights, states:

> (3) Depriving persons of rights or privileges: If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in this person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or

alleged, "black NBA players (1) are punished more frequently and severely than white players, and (2) have less favorable termination and compensation clauses in their contracts."[101]

Here, Sprewell's pleading problem did not arise from the substance of his arguments, but from the rest of his pleadings.[102] While filing his complaint, Sprewell attached a copy of the arbitration award which fatally undermined his § 1981 and § 1985 claims.[103] Citing two different Ninth Circuit cases, the court upheld the use of the arbitrator's award, while deciding dismissal for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).[104]

4. Sprewell's Attempt to Allege Claims of Violations of California State Law.

a. Violation of California's Unruh Act.

Pursuant to state law, Sprewell's first claim was alleged in accordance with California's Unruh Act.[105] According to the district court,

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deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

Civil Rights Act, 42 U.S.C. § 1985(3) (2002).

101. *Sprewell*, 266 F.3d at 988. The district court's listing of Sprewell's allegations pursuant to this complaint was:

(1) a majority of team owners, management and lead positions in Defendant NBA and Defendant Warriors are filled by Whites and Caucasians;

(2) Black and African-Americans like Sprewell, are punished more frequently and receive harsher punishment than White and Caucasian players, because of their race; and

(3) some White and Caucasian players with a history of serious personal conduct violations entered into Player Contracts where Defendant Warriors eliminated and/or reduced its right to terminate the contracts.

Sprewell, 1999 U.S. Dist. LEXIS 3875, at *13.

102. *Sprewell*, 266 F.3d at 988.

103. *Id.*

104. *Id.* at 988. Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994) stated, "[w]e hold that documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on 12(b)(6) motion to dismiss." *Id.* Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1295-96 (9th Cir. 1998) held, "[w]e are not required to accept as true conclusory allegations which are contradicted by documents referred to in the complaint." *Id.*

105. *Sprewell*, 266 F.3d at 989. Section 51 of the California Civil Code is known at the Unruh Civil Rights Act CAL. CIV. CODE § 51 (Deering 2001). It states that:

All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

CAL. CIV. CODE § 51(a) (Deering 2001).

"Defendant's decision to suspend plaintiff, terminate his contract and limit his participation in NBA events was clearly an employment decision not subject to the Unruh Act."[106] The Circuit Court looked to the California Supreme Court opinion in *Rojo v. Kliger*,[107] which held, "the Unruh Civil Rights Act has no application to employment discrimination."[108] Similarly, in *Alcorn v. Anbro Engineering, Inc.*,[109] the California Supreme Court found that "there is no indication that the legislature intended to broaden the scope of section 51 to include discriminations other than those made by a 'business establishment' in the course of furnishing goods, services or facilities to its clients, patrons or customers."[110] For the reasons set by the law of the state, the facts contained in Sprewell's complaint afforded him no protection under California's Unruh Act.[111]

b. Violation of the common law right to fair procedure.

Sprewell's next state law claim alleged a denial of his common law right to fair procedure.[112] Much like Sprewell's claims of racial animus pursuant to § 1981 and 1985(3), by attaching the arbitrator's decision to the complaint had pleaded himself out of the claim.[113] The district court left its common law analysis of fair procedure and stated that, "whether plaintiff's suspension and arbitration hearing comported with standards of fair procedure can only be determined with reference to the procedures required and imposed by the CBA."[114]

Upholding the decision, the circuit court again noted that the arbitration award and held that the NBA's investigation was in compliance with due process.[115] As this was a dismissal for failure to state a claim, the court was not required to accept allegations that were contradicted by the

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This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, disability, or medical condition.

CAL. CIV. CODE § 51(c) (Deering 2001).

106. *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *24.

107. Rojo v. Kliger, 801 P.2d 373 (Cal. 1990).

108. *Sprewell*, 266 F.3d at 989 (citing *Rojo*, 801 P.2d at 380.)

109. Alcorn v. Anbro Eng'g, Inc., 468 P.2d 216 (Cal. 1970).

110. *Alcorn*, 468 P.2d at 220.

111. *Sprewell*, 266 F.3d at 989.

112. *Id.* at 990. Sprewell contends that the NBA and the Warriors failed to provide him with adequate notice of pending discipline and that he was not given a fair opportunity to be heard "about the appropriateness of his discipline." *Id.*

113. *Id.*

114. *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *22.

115. *Sprewell*, 266 F.3d at 990.

complaint as being true.[116] Because the arbitrator's award explained the process by which Sprewell's suspension was determined, the flexibility of the actual process, and the fact that he was suspended and not terminated, the Court of Appeals rejected the fair procedure claim.[117]

5. The NBA and Golden State Warriors alleged interference with contractual and business relations.

Sprewell's third and fourth state law claims purported that both the NBA and the Golden State Warriors "intentionally interfered with his contractual and business relations."[118] As noted above, § 301 gives federal courts the ability to review arbitration awards.[119] Holding this line of precedent, the district court stated, "[t]he Supreme Court has held that federal law exclusively governs suits for breach of a collective bargaining agreement, while concomitantly preempting state law claims predicated on a collective bargaining agreement."[120]

Consistent with the district court's findings, the Ninth Circuit found § 301 would not necessarily preempt Sprewell's claim for intentional interference with contractual and business relations, as California law "can 'be litigated without reference to the rights and duties established in a CBA,' therefore not necessarily preempted by section 301."[121] In looking to precedent set by the Supreme Court in *Lavidas v. Bradshaw*,[122] the court noted that simply consulting a collective bargaining agreement during

116. *Id.* (citing *Steckman*, 143 F.3d at 1295-96).

117. *Sprewell*, 266 F.3d at 990.

118. *Id.* Sprewell claimed both interference with prospective economic advantage and interference with contractual relations. *Id.* The court analyzed the claims as one, referring to them collectively as Sprewell's 'interference' claim. *Sprewell*, 266 F.3d 990-993.

119. *See* Markham, *supra* note 39.

120. *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *19. The district court went even further in its interpretation of the law and stated that "(i)f, in the course of assessing the state law claim, the court must refer to the collective bargaining agreement in order to evaluate it, then that claim is preempted under § 301." *Id.* at 20.

121. *Sprewell*, 266 F.3d at 991 (citing Cramer v. Consol. Freightways, Inc., 255 F.3d 683, 691 (9th Cir. 2001), amended August 27, 2001 (en banc)). However, the court did note two different possible ways to plead this claim that would have two different results. *Id.* The court stated:
To the extent Sprewell's interference claims are based upon alleged violations of the CBA, the district court properly dismissed those claims. That is, any allegation by Sprewell that the NBA's and the Warriors' alleged media communications were 'wrongful' because they violated the CBA would necessarily require an interpretation of that agreement, and thus would be preempted by § 301. Insofar as Sprewell's interference claims are predicated on the NBA's and the Warriors' alleged violations of California law, however, those claims can 'be litigated without reference to rights and duties established in a CBA,' and therefore are not preempted by § 301.
Id. at 991. (citing *Cramer*, 255 F.3d at 691.)

122. Lavidas v. Bradshaw, 512 U.S. 107 (1994).

state-law litigation, does not extinguish the state-claim pursuant to § 301.[123]

According to the court in *Milne Employees Association, et al., v. Sun Carrier, Inc. et al.,*[124] both a claim for interference with contractual relations and the tort of interference with prospective economic advantage have five independent elements, the main difference being the latter does not require proof of a legally binding contract.[125] Nonetheless, the *Milne* court found that resolution of these claims required interpreting the collective bargaining agreement.[126] In keeping with Ninth Circuit precedent, the court in *Milne* stated that claims for interference with contractual relations and prospective economic advantage are generally preempted by § 301.[127]

In *Milne*, the court specifically stated that it did not intend to rule along the same lines as the Sixth Circuit had, referring to *Dougherty v. Parsec, Inc.*,[128] due to the heavy reliance on Ohio state law.[129] In *Dougherty,* the court did not find that it would be necessary to interpret the collective bargaining agreement to resolve claims for tortious interference with contract or business relations.[130] Furthermore, resolving state law claims may entail both interpreting a collective-bargaining agreement and conducting a separate state law analysis because some disputes that tangentially touch on the collective bargaining agreement are not pre-

123. *Sprewell*, 266 F.3d at 990 (citing *Lavidas*, 512 U.S. at 124). The Court also noted that the raising of a defense based on the terms of the CBA will not terminate state law claims. *Id.* (citing *Cramer*, 255 F.3d at 688-89).

124. Milne Employees Ass'n v. Sun Carrier, Inc., 960 F.2d 1401 (9th Cir. 1992), *cert. denied*, 508 U.S. 959 (1993).

125. *Milne*, 960 F.2d at 1411-12. A claim for interference with contractual relations includes: "(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." *Id.* at 1411. Interference with prospective economic advantage requires "(1) an economic relationship between plaintiff and a third party, with the probability of future economic benefit to the plaintiff, (2) defendant's knowledge of the relationship, (3) intentional acts by the defendant designed to disrupt the relationship, (4) actual disruption of the relationship, and (5) proximately caused economic harm to the plaintiff." *Id.* at 1411-12.

126. *Milne*, 960 F.2d at 1412.

127. *Id.*

128. Dougherty v. Parsec, Inc., 872 F.2d 766 (6th Cir. 1989)

129. *Milne*, 960 F.2d at 1412.

130. *Dougherty*, 872 F.2d at 770. After extensive reasoning, the Sixth Circuit decided to use the elements of tortious interference explained in one of Ohio's most recent decisions. *Id.* The court set the elements out as: "One who, without privilege to do so, induces or otherwise purposely causes a third party not to enter into, or continue, a business relationship with another, or perform a contract with another is liable to the other for the harm caused thereby." *Id.*

empted by § 301.[131]

Subsequently, the District Court for the District of Columbia, while deciding *Black v. National Football League Players Association*,[132] recognized that claims for tortious interference might exist outside the collective bargaining agreement.[133] The *Black* court found that the "NFLPA's regulations in this case establish the parameters of Mr. Black's expectancy that his business relationship would continue,"[134] precluding Black's claim for tortious interference.[135] Detrimentally to Black's case, the court cited the precedential case of *Lingle v. Norge Division of Magic Chef, Inc.*,[136] stating that "this claim is not based on rights arising out of a statute designed to provide minimum substantive guarantees to individual workers."[137]

Although *Lingle* dealt with a claim for retaliatory discharge, the Court held that the state law claim was not pre-empted by § 301.[138] Writing for the Court, Justice Stevens held that "even if dispute resolution pursuant to a collective bargaining agreement, on the one hand, and state law on the other, would require addressing precisely the same set of facts, as long as the state-law claim can be resolved without interpreting the agreement itself, the claim is 'independent' of the agreement for the § 301 pre-emption purpose."[139] In deciding the limits, *Lingle* notes that reference to the CBA during a state law claim does not pre-empt the claim, specifically in the area of damages as the 'worker' prevailing in the claim would be entitled to relevant information, such as rate of pay.[140]

Stating that Sprewell "must prove the NBA and the Warriors engaged in wrongful conduct designed to interfere or disrupt an economic relationship between himself and a third party,"[141] the Court of Appeals found it appropriate to look to the California Appellate Court decision of *PMC, Inc., v. Saban Entertainment, Inc.*[142] Citing *PMC*, the *Sprewell*

131. *Id.* at 771 (citing Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, n.12 (1988)).
132. Black v. Nat'l Football League Players Ass'n, 87 F. Supp. 2d 1 (D.C. Cir. 2000).
133. *See generally*, Black, 87 F. Supp. 2d 1.
134. *Black*, 87 F. Supp. 2d at 10 n.4.
135. *Id.* at 11.
136. 486 U.S. 399 (1988).
137. *Black*, 87 F. Supp. 2d at 9 n.3 (citing *Lingle*, 486 U.S. at 411-12)
138. *Lingle*, at 409.
139. *Id.* at 409-10.
140. *Id.* at 413.
141. *Sprewell*, 266 F.3d at 990. Sprewell's claim to wrongful conduct consists of accusations that "the NBA and Warriors" instigation of a negative and false media campaign "intended to vilify Mr. Sprewell and prevent him from making and enforcing contracts with others because of his race." *Id.*
142. PMC, Inc., v. Saban Entm't, Inc., 45 Cal. App. 4th 579 (Cal. Ct. App. 1996).

court noted, "wrongful conduct has been defined by California courts as encompassing unethical business practices such as defamation."[143]

The court found that "to the extent Sprewell's claims of intentional interference are premised on the NBA's and the Warriors' alleged violations of California Law, the district court erred in dismissing those claims."[144] The circuit therefore held that, along with the district court, both the NBA and the Warriors were under a mistaken assumption that comments to the media could only be considered wrongful if they were prohibited by the CBA.[145] Subsequently, the court remanded this case for further proceedings.[146]

6. Alleged violations under California's Unfair Practices Act and a claim of civil conspiracy.

Sprewell's final two state law claims, one under California's Unfair Practices Act, and the second, civil conspiracy, could have proven successful had the interference claim prevailed.[147] The district court dismissed Sprewell's claim under California's Unfair Practices Act pursuant to § 301, as it would require an interpretation of the CBA.[148] According to California statute, Sprewell would need to prove that both the NBA's and the Warriors' business practices could be considered either unlawful or unfair in relation to the present cause of action.[149] After remanding the previous claims as not necessarily requiring an interpretation of the CBA, the court therefore found that "Sprewell's claim under California's Unfair Practices Act is not preempted to the extent it is premised on the NBA's and the Warrior's instigation of a media campaign designed to portray Sprewell in a false and negative light."[150]

As with Sprewell's claim under the Unfair Practices Act, the court stated that his claim for civil conspiracy required that he prove that the

143. *Id.*

144. *Sprewell*, 266 F.3d at 992. Sprewell's claims are "predicated upon the alleged impropriety of his suspension and contract termination and defendant's alleged conduct in connection therewith." *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *21. The circuit court notes that the wrongful behavior must be designed to interfere with an economic relationship between Sprewell and a third party. *Sprewell*, 266 F.3d at 990.

145. *Sprewell*, 266 F.3d at 991.

146. *Id.* at 993. The court noted that, "(t)he arbitration award does not address in any way the media communications engaged in by the NBA and the Warriors following Sprewell's suspension, and therefore does not contradict the allegations of intentional interference pled in Sprewell's complaint." *Id.* at 992.

147. *Id.* at 992.

148. *Sprewell*, 266 F.3d at 992.

149. *Id. See* CAL. BUS. & PROF. CODE §§ 17200.

150. *Id.*

NBA and the Warriors had committed an underlying tort.[151] Contrary to Sprewell's claim pursuant to the Unfair Practices Act, the district court dismissed the civil conspiracy claim due to a failure to allege an underlying tort, and not § 301.[152] In reversing the district court's decision on the potential validity of Sprewell's interference claims, the court also reversed the district court's dismissal of his civil conspiracy claims.[153]

III. CONCLUSION

Although he would probably be found guilty of an assault on P.J. Carlesimo,[154] Latrell Sprewell was granted his day in court, suing in opposition of his penalties. Unfortunately for Sprewell, the district court granted the defendant's motion to dismiss, as it could not find adequate grounds to sustain his claims. Running out of opportunities for relief, Sprewell called upon the Ninth Circuit to keep his hopes alive. In what seems to have been a most fair and justiciable result, the court found

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151. *Id.* at 992. "Conspiracy is not a legal cause of action independent of an underlying tort." *Sprewell*, 266 F.3d at 992 (citing Applied Equip. Corp. v. Litton Saudi Arabia Ltd., 869 P.2d 454, 457 (Cal. 1994)).

152. *Sprewell*, 266 F.2d. at 992.

153. *Id.* As the Circuit Court reinstated several of Sprewell's claims, the sanctions levied by the district court, pursuant to Rule 11 of the Federal Rules of Civil Procedure, also needed further evaluation. *Id.* at 993. Rule 11 of the Federal Rules of Civil Procedure states:

> Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions. (b) Representations to Court. By presenting to the court. . .an attorney. . .is certifying that to the best of the person's knowledge. . .(1) it is not being presented for any improper purpose. . .(2) the claims. . .are warranted by existing law. . .(3) the allegations. . .have evidentiary support. . .(c) Sanctions. If after notice and a reasonable time to respond, the court determines that subdivision (b) has been violated, the court may. . .impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

FED. R. CIV. P. 11(2002).

Consequential to the first dismissal of Sprewell's claims, the district court tried to get Sprewell to either state a cognizable claim or to withdraw his complaint. *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *25-26. Further, the court "instructed Sprewell's counsel to sign any subsequently filed amended complaint in accordance with Rule 11." *Sprewell*, 266 F.3d at 985. Upon Sprewell's return to district court and subsequent dismissal of all claims, the court stated, "(i)n a case such as this, where it is patently clear that a claim has no chance of success under the existing precedents, where no reasonable argument can be advanced to extend, modify or reverse the law as it stands, and the plaintiff nonetheless re-files his complaint after dismissal by the court, FRCP 11 has been violated." *Sprewell*, 1999 U.S. Dist. LEXIS 3875, at *24-25. After the Ninth Circuit held that the pleadings were sufficient to revive a few of Sprewell's claims, the Rule 11 sanctions were also remanded for further considerations. *Sprewell*, 266 F.3d at 993.

154. Aside from minor disagreements of detail alleged in Sprewell's allegation of fraud, *see supra* note 91, nowhere in any of his complaints, beginning from the record of the district court opinion, following through to the circuit court opinion, did Sprewell ever deny that his attack on P.J. Carlesimo on December 1, 1997. *See Sprewell*, 266 F.3d 997; *Sprewell*, 1999 U.S. Dist. LEXIS 3875.

grounds to constitute a claim for which relief could be granted. Sprewell, or his attorneys for that matter, may have just caught a break, since a few of his claims may have been frivolous.

In an attempt to vacate the arbitrator's award, Sprewell's claims seem to have been levied against strong precedent in this area of law. Considering the results laid out in the *Steelworkers Trilogy*, it was an uphill battle for Sprewell. Perhaps it was the result of *Textile Workers Union,* which gave Sprewell the hope that he needed to succeed on this claim. Considering Sprewell's suspension was reduced by the arbitrator's award, he may have faired better in a second round with the arbitrator had the award been vacated as exceeding the scope of his authority. Much like *Textile Workers Union,* the arbitrator felt the severity of the award was not justified, but unfortunately for Sprewell, even the Fourth Circuit eventually changed its mode of thinking, and ceased this line of precedent.[155]

After hearing Sprewell's arguments on appeal, the Ninth Circuit was confronted with a very similar issue in *Major League Baseball Player Ass'n v. Garvey.*[156] On appeal of the district courts denial to reverse the arbitrator's award, the Circuit reversed the decision by rejecting the arbitrator's factual findings.[157] Ultimately, the Circuit Court was reversed by the Supreme Court of the United States stating, "the Court of Appeals usurped the arbitrator's role by resolving the dispute and barring further proceedings, a result at odds with this governing law."[158] Considering these most recent events in the Ninth Circuit's history, the law did not seem in Sprewell's favor nor did the court seem willing to delve into the idea of vacating an arbitration award.[159]

With the current state of the law concerning a court's ability to overturn the findings of an arbitrator, public policy seems to be a viable way of having an award vacated, even if the arbitrator himself stays within the guidelines of the CBA. Nonetheless, in light of the court's analysis of this issue, it would seem somewhat obvious that public policy against

155. *See Lynchburg Foundry*, 404 F.2d at 260.

156. Major League Baseball Player Ass'n v. Garvey, 532 U.S. 504 (2001). Steve Garvey, a retired, highly regarded first baseman, submitted a claim pursuant to Major League Baseball's CBA alleging his contract with the San Diego Padres was not extended due to collusion. *Id.* at 506.

157. *Id.* at 505. Contrary to the *Sprewell* decision, Garvey's appeal dealt with the substantive facts of his case, as opposed to the improper application of law in the case at hand.

158. *Id.* at 511.

159. *Sprewell* was argued and submitted on October 4, 2000, then filed on September 14, 2001. *Garvey* was submitted to the Ninth Circuit on December 5, 2000 and decided on December 7, 2000. The Supreme Court overruled the Ninth Circuit in *Garvey* when it handed down its decision on May 14, 2001.

racial discrimination is well defined and dominant, as the court proceeded directly to step two of the test it had laid out.[160] Unfortunately for Sprewell, the court seemed to be keeping consistent with the scope of review given to an arbitration award. Taking the facts as the arbitrator had found them, the Ninth Circuit seemed very unlikely to get involved.

Pursuant to Sprewell's claim of a violation of public policy, one great disparity has arisen during research into this area of law. It seems as if there is little or no case law available concerning the vacating of an arbitrator's award on grounds of public policy against racism.[161] In Sprewell's situation, he was the employee claiming that his employer's double penalty had violated public policy.[162] If this case were consistent with prior public policy decisions, perhaps it would have been the NBA and the Golden State Warriors filing a claim pursuant to the reduction of a potentially violent employee's suspension.[163]

Perhaps, although The Supreme Court in *Misco* "clearly intended, some, albeit narrow, public policy review,"[164] the Ninth Circuit may give too much deference to arbitration awards. This is not to say that the *Sprewell* case rises to a violation of public policy, but does an arbitrator's duty go beyond the mere interpretation of a CBA? According to current law and the Supreme Court in *Misco*, "[t]he arbitrator may not ignore the plain language of the contract."[165] "[T]he arbitrator's award. . . must draw its essence from the contract and cannot simply reflect the arbitrator's own notions of industrial justice."[166] In accordance with this, the court in *Sprewell* did find that Sprewell's punishment was wholly justified by the language of the CBA and by the virtue of the uniquely egregious nature of Sprewell's punishment." It is difficult to tell how a court can give this level of deference to an arbitrator's award when it is simply an interpretation of a contract, yet give credence to the possibility of a public policy violation.

Alternatively, it does not appear that either the district court or the Ninth Circuit necessarily gave deference to the arbitrator's findings pursuant to Sprewell's §§ 1981 and 1985(3) claims. It seems from the district court's opinion, that the factual basis used by the arbitrator in determining these issues, was the same basis applied by that court, and not

160. *Sprewell*, 266 F.3d at 987.
161. *See generally supra* note 89.
162. *Id.*
163. *Id.*
164. Glanstein, *supra* note 80, at 313 (citing *Misco*, 484 U.S. at 42-43).
165. *Misco*, 484 U.S. at 38
166. *Id.* at 38.

simple deference to the arbitrator's final determination. Applying the appropriate case law, Sprewell had a limited possibility of a stating a viable claim, especially considering that he included the arbitration award with the compliant.

In a further attempt at relief, Sprewell's claimed violation of California's Unruh Act also ran into difficulties. In the application of state law, the federal courts of the United States are to follow the interpretation of state law set out by the highest court of the state for which it applies.[167] Following the precedent set by the California Supreme Court in *Alcorn*, the *Sprewell* court could not extend a reading of the Act far enough to encompass Sprewell's claims. As California's Supreme Court stated the law in a very explicit manner, Sprewell's claims were doomed from the start, and almost definitely in violation of Rule 11.

Similarly, a common law right to fair procedure has been well established by the California courts, consistent with federal courts. As Sprewell's claims were dismissed due to the explicit compliance with the law laid out in the arbitrator's award, the circuit court's opinion makes it difficult to foresee a dismissal of the defendant's motion even had Sprewell not included the award. Sprewell's contention was that the NBA and the Warriors failed "to give him adequate notice that they were 'considering the imposition of discipline before he was disciplined and he was not given an opportunity to be heard about the appropriateness of his discipline.'"[168] First, constructive notice of a discipline hearing would seem to be satisfied considering Sprewell violently attacked his coach. Second, the arbitrator obviously dealt with the appropriateness of the discipline as he reduced the suspension from one year to the remainder of the current season. Indeed, these claims weigh more towards the side of frivolous.

Sprewell's first glimmer of hope in re-instituting his suit came with his claims of intentional interference with contractual and business relations. In an attempt to mount an opposition to an arbitration award, this line of precedent is not a bad place to start. In the highly cited case, *Allis-Chalmers Corp. v. Lueck*,[169] the United States Supreme Court held that

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167. Bush v. Gore, 531 U.S. 98, 112 (2000) (Rehnquist, C.J., concurring). The Supreme Court stated, "[i]n most cases, comity and respect for federalism compel us to defer to the decisions of state courts on issues of state law." *Id.* (Rehnquist, C.J., concurring). That practice reflects our understanding that the decisions of state courts are definitive pronouncements of the will of the States as sovereigns." *Id.* (Rehnquist, C.J., concurring) (citing Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938)).

168. *Sprewell*, 266 F.3d at 990.

169. Allis-Chalmers Corp. v. Lueck, 471 U.S. 202 (1985). There have been 1892 citing references since it was written in 1985 according to a LEXIS NEXIS search conducted on Oct. 15,

"[w]e cannot declare pre-empted all local regulation that touches or concerns in any way the complex interrelationships between employees, employers, and unions; obviously, much of this is left to the States."[170] The Supreme Court's decision in *Lingle* followed this precedent by finding that the alleged state law claim was in-fact not pre-empted by § 301.[171] Since that time, many employees bound by CBA's have had success litigating their claims pursuant to state law, outside of federal law. It is now, that Latrell F. Sprewell has begun the journey of bringing such legal precedent into the world of sports, adding potential claims, which may protect employers from the far-reaching powers of arbitration and collective bargaining agreements.

John Kaplan

2002.

170. *Allis-Chalmers*, 471 U.S. at 208 n.4 (citing Motor Coach Employees v. Lockridge, 403 U.S. 274, 289 (1971))

171. *See Lingle*, 489 U.S. 399 (1998).