

Lifestyle v. Hornby Street and others - Judgment of the Court of Appeal of England and Wales, 28 January 2022

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I. Introduction¹

1. The English Court of Appeal recently considered the question of what law governs whether a non-party to an arbitration agreement is nevertheless bound by that agreement. In its judgment in [Lifestyle Equities CV and another v Hornby Street \(MCR\) Ltd and others \[2022\] EWCA Civ 51](#), the Court of Appeal held by majority that the law applicable to this question is the law governing the arbitration agreement. Lord Justice Snowden dissented, finding instead that the applicable law is the law of the mechanism that binds the non-party.

II. The facts

2. The claimants/appellants (“Appellants”), both Dutch companies, were the registered owner and licensee (respectively) of a UK and various EU trade marks with the “Beverly Hills Polo Club” logo, used mostly on clothing.² The trade marks had been assigned to the first appellant in 2009.³ The defendants/respondents (“Respondents”) include the owner and licensee of a UK trade mark with the “Santa Barbara Polo &

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² [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 4.

³ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 11.

Raquet Club” logo, and a Californian sports and social club of the same name.⁴ Both logos depict a polo player holding a mallet. The logos also contain lettering of similar style and positioning.⁵

3. Given the similarities in the marks, disputes had arisen in the 1990s in both the US and Japan between the previous owner of the Beverly Hills logo, a Californian entity, and the Santa Barbara Polo & Raquet Club (the “SBPC”).⁶ The dispute was resolved by way of a trade mark co-existence agreement concluded in 1997 (the “1997 Agreement”), which provided that each party consented to the use and registration of the other party’s trade mark, worldwide.⁷ The 1997 Agreement provided for arbitration under the rules of the American Arbitration Association in Los Angeles, California, and was governed by Californian law.⁸ While the Appellants were unaware of the 1997 Agreement when the trade marks were assigned to the first appellant in 2009, they were later informed of its existence and, in 2015, the first appellant relied on and corresponded with the SBPC regarding the 1997 Agreement when registering a trade mark in Mexico.⁹
4. In June 2020, the Appellants commenced trade mark infringement proceedings against the Respondents in the English High Court for having used the Santa Barbara logo on goods sold in the UK and the EU.¹⁰ The Respondents requested a stay

⁴ [*Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club*](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 6; [*Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club*](#), Judgment of the High Court of England and Wales [2020] EWHC 3320 (IPEC), 30 November 2020, paras. 8-9.

⁵ [*Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club*](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, paras. 3 and 6.

⁶ [*Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club*](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, paras. 6 and 102.

⁷ [*Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club*](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, paras. 7-8.

⁸ [*Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club*](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 10.

⁹ [*Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club*](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, paras. 11-15.

¹⁰ [*Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club*](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 16.

pursuant to [Section 9 of the English Arbitration Act](#), which requires the court to stay proceedings brought in breach of an arbitration agreement unless that agreement is “null and void, inoperative, or incapable of being performed” (thereby transposing into English law Article II(3) of the [New York Convention](#)). The Respondents argued that the Appellants were bound by the 1997 Agreement, including its arbitration clause, as a matter of Californian law as assignees of the trade marks and on the basis of equitable estoppel (in light of the Appellants’ previous reliance on the agreement).¹¹

5. On 30 November 2020, the English High Court (His Honour Judge Hacon of the Intellectual Property Enterprise Court) granted the Respondents’ request for a stay on the grounds that:
 - a. the Appellants had become parties to the 1997 Agreement as a matter of English law, on account of their previous correspondence regarding the 1997 Agreement with the SBPC and their seeking to benefit from the terms of the 1997 Agreement;¹²
 - b. alternatively, the Appellants were bound by the arbitration clause in the 1997 Agreement as a matter of Californian law, as the law chosen to govern the main contract including the arbitration agreement (under Californian law, a co-existence agreement is a burden attaching to a trade mark, regardless of the assignee’s knowledge of the agreement);¹³ and
 - c. in the further alternative, the Appellants were precluded from denying that they were bound by the 1997 Agreement because of equitable estoppel under Californian law (given their previous reliance on that agreement).¹⁴

¹¹ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, paras. 18 and 20.

¹² [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 21(i); [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the High Court of England and Wales [2020] EWHC 3320 (IPEC), 30 November 2020, paras. 33-42.

¹³ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 21(ii); [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the High Court of England and Wales [2020] EWHC 3320 (IPEC), 30 November 2020, paras. 54 and 96.

¹⁴ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 21(iii); [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the High Court of England and Wales [2020] EWHC 3320 (IPEC), 30 November 2020, paras. 97-107.

6. The Appellants appealed the High Court's decision to grant the stay.

III. Reasoning and decision

7. On 28 January 2022, the English Court of Appeal dismissed the appeal by majority (Lady Justice Macur and Lord Justice Lewison) and upheld the stay of the court proceedings in favour of arbitration. In doing so, the Court of Appeal considered two questions: (a) whether the Appellants were parties to the arbitration agreement in the 1997 Agreement; and (b) whether the Appellants were bound by the arbitration agreement.

A. Were the Appellants *parties* to the arbitration agreement?

8. Regarding the first question, the Court of Appeal unanimously agreed that the High Court judge had been wrong to hold that the Appellants had become parties to the 1997 Agreement (or its arbitration clause).¹⁵ This was a point that had not even been suggested by the Respondents.¹⁶ Moreover, this finding was wrong as a matter of English conflict of laws rules, which treat the question of who is party to an arbitration agreement as a matter of contractual consensus, determined in accordance with the law governing the arbitration agreement.¹⁷ The Court of Appeal referred in this respect to the recent UK Supreme Court decision in [Kabab-Ji SAL v Kout Food Group](#) ("*Kabab-Ji v KFG*") where the law applicable to the arbitration agreement similarly determined whether a non-signatory was nonetheless a party to the arbitration agreement by way of novation of the main contract.¹⁸
9. In the present case, the law governing the arbitration agreement was therefore not English law but Californian law, as the governing law of the 1997 Agreement.¹⁹ In

¹⁵ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, paras. 23-26 and 99.

¹⁶ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 25.

¹⁷ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 24.

¹⁸ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 24.

¹⁹ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 25.

the absence of expert evidence of Californian law on the question of whether the Appellants had become parties, the High Court judge should not have expressed a view (which was wrong in law in any event).²⁰

B. Were the Appellants *bound* by the arbitration agreement?

10. However, the Court of Appeal was split on the next question: even though the Appellants were not parties to the arbitration agreement, were they nevertheless bound by it?²¹ To answer this question, a conflict of laws issue arose: on the one hand, the Appellants argued for the application of rule 135 of Dicey, Morris & Collins on the Conflict of Laws (“Dicey”) – an authoritative guide on English conflict of laws rules – which provides that “the validity and effect of an assignment of an intangible may be governed by the law with which the right has its most significant connection”; on the other hand, the Respondents argued for the application of rule 64 of Dicey, which provides that “[t]he material validity, scope and interpretation of an arbitration agreement are governed by its applicable law, namely... the law expressly or impliedly chosen by the parties; or, in the absence of such choice... the law of the seat of the arbitration.”²²

11. If rule 135 of Dicey applied, the law determining whether the Appellants were bound by the arbitration agreement would have been English law and EU law (as the law where the trade marks were registered and therefore had their most significant connection).²³ If rule 64 applied, the applicable law would have been Californian law (as the law applicable to the arbitration agreement by virtue of the choice of governing law for the 1997 Agreement).²⁴ The High Court judge had been of the view that rule 64 “appear[ed] more relevant” to the question of whether a

²⁰ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 25.

²¹ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 99.

²² [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, paras. 106-108.

²³ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, paras. 46 and 60.

²⁴ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 110.

party is bound by an arbitration agreement, characterising this as a question of “interpretation” of the arbitration agreement.²⁵

1. The majority decision

12. The majority agreed with the High Court that rule 64 applied, although characterising the question as one of “scope” rather than “interpretation” of the arbitration agreement.²⁶ The question of who is bound by an arbitration agreement is therefore governed by the same law as who is party to it, namely the law applicable to the arbitration agreement.²⁷ The majority’s reasoning was that rule 135 “may be relevant to the substantive dispute between the parties”; however, it does not govern the scope of the arbitration agreement which is “a contractual rather than a proprietary question” governed by the law applicable to the arbitration agreement.²⁸ As a result, the High Court judge was entitled to conclude, as a matter of Californian law, that the Appellants were bound by the arbitration agreement, and grant the stay.²⁹

2. The dissenting opinion

13. In his dissenting opinion, however, Lord Justice Snowden preferred the application of rule 135 given the “clear conceptual distinction” between the question of whether one is a party to an arbitration agreement or bound “in some other way”.³⁰ The dissenting judge accepted the Appellants’ submission that the issue of whether a

²⁵ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 32 (citing High Court Judgment, para. 54); [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the High Court of England and Wales [2020] EWHC 3320 (IPEC), 30 November 2020, para. 54.

²⁶ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 111.

²⁷ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 112.

²⁸ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 110.

²⁹ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 115.

³⁰ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 27.

non-party is bound by an arbitration agreement should not be governed by the law applicable to the arbitration agreement, since the issue is not one of contractual consensus – by definition, a non-party has not agreed to be bound by the arbitration agreement.³¹ Where that non-party is bound by an arbitration agreement by way of another mechanism, English conflict of laws rules should look to the law connected to that mechanism (rather than to the agreement to which the non-party did not consent).³² In this case that ‘other mechanism’ was the assignment of the trade marks.³³

14. The same logic was applied in [Egiazaryan v OJSC OEK Finance \[2017\] 1 All ER \(Comm\) 207](#) (“Egiazaryan”), where Mr Justice Burton addressed the question of whether a non-signatory parent (R2) was bound by the arbitration agreement in the contract between its subsidiary (R1) and another company (C).³⁴ In that case, the law applicable to the arbitration agreement was English law, while R1 and R2 were Russian entities. As a matter of English law, R2 was not bound by the arbitration agreement included in the contract between R1 and C. However, as a matter of Russian law, R2 was liable for the contractual obligations of R1 and therefore also bound by that arbitration agreement. Mr Justice Burton held that Russian, not English, law determined whether R2 was bound by the arbitration agreement, in the same way as “the proper law of the contract would not apply to issues of agency.”³⁵ To illustrate the point, he endorsed the following example:

“[I]f an English company made a contract governed by Ruritanian law, and under Ruritanian company law shareholders of Ruritanian companies were deemed to be parties to all contracts made by the company, it would obviously be inappropriate for the arbitral tribunal to

³¹ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, paras. 55 and 85.

³² [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 55.

³³ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 56.

³⁴ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, paras. 50-53.

³⁵ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 51 (citing *Egiazaryan* para. 18); [Ashot Egiazaryan and Vitaly Gogokhiya v. OJSC OEK Finance and the City of Moscow](#), Judgment of the High Court of England and Wales [2015] EWHC 3532, 4 December 2015, para. 18.

apply Ruritanian law to assume jurisdiction over the shareholders of the English company.”³⁶

15. Lord Justice Snowden was therefore of the view that English law and EU law, respectively, as the laws governing the assignment of the trade marks, should determine whether the Appellants were bound by the arbitration clause in the 1997 Agreement.³⁷ As the High Court judge had been wrong to consider that the Appellants were bound as a matter of Californian law, he would have allowed the appeal and discharged the stay.³⁸

16. The majority sought to reconcile its position with the view of Mr Justice Burton in *Egiazaryan* on the basis that the question there was “whether it was permissible to look outside” the law of the arbitration agreement.³⁹ The majority suggested that Mr Justice Burton considered it was permissible to do so, such that “the ‘applicable law’ was not restricted to the law of the arbitration agreement.”⁴⁰ However, in the present case, there was “no such need” to look beyond the law of the arbitration agreement, Californian law, which the High Court judge had found (based on expert evidence) bound the Appellants to the arbitration agreement.⁴¹

17. Lord Justice Snowden disagreed, noting that the example of Ruritanian law (see paragraph 14 above) instead indicated that Mr Justice Burton “did not think it would

³⁶ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 52 (citing *Egiazaryan*, para. 20); [Ashot Egiazaryan and Vitaly Gogokhiya v. OJSC OEK Finance and the City of Moscow](#), Judgment of the High Court of England and Wales [2015] EWHC 3532, 4 December 2015, para. 20.

³⁷ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 56.

³⁸ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, paras. 60 and 82.

³⁹ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 114.

⁴⁰ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 114.

⁴¹ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, paras. 114-115.

be appropriate to apply the governing law of the arbitration agreement, even though that would have permitted the joinder of a non-party to the arbitration.”⁴²

IV. Comments

18. The Court of Appeal’s judgment is significant for several reasons, but most importantly, it confirms that the law of the arbitration agreement applies not only to the question of who is a party to the arbitration agreement (as had recently been confirmed in the UK Supreme Court’s decision in [Kabab-Ji v KFG](#)) but also to the question of whether a non-party is bound by the agreement. In that sense, the majority has provided a clarity that is consistent with recent UK Supreme Court guidance in [Enka v Chubb](#) and [Kabab-Ji v KFG](#) on the law applicable to the arbitration agreement.
19. Despite the dual attractions of clarity and consistency, Lord Justice Snowden’s dissent provides a compelling argument for the alternative position. The dissent cogently argues that it does not make sense that the question “whether a non-party is bound by an arbitration agreement between two other persons” is governed by law applicable to the arbitration agreement, since “[t]he question is only being asked *because* the first person is not a party to the arbitration agreement as a matter of the law of contract.”⁴³
20. As Lord Snowden observed,⁴⁴ the present situation differed from the facts underlying the UK Supreme Court’s recent landmark judgments on the law applicable to the arbitration agreement in [Enka v Chubb](#), which concerned whether a particular dispute fell within the scope of an arbitration agreement between parties who consented to it, and [Kabab-Ji v KFG](#), where the question was whether a third person had become a contracting party to an existing arbitration agreement. In both those cases, the issue was one of contractual consensus, which made it logical to apply the law governing the (arbitration) agreement.
21. However, here the question is whether a non-party, namely the first appellant who had been assigned the relevant trade marks, was bound by the arbitration agreement contained in the 1997 Agreement – not between that party itself but –

⁴² [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 88.

⁴³ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 85 (italics added).

⁴⁴ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, paras. 86-87.

between the previous owner of the trade marks and one of the Respondents. As pointed out by the dissenting judge, “[it] is therefore difficult to see any logical reason.... to characterise it as a matter of contract”.⁴⁵

22. As Lord Justice Snowden suggested in his dissent,⁴⁶ it is also doubtful that Mr Justice Burton in *Egiazaryan* applied Russian law as a secondary step to considering the law of the arbitration agreement. In addition to the example of Ruritanian law referred to by Lord Justice Snowden, Mr Justice Burton endorsed the following submissions of counsel:

“[I]f the question is one as to whether a non-signatory of the agreement can be joined by virtue of a concept such as agency or, in this case, a principle that shareholders or parents are obliged to arbitrate on contracts entered into by the signatory, then it is not the proper law of the contract which gives the answer, but English conflicts rules would look to another law, in this case the law of incorporation of the signatory.”⁴⁷

23. Mr Justice Burton therefore seemed to conclude that the question of whether a non-party is bound by an arbitration agreement is governed *not* by the law applicable to the arbitration agreement but the law of the relevant mechanism that binds the non-party.

24. Besides considering which law applies to the question of who is a party to, or bound by, an arbitration agreement, the Court of Appeal is also notably consistent in its *determination* of the law applicable to the arbitration agreement with recent UK Supreme Court guidance. To recall, in *Enka v Chubb*, the UK Supreme Court held (in the context of an application for an anti-suit injunction) that, in the absence of an express choice of law for the arbitration agreement, a choice of law in respect of the main contract will apply to the arbitration agreement contained in it.⁴⁸ In *Kabab-Ji v KFG*, the UK Supreme Court confirmed that this general rule applies also in the context of enforcement proceedings.⁴⁹

25. Here, the Court of Appeal applied the same rule (albeit without expressly referring to the abovementioned UK Supreme Court decisions in that specific context) when

⁴⁵ *Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street (MCR) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club*, Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 85.

⁴⁶ *Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street (MCR) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club*, Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 88.

⁴⁷ *Ashot Egiazaryan and Vitaly Gogokhiya v. OJSC OEK Finance and the City of Moscow*, Judgment of the High Court of England and Wales [2015] EWHC 3532, 4 December 2015, para. 20 (emphasis added).

⁴⁸ *Enka Insaat Ve Sanayi AS v. Insurance Company Chubb and Chubb European Group SE*, Judgment of the United Kingdom Supreme Court [2020] UKSC 38, 9 October 2020, paras. 53 and 170(iv).

⁴⁹ *Kabab-Ji S.A.L Company v. Kout Food Group Company*, Judgment of the Supreme Court of the United Kingdom [2021] UKSC 48, 27 October 2021, para. 35.

it found that Californian law governed the arbitration agreement in the 1997 Agreement as the law the parties “chose... to govern their contract”.⁵⁰ In other words, the parties’ choice of Californian law for the main contract also applied to the arbitration agreement contained in it. The Court of Appeal thereby applied the conclusions of the UK Supreme Court in the context of an application pursuant to Section 9 of the English Arbitration Act.

26. Finally, the Court of Appeal confirmed that a [Section 9](#) application may be made against a claimant that is not party to the relevant arbitration agreement yet who is bound by it.⁵¹

V. Conclusion

27. The English Court of Appeal in [Lifestyle Equities CV and another v Hornby Street \(MCR\) Ltd and others](#) clarified that the question of who is bound by an arbitration agreement is governed by the same law that governs the question of who becomes party to it, namely the law applicable to the arbitration agreement. However, Lord Justice Snowden’s strong dissent together with Mr Justice Burton’s decision in *Egiazaryan* may provide a compelling alternative position in case this issue were to reach the UK Supreme Court.

28. The Court of Appeal’s judgment is further consistent with the conclusions recently set out by the UK Supreme Court on the governing law of the arbitration agreement, and clarifies that a stay pursuant to Section 9 of the English Arbitration Act may be made in circumstances where an action is commenced by a party that is ‘bound by’ an agreement to arbitrate, as much as by a party who is ‘party to’ that arbitration agreement.

⁵⁰ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 114.

⁵¹ [Lifestyle Equities C.V. and Lifestyle Licensing B.V. v. Hornby Street \(MCR\) Ltd., Regency Trading Ltd., Santa Barbara Polo Club, SB Members LLC, Toqir Abbas, Arunkumar Devji Pindoria, Joanne Claire Swift and Santa Barbara Polo & Racquet Club](#), Judgment of the Court of Appeal of England and Wales [2022] EWCA 51, 28 January 2022, para. 96.