

UK Supreme Court on law applicable to arbitration agreements

Written by **Stephen Armstrong**, lawyer practicing in Toronto, Ontario, Canada with an interest in international arbitration. [Linkedin]

On Friday, October 9, 2020, the United Kingdom Supreme Court released an interesting decision concerning the applicable law governing arbitration agreements in international contracts and the jurisdiction of the courts of the seat of the arbitration to grant anti-suit injunctions. The case is *Enka Insaat Ve Sanayi A.S. v 000 Insurance Company Chubb*, [2020] UKSC 38.

The full text of the Supreme Court's decision is available **here**.

A digestible summary of the case, including the facts, the breakdown of votes, and the reasons, is available **here**.

Interestingly, the Supreme Court fundamentally disagreed with the Court of Appeal on the role of the seat of the arbitration for determining the law of the arbitration agreement. The Supreme Court held that an express choice of law in the main contract should be presumptively taken as an implied choice of law governing the arbitration agreement. By contrast, the Court of Appeal had held that the law of the seat was the parties' presumptive implied choice of law for the arbitration agreement. The Supreme Court did, however, affirm the Court of Appeal's holding that the courts of the seat are always an appropriate forum to grant an anti-suit injunction, regardless of the applicable law.

Unlike other choice of law issues in the UK, this issue is governed by the common law, rather than the EU's Rome I regulation. This makes the Supreme Court's decision a common law authority, rather than an EU law authority. I therefore expect that this decision will find purchase throughout the Commonwealth, including my home jurisdiction of Ontario, Canada.