



Neutral Citation Number: [2026] EWCA Civ 192

Case No: CA-2025-000830

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (Ch D)

Mr Justice Adam Johnson
[2024] EWHC 3325 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/02/2026

Before :

THE CHANCELLOR OF THE HIGH COURT
LORD JUSTICE PETER JACKSON
and
LORD JUSTICE POPPLEWELL

Between :

Zaha Hadid Limited **Appellant**
- and -
The Zaha Hadid Foundation **Respondent**

Michael Bloch KC, Rhys Jones (instructed by **Dorsey & Whitney (Europe) LLP**) for the
Appellant
James Abrahams KC (instructed by **Joseph Hage Aaronson & Bremen LLP**) for the
Respondent

Hearing dates: 28 & 29 January 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 27 February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Sir Colin Birss C.:

1. This appeal relates to a contract between two organisations set up by the famous architect Dame Zaha Hadid. The claimant/appellant company is called Zaha Hadid Limited (“the Company”). It operates as an international architecture practice. Dame Zaha founded that practice. The defendant/respondent is The Zaha Hadid Foundation (“the Foundation”). The Foundation was set up by Dame Zaha to preserve her work and legacy. Dame Zaha died on 31 March 2016.
2. The contract is a trade mark licence. It is dated 1 May 2013 although it was signed in 2014. At that time the parties were Dame Zaha herself as licensor and the Company as licensee. Dame Zaha held the registered trade marks for ZAHA HADID registered in respect of relevant services. Following her death, Dame Zaha’s trade marks were passed to the Foundation and it is now the licensor and party to the contract.
3. Although there are important points of detail, broadly speaking the contract reads like a conventional trade mark licence whereby the Company is licensed to use the trade marks in return for a licence fee. Contracts of this kind have been standard commercial transactions for many years and might be said, for reasons I will mention at the end, to be a form of contract familiar in a trading society.
4. The Company wishes to continue to use the name ZAHA HADID but also wishes to renegotiate the terms of the contract, mainly because it says the level of licence fee – 6% of all net income – is too high. The Company contends it has the right to terminate the contract on reasonable notice. The Foundation does not agree. The first question is whether this contract can be terminated by the Company in that way. The Company had a fall back position, arguing that if there was no right to terminate on reasonable notice then the contract is an unreasonable restraint of trade and thereby void. The restraint of trade issue is the second question.
5. The trial took place in November 2024. In his judgment dated 20 December 2024 Adam Johnson J held that the contract contained no term giving the Company such a right to terminate. The result being that the Company is locked into the contract forever. The judge also rejected the argument based on restraint of trade.
6. The Company appeals both points, with permission given by Falk LJ.
7. In fact the Company had given notice to terminate in March 2024 stating at that stage that it would treat the contract as at an end 12 months later. The Foundation accepted that 12 months would constitute reasonable notice. Despite its statement in March 2024, we were told that the Company has continued to use the trade marks and to pay royalties due under the agreement in accordance with the decision of Adam Johnson J.

The terms of the contract - in summary

8. The recitals record that the licensor is the owner of trade marks listed in the schedule to the contract and that the licensee (the Company) wishes to use the trade marks in the “Territory”. The Territory is defined as the world. After a series of definitions in clause 1, clause 2.1 grants the licensee a non-exclusive licence in relation to the trade marks. Clause 3 contains a number of clauses relating to title, goodwill and the trade mark registrations. It confirms that the licensor is the owner of the trade marks (3.1), that the

licensee shall use the marks in the form stipulated by the licensor (3.2), that the goodwill in the marks accrues to the licensor (3.3) and that the licensee will not do or omit to do anything which will weaken or damage the marks. Clause 4 relates to quality control and provides that the licensee will comply with standards laid down by the licensor. Clause 5 relates to marketing and provides that the licensee will use best endeavours to promote and expand the supply of services on the maximum possible scale.

9. In clause 6 the main provision is at 6.1 which requires the licensee to pay the licensor a royalty of 6% of “Net Income” for the “Licensed Services” (both defined terms). The definition of Net Income does not matter for present purposes but it is worth noting at this stage that Licensed Services are defined in such a way as to cover any and all services provided by the licensee not limited to services using the trade marks.
10. Following clause 6 there are provisions about protection of the marks and third party infringements (clause 7), liability and indemnities (clause 8), additional provisions about the licensee’s use of the marks and sublicensing (clauses 9 and 10) and provisions about assignment (clause 11). Nothing turns on these terms.
11. Clause 12 is entitled “Duration and Termination”. Given its importance in this case I set it out in full:

“12. DURATION AND TERMINATION

12.1 This agreement shall commence on the Effective Date and shall continue indefinitely, unless terminated earlier in accordance with this clause 12.

12.2 The Licensor shall have the right to terminate this agreement on giving the Licensee not less than 3 months' written notice of termination.

12.3 Without affecting any other right or remedy available to it, the Licensor may terminate this agreement with immediate effect by giving written notice to the Licensee if:

- (a) the Licensee fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the Licensee commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the Licensee repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the Licensee becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Licensee (other

than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Licensee's or business, or if the Licensee makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt or if the Manufacturer ceases to carry on business

12.4 For the purposes of clause 12.3(b), material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this agreement over any 3 month period during the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.”

12. The structure of this clause is clear enough. By clause 12.1, once the agreement has commenced it will “continue indefinitely, unless terminated earlier in accordance with this clause 12”. Then at 12.2 the licensor has a power to terminate without cause on 3 months’ notice, while at 12.3 a further set of grounds on which the licensor may terminate are set out, including for a material breach as defined in 12.4. Notable by its absence is any explicit reference to termination by the licensee, either ruling it out or specifying terms on which it might be done. The meaning of clause 12 and in particular 12.1 is at the heart of this appeal.
13. To finish the summary of the contract terms, clause 13 deals with the effect of “expiry or termination”, essentially providing that all rights and licences will cease and all outstanding sums payable will fall due. So for example royalties payable on past activity will be due but once terminated no further royalties will fall due. Clauses 14 and 15 deal with further assurance and waiver, while clause 16 is an entire agreement clause and clause 17 deals with variation. If it is necessary to examine clause 17 in the context of the restraint of trade issue I will address it then. Clauses 18 to 26 deal with other matters such as severance, governing law and jurisdiction and notices, none of which have an impact on the issues in this appeal.

The judgment

14. The judgment starts by summarising the issues and the history, also noting the limited oral evidence given at trial. At [13] to [17] a preliminary point of fact is addressed, concerning whether Dame Zaha had intended to use the 6% royalty to fund the Foundation after her death and, if she did, whether that was relevant in principle. There was conflicting factual evidence, on one side from Sir Brian Clarke the well known architectural artist and painter that this was Dame Zaha’s intention, and on the other side from Mr Patrik Schumacher, who is as the judge noted himself an architect of considerable renown and had worked with Dame Zaha for over 30 years. Mr Schumacher’s evidence was to the contrary. In this section the judge holds that he does not have to resolve the matter because it would be wrong in principle to impute her subjective intention to the Company since at the time of the transaction she was in a position of conflict - which she had declared through her solicitors who recommended the Company take independent legal advice. As the judgment goes on to explain, the

Company seems not to have taken such advice and in any event the Licence Agreement was signed on behalf of the Company by Mr Schumacher, in his capacity as director. I mention this at this stage because a point made at times in argument on appeal was to suggest there was some relevant inequality in bargaining power between the two parties to this contract. The judge clearly thought otherwise (see also [76]-[77]) and was entitled to that view.

15. Turning to the first question at [32]-[37] the judgment explains that the Company was putting its case firmly on the basis of construction, Counsel making it clear that he was not seeking to imply a term. It was said by the Foundation that the Company's motive for this was because it was recognised that implying a term would fail bearing in mind the stringency of the modern approach to the implication of terms reflected in *Marks & Spencer plc v. BNP Paribas Securities Services Trust Co (Jersey) Ltd and Anor.* [2015] UKSC 72, [2016] AC 742 and *Tesco Stores Ltd v. Union of Shop, Distributive and Allied Workers and others* [2024] UKSC 28. The point was that these cases represented a shift from what was suggested by Lord Hoffmann in the *Attorney General of Belize v Belize Telecom Ltd* [2009] 1 WLR 1988, namely that the process of implying a term was part of the exercise of construction.
16. The Company had identified a line of authority to illustrate its submission that where a contract contains no express provision for termination, it may be construed as being subject to a right to terminate on reasonable notice. The cases are *Winter Garden Theatre (London) Limited v. Millenium Productions Ltd* [1948] AC 173, *Martin-Baker Aircraft Co Ltd v Canadian Flight Equipment Ltd* [1955] 2 QB 556, *Spenborough Corporation v Cooke Sons & Co. Ltd* [1968] 1 Ch 139, and *Staffordshire Area Health Authority v South Staffordshire Waterworks Co* [1978] 1 WLR 1387. The Foundation's retort was that this line of cases, from *Winter Garden Theatre* onwards, could be distinguished on the basis that however those judgments were expressed at the time, the results reached would only be seen as feasible today if they could be reached by implying terms, which the Company disavowed. At [37] the judgment concludes that there is no need to resolve the debate about the basis for decisions like *Martin-Baker Aircraft* because the Company's case was firmly limited to construction.
17. Citing the convenient summary of the modern approach to construction in *Virgin Aviation TM Ltd v. Alaska Airlines Inc.* [2024] EWCA Civ. 622, the judgment concludes the first question in favour of the Foundation for essentially five reasons. First ([41]) the terms of the contract as a whole (absent clause 12) and some of the wider context support the conclusion that it was intended that the licensor should have wide powers of termination and the licensee should have none. Second ([42]) the words of clause 12 reinforce that conclusion because the only provisions for termination set out there are rights exercisable by the licensor. Third ([43]-[44]) that the Company's submission that the opening words of clause 12.1, and in particular the word "indefinitely", signalled that the agreement was of indefinite duration and thereby included a right to terminate on reasonable notice, was wrong. Although perhaps inelegantly expressed what the parties plainly meant was that the contract would continue unless the licensor terminated it. Fourth (also in [43]-[44]) the later words in clause 12.1 ("unless terminated earlier in accordance with this clause 12") did not support the Company's case. These words were inconsistent with the Company's case because they showed that the express termination rights given to the licensor by clause 12.2 and 12.3 were the only means by which the contract could be terminated. The

submission by the Company that it made no sense to refer to the agreement being terminated “earlier” than forever was a metaphysical notion with no place in the practical construction of a business agreement. Fifth and finally ([45]) the wider factual matrix supported this conclusion because while Dame Zaha was the sole shareholder in the Company at the time the agreement was entered into, it was common ground that she intended that over time Mr Schumacher and other senior staff would be given equity in the Company and so it made sense that she would want to retain a mechanism of control such as a unilateral right to terminate.

18. The judgment then turns to the question of restraint of trade ([46] to [82]). It starts with *Quantum Actuarial LLP v Quantum Advisory Ltd* [2021] EWCA Civ 227 and the judgment of Carr LJ which at [68] summarised the three steps to be considered as follows:

“[68] There are three steps to consider:

(i) Whether or not, in practical terms, the restraints in the covenant amount to a restraint of trade;

(ii) If so, whether or not the covenant should be excluded from the application of the doctrine. The question is whether or not (as a matter of public policy) it is appropriate to dispense the contract from the necessity of justification under a public policy test of reasonableness;

(iii) If the doctrine is engaged, whether or not the covenant is reasonable by reference to the private interests of the parties and to the public interest.”

19. The Company’s case as originally formulated was that the 6% royalty on all taxed income, whether earned from using the trade mark or not, imposed a financial burden which effectively “sterilised” the Company’s economic activity. The judgment explains ([56]) that it became clear that this plea was unsustainable given the successful financial performance of the Company and explains that this part of the Company’s case was deleted.
20. Another way of putting the case was a vague submission based on the alleged long term impact of the one-sidedness of the agreement and the point that the licence is non-exclusive ([58]-[59]). A more specific submission was based on clause 5.1. This term requires the Company to use its best endeavours to promote and expand the supply of Licensed Services throughout the world on the maximum possible scale. The submission is that this was a fetter on the business but the judgment rejects this, holding that the nature of the bargain was that the Company was given the right to use trade marks of very significant value and prestige indefinitely and in return agreed to the various obligations (some of them imposing limitations) which are all rationally and commercially defensible such as the royalty and the other requirements such as quality control, marketing and promotion.
21. The judgment concludes on this aspect at [68] and [69], holding that the real nub of the Company's complaint is that it has come to think it is paying too much for the right it has acquired and that if it was paying less it could charge more competitively. As the

judge explained, if the test for the existence of a restraint were whether, had a more favourable package of terms been agreed, the relevant party would be able to manage its affairs differently, then commercial life would become inherently unpredictable.

22. The final section of the judgment from [70] to [82] addresses public policy and reasonableness issues and rejected the Company's case on those aspects too.

Grounds of appeal

23. The Company appeals on 6 grounds. The first two grounds relate directly to the interpretation of clause 12. Briefly ground 1 is that the judge erred in his construction of clause 12.1 by failing to consider the provisions in the context of the contract as a whole and its commercial implications. The Company submits that construed as the judge did the Company is bound forever, which makes no commercial sense. Ground 2 is in fact three points. The first is a challenge to the conclusion that the Company's construction of the word "indefinitely" was based on metaphysical notions. The second is a submission that an interpretation of clause 12.1 which involved a right to terminate on reasonable notice would not be inconsistent with the express terms of the rest of clause 12. The third is a submission that the judge misunderstood what mechanisms of control a licensor would require in order to protect the trade mark.
24. Ground 3 relates to the status of the line of authorities concerned with contracts of no fixed term and the ability of a party to terminate on reasonable notice, i.e. *Winter Garden Theatre, Martin-Baker Aircraft, Spenborough Corporation* and *Staffordshire Area Health Authority*. The Company submits that the judge erred in treating these as cases concerned with the implication of terms.
25. Grounds 4, 5 and 6 relate to restraint of trade. Ground 4 concerns the correct interpretation of the judgment of Carr LJ in *Quantum Actuarial*. Ground 5 challenges the conclusion that the contract does not operate in practice as a restraint of trade and ground 6 challenges the judge's conclusion that clause 5.1 did not engage the restraint of trade doctrine.
26. In a Respondent's Notice the Foundation takes three points said to be relevant to construction on the basis that they form part of the factual matrix. The submissions are as follows. First that the agreement was intended to provide an income for Dame Zaha in her lifetime and that Dame Zaha would relinquish control of the Company and so the absence of a power of termination by the licensee made sense. Second that it was intended and understood by the parties that the Company would trade under the name Zaha Hadid indefinitely. Third that a letter from the Company on 15 June 2023 which effectively commenced the current dispute by complaining about various terms of the contract, did not mention the inability to terminate, so it is said thereby undermining the Company's submission now that the lack of such a terms makes the contract uncommercial.
27. The Respondent's Notice also takes essentially three points relating to restraint of trade, first a point on the correspondence, second a submission that the argument about clause 5.1 was not pleaded and has no evidence in support, and third that the relief sought by the Company would contradict the principles on severance in *Tillman v Egon Zehnder* [2019] UKSC 32 [2020] AC 154.

A development during oral submissions in this court

28. In oral submissions the Company advanced its grounds of appeal and the Foundation supported the judge's judgment. As a result of questions and an invitation from the bench relating to the Company's blanket disavowal of a case based on implied terms, Counsel made one adjustment to the case on appeal. The Company maintained its characterisation of its own submissions on the first question as being based on construction, however the Company also submitted that if the court took the view that what the Company's arguments amounted to in substance involved a case based on an implied term, then the Company did maintain that argument too.

The first question – termination on reasonable notice

29. The law on the construction of contracts is very familiar. The principles were authoritatively explained by Lord Hodge in *Wood v Capita Insurance Services Ltd* [2017] AC 1173 at [10] to [15]. In *Sara & Hossien Holdings Ltd v Blacks Outdoor Retail Ltd* [2023] UKSC 2 Lord Hamblen provided a concise summary of those principles insofar as they were relevant to the case before him, as follows:

“(1) The contract must be interpreted objectively by asking what a reasonable person, with all the background knowledge which would reasonably have been available to the parties when they entered into the contract, would have understood the language of the contract to mean.

(2) The court must consider the contract as a whole and, depending on the nature, formality and quality of its drafting, give more or less weight to elements of the wider context in reaching its view as to its objective meaning.

(3) Interpretation is a unitary exercise which involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its implications and consequences are investigated.”

30. This summary is also applicable to the present case.
31. Each case necessarily will be decided on its own facts, nevertheless I believe a brief review of the authorities relating to contracts found to contain a right to terminate on reasonable notice will be worthwhile, if nothing else simply to orientate the court and to see the arguments in their legal context. The review will also include two further cases which were added on this appeal: *Re Berker Sportcraft Ltd, Hartnell v Berker Sportcraft Ltd* [1947] (177) Law Times 420 (Jenkins J) and *Watford Borough Council v Watford Rural Parish Council* (1987) 86 LGR 524 (Tudor Evans J).
32. Starting with *Winter Garden Theatre*, that case concerned a licence granted by the owner of a theatre to a production company to use the theatre in return for a weekly payment. The contract was formed in an exchange of letters which did contain an express term whereby the production company could terminate the licence on one month's notice, but gave the licensors no express right to terminate the licence. The question therefore was whether the licensors did have such a right.

33. An important part of the context was that in the earlier House of Lords case of *Llanelly Railway & Dock Co. v London & Northwestern Railway Co.* L. R. 7 H.L. 550 a contract for railway running powers (that is the right to run one company's trains over another company's lines) had been held to be permanent in character. In reaching that conclusion Lord Selborne (at *Llanelly* p567, quoted in *Winter Garden Theatre* at p203) held that for an agreement extending over time which on the face of it was "indefinite and unlimited", there was a burden upon any one alleging that it was not perpetual in nature.
34. The House of Lords in *Winter Garden Theatre* distinguished *Llanelly* and held unanimously that the licensor theatre owner had a right to terminate the licence on reasonable notice. Lord MacDermott's reasoning (with which both Viscount Simon and Lord Simonds agreed (at p191 and p208 respectively) was in two steps. First he concluded that as a matter of the construction of the intention of the parties, the agreement was not perpetual in nature (top half of p204). Therefore it was revocable and so the next step was to ask how revocation could be effected (middle of p204). Lord MacDermott approached this second question again as a matter of construction but also as to what term should be implied to give effect to the intention of the parties. He concluded that the licensor had the right to terminate the licence on reasonable notice.
35. Lord Porter's approach (at p195/196) was that licences were prima facie revocable as a matter of law, but that approach has not been followed subsequently. Lord Uthwatt approached the matter by asking whether a stipulation that the licensor could not revoke the licence could be implied in the circumstances, holding it could not (p198-199).
36. A few weeks before judgment in *Winter Garden Theatre*, the case of *Re Berker Sportcraft Ltd* came before Jenkins J in the High Court. This was a dispute between the well-known dress designer Norman Hartnell and the dressmaker Berker Sportcraft (who traded as Berketex). Under the two agreements Norman Hartnell provided dress designs to Berkertex in return for a fee for each design and a commission on sales. The agreements were expressed so as to continue from year to year and each party had an express right to cancel the arrangement if the commissions fell below certain levels. Norman Hartnell sought to terminate the agreement even though the financial condition was not satisfied. Jenkins J held he had no power to do so because the presence of the express powers excluded the implication of such a term. There was no reason such an arrangement should not be made to continue as long as the results are mutually satisfactory from the parties point of view (Jenkins J at p428).
37. In 1955 the *Martin-Baker Aircraft* case came before McNair J. Martin-Baker was a manufacturer of ejection sets and had agreed with a Canadian company that the latter could make and sell their products, supplying the relevant know-how to the Canadian company and receiving a royalty on sales. There was no provision for determination of the agreement. There was also a second related agreement with a director of the Canadian company. Martin-Baker sought to terminate both agreements. The Canadian company contended the agreements were only terminable by mutual consent. Amongst others all three of *Llanelly*, *Winter Garden Theatre* and *Re Berker Sportcraft Ltd* were cited. McNair J held at p577 that the court ought not to approach the matter based on presumptions (a reference to what was in effect a presumption of permanence identified in *Llanelly*). Indeed McNair J went further and expressed the view that if there was any presumption at all, it would be the other way round. For what it is worth I respectfully

agree with McNair J. The issue is not decided based on presumptions. Nevertheless, in a commercial context, one does not normally expect to find agreements forming permanent irrevocable relationships.

38. McNair J's conclusion was that the contract could be determined unilaterally on reasonable notice. Two aspects are notable before moving on. The reasoning is clearly expressed by reference to the implication of terms on the grounds of reasonableness and it also involved a finding that the relationship between the parties was one of mutual trust and confidence.
39. In 1967 Buckley J decided the *Spenborough* case. The agreement here related to discharge of the defendant's trade effluent into a public sewer. The agreement had provisions for termination on breach but unlike a predecessor agreement, the one in issue had no provision for termination on notice. *Martin-Baker*, *Winter Garden Theatre* and *Llanelly* were all cited. The principle to be applied was identified by Buckley J in the passage at p146-147. He held that when an agreement does not confer an express power to terminate, the question whether such a power should be inferred is a question of construction of the agreement, not in the narrow sense of putting a meaning on language but in the wider sense of ascertaining what the common intention of the parties was. On the facts, Buckley J reached the conclusion at p154 that on the true construction of the agreement, it was terminable upon the council giving reasonable notice to the defendant.
40. Next is *Staffordshire Area Health Authority* in 1978, decided by the Court of Appeal (Lord Denning MR, Goff and Cumming-Bruce LJ). The various cases above (save for *Berker Sportcraft Ltd*) were cited. The case concerned a contract made under seal in 1929. The parties now were a water company and a health authority. The contract provided that the company would "at all times hereafter" supply the hospital with a large quantity of water for no charge, with a fixed price per unit volume applying to extra water taken on top. Water prices had risen significantly by the early 1970s and the water company gave notice to terminate. Foster J held that "at all times hereafter" meant "forever or in perpetuity" and found in favour of the health authority. The company appealed and the appeal succeeded. The appellate judges agreed on the result but not on the reasoning to reach it. The majority (Goff and Cumming-Bruce LJ) decided the issue as a matter of construction of the agreement rather than by implying a term (as Lord Denning MR did).
41. In terms of construction the expression "at all times hereafter" was capable of two meanings – one was "in perpetuity" and the other was during the continued operation or subsistence of the agreement (see Goff LJ at 1400 D-E, Cumming-Bruce LJ p1405 B). Both judges decided that in all the circumstances the latter construction was the right one. In other words they both construed the agreement as one which was not intended to be perpetual and so therefore, as they both then also agreed, the contract was terminable on reasonable notice at any time (see p 1402 H - 1403 A and 1406 E).
42. The final case in this line was *Watford Borough Council*. The agreement concerned the maintenance of two cemeteries. The conclusion of Tudor Evans J on the facts was that the parties did intend to be bound in perpetuity and therefore there was no room to imply a term that the agreement could be terminated.

43. From this review of the cases I draw the following conclusions. First, even if they do not all say so explicitly, overall the logic of these cases essentially supports the two-stage reasoning first applied by Lord MacDermott in *Winter Garden Theatre*. The first logical step is a decision as a matter of the construction of the common intention of the parties whether the agreement was intended to run in perpetuity or not, either in all circumstances or in some defined circumstances e.g. unless determined by one party in accordance with contractual terms which confer a right of termination on only one of the parties. A contract which is not intended to be perpetual in this sense (and has no other explicit duration) is one in which the duration is indefinite. The difference between these two constructions is simple enough. If the true construction of the parties' intention is that the agreement is in perpetuity (for one or both parties), then, absent express terms, that leaves no room for an inference that such party or parties could terminate on reasonable notice. On the other hand, an agreement intended to be of indefinite duration necessarily and within its own terms contemplates that it can be brought to an end at some unspecified time in the future. That then leads to the second step. The only way to give effect to a common intention that the agreement is for both parties of indefinite duration and not perpetual, would be that all parties had the ability to bring it to an end – i.e. to terminate on reasonable notice. Analytically I believe such a term can be said to exist as part and parcel of the construction exercise. All the same it might be said that this second step is a kind of implied term, but to the extent that is so, it is one which follows directly from the true construction of the agreement.
44. In other words, as a matter of principle and logic, and absent any other factors, it necessarily follows from a conclusion that the true construction of the parties' intentions is that an agreement is to be of indefinite duration as opposed to perpetual, that a power to terminate on reasonable notice forms part of those intentions.
45. Second and more simply, what this review demonstrates is that to describe the duration of a contract as indefinite is a fundamentally different thing from describing it as perpetual. They are not synonyms.

The agreement

46. Starting as the judge did with the terms of the contract as a whole (absent clause 12) and aspects of the wider commercial context, in my judgment there is nothing there which supports the idea that only the licensor would have powers to terminate and not the licensee. The conclusion to the contrary at [41] is an error. The facts, that the trade marks were assets of great value to Dama Zaha, reflected her life's work and that Dame Zaha as trade mark owner would wish to exercise close control of the manner of exploitation, are true but do not support such a conclusion. Trade mark owners have a natural interest in ensuring licensed marks are used appropriately and that goodwill accrues to the licensor. The contract terms reflect this because if they did not there would be a risk that the marks were rendered invalid. The licensor also has an interest in requiring the licensee to actually use the marks in the whole Territory (as I believe this contract does, although the point was not taken below). The reason for that is, again, that there would otherwise be a risk of invalidity since trade marks law in general (and in the UK and EU in particular) usually contains a "use it or lose it" requirement. In that sense the terms of any trade mark licence can appear one-sided but that is simply a reflection of the subject matter. It is not something supporting an inference either way about termination provisions.

47. Having mentioned some aspects of the context, it is convenient to address the remainder of this topic now too although the judgment dealt with it as the fifth point. Although Dame Zaha owned the Company at the time, it was common ground that she intended Mr Schumacher and others to have equity. In other words the Company would become independent (this is the gist of the first Respondent's Notice point). The idea that an independent professional practice such as a group of architects might sometime in the future wish to change their name is hardly far-fetched and, contrary to the view expressed at [45], in my judgment this factor militates against a perpetual licence. In the end trade mark licences are simply one kind of commercial relationship. There can be no presumptions either way, if anything (see *Martin-Baker*) one might expect commercial parties not to lock each other into a relationship in perpetuity.
48. Turning to the words of clause 12.1, to recap it provides:
- “This agreement shall commence on the Effective Date and shall continue indefinitely, unless terminated earlier in accordance with this clause 12”
49. The first and obvious point is that the word used is “indefinitely” and not “perpetually”. I do not say that the former could never be understood to mean the latter, but it is not a promising start. The word “continue” is consistent with either meaning and so is neutral (despite the Foundation's submission to the contrary).
50. This first part of clause 12.1 is clearly the place in the document to find out what the parties intended about the duration of the contract, there is no other. On the face of it the duration is indefinite. In other words it does not purport to lock the parties together forever. The arrangement can be brought to an end and, following the reasoning from the earlier cases, one would infer the parties intended by using this language that it could be terminated by either party on reasonable notice. This would be a simple way to approach this part of the clause, along the same lines as the previous cases. It may cogently be said that an agreement which provides one party with a right of termination is for that reason alone for an indefinite period. But this cannot assist the Foundation's case. In clause 12.1 the word indefinitely is used to describe the position in the absence of the termination rights conferred on the Foundation, as is clear from its structure and the word “unless”.
51. It is worth highlighting that what amounts to reasonable notice depends on the circumstances when that notice is given (this was mentioned by McNair J in *Martin-Baker* at p581 but see also Sachs LJ in *Decro-Wall International SA v Practitioners in Marketing Ltd* [1971] 1 WLR 361 at 376-377). So for example in the present case, in the early days after the contract had commenced and before Dame Zaha had died, what would amount to reasonable notice might have been a very considerable period of time. The fact the parties are agreed that the one year's notice given by the Company in 2024 was a reasonable period in the current circumstances does not matter and is not something we need to consider. The point is that one does not need to test the Company's construction of the contract as if one year's notice just after it was signed in 2014 would have been reasonable. This is why the fact the agreement was intended to provide an income for Dame Zaha during her lifetime does not assist the Foundation (this was the other part of the first Respondent's Notice ground).

52. Testing the alternative construction of the word “indefinitely” as “perpetual”, this would mean that the contract was literally intended to go on for ever unless terminated by Dame Zaha or her successor in title. While no doubt it was envisaged to be a long term relationship, from either party’s point of view that would not make business sense. Clause 3.4 and clause 5.1 effectively require the Company to promote the use of the trade marks. Many things might happen or emerge over the decades or centuries following the date of the agreement which might be so detrimental to the brand as to make it seriously disadvantageous to the Company to be obliged to continue to promote the marks, for example if an iconic Zaha Hadid building was beset with structural problems. Further, architectural styles change with changes in technology and taste. Can it sensibly be said that the parties intended the Company to be bound to associate itself with and to promote Dame Zaha’s architectural identity in 100 years time?
53. The next issue is the relationship between the two parts of clause 12.1, the first part up to the word “indefinitely” and the second part from “unless”. The Foundation’s construction, accepted by the judge, proceeds on the basis that the presence of the express powers of termination in clause 12.2 and 12.3 operate to undermine the interpretation of “indefinitely” as meaning what it says and to support reading 12.1 as referring to a perpetual duration. However in my judgment that only works if a power to terminate on reasonable notice would be inconsistent with clauses 12.2 and 12.3, but it is not. For one thing the power could be exercised by the licensee, for whom neither 12.2 nor 12.3 makes provision. Moreover the fact the licensor might also have the power to terminate on reasonable notice in addition to clauses 12.2 and 12.3 is not inconsistent with either of them. Clause 12.3 is essentially a power to terminate with immediate effect in cases of default by the licensee. There is nothing inconsistent about that. Clause 12.2 allows for termination without cause and specifies a three month notice period. That would no doubt allow the licensor to give less notice than might be reasonable in some cases, but in other circumstances reasonable notice might be a very much shorter period than three months.
54. The Foundation relied on a maxim that where a contract expressly mentions some things, it is often to be inferred that other things of the same general category which are not expressly mentioned were deliberately omitted (see e.g. Lewison on the Interpretation of Contracts 8th Ed at 7.53-7.58). Applied in this case the maxim is simply another way of saying that the iterative testing exercise in the previous paragraph needs to be considered. It is a factor to consider but does not determine the outcome.
55. A point below was about whether the word “earlier” assisted the Company’s case because if “indefinitely” really meant “perpetual” in clause 12.1 then that created a metaphysical debate that the clause was now contemplating the oddity of something earlier than forever. In my judgment the word “earlier” does not assist either party, it is not a pointer in favour of either construction.
56. Standing back, as a matter of the construction of the parties’ intentions revealed by the words used, and the circumstances, it makes much more sense to hold that the parties intended this contract to last for an indefinite period and not to be perpetual in nature from either side’s point of view. To fulfil that construction of their intention, a power to terminate at the behest of either party on reasonable notice should be inferred. The express terms of the contract are not inconsistent with such a power and the Company’s case is the right one.

57. The three points taken in the Respondent's Notice do not assist. The two parts of the first one have already been addressed above. The second ground, that it was understood that the Company would trade under the name "indefinitely" does not add to the analysis above. On the third ground the recent correspondence is a meagre basis from which to draw inferences about the commerciality or otherwise of the rival interpretations.
58. I have considered whether the conclusion I have reached is inconsistent with the Company's disavowal of a case based on implied terms. I do not believe it is. The case starts firmly from a foundation of construction and follows the two steps from *Winter Garden Theatre*. If that involves an implied term at the latter stage, it is within the Company's adjusted case as articulated, with our permission, on appeal.
59. I would therefore allow the appeal.

The second question – restraint of trade

60. Since I would allow the appeal, it is not necessary to address the restraint of trade issue and I propose to say only a few words about it to explain why I would prefer to leave consideration of those issues to a case in which it mattered.
61. In *Peninsula Securities Ltd v Dunnes Stores (Bangor) Ltd* [2020] UKSC 36, the Supreme Court departed from the majority in *Esso v Harpers Garage* [1968] AC 269, and decided that the test for whether the doctrine of restraint of trade is engaged, at least in that case, was the trading society test articulated by Lord Wilberforce alone. Although *Quantum Actuarial* makes clear that the trading society test cannot be universally applicable, what concerns me is that it might be said that trade mark licences could be an example of a class of agreement in which terms which might appear restrictive (such as restrictions on marketing and requirements to use the mark coupled or not with a best endeavours clause) are in fact accepted as part of the structure of a trading society. So far in this case the examination of the restraint of trade issues has not sought to engage with that kind of analysis and so, since it is not necessary to resolve these grounds of appeal, I propose to say no more about this aspect of the case.

Lord Justice Peter Jackson:

62. I agree.

Lord Justice Popplewell:

63. I also agree.