

# United States Court of Appeals For the First Circuit

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No. 21-1831

RODRIGO RIBADENEIRA; SUPERDEPORTE PLUS PERU S.A.C.,

Petitioners, Appellees,

v.

NEW BALANCE ATHLETICS, INC.,

Respondent, Appellant.

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Allison D. Burroughs, U.S. District Judge]

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Before

Kayatta, Lipez, and Howard,  
Circuit Judges.

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Kevin P. Martin, with whom Mark E. Tully, Kate E. MacLeman,  
Gerard J. Cedrone, and Goodwin Procter LLP were on brief, for  
appellant.

David M. Cooper, with whom David M. Orta, Julianne F. Jaquith,  
Gregg Badichek, and Quinn Emanuel Urquhart & Sullivan, LLP were on  
brief, for appellees.

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April 6, 2023

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**LIPEZ, Circuit Judge.** At the beginning of 2013, appellant New Balance Athletics, Inc. ("New Balance") entered into a contract (the "Distribution Agreement") with Peruvian Sporting Goods S.A.C. ("PSG") to distribute its products in Peru. This Distribution Agreement contained an arbitration clause, which New Balance invoked in 2018 to initiate arbitration proceedings against PSG. Also joined as respondents in this arbitration were appellees Rodrigo Ribadeneira, the controlling owner of PSG, and Superdeporte Plus Peru S.A.C. ("Superdeporte"), another business entity owned by Ribadeneira in Peru. The arbitrator issued two awards, which imposed liability on PSG and Superdeporte for breach of the Distribution Agreement, and on PSG, Superdeporte, and Ribadeneira for tortious interference. The arbitrator also rejected three counterclaims brought against New Balance.

Ribadeneira and Superdeporte subsequently filed a motion in the district court to vacate the arbitration awards. The awards had to be vacated, they contended, because they were nonsignatories of the Distribution Agreement, and hence not subject to its arbitration clause.<sup>1</sup> Agreeing that the arbitrator had improperly exercised jurisdiction over Ribadeneira and Superdeporte, the

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<sup>1</sup> PSG did not join Ribadeneira and Superdeporte in filing the motion to vacate, and indeed, appellees expressly recognize that PSG was bound, as a signatory to the Distribution Agreement, to abide by that agreement's arbitration clause. Consequently, PSG is not a party to this appeal.

district court vacated the awards. Because we conclude that theories of assumption and equitable estoppel apply here to support arbitral jurisdiction over appellees, we reverse the judgment of the district court.

## I.

The resolution of this appeal turns in part on the parties' actions before and during the arbitration proceedings. Hence, we recount the tangled history of the parties' business relationship, the litigation in Peru arising out of the breakdown of that relationship, and the arbitration proceedings that resulted in the contested awards.<sup>2</sup>

### **A. The Original Distribution Agreement and Negotiations over a New Agreement**

On January 1, 2013, New Balance and PSG entered into the Distribution Agreement, pursuant to which PSG would serve as the exclusive wholesale distributor of New Balance products in Peru in exchange for paying distribution fees to New Balance. At the time, Ribadeneira was PSG's majority shareholder but was not himself a party to the agreement. The agreement was set to expire after an initial term of three years but would automatically renew for an

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<sup>2</sup> As an aid to understanding the procedural history of the Peruvian litigation, the arbitration proceedings, and the challenge to the arbitration awards in the district court, we include an Appendix to this opinion in the form of a chart that summarizes the claims and counterclaims brought by the various parties in the various forums, as well as the key rulings of the arbitrator and the district court.

additional year absent timely notice by either party objecting to renewal.

Section 21 of the Distribution Agreement contained an arbitration clause, providing that:

The parties agree that any and all disputes (whether in contract or any other theories of recovery) related to or arising out of this Agreement or the relationship, its application and/or termination (including post-termination obligations) shall be settled by final and binding arbitration in accordance with the UNCITRAL Arbitration Rules.

The Distribution Agreement also included two choice-of-law provisions. First, there is a provision in Section 20 setting out the law governing the agreement:

This Agreement . . . shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, U.S.A. without giving effect to principles of conflicts of laws . . . .

Second, there is a provision in Section 21, which dealt with arbitration, requiring that:

The arbitrator shall determine the matters in dispute in accordance with the laws of the Commonwealth of Massachusetts, USA.

While the Distribution Agreement was still in effect, New Balance and PSG began negotiating a new distribution agreement. By that time, PSG was in arrears with respect to distribution fees it owed New Balance.<sup>3</sup> In September 2015, the parties exchanged a

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<sup>3</sup> Although the parties disagreed below about the extent of

draft of an "Amended and Restated Distribution Agreement" (the "New Agreement"). While some of the terms in the putative New Agreement differed from those in the original Distribution Agreement, its arbitration clause remained identical. In their negotiations, both parties understood that while the New Agreement initially would be executed between New Balance and PSG, a new entity -- Superdeporte -- would be incorporated and would, once operational, replace PSG as the distributor of New Balance products in Peru.

Meanwhile, as neither PSG nor New Balance gave notice of an intention to let the original Distribution Agreement expire on December 31, 2015, the agreement renewed by its terms until December 31, 2016.

In May 2016, Superdeporte was ready to begin operations. Believing that it had reached agreement with New Balance on the New Agreement -- and that, accordingly, the New Agreement was binding on both parties -- PSG informed New Balance that Superdeporte was ready to distribute New Balance products in Peru and sought New Balance's agreement to modify the New Agreement to substitute Superdeporte for PSG as its Peruvian distributor.

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this arrearage, that dispute is not material to this appeal, which does not turn on the merits of the underlying claims and counterclaims in the arbitration.

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