



Neutral Citation Number: [2021] EWHC 3037 (QB)

Case No: QA 2021 000025

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 November 2021

Before :

MR JUSTICE RITCHIE

Between :

NAFIS CHOWDHURY

Claimant/Respondent

- and -

PZU SA

Defendant/Appellant

(Sarah Prager instructed by Hugh James, Cardiff) for the Claimant
(Lucy Wyles instructed by Weightmans) for the Defendant

Hearing dates: 9 November 2021

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Mr Justice Ritchie:

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- [1] The Claimant is a British citizen who suffered a road traffic accident in Poland on the 27th of August 2017.
- [2] The Defendant is an insurance company based in Poland which insured the other car involved in the said road traffic accident.

The issue

- [3] The issue in this appeal relates to whether the courts of England and Wales have jurisdiction to try a personal injury case brought by the Claimant against the Defendant arising from the aforesaid road traffic accident.
- [4] The Claimant asserts that he was domiciled in England at the relevant time and so the English courts have jurisdiction. The Defendant asserts that he was not so domiciled.

The appeal

- [5] By a notice of application dated the 23rd of October 2020 the Defendant applied for a declaration that the English courts do not have jurisdiction.
- [6] On the 5th of January 2021 master Brown heard the Defendant's application and dismissed it, ruling that the Claimant was domiciled in England and hence entitled to bring proceedings in England.
- [7] The Defendant appealed the master's ruling by a notice of appeal sealed on the 26th of January 2021 and served with grounds of appeal attached.
- [8] This appeal is heard under CPR rule 52. By rule 52.21 the appeal is limited to a review of the decision of the lower court unless this court considers that, in the interests of justice, a re-hearing should occur. By rule 52.21 (3) this court will allow the appeal where the decision of the lower court was either wrong or unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

Bundles and evidence

- [9] I had before me the notice of appeal, the grounds of appeal, skeleton arguments from both parties, the particulars of claim and schedule of loss, the Defendant's application notice, the order and judgment of master Brown, a medical report from doctor Price, a witness statement from John Richards dated 21st October 2020 and a witness statement from Nafis Chowdhury, the Claimant, dated 16th December 2020.

The chronology

- [10] The Claimant was born in Dakar on the 21st of April 1987 and is now aged 34. He moved to the United Kingdom at age 1. His parents lived in Worthing and he was brought up there. He went to school locally and was then educated at Cambridge University and graduated in 2008 with a 2:1 in economics. He started working for Goldman Sachs in 2008 in investment banking. He moved to J. P. Morgan Fund Management and worked there between 2008 and 2011. He then moved to Threadneedle Fund Management and worked there between 2011 and 2014 and finally in May 2014 moved to Artemis Fund Management. He worked there full time until June 2015 when he stopped work because he was ill.

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- [11] When he was well he would go to the gym three or four times a week, play squash and tennis and enjoyed mountain biking. However, in mid 2014 he moved into a flat in Earls Court, it was rented and it was mouldy. On his case, two weeks later he began to be unwell and developed rashes and other symptoms. A mould expert reported in December 2015 that there was a high level of injurious spores in his flat so he moved out in January 2015. However, on his case, he suffered mould toxicosis and he left work in June 2015 to gain treatment for that condition. On his case he aimed to return to work by the final quarter of 2017. He was in a high paid job earning he says more than £200,000 pa.
- [12] After going off on long term sick leave, between June and September 2015 the Claimant moved to the United States of America to gain access to specialist mould toxicosis treatment. There he was given the diagnosis of myalgia. During this time he was being paid 75% of his salary through PHI insurance. He returned to the UK and then went back out again to the United States in October 2015, staying for six months until April 2016, where he received a different type of treatment from a different medical specialist.
- [13] Returning to England in April 2016, he had treatment from English doctors throughout that year and running through 2017 up until the August. He improved. During this time he had a Polish girlfriend and in July 2017 he went with her on a tour round Europe through Brussels and Germany ending up in Poland. Also that month he went on a trip to France. Also that month he moved into a flat in Putney. In August of 2017 he flew to Poland for a wedding with his girlfriend and it was on the 27th of August 2017, when he was a rear seat passenger in a Mercedes, that a forceful road traffic accident occurred with a Volkswagen Lupo driven by a person insured by the Defendant.
- [14] Liability for the accident was admitted two years later: on the 13th of August 2019.
- [15] On the Claimant's case he suffered soft tissue injuries, was knocked out and suffered lung contusions but no bony injuries. He was in hospital in Poland for five days and was unfit to fly for approximately a month. He returned to England then and he sets out his various complaints of symptoms in his witness statement. He suffered electrical shocks in his arms and legs, pain, reduced cognition and memory, irritability, reduced balance, depression, anxiety and nightmares, limb collapse, ankle swelling and migraines.
- [16] The Claimant relied before the master on a medical report from a neuro psychiatrist called doctor Price, dated February 2020. In that report he diagnosed post traumatic stress disorder, anxiety disorder and somatic symptom disorder together with mild traumatic brain injury. He also noted that the Claimant had healthcare seeking behaviour before the road traffic accident and was a vulnerable person. He suggested cognitive behavioural therapy and antidepressant treatment.
- [17] Picking up the story after the road traffic accident, by September 2017 the Claimant was living in his rented flat in Putney and through the rest of 2017 into April 2018 he continued to live there. In the March of 2018 he took a trip to Belgium for treatment for chronic fatigue syndrome. Then, in the April of 2018, he moved to Germany to get what he considered would be better treatment from a hospital in Heidleberg. He spent

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three days in that hospital in May of 2018 with suspected infective carditis and thereafter, having rented accommodation, he stayed near that hospital with his carer, for his continuing treatment.

- [18] The potential personal injury claim resulting from mould in the Earls Court flat was issued and then withdrawn.
- [19] Covid emerged in March of 2020 in England which, on the Claimant's case, restricted the number and duration of trips that he could take back to the United Kingdom. He also asserted that he had a fear of flying attributable to his injuries and covid. In any event the Claimant did return to England for four weeks. During that time he stayed with his parents and with his friends.

The summary of the claim and defence

- [20] The Claimant's personal injury claim was issued by his solicitors, Hugh James, based in Cardiff, on the 25th of August 2020.
- [21] The Defendant admits liability but denies jurisdiction.

The facts

- [22] The master's findings of fact are set out in the transcript of the extempore judgment at paragraphs 2 to 6; 19 to 28 and 33-41.
- [23] None of the master's findings of facts were challenged on appeal except for residence.

The Law – “domicile” and “resident in the UK” or “part” of the UK or a “place” in the UK

- [24] The road traffic accident occurred when England and Wales were in the European Union. The standard rule was that an EU national who was a Defendant to a claim was to be sued in the State of his or her own domicile: see *EU Regulation 2015/2012 Art 4*.
- [25] The standard rule was subject to a qualification which entitled all persons domiciled in the EU to sue insurance companies in tort actions in their own State of domicile wherever the cause of action may have arisen in the EU.
- [26] So by *EU Regulation 2015/2012*, on jurisdiction (recast):

“Art 11. An insurer domiciled in a Member State may be sued:
 (a) in the courts of the Member State in which he is domiciled;
 (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled; or ...”

“Art 13.

1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.
2. Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.

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3. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.”

[27] Pursuant to a ruling in *FBTO Schadeverzekeringen NV v Jack Odenbreit* (Case C-463-06) the European Court of Justice interpreted the provisions which are set out above as entitling an injured party, who could bring an action directly against the insurer, to do so before the courts in the Member State where that injured party was domiciled (paras 26 - 31).

[28] By para. 9 of the *Civil Jurisdiction and judgments Order 2001/3929* (which is very similar in the relevant wording to S.41 of the *Civil Jurisdiction and Judgment Act 1982*):

9.— Domicile of individuals (section 41)

(1) Subject to [Article 62]¹ (which contains provisions for determining whether a party is domiciled in a Regulation State), the following provisions of this paragraph determine, for the purposes of the Regulation, whether an individual is domiciled in the United Kingdom or in a particular part of, or place in, the United Kingdom or in a state other than a Regulation State.

(2) An individual is domiciled in the United Kingdom if and only if—

- (a) he is resident in the United Kingdom; and
- (b) the nature and circumstances of his residence indicate that he has a substantial connection with the United Kingdom.

(3) Subject to sub-paragraph (5), an individual is domiciled in a particular part of the United Kingdom if and only if—

- (a) he is resident in that part; and
- (b) the nature and circumstances of his residence indicate that he has a substantial connection with that part.

(4) An individual is domiciled in a particular place in the United Kingdom if and only if he—

- (a) is domiciled in the part of the United Kingdom in which that place is situated; and
- (b) is resident in that place.

(5) An individual who is domiciled in the United Kingdom but in whose case the requirements of sub-paragraph (3)(b) are not satisfied in relation to any particular part of the United Kingdom shall be treated as domiciled in the part of the United Kingdom in which he is resident.

(6) In the case of an individual who—

- (a) is resident in the United Kingdom, or in a particular part of the United Kingdom; and
- (b) has been so resident for the last three months or more, the requirements of sub-paragraph (2)(b) or, as the case may be, sub-paragraph (3)(b) shall be presumed to be fulfilled unless the contrary is proved.”

It is noteworthy that subclause 3 refers to “a particular part” of the UK and subclause 4 to “a particular place” in the UK.

The two criteria – residence and substantial connection

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- [29] So for the Claimant to succeed in establishing jurisdiction for commencing proceedings in England he had to satisfy two criteria:
 “(a) he is resident in” England, which is a part of the UK, or a part of or place in England; and
 “(b) the nature and circumstances of his residence indicate that he has a substantial connection with” England or a part thereof or a place therein.

Substantial connection

- [30] Both before the master and on appeal the Defendant admitted and agreed that if the court found “residence”, the Claimant satisfied the second criteria with the evidence he had provided to the master.
- [31] What did that admission mean? To determine that I must look at the words of the criterion which was admitted. I remind myself that paras 9 (2) (3) and (4) state: “(b) *the nature and circumstances of his residence indicate that he has a substantial connection with*” the UK or a particular part of the UK or a particular place therein. It is obvious in my judgment that a person cannot establish a “substantial connection” with nowhere. A person can of course have no substantial connection with anywhere.
- [32] So it was not just the nature and circumstances of the Claimant’s life which were admitted as showing a substantial connection with England or a part thereof or a place therein. There were two parts to the admission: (1) it was the “nature ... of his residence” and (2) the “circumstances of his residence” which created the substantial connection with England or a part thereof or a place therein.
- [33] When considering the substantial connection criterion admission it seems to me that the timescale looked at must be longer than just the single day of the issue of the claim form. An objective and natural interpretation of the words in the Order would require the courts to look at the past history of the Claimant’s residence and the nature and circumstances of his residence.
- [34] No particulars of the factual matrix for the admission and agreement were presented to the master, but the evidence was covered by the master in the evidence paragraphs and his findings of fact paragraphs in the judgment (listed at [23] above) and summarised in part below.
- [35] The master found that: the Claimant had lived in England all of his life save for his holidays and foreign medical treatment trips; he was “habitually resident in the UK” (para 19); he was a registered voter in England; he held a UK passport; he was educated in England; he spoke English; his parents and brothers lived in England and his qualifications were English; he worked in English offices in London for worldwide companies and he was registered with an English GP; his flat rentals, whilst working and whilst off work, were in London. The Claimant was paid in pounds sterling and he himself paid English tax and NI. His friends were in England and his business contacts as well. The Claimant received English Government benefits and NHS treatment for his ill health.

“Resident in” England or a particular part thereof or a particular place therein.
Time of determination

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[36] Both parties submitted that the residence criterion is to be determined at the time of issue of the proceedings, relying on *Canada Trust Company v Stolzenberg No 2 [2002] 1 AC 1*. Master Brown accepted this (para 8). In *Canada Trust*, the House of Lords were considering, inter alia, the Defendant's domicile for the purposes of service outside the jurisdiction and whether it was to be determined at the time of issuing or at another time. Lord Steyn giving the lead judgment ruled that:

“Looking at the matter in the round I am satisfied that "sued" in articles 2 and 6 should be interpreted as referring to the initiation of the proceedings.” (p12E)

[37] So domicile is to be determined as at the date when the action of the Claimant in this case was issued (August 2020), but what is the scope of the evidential timescale which should be considered? All of the cases set out below on domicile and residence contain a careful analysis of the factual matrix going backwards in time as far as they need to, on the evidence presented. None of them only consider evidence on the actual day of issue. Nor would it have made sense for them to have done so. For a litigant who is domiciled in England might have been in Bulgaria for a few weeks, on holiday or on business or for other reasons, on the day of issue by his solicitors. So the mere physical presence and actions of a claimant on that day are not the determinant of domicile.

Burden and standard of proof

[38] The burden of proof is on the Claimant.

[39] The standard of proof is not the balance of probabilities. What is required is a good arguable case, something more than the normal standard which would apply in an application for interim relief. This means that the Claimant must have much the better of the argument on the evidence as it stands before the court at this stage: see *Canada Trust Company v Stolzenberg No 2 [2002] 1 AC 1*.

Case law on “he is resident in” England or a particular part thereof or a place therein

[40] I draw from the cases below the following principles and factors.

[41] In determining whether “he”, being the Claimant in this case, “is resident in” England or a part thereof or a place therein, the following 4 principles apply:

1. The words “resident in” are given a plain and normal meaning.
2. All of the relevant factual matrix is taken into account.
3. No one factor trumps all others.
4. A person can reside in two or more places at any one time, so residence is not exclusive.

And the following 6 factors are considered by courts as part (but not all) of the factual matrix:

1. The Claimant's physical presence is relevant.
2. The Claimant's pattern of life (settled or otherwise) and the Claimant's activities are relevant.
3. The Claimant's intention in relation to where he is living and where he wishes to live in future are relevant, but are judged not only subjectively, on what the

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Claimant says, but also objectively by reference whether his actions evidence what he says.

4. Ownership or rental of property is relevant.
5. Continuity, permanence or longevity is relevant.

[42] I take into account, from the cases set out below, that there are many forms of “residence”, these are described variously (this is not the whole list) as follows:

Permanent residence;
 Habitual residence
 Ordinary residence;
 Temporary residence;
 Business residence;
 Visiting for sport residence;
 Holiday residence;
 Studying residence;
 Emergency or ill health residence;
 No fixed residence.

[43] Residence: In *Levene v Inland Revenue* [1928] A.C. 217 Viscount Cave considered residence for tax purposes (p222-223) thus:

“My Lords, the word "reside" is a familiar English word and is defined in the Oxford English Dictionary as meaning "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place." No doubt this definition must for present purposes be taken subject to any modification which may result from the terms of the Income Tax Act and Schedules; but, subject to that observation, it may be accepted as an accurate indication of the meaning of the word "reside." In most cases there is no difficulty in determining where a man has his settled or usual abode, and if that is ascertained he is not the less resident there because from time to time he leaves it for the purpose of business or pleasure. Thus, a master mariner who had his home at Glasgow where his wife and family lived, and to which he returned during the intervals between his sea voyages, was held to reside there, although he actually spent the greater part of the year at sea: *In re Young* 17; *Rogers v. Inland Revenue*. 18 Similarly a person who has his home abroad and visits the United Kingdom from time to time for temporary purposes without setting up an establishment in this country is not considered to be resident here - although if he is the owner of foreign possessions or securities falling within Case IV. or V. of Sch. D, then if he has actually been in the United Kingdom for a period equal in the whole to six months in any year of assessment he may be charged with tax under r. 2 of the Miscellaneous Rules applicable to Sch. D. But a man may reside in more than one place. Just as a man may have two homes - one in London and the other in the country - so he may have a home abroad and a home in the United Kingdom, and in that case he is held to reside in both places and to be chargeable with tax in this country.”

[44] Absence for work: I find that the example given of the master mariner is instructive. Residence in England is not lost merely by reason of travel, even long duration travel, due to work. In addition the ruling in *Levene* was that a man may have two residences and “reside” in both, so residence is not an exclusive concept in itself. The

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exclusivity which domicile requires is introduced perhaps more by criterion (b) of the Order : the substantial connection.

- [45] Visiting for work: Visiting for work did lead the defendant in *IRC v Lysaght [1928] AC 234* to be found resident in the UK for tax purposes. Mr. Lysaght lived in Ireland but would come regularly to England for a total of less than three months a year and would spend a week or so in a hotel for the purpose of board meetings, Lord Buckmaster noted at pp. 247–8:

“Though a man may make his home elsewhere and stay in this country only because business compels him, yet none the less, if the periods for which and the conditions under which he stays are such that they may be regarded as constituting residence, as in my opinion they were in this case, it is open to the commissioners to find that in fact he does so reside, and if residence be once established ordinarily resident means in my opinion no more than that the residence is not casual and uncertain but that the person held to reside does so in the ordinary course of his life”.

- [46] Temporary sports residence: In *Levene* Viscount Cave considered the decision on temporary sports residence in *Cooper*, Viscount Cave noted:

“ ... in *Cooper v. Cadwalader*, 5 Tax Cas. 101., an American resident in New York who had taken a house in Scotland which was at any time available for his occupation, was held to be resident there, although in fact he had only occupied the house for two months during the year; and to the same effect is the case of *Loewenstein v. de Salis*. 10 Tax Cas. 424.”

- [47] In *Lowenstein*, a Belgian subject with a residence in Belgium visited England each year, and stayed in a “hunting box” (a substantial estate) belonging to a company of which he was a director and held over 90% of the shares. He was never in England for over 6 months. In 1923-1924 he arrived in early November and stayed there for fox hunting until the 21 December, when he left the UK, before returning in January and leaving again in March. In 1924-1925 he arrived during the second week in November and left the UK in the second week of December, returning at the beginning of February and leaving during the second week of April. He was found to be resident in England for tax purposes. Rowlatt J held (at p 9):

“you look, at the substance of the matter and say: this is the house in which he could reside and did reside...he has got this house to come to when he likes; he does not own it; he has got no proprietary interest in it, but it is just as good as if he had for the purpose of having it for a residence, and there, it is. I am bound to say that I do not think there can be any question on the facts as clearly found in this case.”

- [48] Student residence: In *Fox v Stirk [1970] 2 QB 463 CA*, Lord Denning was determining the residence or otherwise of foreign students in England and ruled that (p475C):

“I prefer to go by the ordinary meaning of the word "resident." I

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follow Viscount Cave L.C. in *Levene v. Inland Revenue Commissioners* [1928] A.C. 217, 222, where he said:

" . . . the word 'reside' is a familiar English word and is defined in the Oxford English Dictionary as meaning 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place.' "

I would also take into account, as the statute says, the general principles formerly applied and have regard to the purpose and other circumstances of his presence at or absence from the address. Hence I derive three principles. The first principle is that a man can have two residences. He can have a flat in London and a house in the country. He is resident in both. The second principle is that temporary presence at an address does not make a man resident there. A guest who comes for the weekend is not resident. A short-stay visitor is not resident. The third principle is that temporary absence does not deprive a person of his residence. If he happens to be away for a holiday or away for the weekend or in hospital, he does not lose his residence on that account."

[49] Lord Widgery ruled as follows (p477D) :

"It is imperative to remember in this context that "residence" implies a degree of permanence. In the words of the Oxford English Dictionary, it is concerned with something which will go on for a considerable time. Consequently a person is not entitled to claim to be a resident at a given town merely because he pays a short, temporary visit. Some assumption of permanence, some degree of continuity, some expectation of continuity, is a vital factor which turns simple occupation into residence."

[50] So it is clear that dual residence is acceptable. Also that the longevity or permanence of the residence is relevant, longer being more persuasive than shorter. The factor relating to pattern of life was being developed in *Fox*, following *Levene*.

[51] Occasional visits. Saville LJ was required to consider service out, residence and domicile in *Bank of Dubai v Abbas* [1996] *I.L.Pr.* 308. He was interpreting the words in S.41 of the 1982 Act. On the facts of that case the claimant bank had misled the court over certain vital evidence in relation to residence and the Court of Appeal overturned the first instance ruling, that residence was established, as a result of the misleading evidence. Abbas lived in Pakistan and did business in Belgium. He sometimes stayed in a flat in London owned by a company with which he had a connection and was involved in the renovation of the flat.

[52] Having referred back to *Levene*, at p311 Saville LJ stated:

"On the basis of LEVENE it seems to me that a person is resident for the purposes of section 41(3) in a particular part of the United Kingdom if that part is for him a settled or usual place of abode.

[11] A settled or usual place of abode of course connotes some degree of permanence or continuity."

[53] At 312 Saville LJ ruled:

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“In other cases it may be necessary to look at how long the person concerned has been here and to balance that factor with his connections abroad.”

[54] Once again permanence or longevity was held to be a factor but the quality of the residence at the flat was the substance of the evidential investigation by the Court of Appeal in that case. So I consider that pattern of life is relevant.

[55] In *R v Barnet LBC ex parte Shah* [1983] 2 AC 309, the House of Lords considered “ordinary residence” in the context of the *Education Act 1962*. Lord Scarman ruled at p343G-H that:

"Unless, therefore, it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning, I unhesitatingly subscribe to the view that 'ordinarily resident' refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or of long duration."

At p344C-D he said:

"And there must be a degree of settled purpose. The purpose may be one; or there may be several. It may be specific or general. All that the law requires is that there is a settled purpose. This is not to say that the 'propositus' intends to stay where he is indefinitely; indeed his purpose, while settled, may be for a limited period. Education, business or profession, employment, health, family, or merely love of the place spring to mind as common reasons for a choice of regular abode. And there may well be many others. All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled."

[56] Lord Scarman advised Local Authorities to ask the question:

"...has the applicant shown that he has habitually and normally resided in the United Kingdom from choice and for a settled purpose throughout the prescribed period, apart from temporary or occasional absences?"

[57] I consider that “settled purpose” clearly involves looking at the person’s intention and pattern of life.

[58] I have to bear in mind that in this appeal I am considering “resident in” England or a particular part thereof or a place therein not “ordinarily resident” in England. The lack of the first word “ordinarily” in the legislation I am dealing with seems to me to allow for a less restricted interpretation of the second word.

[59] Medical residence: Singh J considered medically chosen residence and the issue of domicile in *Panagaki v Apostopoulos* [2015] EWHC 2700 (QB). The context was a road traffic accident in Greece suffered by a dual nationality Greek/British lady who was studying at Edinburgh University and only came to England to get medical

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treatment for her spinal injury ending up at Stoke Mandeville Hospital for many months. She issued in England.

[60] The ratio was at para 49 in which Singh J ruled that:

“I accept Miss Deal's submission that the claimant has not been staying in hospital as a substitute for her home as might be the case if, for example, a person is detained under the Mental Health Act 1983. In my view the fact that the transfer to hospital took place across national borders is in some ways liable to distract attention away from the natural way of looking at things. Take, for example, a person who lives in England, who is badly injured in an accident in England and has to spend a long time in hospital for treatment in England. The natural way of looking at their residence would be to say that it was still their home, not that the hospital had become their home. That is where he or she was living and that is where he or she would move back to as soon as the need for treatment in hospital has come to an end. In the present context too in my view the claimant was not resident at the hospitals concerned and therefore was not resident at the material date in England and Wales.”

[61] I consider this reasoning to be relevant to the appeal before me, as did the master. It evidences that the courts look at the quality of the residence and the reason for it, not just longevity or physical presence. The Greek claimant was in the English hospital solely for treatment. It was not her uninjured lifestyle choice, the need was thrust upon her by the injuries. So her residence in Greece (and/or Scotland (see para 42)) was unaffected by her long but temporary presence in Stoke Mandeville and she did not gain English residence.

[62] Multiple business residences: A wealthy defendant with multiple residences for business was considered by Eady J in *High Tech International v Oleg Vladimirovich Deripaska* [2006] EWHC 3276 (QB). Mr. Deripaska was a Russian citizen who lived in Russia. The claimant asserted he was domiciled in England because he owned and ran two valuable homes in England, one in Surrey and one in central London. He visited mainly for business purposes and called them “flying visits” and in total he was in England 2-3 months pa. Eady J distinguished *Cadwalder* and *Lysaght* and focussed on “*the quality and nature of the visits in question*” (para 24) ruling that:

“Although Mr Deripaska owns two very substantial properties in England, is responsible for the council tax and utility bills, and keeps them “ready for use” through staff employed for the purpose, it would not be right, in the case of a man so wealthy, to make the leap from property owning to “residence”. There is undoubtedly permanence and continuity in ownership and (indirect) occupation, but not necessarily when one comes to address “residence” or “abode”. There is certainly no regular pattern comparable to the situation in the earlier cases cited to me. Although Mr Hunter appeared to be suggesting that a presumption of residence arises from the mere fact of ownership, I find no authoritative support for this proposition. It seems to me that it must be a question of fact and degree in each case, according to the appropriate standard of proof. No doubt in many cases it would be relatively easy to draw an inference of residence from the possession of a substantial house in this jurisdiction. Here, however, the total picture permits no such inference. There are footholds in several jurisdictions which are there for

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convenience when it is necessary to hold business meetings. They may perhaps also have some incidental value as investments, but the uses to which they are put suggest to me that they are “stopovers” rather than homes in any conventional sense. Mr Deripaska's visits to England can generally be classified as merely ancillary to the conduct of his Russian businesses.”

- [63] A year later, in *Cherney v Deripaska* [2007] EWHC 965 (Comm), Langley J came to the same conclusion as Eady J ruling that [45]:

“It is not a numbers game, although the numbers hardly support Mr Cherney's case. The “quality” of the use of the house is, I think, equally important. In many ways its use by Mr Deripaska resembles that of a private hotel. It is infrequent, intermittent, and generally fleeting. The house has the character of continuity and permanence; its use does not. It cannot, I think, in any normal sense of those words, be described as a “settled or usual place of abode” of Mr Deripaska.”

- [64] Thus the pattern of life, and the type or quality of the residence (not in the property sense but in the lifestyle sense) in England, falls to be assessed by the court as a factor in the decision on residence. Mere ownership of property is not determinative. So the converse must be true, mere lack of ownership of property does not abolish residence in England.

- [65] Simon Bryan QC sitting as a deputy in *Bestolov v Arenkin* [2017] EWHC 1968, having reviewed many of the cases found that the defendant was resident both in England and Russia. He lived in Belgravia with his wife and children for parts of the year (60-75 days). The deputy set out 7 factors at paragraph 44:

- “(1) It is possible for a defendant to reside in more than one jurisdiction at the same time.
- (2) It is possible for England to be a jurisdiction in which a defendant resides even if it is not his *principal* place of residence (ie even if he spends most of the year in another jurisdiction).
- (3) A person will be resident in England if England is for him a *settled or usual place of abode*. A settled or usual place of abode connotes *some degree of permanence or continuity*.
- (4) Residence is not to be judged according to a “*numbers game*” and it is appropriate to address the *quality* and *nature* of a defendant’s visits to the jurisdiction.
- (5) Whether a defendant's use of a property characterises it as his or her “residence”, that is to say the defendant can fairly be described as residing there, is a *question of fact and degree*.
- (6) In deciding whether a defendant is resident here, regard should be had to any *settled pattern of the defendant’s life* in terms of his presence in England and the reasons for the same.
- (7) If a defendant visits a property in England on a regular basis for not inconsiderable periods of time, where his wife and children live, in order to see his wife and children (including where the centre of the defendant's relationship with his children is England), such property has the potential to be regarded as *the family home* or *his home when in England*, which itself is evidence which may go

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towards supporting the conclusion that England is for him a settled or usual place of abode, and that he is resident in England, albeit that ultimately it is a question of fact and degree whether he is resident here or not, having regard to all the facts of the case including any discernible *settled pattern of the defendant's life* or as it has also been put *according to the way in which a man's life is usually ordered.*" (The italics are in the original text).

- [66] In *Shulman v Kolomoisky* [2018] EWHC 160 (ch), Barling J considered the circumstances in which an established "residence" could stop. He listed the factors at [28] which included an alteration in the pattern of the person's life, loosening of social ties, moving away from England and all relevant factors. The motive for a defendant when fleeing the country was not of weight in the decision.
- [67] I gain assistance from the judgment of Julian Knowles J in *Kim v Lee* [2020] EWHC 2162, who ruled that residence is all about the facts (para 49).

Submissions

- [68] The Appellant's grounds of appeal were 5 in number. That the master was wrong to hold that the Claimant/Respondent was resident in England. In particular, because the master did not accept that the Respondent lived at his parents' address and no other address was contended for. Because of his nugatory physical presence in the jurisdiction after April 2018. He had lived in Germany for over 2 years, it was submitted that the master was wrong to take into account the Respondent's unrealised intentions for other visits frustrated by COVID and ill health. Additionally the master applied the wrong test for ceasing to reside in the UK. The master was wrong to hold that the predominant reason for moving to Germany was medical treatment.
- [69] In verbal submissions the Appellant suggested that to have residency in England the Claimant needed an address or a place. It was not possible just to have residency in England in general. The Appellant's submission was that non specific residency was not within the wording of the Order.
- [70] The Respondent submitted that the master's extempore judgment was correct in fact and law. He had considered the relevant law, applied it properly, made relevant findings of facts and the judgment should not be overturned. In addition, because the ruling arose from findings of fact, it should not readily be overturned on appeal.

Rulings

- [71] I consider that on each of the findings of fact made by the master there was a proper foundation in evidence. I consider that the findings of fact made by the master were relevant matters which should have and did inform his decision on residence in England.
- [72] I consider that the master was entitled to find that the Claimant was a British citizen, with a British passport, who grew up in Worthing and was educated in England, worked in England, had his parents and family in England, had his friends in England, had rented flats in London, in Earls Court and in Putney, had his benefits paid in England, had his property by way of clothes and personal items in England and kept some of those at his parents' house in Worthing, in his own room there.

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- [73] I consider that the master was entitled to find that the Claimant was assisting his parents by paying for all or part of the insurance at his parents' home. The master was entitled to find that the Claimant visited England in 2020 and would have visited more often but for COVID and his ill health, and the master was entitled to find that the Claimant was only in Germany because the tortfeasor had injured him and he was seeking treatment for his medical conditions arising from the tort.
- [74] Taking into account the factors that I have identified above, distilled from the case law, I consider that the master properly considered the relevant facts, which then fed his decision on those factors.
- [75] So in relation to physical presence, I consider that the master was right to take into account that the Claimant was physically present in England for all of his life, save for some medical trips to the United States of America for treatment for his mould infections. Also that, but for the road traffic accident, the Claimant would have continued to be physically present in England. The cause of the Claimant's physical presence in Germany was the tort, not the Claimant's unfettered choice. So whilst the Claimant's stay in Germany was a voluntary act it wasn't wholly voluntary in the sense that it was made freely without influence from the tortfeasor. It was made as a result of or driven by the tort, liability for which is admitted. In any event, month counting (albeit 27 months, being April 2018 to August 2020 in Germany, less 1 month in England) is not the answer to the question: "was the Claimant resident in England?"
- [76] Looking at the Claimant's pattern of life and activities, it is clear to me that his life and activities were based on residence in England, in London, until he gave up his flat to move to Germany, for the sole purpose of medical treatment. His residence in Germany was based on his ill health caused by the tortfeasor. I consider that the master was right to draw a parallel with the *Panagaki* case.
- [77] As to the Claimant's intention. I see no errors in the master's finding that the Claimant lived in England before the road traffic accident, lived in England after the road traffic accident and only went to Germany for medical treatment, fully intending to return when that treatment had run its course.
- [78] Turning to the ownership of property or the rental thereof. The master took into account that the Claimant did not rent or own any property in England at the time of issuing the action. But that is not determinative in law and I so rule. Putting it the other way round, if the Claimant had owned a mansion in Surrey and a house in Belgravia, that would not have been determinative either. It is just a relevant factor. The explanation for the lack of a property held under a lease, for a young man of the Claimant's age, whose contemporaries are a generation who rent more often than they own, due to high property prices, is that he gave up the rental of his property in Putney to go to Germany for medical treatment. I do not understand the evidence to be that he gave up his rental in Putney because he wished to move his life to Germany. In addition, ownership of property is not the determinant of residence and I so rule. Travellers (the Travelling Community) do not own real property (bricks and mortar). Nor do the homeless. Both are equal under the law with all others in relation to domicile.

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- [79] As to continuity, permanence and longevity, looking back over the course of the Claimant's 34 years, the vast majority was spent in England, subject to holidays and medical treatment, and the pattern of his life was established, settled and bedded down in England.
- [80] Therefore, overall, I consider that there is no valid ground for overturning the master's decision. Taking the grounds one by one:
- (1) I rule that the words of the Order, read singly and in conjunction with the other subsections, do not require the Claimant to prove a "post code", an address or anything else specific, as is suggested by the Appellant. The words are "place in" or "part of" the UK.
 - (2) Ground (2) is not made out. The Claimant's mere presence in Germany did not cease his long term residence in England for the purposes of the Order. He may have been temporarily resident in Germany but that did not abolish his residence in England.
 - (3) Ground (3): the master did not apply the wrong test for whether the Claimant ceased to reside in England.
 - (4) Ground (4): the master was not wrong in his finding that the Claimant's move to Germany had been to seek medical treatment. That finding was fully justified on the evidence and that behaviour matched the pattern of his behaviour before the road traffic accident, when he went to the United States for treatment for his mould infection.
 - (5) Ground (5): the master placed appropriate weight on the Claimant's intention to return to live in the United Kingdom, specifically in England, once his treatment had run its course.

The Conclusions

[81] **Judgment** Appeal dismissed.

[82] **Costs** I shall consider costs arguments in due course but the likely order is that the Appellant will pay the Respondent's costs of the appeal to be assessed if not agreed.

Ritchie J

End