



Neutral Citation Number: [2022] EWCA Civ 1429

Case No: CA-2022-000146

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM DISTRICT JUDGE GRIFFITH
HIGH COURT OF JUSTICE
KING'S BENCH DIVISION,
BIRMINGHAM DISTRICT REGISTRY
CASE NO: G90BM160

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 November 2022

Before :

LORD JUSTICE UNDERHILL
(Vice-President of the Court of Appeal (Civil Division))
LORD JUSTICE POPPLEWELL
and
LADY JUSTICE WHIPPLE

Between :

Robin Stait **Appellant**
- and -
Cosmos Insurance Limited Cyprus **Respondent**

Sarah Prager and Henk Soede (instructed by **Irwin Mitchell LLP**) for the **Appellant**
Alistair Mackenzie (instructed by **Weightmans LLP**) for the **Respondent**

Hearing dates : 6 October 2022

Approved Judgment

This judgment was handed down remotely at 10am on 1 November 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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Lady Justice Whipple:

INTRODUCTION

1. This is an appeal by Robin Stait, a 39 year old man who suffered serious injuries in a cycling accident in Cyprus on 24 October 2017. He is an RAF officer who was at the time stationed at the Sovereign Base Area at Akrotiri (“the SBA”). The accident occurred on a road outside the SBA, in the Republic of Cyprus. By proceedings issued on 29 October 2020 in the Birmingham District Registry of the King’s Bench Division of the High Court, he sued the insurer of the driver of the car which had emerged from a side road and had, he alleged, caused the accident to occur. That driver was insured by Cosmos Insurance Limited of Cyprus, an insurance company domiciled in Cyprus and the respondent to this appeal (“Cosmos”).
2. By an application dated 9 December 2020, and in answer to the proceedings issued by Mr Stait, Cosmos sought a declaration under CPR Part 11 that the courts of England and Wales had no jurisdiction to try this claim.
3. By a judgment handed down on 24 June 2021, DJ Griffith granted Cosmos’ application. He held that Mr Stait was not domiciled in England and Wales at the time proceedings were issued and that in consequence the courts of England and Wales lacked jurisdiction. He set aside service of the claim form.
4. Mr Stait appealed that judgment. On 11 November 2021, Andrew Baker J granted permission to appeal and “leapfrogged” the appeal direct to the Court of Appeal pursuant to CPR 52.23(1).
5. The issue before this Court is therefore one of domicile: was DJ Griffith wrong to decide that Mr Stait was not domiciled in England and Wales at the material time?

FACTS

6. I take the following explanation of the accident from the Particulars of Claim and accompanying medical report. I do not understand there to be any dispute about these matters, but what follows is of course without prejudice to future arguments about the circumstances of the accident or the injuries sustained.
7. On 24 October 2017, Mr Stait was riding his bicycle along the main public highway from Limassol to Paphos in the Republic of Cyprus, when a vehicle driven by Mr David Twist emerged from a side road directly into the path of Mr Stait, who forcefully braked to avoid collision with Mr Twist’s vehicle and was thrown from his bicycle to the ground.
8. Mr Stait was born on 27 July 1983 and was 34 at the time of the accident. He suffered a left hip dislocation complicated by fractures of both the acetabulum (hip socket) and femoral head (ball). He has irreversible post-traumatic osteoarthritis of the hip joint. He underwent surgery and extensive post-operative physiotherapy. He may still be at risk of avascular necrosis in the hip joint.

9. The Claim Form puts the value of the damages claimed for these injuries at more than £10,000 but less than £200,000. In other papers before the Court, the value is estimated at around £100,000.
10. Mr Stait's personal circumstances are set out in a witness statement dated 1 April 2021, which was before the judge, and was not contested at the hearing below. He is an RAF Information Communications Technician (Electronics). He joined the military in 2002 when he was 18 years old. He undertook basic training at RAF Halton and has been in the RAF ever since. He worked initially at RAF Cosford for 18 months undertaking electronics training. He then obtained a post in communications equipment repair at RAF Brize Norton from 2003 to 2007. He worked at RAF Spadeadam in Cumbria from 2007 to 2013, during which time he met his wife, married, and they had their first child. In 2013 he moved to RAF Scampton in Lincolnshire with his family, where he stayed until 2016.
11. In 2016, he started work on a 5 year contract as an electronic equipment technician for the RAF in the SBA. This was a posting for which he voluntarily applied, not one which he was required to take. He intended to return to the UK when that contract expired, to continue working for the RAF. (I interpose to say that we were told that he did return to the UK in 2021, and now lives here.)
12. He was born in Gloucester, where his family remains. He and his wife own a two bedroom house in Cumbria, which they rented out while they were stationed in the SBA. Mr Stait's evidence does not reveal whether they lived in it at any time or, if so, for how long. They both retained UK bank accounts while they were away, and both held investments in the UK. Mr Stait has a UK driver's licence and a UK pay-as-you-go mobile phone. He remained on the UK electoral register throughout his time stationed in the SBA. He paid UK tax and National Insurance on his RAF income which was paid to his UK bank account.
13. After the accident, his medical treatment was initiated at the RAF Akrotiri Medical Centre which operates as part of the UK NHS. He has an NHS number. He was then transferred to the Queen Elizabeth Hospital, Birmingham for surgery on his hip and follow up appointments.
14. As an RAF Officer stationed in the SBA, he lived with his family in accommodation provided on the air base. His children attended the RAF Akrotiri primary school which is the responsibility of the Ministry of Defence. At the appropriate ages, they graduated to the secondary school on the base which is also the responsibility of the MoD. They followed the English curriculum. The MoD provided funding for one return visit to the UK every year while the family was stationed at the SBA, either using RAF aircraft or reimbursing the cost of commercial flights.
15. While stationed there, the appellant learnt a few words of Greek but he worked and socialised in English, which is the language commonly used on the base. He retained his UK passport and remained a citizen of the United Kingdom.

THE SBA

16. As part of the background to this appeal, it is necessary to explain the status of the SBA. The SBA has never been part of Cyprus. Nor has it ever been part of the UK. It is not

and never has been part of the EU. It is a former colony, now known as a British Overseas Territory. The SBA retains strong connections with the UK, and the UK retains an RAF base on it.

17. The island of Cyprus was until 1960 a British colony. In 1960 it gained independence. The territory of the Republic of Cyprus excludes the SBA (and the other sovereign base area of Dhekelia, both of which remain under the sovereignty of the United Kingdom in accordance with the provisions of the Treaty Concerning the Establishment of the Republic of Cyprus). The Republic of Cyprus became a Member State of the EU in 2004.

LEGAL FRAMEWORK

Recast Regulation

18. The claim was issued on 29 October 2020 which was during the transition period relating to the UK's exit from the European Union. Regulation 92 of the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 applied, interpreted by reference to paragraph 1(1) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020, which had the effect of preserving EU law as it applied to jurisdiction issues for the transition period.
19. That means that jurisdiction in this case is governed by Regulation (EU) 1215/2012 (the "Recast Regulation").
20. Article 11.1 of the Recast Regulation provides as follows:
 - "1. 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
 - (c) if he is a co-insurer, in the courts of the Member State in which proceedings are brought against the leading insurer."
21. Article 13.2 provides that
 - "Articles 10, 11 and 12 shall apply to actions brought by the insured party directly against the insurer, where such direct actions are permitted."
22. When read together, the effect of those provisions is to permit a claimant to sue an insurer in another Member State, provided certain conditions are met, in what is called a direct action. That is the effect of the judgment of the Court of Justice of the European Union in Case C-463/06 *FBTO Schadeverzekeringen NV v Jack Odenbreit* [2007] ECR I-11321, see [26]-[31]. That case was concerned with the equivalent provisions in the predecessor regulation 44/2001. At [28], the Court explained the reason for permitting an injured person to bring a direct action in the courts of the Member State where that

injured person was domiciled, namely to afford equivalent protection to that person who was regarded as vulnerable (emphasis added):

“... To deny the injured party the right to bring an action before the courts for the place of his own domicile would deprive him of the same protection as that afforded by the regulation to other parties *regarded as weak* in disputes in matters relating to insurance and would thus be contrary to the spirit of the regulation.”

23. Direct actions by an injured person against an insurer are permitted in the courts of England and Wales, by operation of the European Communities (Rights against Insurers) Regulations 2002 [SI 2002/3061], which permits an entitled party to issue proceedings in relation to a motor vehicle accident against the insurer of a liable person. The insurer will be directly liable to the extent that they are liable to the insured person. SI 2002/3061 was introduced to implement the Fourth Motor Insurance Directive (2000/26/EC) and the provisions of that directive were, in 2009, codified in Directive 2009/103/EC (see recital 36 and Article 18).
24. Article 62 of the Recast Regulation provides that

“In order to determine whether a party is domiciled in the Member State whose courts are seized of a matter the court shall apply its internal law.”
25. It is important to emphasise that an injured person’s right to sue an insurer in the Member State of their domicile is in addition to that person’s right to sue an insurer in the courts where that insurer is domiciled, or in the Member State where the policyholder, insured or a beneficiary is domiciled, or where a co-insurer is domiciled (see Article 11.1).

Domicile for Jurisdiction Purposes

26. The test of domicile in the Recast Regulation, which Article 62 requires to be determined in this case by the law of England and Wales, differs from the concept of domicile in our common law which exists in other fields of private international law. The former was specifically defined for the purpose and inserted into domestic law by section 41 of the Civil Jurisdiction and Judgments Act 1982 (the “1982 Act”), as part of the domestic implementation of the 1968 Brussels Convention, to which the UK acceded in 1978.
27. The travaux préparatoires for the 1978 Accession Convention cast some light on the concept of domicile as it appears in the Recast Regulation, and therefore also on the concept as defined by the implementing legislation in this country. The rapporteur for the working party for the 1978 Convention was Professor Schlosser. At paragraph 72(b) of his working party’s report, it was noted that “The concept of domicile under the law in Ireland and the United Kingdom differs considerably in several respects from the continental concept”. The continental concept was essentially concerned with the connection of a person to a place (see paragraph 71(a)) whereas the UK concept derived from the notion of where a person has their roots (see paragraph 72(b)). The working

party concluded that this difference of approach would lead to an imbalance in the application of the 1968 Convention. The report records at paragraph 73:

“The Working Party therefore requested the United Kingdom and Ireland to provide in their legislation implementing the 1968 Convention ... for a concept of domicile which would depart from their traditional rules and would tend to reflect more the concept of ‘domicile’ as understood in the original states of the EC”.

Domestic Law

28. The definition of domicile implemented by means of section 41 of the 1982 Act was a response to Professor Schlosser and his working party’s request. It is now found in substantially similar terms in paragraph 9 of Schedule 1 to the Civil Jurisdiction and Judgments Order 2001 [SI 2001/3929] (amended to reflect the Recast Regulation by the Civil Jurisdiction and Judgments (Amendment) Regulations 2014 [SI 2014/2947]) which provides:
 - “(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.”
29. That definition of domicile is specific to jurisdiction for the purposes of the Recast Regulation. It is unrelated to and narrower than the domestic common law concept of domicile, as is pointed out in The Conflict of Laws by Dicey, Morris and Collins, 16th ed, at paragraph 6-002 and following. It follows that domestic cases which examine the issue of domicile of servicemen for common law purposes are not relevant. I note as examples, *Ex parte Cunningham*, *In re Mitchell* (1884) 13 QBD 418 and *Paxton v Macreight* (1885) 30 Ch 165.
30. It is not disputed that the critical date for establishing residence is the date that the proceedings were issued, following *Canada Trust Co v Stolzenberg (No 2)* [2000] 3 WLR 1376.
31. Nor is there any dispute that by operation of Regulation (EC) 864/2007 (“Rome II”), the claim would be governed by the law of Cyprus, at least so far as liability, limitation and the assessment of damages is concerned.
32. So far as burden of proof is concerned, it is agreed that it is for Mr Stait as claimant to establish a “good arguable case” that he was domiciled in England and Wales at the material time, relying on *Brownlie v Four Seasons Holdings Inc* [2018] 1 WLR 192, per Lord Sumption JSC at [7].

THE APPEAL

The Judgment Below

33. DJ Griffith found that Mr Stait did have a substantial connection with England and Wales. He met the test in paragraph 9(2)(b). The judge considered relevant case law to determine the question whether Mr Stait was resident in this jurisdiction for the purposes of paragraph 9(2)(a). He concluded that Mr Stait had a clear and settled pattern of life at and around the SBA, which was where he was resident for jurisdiction purposes:

“21. ... That is the place where he lives in accommodation with his family, where his children go to school, where he works and where he receives his primary medical care. If a member of the public were simply asked where he or she thought the Claimant resided, I feel they would inevitably say Cyprus. Of course, he did have a settled pattern of life in England until the move to Cyprus but once he moved there he ceased to be resident in England or indeed the United Kingdom. Although he may at some point re-establish a pattern of life in England, and that is his stated intention, it is both uncertain on the evidence and irrelevant to the question of whether he had one at the relevant time.”

(The references to Cyprus in that extract are to be understood as meaning the SBA, which is of course located on the island of Cyprus, but distinct from the Republic of Cyprus.)

34. The judge went on to declare that the Court had no jurisdiction to hear the claim, because Mr Stait had failed to establish that he was resident, and therefore domiciled, in England and Wales at the time proceedings were issued.

Grounds of Appeal / Response

35. Mr Stait argues that the judge was in error. The grounds of appeal assert that the judge failed to give any or sufficient consideration to the following:
- a. the fact that Mr Stait had been resident in England and Wales until at least 2016 and had not abandoned his residence,
 - b. the fact that it is possible to have more than one residence,
 - c. the unusual factors arising out of Mr Stait’s employment with the RAF,
 - d. the consequence of his ruling, which is that members of the British armed forces lose the jurisdictional rights associated with their residency within the UK when posted abroad, and thereby face unfair restrictions of their rights.
36. By its Respondent’s Notice, Cosmos seeks to uphold the decision of DJ Griffith for the reasons he gave, and in addition for the following reasons:

- a. that the existence (or not) of an *intention* to return to the jurisdiction is immaterial to the question of residence (as opposed to the issue of substantial connection),
 - b. that insofar as a distinct break from or abandonment of previous residence is required, Mr Stait’s voluntary taking up of a position abroad and establishing a clear and settled pattern of life there satisfies that requirement, and
 - c. the test of residence (and domicile) is applied in the same way to members of the armed forces as to other persons and there is no special or distinct category of persons to whom the test is applied differently.
37. At the hearing, Ms Prager appeared with Mr Soede for Mr Stait. She submitted that her client retained many links with England and Wales at the time proceedings were issued; he has since returned to live full time in the UK. The only connection he had with any jurisdiction other than England and Wales was by virtue of his posting with the RAF to the SBA. This was not a purely voluntary act; rather it was a move abroad at the behest of his employer, and at no stage did he abandon his residence in this jurisdiction. The extent of his ties to the UK should be taken into account in determining residence. He remained resident in England and Wales throughout, either as his sole place of residence, or alongside residence in the SBA.
38. Further or alternatively, the effect of the judgment below is to deprive British servicemen and women posted abroad of their jurisdictional rights associated with British residence. There should be a special category to protect the thousands of members of the armed forces who work abroad.
39. For Cosmos, Mr Mackenzie submitted that the judge was right to conclude that Mr Stait was not resident in England and Wales. The statute refers to where a person “is” resident, which requires attention to be had to the position at the material time and not what went before or might come after. Mr Stait was plainly resident in the SBA in October 2020. The distinct break concept articulated in some of the tax cases, to denote the point at which a person changes their residence, applies only in the tax context, but alternatively was a test which simply involved a loosening of ties with this jurisdiction, and not abandonment of all ties with this country as Ms Prager suggested. Further, there is no basis in law for putting servicemen and women in a different category; they are and should be subject to the same jurisdictional rules as everyone else.

DISCUSSION

The meaning of “residence”

Leading Authorities

40. The meaning of residence in domestic law has been considered in a number of cases. The first and leading case is *Levene v Commissioners of Inland Revenue* [1928] AC 217. That case concerned an individual who lived in London until March 1918, when he surrendered the lease of his house in London and from then until January 1925 did not occupy any fixed place of residence but lived in hotels, in the UK and abroad. The issue was whether he was liable to UK tax on dividends for the four tax years starting with 1921-22. His argument was that he was neither resident nor ordinarily resident in

the United Kingdom in those years, and that as a non-resident he was not subject to UK tax. The House of Lords rejected that argument. Viscount Cave LC summarised the facts in a passage at pp 220-221, noting that in 1922, 1923 and 1924 he had tried unsuccessfully to find a flat in Monaco, and that it was only in January 1925 that he took the lease of a flat in Monte Carlo and started living there with his wife. For each year in question, from 1920 to 1924, he had spent around 4 to 5 months in the UK. The purposes of his visits had been to obtain medical advice for his health issues, to visit relatives, to arrange care for a relative, to take part in religious observances, to visit the graves of his parents buried at Southampton and to deal with income tax affairs. In a famous passage, Viscount Cave said:

“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.”

41. He illustrated his point by reference to various cases actual or hypothetical. Mr Mackenzie described these as “categories”. I would not go quite so far. In my judgment these are illustrations of where the line between residence and non-residence lies, but they should not be treated as an exhaustive catalogue of possibilities, and each case must be determined on its own facts. Viscount Cave referred first to a master mariner who had a home in Glasgow where his wife and family lived, to which home he returned during the intervals between his sea voyage; such a person was resident in Glasgow (citing *In re Young* 1 Tax Cas 57; *Rogers v Inland Revenue* 1 Tax Cas 225). Secondly, he referred to a person who has his home abroad and visits the UK from time to time for temporary purposes without setting up an establishment in this country. Such a person is not resident here although he may in some circumstances be subject to tax on investments here by operation of the rules on Schedule D income. Thirdly, he noted that a person may reside in more than one place, so a person who has a home in the United Kingdom and another home abroad could reside in two places and if one of them was the UK, be liable to UK tax. He gave two examples from case law: *Cooper v Cadwallader* 5 Tax Cas 101 and *Loewenstein v De Salis* 10 Tax Cas 424. Fourthly, he addressed the “more difficult” questions which arise when a person has no home or establishment in any country but lives in hotels or with friends; if those hotels or friends are in the UK, then he will be resident in the UK. The most difficult case of this sort is that of a “wanderer” who has no home in any country and spends some of their time in hotels in the UK and some of their time in hotels abroad. He held that in these sorts of difficult cases, the question is one of fact and degree and must be determined on all the circumstances of the case (citing *Reid v Inland Revenue Commissioners* 10 Tax Cas 673). The sort of factors which might be taken into account included the person’s “past and present habits of life, the regularity and length of visits here, his ties with this

country, and his freedom from attachments abroad” (p 224, cross-referencing to the statement of case set out at p 222).

42. *Levene* has been applied in a number of subsequent cases, some of them in the Court of Appeal or above. In *Fox v Stirk* [1970] 2 QB 463, the question was where undergraduates were to be regarded as resident for the purpose of the Representation of the People Act 1949 for the purpose of registering to vote. The Court held that the undergraduates were resident where they were students and where they slept. Lord Denning referred to three principles at pp 475 to 476:

“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 a 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 [I would emphasise that phrase], he does not lose his residence on that account.

...

I think that a person may properly be said to be ‘resident’ in a place when his stay there has a considerable degree of permanence.”

43. Widgery LJ said at pp 476-477:

“I also would begin, when considering what is meant by the word ‘reside’, by observing Viscount Cave’s acceptance of the definition in the Oxford English dictionary...namely ‘to dwell permanently or for a considerable time, to have one’s settled or usual abode, to live in or at a particular place’. That definition is coloured and enlarged by numerous references in the authorities, such as by Lord Coleridge C.J. in *Barlow v Smith* [1892] 9 T.L.R. 57 where he speaks of a man’s residence as being where he lives and has his home. There are other references to a man’s home, references which I find helpful, because, although I recognise that the word is in some ways an ambiguous word, I think it nevertheless follows that a man cannot be said to reside in a particular place unless in the ordinary sense of the word one can say that for the time being he is making his home in that place. ... 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 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.”

44. Karminsky LJ said at pp 478-479 that each case was to be determined on its own facts.

45. *R v Barnet LBC ex P Shah* [1983] 2 AC 309 concerned appeals by students against local authorities’ refusals to grant awards under the Education Acts of 1962 and 1980. The House of Lords adopted the approach in *Levene*. Lord Scarman stated that ‘ordinary residence’ (as was in issue in that case) referred 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” (p 343G-H) and at p 344 D said:

“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.”

46. He criticised the judges below for attaching “too much importance to the particular purpose of the residence; and too little to the evidence of a regular mode of life adopted voluntarily and for a settled purpose, whatever it be, whether study, business, work or pleasure” (pp 347H-348B).

47. The Court of Appeal in *Bank of Dubai Ltd v Fouad Haji Abbas* [1997] I.L.Pr 308 cited *Levene* to determine the meaning of “residence” for the purposes of the Civil Jurisdiction and Judgments Act 1982. The language of section 41(3), at issue in *Bank of Dubai*, is materially identical to the language of the 2001 Order at issue in this case. Saville LJ said at [10]:

“Although there was some discussion before us on what is meant by the word ‘resident’ in section 41 of the Civil Jurisdiction and Judgments Act 1982, it seemed to me that the parties were really little apart on this aspect of the case. The leading case is *Levene v Commissioners of Inland Revenue*. Although this was a tax case, it is clear that the meaning given to the word in that case was its ordinary meaning, uncoloured by the fact that it was used in a revenue context.

...

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.”

48. The Court of Appeal dismissed an appeal against a finding of UK residence in *Varsani v Relfo* [2010] EWCA Civ 560. The issue arose in the context of service of proceedings on a defendant at his family address in Edgware, London. Applying the test in *Levene*, Etherton LJ confirmed the judge’s findings that this house was “in an obvious and very real sense” the defendant’s home, even though he had business interests abroad and spent much time in Kenya (see [27]).

49. In *R (Davies and another) v Revenue and Customs Commissioners*; *R (Gaines-Cooper) v Revenue and Customs Commissioners* [2011] UKSC 47, [2011] 1 WLR 2625, the Supreme Court considered two judicial reviews of the Commissioners in relation to the meaning of Inland Revenue Booklet 20 (“IR20”) which provided guidance on residence and non-residence for tax purposes. The facts of the first JR involving Mr Davies and another were that the taxpayers had moved to Belgium but had not sold their house in Wales, where their wives remained and where they had local connections, and where each returned frequently albeit not for more than 90 days in any tax year. The facts of the second JR involved Mr Gaines-Cooper adopting the Seychelles as his domicile of choice in 1976 (departing from the UK as his domicile of origin); between 1976 and 2004 he travelled the world extensively on business but he maintained a house in England which he used frequently for up to 90 days a year. Both JRs failed.
50. Lord Wilson JSC gave the majority judgment. In a section at [12]-[24] he examined residence as a matter of UK law. Those paragraphs warrant reading in full. He noted that for more than 80 years the leading authority has been *Levene*. He said:
- “14. Since 1928, if not before, it has therefore been clear that an individual who has been resident in the UK ceases in law to be so resident only if he ceases to have a settled or usual abode in the UK. Although, as I will explain in para 19 below, the phrase ‘a distinct break’ first entered the case law in a subtly different context, the phrase, now much deployed including in the present appeals, is not an inapt description of the degree of change in the pattern of an individual’s life in the UK which will be necessary if a cessation of his settled or usual abode in the UK is to take place.”
51. Lord Wilson quoted s 334 of the Income and Corporation Taxes Act 1988 which deems a person still to be resident in the UK for tax purposes if that person has gone abroad only for “occasional residence abroad”. He traced the term “distinct break” from its origin in *Inland Revenue Commissioners v Combe* (1932) 17 TC 405, which concerned a man who left the UK to work in New York, returning to the UK for work reasons in the subsequent three years, who was held not to be resident in those years, through to its application in *Reed v Clark* [1986] Ch 1, which concerned a man who moved from the UK to Los Angeles and did not set foot in the UK during the period in issue, and was also held not to be resident during that time. In *Reed v Clark*, Nicholls J adopted the phrase “distinct break” and suggested that what was required distinctly to be broken was the “pattern of the taxpayer’s life”. Nicholls J also referred to *R v Barnet London Borough Council, ex p Nilish Shah*, which I have cited above.
52. Lord Wilson said (original emphasis):
- “20. It is therefore clear that, whether in order to become non-resident in the UK or whether at any rate to avoid being deemed by the statutory provision still to be resident in the UK, the ordinary law requires the UK resident to effect a distinct break in the pattern of his life in the UK. The requirement of a distinct break mandates a multifactorial inquiry. ... The distinct break relates to the pattern of the taxpayer’s life in the UK and no doubt it encompasses a substantial *loosening* of social and familial ties;

but the allowance, to which I will refer, of limited visits to the UK on the part of the taxpayer who has become non-resident, clearly foreshadows their continued existence in a loosened form. ‘Severance’ of such ties is too strong a word in this context.”

53. At [21] he discussed the case of a taxpayer who leaves the UK to take up full-time employment abroad, noting that such a person would be likely to cease to be UK resident (at common law) but would also escape the statutory deeming provision, because his absence was for more than occasional residence abroad.

54. Lord Hope agreed with Lord Wilson, saying this:

“63. There is an obvious attraction in keeping the test as simple as possible, especially as taxpayers are now responsible for self assessment when making their returns. But the underlying principle that the law has established is that it must be shown that there has been a distinct break in the pattern of the taxpayer’s life in the UK. The inquiry that this principle indicates is essentially one of evaluation. It depends on the facts. It looks to what the taxpayer actually does or does not do to alter his life’s pattern. His intention is, of course, relevant to the inquiry. But it is not determinative. All the circumstances have to be considered to see what light they can throw on the quality of the taxpayer’s absence from the UK. ...”

First Instance Cases

55. There are many other cases, not binding on this Court, where lower courts have applied the principles established by *Levene* and the cases which come after it, some of which are noted above. We were taken to two such cases involving disputes between wealthy Russian businessmen. In *Ruslan Urusbievich Bestolov v Siman Viktorovich Povarenkin* [2017] EWHC 1968 (Comm) Simon Bryan QC (as he then was), sitting as a deputy judge of the High Court, decided that Mr Povarenkin was resident in the UK, summarising the applicable principles at [44].

56. In *Vadim Maratovich Shulman v Igor Valeryevic Kolomoisky and Gennadiy Boisovich Bogolyubov* [2018] EWHC 160 (Comm), Barling J decided that Mr Bogolyubov was not resident in the UK. He summarised the applicable principles at paragraph [28].

57. We were also referred to personal injury cases where issues of jurisdiction arose. In *Panagaki v Apostolopoulos* [2015] EWHC 2700 (QB) Singh J (as he was) decided that a claimant’s physical presence in hospitals in the UK for treatment for severe injuries sustained in a car accident which took place in Greece, was insufficient to make her resident in the UK when her ordinary abode was Greece (where she had lived since a child) or Scotland (where she was a student). In *Chowdhury v PZU SA* [2021] EWHC 3037 (QB); [2022] RTR 13, Ritchie J decided that a British citizen remained resident in the UK even though he had travelled to Germany to receive medical treatment for a car accident which had taken place in Poland.

58. We were also shown *Sang Youl Kim v Sungmo Lee* [2020] EWHC 2162 (QB), a decision of Julian Knowles J, who dismissed the defendant's application to have a libel claim against him struck out on the basis that he was not domiciled in the UK for the purposes of section 9 of the Defamation Act 2013. The defendant's family home was, the judge held, in London.

Authorities: Summary

59. There is abundant case law on this topic. I would not wish to summarise the principles established in *Levene* and other cases which followed it into any numbered list. The case law sets out broad principles which must be applied to the infinitely variable facts of each case. Residence is an ordinary word with an ordinary meaning, which denotes the place where a person lives, is settled, has their usual abode, with some degree of permanence.
60. In cases where a person has been resident in the UK and the issue is whether they are still resident in the UK, it is necessary to consider whether there has been a distinct break in the pattern or order of that person's life. I do not agree with Mr Mackenzie that the concept of distinct break is limited to the tax context. It is part of the general law and is applicable to any case where the question of change of residence arises. Lord Wilson makes that point at [20] of *Davies* where he says the concept applies as part of our "ordinary law". The inquiry to be undertaken is multifactorial (Lord Wilson) or evaluative (Lord Hope), depending on the facts and what the person has actually done or not done to alter life's pattern. Intention is relevant but not determinative, and all the circumstances have to be considered to see what light they can throw on the quality of the taxpayer's absence from the UK.

Grounds 3 and 4: different treatment for servicemen?

61. By her third and fourth grounds, Ms Prager asserts, in effect, that it is necessary to confer special protection on members of the British armed forces to ensure that they do not lose their rights to sue for personal injury in the UK in the event that they are injured elsewhere in the EU when working with the UK armed forces abroad.
62. That submission has limited currency given that the UK is no longer a member of the EU and no longer party to the EU system for allocating jurisdiction amongst the Member States.
63. The direct answer to her point is that neither the Recast Regulation nor the statute or order implementing it domestically carve out a different position for members of the armed forces. It is not possible for this Court, even if we considered it desirable, to create a special category for servicemen and women. That does not mean that Mr Stait's status as a member of the armed forces falls out of view. It comes in as part of the overall facts of the case, which must be assessed to determine whether he was resident in the SBA for these years. It is part of the multifactorial or evaluative assessment of that question.
64. Grounds 3 and 4 must fail, to the extent that they seek special treatment for Mr Stait and the class of servicemen and women whom he represents.

Grounds 1 and 2: resident in the UK?

65. I turn to grounds 1 and 2 which raise the central issue in this case: did Mr Stait remain resident in the UK after he went to the SBA in 2016 and until he returned in 2021? Proceedings were issued in October 2020, which is the date on which the residence question is posed.
66. There are factors which pull both ways. But it is not a game of numbers, rather it is an evaluative exercise looking at the quality of Mr Stait's time in and connections with England and Wales. I consider the factors which demonstrate that Mr Stait was solely resident in the SBA during those years outweigh, by some margin, the factors which suggest residence was retained in the UK throughout, and the judge was correct to reach the conclusion that he was not resident in this jurisdiction.
67. On the one hand, the main factors which suggest sole residence in the SBA are:
- a. Mr Stait was working full-time in the SBA throughout this period. The reason Mr Stait went there was that he volunteered for the posting. He was not compelled to go there. Therefore his situation is similar to any other person who moves abroad for work reasons. Such a person is normally considered to have changed residence (see Viscount Cave in *Levene*, second illustration).
 - b. His contract was for 5 years, which is a relatively long period of time. By October 2020, he had been living and working at the SBA for 4 years.
 - c. Mr Stait was only physically present in this country for a very short time during that period. His statement says that the RAF funded him to come home with his family once a year, and the inference is that this was for a week. He was unable to do so during restrictions imposed during the COVID pandemic. This means that during this period, he was an infrequent, even occasional, visitor to the UK, spending a tiny proportion of his time here.
 - d. When he came home he did not stay in his own house in Cumbria, which was rented out to tenants throughout this time. It was not a home available for his use or used by him during this time.
 - e. While in the SBA, Mr Stait and his family lived in accommodation provided by the RAF, as a family unit, enjoying the normal incidents of family life: children going to school there, making friends there and having a social life there. Their pattern of life had moved there completely.
68. On the other hand, there are factors which Ms Prager suggests go the other way:
- a. He intended to return to the UK and he has in fact returned. (I accept that an intention to return is relevant.)
 - b. He kept a house in the UK. (This too I accept. But that house was rented out and was not available for his use during the time he was living in the SBA, see above.)
 - c. He went to the SBA with the RAF and was in the service of the Crown during his time abroad. (This too I accept. But his posting was voluntary. If he had

been sent abroad under some compulsion, this factor might have weighed more heavily in the balance.)

- d. He was only away for 5 years which is a relatively short time in the context of his adult lifetime or considered as a proportion of his total career with the RAF. (I accept that 5 years is a relatively small proportion judged by reference to a whole career. But it is a relatively long time to be away from the UK and is easily enough time to become resident abroad. It is not so short that the temporary nature of the absence is a dominant feature.)
- e. He did not build up any community ties with Cyprus, given that he did not speak the local language or make friends in that country. (His ties with Cyprus are not in point; rather it is the quality of his ties with the SBA which are relevant.)
- f. His salary was paid into his UK bank account and his financial affairs remained in the UK. (I accept this as a factor connecting him with the UK.)
- g. He was treated by the NHS. (This too I accept but medical care in the SBA is afforded via the NHS, a product of the SBA's status as an overseas territory).

69. Ms Prager suggested two further factors, neither of which I find to offer much assistance on the residence question:

- a. He continued to pay tax in the UK. (The basis for that was not explored at the hearing. It may be a consequence of section 23 of the Income Tax (Earnings and Pensions) Act 2003 relating to UK based earnings when an employee is not resident in the UK. Either way, this tends to suggest that he retained links to the UK, it does not assist on the factual test of whether he was resident in the UK for jurisdiction purposes.)
- b. He continued to vote in the UK and remained on the electoral register. (The basis for this was not explored at the hearing either. It may well be that he is permitted to remain on the electoral register as a serviceman working abroad by operation of statute. I am not persuaded this factor carries much weight, for similar reasons: it demonstrates his continuing links to the UK but does not assist on the factual test of whether he was resident in the UK.)

70. The balance of these factors favours sole residence in the SBA. That was where he was living, with his family. He retained links with England and Wales, certainly, but his life was in the SBA, where he had moved for work purposes, taking his family with him.

71. It is of course possible to be resident in two places at once (as Viscount Cave acknowledged in his third illustration in *Levene*). The judge acknowledged the possibility but did not address it as part of his disposal of the case. Mr Stait retained links with this jurisdiction and I have considered whether those retained links could support the analysis that he was at the time a dual resident. Taking a realistic view of the facts, and looking for the common-sense conclusion, I have concluded that they cannot. The same factors which make Mr Stait resident in the SBA render him no longer resident in the UK. He has indeed changed the pattern of his life and re-ordered

it, so as to make a distinct break with the UK. The quality of his absence from the UK from 2017 to 2021 was complete: his ordinary life, professional, social and family, moved to the SBA. He came back only occasionally during that time. He kept connections with the UK, with a view to picking up his life in the UK and again becoming resident here when he returned.

72. Grounds 1 and 2 must therefore fail also.

Wider arguments

73. Ms Prager invited this Court to provide guidance for other claimants in the same or similar position as Mr Stait. Indeed, the suggestion that guidance was needed and might be provided by this Court was what prompted Andrew Baker J to direct this case to leap-frog straight to the Court of Appeal. I would decline that invitation. It seems to me that the principles are settled and their application is fact specific. There is no special rule or different approach where persons working for the armed forces abroad are concerned.
74. Ms Prager also suggests that UK servicemen will be significantly disadvantaged if this appeal fails, because they will lose an important jurisdictional right to sue in the UK. I have three responses. First, and obviously, I answer by saying that this Court applies the law, and on the law as it stands there is no special rule for members of the armed services. Secondly, however, it is important to caution against overstating the consequences of this appeal being dismissed. If Mr Stait had been resident in the UK, it is right to say that he could have sued Cosmos in the UK, as an alternative to suing in Cyprus which was where Cosmos was domiciled. It is also right to acknowledge that it might have been more convenient to Mr Stait to issue proceedings in the UK (particularly as he has, since 2021, been living back in the UK). But the consequence of the failure of this appeal is not to eradicate his right of action; it simply means that any such action must be issued in Cyprus, an EU Member State which has, according to EU rules, an equivalent system of civil justice. The case was always going to be resolved under the laws of Cyprus, so the governing law will be no different. Third, and again to avoid the risk of overstatement, it is important to be clear that the additional right sought by Mr Stait was one which only existed while the UK was part of the EU, and it only operated in relation to claims against insurers who were also EU resident. Following Brexit, the right no longer exists. Apart from its possible application to other cases which arose before the UK left the EU, this appeal is of historic interest only.

CONCLUSION

75. In my judgment, Mr Stait was domiciled in the SBA at the relevant time. Subject to the views of my Lords, I would dismiss this appeal.
76. I thank counsel and their legal teams for all the assistance they have given to the Court in this case.

Lord Justice Poplewell:

77. I agree with both judgments.

Lord Justice Underhill:

78. I am grateful to Whipple LJ for her careful exploration of the case-law, and I agree that the appeal should be dismissed for the reasons which she gives. I add this short judgment only in order to make the point that some of the questions raised by the parties, and which she properly addresses, in fact have very limited application in the particular circumstances of this case.
79. In my view this is a straightforward case on its facts. At the time that he issued his proceedings Mr Stait was living and working full-time in the SBA in the course of a five-year posting. (He had in fact already been living there for over four years, but I do not think that that in itself adds anything since we are concerned with the quality of his absence.) His wife and children lived with him, and the children went to school in the SBA. He did not have the use of a home in the UK and had made only short and occasional visits here, apparently in the nature of a holiday and/or to see family members. Those basic facts are in my view enough to establish that he was, as a matter of ordinary language, resident in the SBA, and none of the paraphrases found in the case-law and referred to by Whipple LJ at the end of para. 59 of her judgment suggest any other conclusion. I accept of course that he always intended to return to live in the UK, but that only means that at the end of the five years his place of residence would change: it does not affect the fact that during his posting he was resident in the SBA. Widgery LJ in *Fox v Stirk* refers to a requirement for “some degree of permanence” (equated by him to “for a considerable time”) – see para. 43 of Whipple LJ’s judgment; but a five-year posting seems to me amply to satisfy that requirement. Residence need not be of long duration, as Lord Scarman makes clear in *exp Shah* – see para. 45 above.
80. That being so, while I of course accept that the question of residence is in principle multifactorial, in the particular circumstances of this case the factors on which Ms Prager relied as suggesting that at the relevant date Mr Stait was resident in England (either solely or, less unrealistically, on the basis of dual residence) seem to me of no real significance. They clearly establish that he had strong connections with England, but that is not the question. They would only assume potential importance in the less straightforward kinds of case with which the authorities are mainly concerned. For the same reason, I do not think that in the circumstances of this case the concept of a “distinct break” adds anything to the analysis - though it is in fact clear that Mr Stait’s posting to the SBA involved such a break.