Case No: QB-2020-002967

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

05/01/2021

Before:

MASTER BROWN

- -

Between:

NAFIS CHOWDHURY — **Claimant**

- and -

PZU SA — **Defendant**

- -
- -

MS. S. PRAGER (C) (instructed by **Hugh James**) for the **Claimant**
MS. L. WYLES (C) (instructed by **Weightmans LLP**) for the **Defendant**

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APPROVED JUDGMENT

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MASTER BROWN:

1. I am asked to determine an application dated 23rd October 2020 for a declaration that the court does not have jurisdiction to hear the underlying claim in this case. This is my decision.

2. The claim is for damages for personal injury arising out of an accident on 27th August 2017 when the claimant was travelling as a passenger in an Uber taxi which came into collision with a Volkswagen Lupo in Poland. As I understand it, the Claimant and a companion were on their way to Gdansk Airport to return to the UK. At the time of the accident PZU, a Polish insurer, provided motor insurance in respect of the Lupo car. I am told that by email dated 13th August 2019 the handling agent to PZU admitted liability for the accident on behalf of the driver.

3. The Claimant admits that an assessment of damages in the claim is governed by Polish law save that by the operation of recital 33 to Rome II the Court should apply English law to the assessment of damages for the costs of care and assistance and medical treatment.

4. The Claimant was born on 21st April 1987 and is 33 years old. The Particulars of Claim assert that he suffered severe "*polytrauma*". He says that at the time of the accident he was employed as a lead financial sector analyst by Artemis Fund Managers in Mayfair, London on sick leave, recovering from what is said to be a long illness caused by mould toxicosis. It is said that he was at the end of a long period of recovery and looking to return to work. He alleges, relying on a neuro-psychiatric report from Dr. Price, that he suffered post-traumatic stress disorder, generalised anxiety disorder, a somatic symptom disorder and a mild traumatic brain injury. The Particulars refer to a diagnosis by treating doctors of fibromyalgia. The Claimant has, according to the reports, complained of a wide range of symptoms including fatigue, cognitive difficulties, headaches, breathing difficulties and various other matters, depression and anxiety and some mobility problems.

5. The Claimant is a British National. Since the accident he has remained on long-term sick leave and the last couple of years since April 2018 has been living and physically present in Heidelberg in Germany, he says in order to receive medical treatment there.

6. The address given on the Claim Form is that of his parents in Worthing, England. He says that this was, as he puts it, his main residential address. He says that he is habitually resident in the UK.

7. There was very little disagreement between the advocates as to the legal framework. It is clear that the general rule is that persons domiciled in a Member State of the EU should be sued in the courts of that Member State, Article 4 of the Brussels Recast Regulation (EU) No. 1215/2012 ("Brussels Recast"). That general rule is subject to special jurisdiction rules in Article 5. Articles 11 and 13 within section 3 of the Brussels Recast covers jurisdictions relating to insurance. The Claimant relies on the decision of the European Court of Justice in *FBTO Schadeverzekeringen v Odenbreit* C-463/06 by which the relevant regulations are interpreted as meaning that the injured party may bring an action directly against the insurer before the courts for the place in a Member State where the injured person is domiciled, provided a direct action is permitted and the insurer is domiciled in a Member State.

8. In order to avail himself of the exception, the Claimant must show that he was domiciled in England at the relevant date, being the date on which he issued proceedings, *Canada Trust Company v Stolzenberg No 2* [2002] 1 AC 1. Pursuant to Article 62 of the Brussels Recast, in order to determine whether a party is domiciled in a Member State whose Courts are seized of the matter, it shall apply its internal law.

9. The requirement of domicile for these specific purposes is addressed in paragraph 9 of Schedule 1 of the Civil Jurisdiction Judgment Order 2001 (as subsequently amended). It provides:

> *"Domicile of individuals (section 41)*
>
> *9.—(1) Subject to Article 59 (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."*

10. Pursuant to these provisions, in order to establish domicile, the Claimant must show that he is resident in a particular part of the UK and that the nature and circumstances of his residence indicate that he has a substantial connection to that part. The issue arising before me is one of residence. If I am satisfied of residence, no issue is taken in relation to whether or not there is a substantial connection to that part of the UK.

11. As to the issue of residence, I have been helpfully referred by the advocates to a number of authorities. The word 'resident' is to be given its ordinary meaning. It connotes a settled or usual place of abode.

12. Ms. Wyles referred me to the following passages in *Bank of Dubai Ltd v Abbas* [1997] I.L.Pr. 308, CA:

> *"[11] A settled or usual place of abode of course connotes some degree of permanence or continuity..... Depending on the circumstances of the particular case time may or may not play an important part in determining residence. For example, a person who comes to this country to retire and who buys a house for that purpose and moves into it, selling all his foreign possessions and cutting all his foreign ties, would to my mind be likely to be held to have become immediately resident here. 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. Since the answer to the question depends on the circumstances of each case, I did not find the other authorities cited to us of any real assistance."*

13. Reference was also made by Ms. Wyles to the judgment of Widgery LJ (as he then was) in *Fox v Stirk* [1970] 2 QB 463, in particular the passage beginning at p 477H:

> *"The principles applicable under the old Acts and which survive for this purpose have already been discussed and dealt with. 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, which my Lord has read, 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 B 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. With regard to the army officer in Ford v. Hart (1873) L.R. 9 C.P. 273 it was said that when on service in Topsham Barracks he was living, sleeping and doing there all that constitutes residence. Indeed, this conception of residence is of the place where a man is based or where he continues to live, the place where he sleeps and shelters and has his home. 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. Continuity is a vital factor which turns simple occupation into residence."*

14. The authorities were comprehensively reviewed in relation to this matter by Knowles J in *Sang Youl Kim v Sungmo Lee* [2020] 8 WLUK 82. I refer particularly to paragraphs 31 to 49 and the summary principles. The learned judge set out a summary of the principles (citing Simon Bryant QC, as he then was and now Mr. Justice Bryant, in the case of *Bestolov v Povarenkin* [2017] 7 WLUK 717) as follows (although the references here, as in other parts of these judgments, are to defendants, they appear to apply equally applicable to claimants):

> "*(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, i.e. even if he spends most of the year in another jurisdiction. A person will be resident in England if England is for him a settled or usual place of abode.*
>
> (3) *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 the defendant's visits to the jurisdiction.*
>
> (5) *Whether the 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 the 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 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 has also been put, according to the way in which a man's life is usually ordered."*

15. In *Shulman v Kolomoisky* [2018] EWHC 160 Ch, a defendant sought a declaration that the court has no jurisdiction to try the underlying claim on the basis that he has ceased to reside in England at the relevant time. Barling J set out the following principles at [28]:

> *"It follows from the case law to which I have referred, that in assessing whether or not an individual has ceased to be resident for jurisdiction purposes, the following principles apply:*
>
> *i. The inquiry is a multi-factorial and fact-dependent evaluation, in which all relevant circumstances are considered in order to see what light they throw on the quality of the individual's absence from the UK:*
>
> *ii. For residence to cease there should be a distinct break in the sense of an alteration in the pattern of the individual's life in the UK*
>
> *iii. This may well encompass a substantial loosening of social and family ties, but does not require a severance of such ties*
>
> *iv. The individual's intention to cease residing in the jurisdiction is relevant to the inquiry but not determinative*
>
> *v. Actions of the individual after the material time (here, the issue of the claim form) may be relevant, if they throw light on the quality of the individual's absence from the UK*
>
> *vi. If the individual has in fact ceased to be resident according to the applicable criteria, the fact that his motive*

> *for doing so was unworthy or even unlawful will not affect the position*
>
> *vii. One should be careful to avoid the risk of over-analysis in applying what are ordinary English words."*

16. Ms. Prager relies in particular upon the decision of Singh J (as he then was) in *Panagaki v Apostolopoulos* [2015] 5 WLUK 332. In that case the claimant, a dual British and Greek National who was resident at Edinburgh University, was injured in a road traffic accident in Greece. She sought to bring a claim in respect of the accident in the courts of England and Wales very shortly before the defendant issued proceedings in Greece. She relied on the fact that for many months prior to the issue of the claim form she had been receiving treatment at a hospital, Stoke Mandeville, within the jurisdiction. The Learned Judge rejected the case that the Court had jurisdiction, finding it relevant, that "*the reason given by the claimant for wishing to transfer out of Greece to Stoke Mandeville was for the purpose of treatment, not, for example because she wished to return home or to be near home*" [43]. He said at paragraph 49:

> *"I accept [the submissions] that the claimant has not been staying at the hospital as a substitute for her home, as might be the case for example if a person is detained under the Mental Health Act. In my view the transfer to hospital took place across national borders is in some ways is liable to distract attention 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 moved 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 is not resident at the hospital and so therefore not resident at the material date in England and Wales".*

17. It is clear that this decision in *Panagaki* is not at all on all fours with the facts of this case, although reliance is particularly made by the claimant in particular on what was said by the court as to the effect for residence purposes of the reason given by the claimant for wishing to leave Greece for England: that being for the purposes of treatment, not because she wanted to return home or be near home.

18. The burden of proof is on the Claimant. I am asked to consider whether the claimant has "the better of the arguments" on the facts going to jurisdiction. The precise test is common ground and has recently been reformulated by the Supreme Court in *Brownlie v Four Seasons Holdings* [2017] UKSC 80 at paragraph 7 (affirmed in *Goldman Sachs v Novo Banco* [2018] UKCC 34 paragraph 9) as follows:

> *"..(i) "that the claimant must supply a plausible evidential basis for the application of a relevant jurisdictional gateway;*

> *(ii) that if there is an issue of fact about it, or some other reason for doubting whether it applies, the court must take a view on the material available if it can reliably do so; but*
>
> *(iii) the nature of the issue and the limitations of the material available at the interlocutory stage may be such that no reliable assessment can be made, in which case it is a good arguable case for the application of the gateway if there is a plausible albeit contested evidential basis for it".*

19. The Claimant states in paragraph 2 of his statement, as I have already noted, that he is habitually resident in the UK. The Defendant asserts that habitual residence as such is not the relevant test and that the Claimant has not provided plausible evidence that he was resident in Worthing or England in August 2020 in the sense required for jurisdictional purposes. In fact the evidence, Ms Wyles says, points the other way.

20. Ms. Prager says there is no argument that the Claimant was resident within the jurisdiction of England and Wales until April 2018 when he first went to Germany to seek medical treatment. Whether or not he took up residence in Germany as well as England or instead of England after that time or actually abandoned his residence is a matter of fact. It is submitted that the question for the court to determine is whether by the time of the issue of claim form, on 24 August 2020, the Claimant had abandoned his residence in England and Wales. The question is not whether he is resident at any particular place in England and Wales.

21. There has been some debate in the course of the argument as to whether or not the test requires me to fix residence by reference to a particular place. It seems to me that paragraph vii of the principles set out in *Sang Youl Kim* makes it clear that, although the consideration of the place where a person may reside may be relevant in the sense that is set out in paragraph vii, it is not in itself determinative. I am asked to determine whether or not England is for him a settled or usual place of abode and that he is resident in England.

22. The factual evidence shows, as Ms. Prager points out by reference to the matters set out in her skeleton argument, with the modifications proposed by Ms. Wyles, that the Claimant is, as I said, a British citizen. He has a UK passport and is registered on the British Electoral Register. His family, so far as can be seen, all reside in England, where he says his family home, essentially his parents' home, his friends and the vast majority of belongings, are located. Some of the Claimant's belongings are in storage. Rather than moving a substantial amount of his things to Germany, he pays storage fees, and I note that significant sums have been paid on a monthly basis for these purposes.

23. The Claimant says he did not want to move any belongings to Germany as he had never intended to stay there. There is reference to him having one friend, apparently a disabled care worker. there in Germany. But he says his ex-girlfriend did not come with him and, although there is some confusion arising out of or in the medical records about this, he says he went to Germany with a carer or a PA to assist him in accessing the medical care.

24. The Claimant says he returned to England for four weeks in early 2020 and says that but for the current pandemic he would have done so more, latterly in 2020. He has a

UK mobile phone and a UK driving licence. He is registered as a UK organ donor. He is a member of a UK union. His employer is registered in England, Artemis Fund Managers, and he says he would "dearly love" to return to work if he was better. He says all his qualifications were obtained in the UK: GCSEs, A levels and a degree from the University of Cambridge, professional qualifications, being a UK Financial Services Authority regulated certificate and what is referred to as CFA, a Chartered Financial Analyst Level 1. He says that the latter is a highly regarded qualification in the UK but is not valid in Germany.

25. The Claimant says he is paid in England. He is taxed in England. His financial affairs are all based in England where he holds his investments.

26. Reference is made by the Claimant to him having in 2014 suffered from a respiratory injury for which he sought treatment in the USA, after which he returned to England with the intention of returning to work, although he did not in fact, as I understand it, do so. That, it is said, is analogous to the situation here where following the accident he was treated as an in-patient in Poland, after which he sought treatment in England. From April 2018 in Germany he sought treatment, but he says he always planned to return to the UK. He says he has no or no substantial German social connections and does not speak the language. He does not have a German visa or residence permit and has not sought to regularise his residence, if that is what it is, in Germany. This latter point, Ms. Prager says, is a significant point given Brexit.

27. The Claimant receives UK disability benefits, contribution-based ESA and PIP, his treatment funded by the British NHS. It is said that the only reason he can access the German public healthcare is because he pays UK taxes, in particular National Insurance. He says he is and has been planning to purchase a property in England. In this respect he refers to steps taken by him as long ago as October 2018 with a view to purchasing a property.

28. It is submitted on behalf of the Claimant that the only connection the Claimant has with any other jurisdiction other than England and Wales arises out of his desire to access medical treatment only available to him in Germany, as he did in 2015 and 2016 going to the USA. It is said that he does not have a social connection to Germany and had not learned the language. He rented a property from month to month, has not moved his belongings from England, and has no plans to remain in Germany. To that extent she says there is some analogy to be drawn with the claimant in *Panagaki*.

29. Ms. Wyles advances a number of arguments in support of the Defendant's case.

30. First, it is said that the Claimant has not established that he has been factually present in England which it is said is the necessary starting point for the consideration of residency. In the 28 months, I think it is, since he moved to Germany he had only been to England once for a four-week visit in early 2020. He only stayed, it appears, at the Worthing address for an unspecified part of the visit, during which it appears he also visited London and elsewhere and then attended a medico-legal examination.

31. As Ms. Prager reminds me, it is important for me not to, as it were, 'play the numbers game'. But there is force in the submission, it seems to me, that there has been a very lengthy period in which the Claimant has been away, from which an inference might be drawn about the Claimant's intentions going to the test that I have to address. However,

I have to consider that matter in the context, as I am required to do following the guidance by Barling J in *Shulman*, of all the other factors.

32. Moreover, one of the matters that I think I should have in mind is that, on the face of it, albeit the time spent by the Claimant in 2020 is short, he is saying he spent some one-third of the time he was able to travel from Germany within this jurisdiction after the end of March 2020 when the dangers of exposure to Covid-19 became well known. Ms. Prager asks me to have regard to the relatively high rates of infection in this country, which she says is common knowledge across Europe, and measures were taken in order to contain the spread. It is said that this would have made it very difficult, indeed foolhardy, for somebody in the Claimant's position, who might regard himself as being in a high-risk category, to return to this country. In the circumstances, Ms. Prager submits, it is hardly surprising that he did not return to the jurisdiction after that time.

33. As to the position beforehand the claimant says that he has been significantly affected by his condition. Of course I make no findings in relation to his condition to the extent to which it has affected him, but he says that as a result of his anxiety he has had difficulty flying and had to miss his brother's wedding in July 2019, and this he says is because of his difficulties with or inability to travel and anxiety connected with his accident in respect of travelling to the airport. In other words, it is not as a matter of choice that he has not come back to the UK more often than he has. Ms. Prager argues that but for the problems he faced he could have come back to the UK. It seems to me that these are matters that I should consider and weigh in the balance in considering this matter.

34. Secondly, it says the claimant made a distinct break with England in April 2018 when he said he gave up his flat in Kingston, put his belongings into storage and travelled to Germany where he has lived, as I say, ever since. However, it seems to me that that of itself, set against the other evidence, in my judgment, is not[1] determinative of the matter, and it seems clear that there is a plausible basis for considering that he went to Germany in order to undertake treatment.

35. I appreciate that it is suggested in the evidence that he also went there because of clean air, but the Claimant says that that was a subsidiary reason. There is, it seems, a plausible basis for thinking that he went there with an assistant to access the German medical facilities, not to sever his relationship with the UK.

36. Thirdly, it is said that the Claimant's statement repeatedly refers to his intention to return to the UK when his treatment is complete, which, it is said, is inconsistent with him having current residence in England[2]. I was not quite sure of the point being made. In a sense it is just a statement of the obvious: he is not physically present in this country. But the point that the Claimant is making is that he would return if his treatment were complete.

37. Fourthly, it is said that the Claimant did not live at the Worthing address just before he moved to Germany. He does not intend to live there when he eventually returns to the UK since, it is said, he plans to purchase a suitable home. But the issue that I have to

[1] There appeared to be missing 'not' in the recording.
[2] In the recording that there is reference to the UK instead of England in various places, which was plainly a mistake.

decide is not whether he is resident in a particular place, i.e. the Worthing address, but whether he is resident in the jurisdiction. It does not seem to me that it necessarily follows because he is not resident in Worthing that he cannot be treated as resident in England. The evidence that he plans to purchase a suitable home seems to be indicative of him retaining his home in England.

38. Fifthly, it is said that his use of the NHS overseas healthcare scheme is, on its terms, inconsistent with being resident in the UK. Reference was made to documentation in the bundle including a letter from the DWP which it appears the claimant has annotated with the following:

> *"The UK DWP pays for my German healthcare through an S1 form and I can use the NHS at any time as though I am an ordinary UK resident. This is due to the fact that I work for a UK employer, pay UK National Insurance and tax and receive exportable UK benefit contribution-based ESA. This is covered by the UK and will continue long term".*

39. Reference is made by Ms. Wyles in particular to the use of the words "*as though I am an ordinary UK resident*", relying on them as acceptance by the Claimant that he is not a UK resident. However, it seems to me the key word is "ordinary". What it seems to me the Claimant is saying, or at least a reasonable interpretation of what he is saying, is that his position is unusual. His position may not be ordinary in the sense that he is physically present here, but I do not think I can rely upon that in my assessment as being determinative or indeed pointing strongly to not having residence in England.

40. Further, reference was made by Ms. Wyles to the content of this letter and what it says on page 174:

> ***"Registering with other authorities***
>
> *To register your S1 form take it to your local health office in your place of residence. They may ask you for proof of identity and your right to reside in Germany. They will register the form and retain one copy. The other copy was sent direct to the overseas healthcare team."*

And further down:

> ***"What if your circumstances change?***
>
> *We must be told if you or dependent family:*
>
> - *Starts work or starts getting a pension from another country.*
> - *Changes address in Germany or moves to another country, including the UK…"*

41. The point made is that it is the understanding of the NHS that the Claimant is a beneficiary under the healthcare scheme because he is resident in Germany. This, it is

said, is inconsistent with the conclusion that the Claimant has a residency in England, or at least it would be indicative that that were not the case.

42. It seems to me that, as has been pointed out in the authorities, a person can have residence in two countries, so on the face of it even if the Claimant were resident in Germany that is not determinative. In any event it seems to me that how the NHS (and for that matter the HMRC) regard the Claimant is not determinative of this matter. It is apparent on the face of the documentation that the HMRC regard the Claimant and the Claimant regards himself for tax purposes as being resident in England. As I think Ms. Wyles accepted, there is a multi-factorial consideration of this matter and I am not satisfied that this factor of itself sufficiently or substantially weighs in the Defendant's favour.

43. Sixthly, it is said that similarly the Claimant has arranged to be registered electorally for absent vote by post until further notice and for family members to have powers of attorney for his UK health and financial affairs, and that these matters are inconsistent with residence in England. I understand it to be said that these matters indicate that the Claimant's return is not, or has not been, imminent; that he has made arrangements for others, the electoral authorities, to correspond with him in Germany about his voting and for family members to have the powers that are consequent upon the powers of attorney because there is no expectation of an imminent return.

44. However, I am not satisfied that the expectation of an imminent return is determinative when considering this issue. These matters are compatible with the Claimant being present in Germany, living there for the purposes of undergoing treatment and that treatment was not anticipated necessarily to last for a short period. I am not therefore satisfied that they are in themselves inconsistent with residence in England or necessarily indicative, or at least substantially so, when looked at in the context of other evidence and applying the relevant tests, that he had abandoned his residence in England and that his usual or settled abode or home has ceased to be in England.

45. Seventhly, it is said the fact that the Claimant has his own room in his parents' house in which he stores some belongings and has arranged home insurance is not plausible evidence that he lives there. He has, it is said, not produced evidence such as utility bills or household bills or living costs incurred by him in Worthing and is not registered with a GP. It is argued by Ms. Wyles that you would expect to see utility bills and the like if he were residing there. In a sense this is just a reflection of the fact that he is actually physically present in Germany, but also it seems to me that whilst these matters may go to the question of whether he resides with his parents I am not satisfied this is determinative or indeed goes substantially to the test that has to be applied in the circumstances of this case.

46. Further, and eighthly, it said that whilst it is acknowledged that the Claimant's use of his parents' address as a UK mailing address while he is living in Germany is, understandably, convenient it is wholly insufficient to establish residence for these purposes. I would not disagree with the proposition that the use of a mailing address is inadequate of itself to establish jurisdiction. Indeed what is said about the use of the address may well be so, but reliance is made on rather more than that in relation to this issue.

47. I have also considered also in this context the points made by Mr. Richards in his witness statement and the references he makes to matters set out in the neuro-psychiatric report of Dr. Price. There is reference to the Claimant having moved with his girlfriend to Germany, as I have already indicated for better air and green surroundings. But it also said that he has moved there, and this is apparently based on what the Claimant said, to live in a quiet place within the catchment area of Heidelberg hospital. As the Claimant points out, it is very clear in the report, or at least it appears that it was communicated to the compiler of the report, Dr. Price, that on completion of his treatment he plans to return to England to be closer to family and friends.

48. There is, it seems to me, a clear and plausible basis in the evidence before me for the case that the Claimant lives in Germany in order to access hospital treatment (the reference to the clean environment is to that extent subsidiary). I am satisfied applying all the tests that the Claimant has not broken his connection with England in the sense set out in the guidance of Barling J in *Shulman* and abandoned his residence or ceased residing in England. I am satisfied for these purposes that he has not done so, the burden being on the Claimant to establish that he has not done so.

49. I am also satisfied, applying the relevant tests, that there is a plausible basis for considering that the Claimant has not intended to stop residing in England and there has been no alteration in his pattern of life, severing of social and family ties, and change in his financial arrangements, save to the extent that he is seeking treatment abroad. To my mind there is a plausible basis for considering that the Claimant's intention has been and remains to return to England when the treatment is complete. I am not satisfied that the seeking of treatment in Germany is of itself sufficient to break the connection with England or to cease residing in England.

50. An analogy has been made with the approach in *Panagaki*, to my mind helpfully so. And indeed I myself raised the possibility of a further analogy with students who go and live abroad. They might go for a short period of time then do not return back to the England, maybe because they prolong an educational course or such like. I appreciate in this case that the length of time which the Claimant has been physically outside the jurisdiction is a substantial matter in the context of this issue, but I understand that I am not required to and should not 'play the numbers game' but consider the matter qualitatively. I have to balance and consider the time the Claimant has been physically abroad with other factors.

51. Balancing all the factors and in accordance with the guidance that I have referred to, the Claimant has satisfied me that there is a plausible evidential basis for the application of the relevant jurisdictional gateway.

52. That is my conclusion on residence. There is no need for me to consider the second limb. In those circumstances I think the result is that I should dismiss the application. It would however be remiss of me not to record in this judgment how very greatly assisted I was by both advocates in their skeleton arguments, the provision of authorities and in the course of the hearing.

This judgment has been approved by the Master.

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