



Cooney and ARF et al
Royal Court
7th January 2016

JUDGMENT
1/2016

Preliminary issue of whether Patrick Joseph Robert Cooney was domiciled in Jersey at the date of his death

IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)

Between

NORA COONEY

Plaintiff

-and-

AFR EXECUTORS (GUERNSEY) LIMITED
(as executors of the estate of Patrick Joseph Robert Cooney)

First
Defendant

DAVID COONEY
LYDIA MAY COONEY
CLAUDIA ROSE COONEY

Second,
Third and
Fourth
Defendants

-and-

ROBERT COONEY

Interested
Parties

PAULINE SANDERSON

Dates of hearing: 30th November and 1st to 3rd December 2015

Judgment handed down: 7th January 2016

Before: Richard James McMahon, Esq., Deputy Bailiff

Jurats: S Mowbray, C H Le Pelley, T J Ferbrache Esq

Counsel for the Plaintiff and the Interested Parties: Advocate G S K Dawes
Counsel for the Defendants: Advocate M G Ferbrache

Cases, Texts & Legislation referred to:

The Inheritance (Guernsey) Law, 2011
The Royal Court (Reform) (Guernsey) Law, 2008

The Housing (Control of Occupation) (Guernsey) Law, 1994
The Housing (General Provisions) (Jersey) Regulations, 1970
Re Hawksford Executors Limited 2013 (2) JLR 357
Dicey, Morris and Collins, *The Conflict of Laws* (14th ed., 2006)
Udny v Udny (1869) LR 1 Sc & D 441
Agulian v Cyganik [2006] EWCA Civ 129
Barlow Clowes International Limited v Hamilton [2008] EWCA Civ 577
Irvin v Irvin [2001] 1 FLR 178
National Provincial Bank v Evans [1947] 1 Ch 695
The Evidence in Civil Proceedings (Guernsey and Alderney) Rules, 2011
The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009
The Shorter Oxford English Dictionary

Introduction

1. This judgment deals with the preliminary issue of whether Patrick Joseph Robert Cooney was, at the date of his death on 21 January 2014, domiciled in Jersey, as alleged by his widow, Nora Cooney, who is the Plaintiff. The declaration sought by the Plaintiff is opposed by one of her sons, David, and by two of her granddaughters, who are David's children, who are respectively the Second, Third and Fourth Defendants, but it is supported by the Plaintiff's other two children, Robert and Pauline, who have been joined to the proceedings as Interested Parties for the purpose of being bound by the Court's decision. Because a number of the persons involved share the same surname, for ease of reference we will refer to each of them by the names by which they have come to be known in these proceedings. Accordingly, the Deceased will be referred to as "Bob", the Plaintiff as "Nora", the Second Defendant as "David", the First Interested Party as "Robert", the Second Interested Party as "Pauline" and the wife of David as "Angi".
2. Bob executed his last will and testament in respect of his personal estate on 25 September 2013 ("Bob's Will"). By clause 2, he appointed the First Defendant, AFR Executors (Guernsey) Limited, as his executor. The First Defendant has largely played a neutral role in the proceedings thus far, recognising that Bob's disputed domicile is a matter primarily concerning the members of the Cooney family. Clause 1 of Bob's Will provides:

"I declare my domicile to be in the Island of Guernsey and that I have abandoned any previous domicile I may have had."
3. Nora contends, however, that a proper analysis of the life of Bob supports a finding that Bob had previously established a domicile of choice in the Island of Jersey and that his domicile remained unchanged at his death.
4. There are different consequences if the Court finds in favour of the Plaintiff and grants the declaration she receives and if it does not. In Guernsey, by virtue of the Inheritance (Guernsey) Law, 2011, testators have complete freedom as to how to dispose of their personal estate whereas in Jersey the customary law position continues, under which Nora would be entitled as Bob's widow to receive one-third of his net estate and Bob's three children would share equally in a second one-third, leaving only the final one-third as freely disposable by him. This regime, which operated in Guernsey until the 2011 Law was commenced on 2 April 2012 is often described as "*forced heirship*".
5. At the conclusion of the hearing on 3 December 2015, the Court reserved its judgment. This judgment, which has been prepared in accordance with the provisions of section 16(5) of the Royal Court (Reform) (Guernsey) Law, 2008, contains the unanimous findings of the Jurats. The Court has concluded that the declaration sought by the Plaintiff should not be granted.

This judgment contains the reasons for that decision. The scheme of the judgment is to set out first the facts, before describing the legal principles that the Deputy Bailiff directed the Jurats to take into account and summarising the evidence adduced by the parties, and concludes with a discussion of the way in which those principles have been applied in the light of all the evidence before the Court.

Facts

6. Bob was born on 2 April 1938 in Dublin. He moved to England at the age of 15. He and Nora married in 1957. Their three children were born in England between 1957 and 1964. The family remained in England until 1981. During that time, Bob and Nora raised their children and developed their business interests in the fields of property investment (and management) and removals. Their move to Guernsey in 1981 arose because of the wish to sell the businesses in the most tax-efficient manner.
7. Bob and Nora purchased dwellings for themselves in Guernsey. Because neither was a qualified resident under the Island's legislation controlling who could occupy "local market" properties, each such dwelling was "open market", ie, inscribed in the Housing Register. Bob continued to involve himself in various businesses throughout the 1980s. In particular, he set about assembling a site at Gategny Esplanade for future development. He did not, however, enjoy a harmonious relationship with the Island Development Committee and the planning officers who worked for the States of Guernsey. Bringing the Gategny Esplanade site to a successful conclusion and completing the redevelopment of a residential property in St Pierre du Bois were both in jeopardy. Robert, who was already performing functions elsewhere on behalf of the family's business interests, re-located to Guernsey and became more deeply involved in these projects.
8. It is common ground between the parties that, as a result of leaving England and settling in Guernsey in the 1980s, Bob acquired a domicile of choice in Guernsey at that time.
9. Bob had joined the Catenian Association when in England and became a member of the Guernsey Circle soon after his arrival in Guernsey. He subsequently became a member of the Jersey Circle. His participation in Catenian Association events was an important part of his spiritual and social life. As noted by Michael Dene, since the 1990s, Bob attended meetings in Guernsey as a joint member or guest when he visited Guernsey several times a year. Liam McKenna, whose parents were friendly with Bob and who, in later years, became someone to whom Bob turned to arrange social occasions for when he visited Guernsey, similarly refers to several visits each year over the decade preceding Bob's death.
10. In the early 1990s, Bob and Nora had no settled residence. They had chosen to leave Guernsey because Bob did not wish to be subjected to the level of scrutiny that the Administrator of Income Tax was taking in his business affairs. A number of different places were considered to which they might move, eg, Andorra and Monaco. A Guernsey passport was issued to Bob on 9 April 1992. Bob continued to receive correspondence at a variety of Guernsey addresses. The couple spent some time in England. Correspondence was received there. By way of example, on 25 May 1993, a firm of solicitors in Leicester wrote to Bob in Guernsey saying "*I am putting this with a covering letter to Robert so that he can open it and contact you wherever you may be*". The same firm included the following wording in a letter dated 23 January 1995: "*so that you can then take advice in Jersey once you become resident there*".
11. Bob suffered a stroke in August 1994, resulting in partial paralysis. He was in the Republic of Ireland on business at the time this happened. He was staying at the property of Mary Hayes. They had met in Guernsey some years previously, at a time when Ms Hayes was a

nun. Bob was admitted to hospital. Nora, Robert, Pauline and David went to Dublin to visit him. When discharged and fit enough to travel, Bob went to England. A letter dated 23 August 1994 to a consultant based in Leicester records Bob's address as being in St Pierre du Bois. Bob continued his rehabilitation in Leicester before being discharged home.

12. It took longer than envisaged for Bob and Nora's house in St Pierre du Bois to be sold. Indeed, because Robert had sold his own property in Guernsey, Robert and his family moved into this house before it was sold.
13. In February 1996, Bob purchased a flat in Jersey. He and Nora lived in it until this flat was sold in July 1998. The flat was a *degrèvement* property and so available for their occupation outside Jersey's housing controls. The property was redeveloped and equipped by Robert and his wife. It was very much to Nora's taste and she loved this flat. The sale of it was required so as to assist cash flow related to the Gategny Esplanade site. In July 1997, a NHS medical card was issued to Bob showing an address in Luton. In the autumn of 1997, Nora stayed with David and Angi to help look after their elder daughter whilst David convalesced and Angi worked. Angi did not speak to Bob for a number of years afterwards because of the way he tried to insist on how David should consult a specialist. When this flat was sold, Bob and Nora went to live in Luton with their children's Aunty Mary. When David and Angi's younger daughter was born in November 1998, they were still living there and so able to visit easily.
14. On 12 October 1998, a Guernsey law discretionary trust known as The Umbrella Trust was declared. The shares in Umbrella Holdings Limited, which were held by nominees to the order of Bob, (albeit that earlier that year it had been proposed that he would transfer them to Nora and Robert to hold on his behalf), formed the initial trust assets. This trust was the vehicle through which the family's wealth was thereafter managed. The trustee was Avenue Trust Company Limited ("Avenue"), the in-house trust company of Lince Salisbury. Michael Fattorini, who was for many years an adviser to Bob and became his friend, was the principal person involved. The original beneficiaries of The Umbrella Trust were Bob and Nora. Robert was added as a beneficiary by way of a board minute on 24 May 2001. A Deed of Appointment was executed by Avenue on 16 April 2002 providing that Robert, David and Pauline were additional beneficiaries.
15. In December 1998, another flat in Jersey was purchased by Bob in which he and Nora lived. This flat was then sold in March 2000. These dates were confirmed in letters from St Saviours Crescent Developments (1990) Limited dated 18 November 2009 and Clyde-Smith Management Services Limited dated 1 February 2010.
16. Bob and Nora separated in 2001. Their relationship had not been good for a number of years. In 1992 or 1993, Pauline, with Robert's support, organised for Nora to be taken away from Bob to Canada for several months. At that time, Bob stayed in England with David. In 2001, Nora went to live in the Lake District. This move was also facilitated by Pauline. The Umbrella Trust purchased a property in the Lake District for Nora's use. In June 2001, The Umbrella Trust also purchased an apartment at Park Heights in Jersey for Bob's use ("apartment A2"). Pauline's relationship with Bob was never the same and they did not speak for many years prior to 2012. The trust then purchased a second apartment in this development.
17. In May 2001, a meeting took place between Bob, Robert and Mr Fattorini in the latter's garden. Although agreement was reached between Bob and Robert, it is apparent that Robert threatened to walk away from the Gategny Esplanade development project if his proposals were not accepted. Mr Fattorini subsequently recorded these fundamental disagreements between Bob and Robert about the latter's involvement with the project and,

in particular, about what should be paid to Robert for the role he was performing. Mr Fattorini expressed his view that Robert's ongoing involvement was central to the project because he had the confidence of the joint venture partners.

18. Bob became a patient of Dr Malachy Wilson in Jersey on 12 September 2002, when Bob first attended his surgery.
19. In early 2002, Bob had surgery in Jersey and asked Ms Hayes if he could stay at her property whilst he convalesced. Ms Hayes travelled to Jersey to accompany him to Dublin. Bob stayed in Dublin until 2006 at the home of Ms Hayes, who was able to look after his care needs and was a companion to him. She was a trained nurse. Because of his disability, Bob needed care and Ms Hayes was able to provide it. He was hospitalised on a number of occasions and his mobility deteriorated over this period. A letter dated 15 July 2002 sent by Mr Fattorini to Bob at apartment A2 records Bob's wishes in relation to discharging the mortgage Ms Hayes had secured on her property and ongoing provision of monies to her in appreciation of the care she was to provide "*in her own home or such other place as may be mutually agreed*". Mr Fattorini added that "*The foregoing presupposes that you have not chosen to return to either Jersey or Guernsey*". This was repeated in a further draft letter prepared by Mr Fattorini dated 31 July 2002. In August 2006, Bob formally assigned any interest he might have been regarded as having in the Dublin property of Ms Hayes to her.
20. In March 2006, Bob came to Guernsey with Ms Hayes seeking to view the development at Gategny Esplanade, by then known as Marina Court. They were refused entry on the first occasion. Through Mr Fattorini, Bob and Ms Hayes were able to enter Marina Court the following day and to look around one of the flats. Robert, following discussions with Pauline, had decided that their father should not be permitted to acquire any of the dwellings in the development. On 28 March 2006, Robert wrote to Mr Fattorini confirming that "*in the interests of all parties concerned Premier Developments Limited will not hold or sell any of the properties in Marina Court to the clients you are seeking to represent either as individuals or by nominated persons or companies*". Robert's view was that, because he had invested 17 years of his life in bringing the Gategny Esplanade project to fruition, he did not want it to be jeopardised by his father living in an apartment within the development. At around this time, Ms Hayes sought and obtained on 21 December 2006 a status declaration from the Housing Department confirming that she is a qualified resident under the Housing (Control of Occupation) (Guernsey) Law, 1994. Bob had asked her if she would move to Guernsey to live here with him because her status as a qualified resident offered wider accommodation opportunities. In early 2008, Bob made an offer for a local market apartment at Marina Court, but this was rejected.
21. In April 2006, Bob was issued with an Irish passport.
22. In the summer of 2006, Bob left Dublin. As a result of her ill-health, Ms Hayes was no longer able to look after him, so Bob went to stay with David and his family in England. He remained with them for approximately 12 months. Works were carried out to their house, for which Bob paid. At this time, Bob was talking to David and Angi about moving to Guernsey. David and Angi visited Mr Fattorini in around October 2006 to try to get information about The Umbrella Trust and Marina Court so as to explain it to Bob. They attempted to visit Marina Court but were refused entry. On their return home, they explained everything that had happened to Bob.
23. In January 2007, Bob sent an e-mail to Mr Fattorini in which he sought confirmation that the reservation he claimed to have in respect of apartment 9 at Marina Court could be transferred to apartment 13 as he wished "*to make arrangements for specialist equipment to be delivered in anticipation of [his] return to the island*". On 12 January 2007, Mr

Fattorini's PA sent to Bob an e-mail stating that *"It has occurred to Michael that if you move to Guernsey then the Trust becomes Guernsey resident for tax purposes. Have you thought about this?"* Bob initially responded on 14 January 2007, prompting Mr Fattorini to clarify that he was enquiring about Bob's tax status and not the work that needed to be carried out to make any apartment at Marina Court comfortably habitable by Bob. On 18 January 2007, Bob replied *"It is more important to me to be comfortable and familiar with where I intend to live as I can adapt my Apt to my disability and be surrounded by friends. Even a restricted view is better than looking at a blank wall which is what faces me in Jersey!"*

24. On 1 February 2007, Mr Fattorini informed Bob by a letter sent to David's address that there were problems securing an apartment at Marina Court but that he and he wife had identified an alternative at Hazely Manor, which had the benefit of being cheaper for The Umbrella Trust and also was on the ground floor, rather than the second floor, and so more suited to Bob's circumstances. Bob did not pursue that alternative option. As he explained to David, it was not what he wanted and he felt it was indicative of Mr Fattorini not wishing to confront Robert over the apartment at Marina Court that had been underwritten by The Umbrella Trust.
25. In March 2007, English solicitors acting on behalf of Nora commenced divorce proceedings. These were said to be *"with the sole aim of securing a financial settlement"* and that Nora's desire was *"to have financial independence, and control over her own affairs"*. It was proposed that The Umbrella Trust might somehow be divided between Bob and Nora.
26. In April 2007, Bob received correspondence at his Jersey address from the GP practice in Jersey with which he must have continued to be registered.
27. In August 2007, Bob took up residence at Blanchelande Park in Guernsey. This was when he met Mrs Beth Ozanne, who worked there. He stayed there for approximately three months before resuming residence at the apartment in Jersey owned by The Umbrella Trust in which he had lived previously. Correspondence was sent to him at this address (apartment A2) by his Advocates and by Mr Fattorini. The latter sent a letter dated 14 November 2007 in which he recorded the discussions he had had with Bob about Bob's wishes in respect of The Umbrella Trust in the event of his death. Aside from making some provision for Ms Hayes to reflect the care she provided over four years in Dublin and assisting David, Bob had *"no wish to support any other member of his family save Nora and all the funds should then go to charity"*.
28. In 2008, Avenue wrote to Bob at apartment A2 and to Nora in the Lake District about the proposed division of The Umbrella Trust. One aspect of the proposal was that the companies holding those respective properties would be allocated to each of them. Other adjustments to reflect a broadly equal split were considered. However, because of Bob's ongoing acrimony towards Robert, it was agreed that Nora would be solely responsible for certain amounts to be taken into account so as to facilitate the split being finalised. David was the only member of Bob's family who saw him on his 70th birthday that year.
29. Bob was admitted to the General Hospital in Jersey towards the end of 2008. He provided an updated letter of wishes to Avenue dated 23 December 2008 in which he expressed the wish that The Umbrella Trust should regard Nora as the principal beneficiary after his death and that, after Nora's death, the fund should be used for the benefit of David, Angi and their two children.
30. From 2008 onwards, Chris Dwyer saw Bob in Jersey regularly. Mr Dwyer was a fellow Catenian and had known Bob for over 20 years by then. They continued to meet quite frequently, both as Catenians and outside Circle meetings. Mr Dwyer's wife, Lily, also had

regular dealings with Bob over this time, often seeing Bob twice a week. If Bob missed mass, Mrs Dwyer would take Holy Communion to him in the early part of the following week. Mrs Dwyer assisted Bob with his correspondence, typing out letters and e-mails he wished to send. Some of that correspondence related to Bob's affairs in Guernsey. Bob expressed his wish often to the Dwyers that he would return to Guernsey because of his business interests there and because he liked the Island. As Mrs Dwyer put it, Bob indicated that his heart was in Guernsey and she formed the impression he knew more people in Guernsey than he did in Jersey. In the context of his health, Bob told Mr Dwyer that this would impact on the timing of his planned return to Guernsey, so that if it deteriorated, he would make the move sooner rather than later. He told Mrs Dwyer that he did not wish to move into a nursing home in Jersey. On his relationship with Robert, Bob became more expansive in his discussions with Mr Dwyer after 2008 and made it clear that he was not on good terms with his son. Bob also on one occasion handwrote a will in which he was to leave his estate to David and David's family and asked Mr and Mrs Dwyer to witness it, but they did not do so and suggested he should consult a lawyer.

31. In 2010, Bob was seeking at the same time confirmation of his residential status in Jersey and a housing licence in Guernsey. Bob was negotiating at the time to purchase La Parterre in St Saviour in Guernsey. By a letter dated 23 March 2010, the estate agents confirmed that the vendors had accepted his offer and provided draft Conditions of Sale. This proposed purchase did not, however, proceed to completion, although Bob paid for a conveyance by way of exchange relating to the boundary at this property, as shown by a letter and account dated 21 April 2010.
32. Bob's application for a housing licence in Guernsey was made by way of a handwritten letter received by the Department on 12 April 2010. At the top, Bob gave his apartment A2 address and also the address of Peter and Beth Ozanne (Vida Nova). In his letter, he explained what he had done in Guernsey in the 1980s and since and indicated that he "*moved to Jersey to wind down*". He explained how he met Mrs Ozanne and how, because he had become very infirm, the Ozannes "*had agreed to look after [him] in Guernsey*", which is why he sought permission to move to their house in Guernsey. The Department sought further information on 23 June 2010. Accordingly, Bob completed an application form in respect of his proposed occupation of Vida Nova, which was counter-signed by Mr Ozanne and dated 3 September 2010. In addition, Bob wrote a second short letter to the Department received by it on 17 September 2010 in which he referred to Robert living in Guernsey and explained that he owned no property in Guernsey and that apartment A2 in Jersey was owned by a trust company, with the trust supporting his living expenses. A housing licence was then issued dated 26 October 2010 by the Department for a period of two years permitting Bob to occupy Vida Nova. It was subject to the condition that Bob "*continues to occupy the above dwelling with Mr and Mrs P G Ozanne on a board and lodgings basis*".
33. By letter dated 12 April 2010, the Population Office of the States of Jersey indicated that "*Based on the information already held it would seem that you will qualify with effect from 1st June 2010*". The information in question was that Bob had been continuously resident from June 1999. A further letter dated 30 June 2010 confirmed on behalf of the Housing Minister that it was accepted "*based on the information you have provided*" that Bob qualified under Regulation 1(1)(f) of the Housing (General Provisions) (Jersey) Regulations, 1970, as amended. On 8 February 2011, the Population Office wrote to Edge Cox Peel Wilson confirming that the Minister agreed to the proposed purchase by Bob of shares in West Park Apartments Limited, recognising that he was qualified under the 1970 Regulations to occupy the apartment he had in mind as his sole or principal place of residence. The permission would remain valid only for as long as Bob remained "*continuously ordinarily resident in Jersey*".

34. In August 2010, Bob was issued with a driving licence in Jersey.
35. On 6 January 2011, the Social Security Department of the States of Guernsey wrote to Bob at Vida Nova about him paying income related non-employed contributions. On 26 January 2011, Network Insurance wrote to Bob at apartment A2 confirming that his household insurance policy had been *“endorsed to include his mobility scooter over here in Guernsey”*.
36. In a document dated 22 February 2011, Bob confirmed that he had gifted £30,000 and *“any further monies that are required for the alterations to the property Vida Nova”* to the Ozannes. This was in recognition of their kindness caring for him and so that he *“can go and live or holiday at their house”*. This document was witnessed by a person with an address in Jersey.
37. In 2011, Bob purchased Apartment 12, West Park Apartments in Jersey (*“Apartment 12”*). At the time, the apartment was tenanted. When it became vacant, he left apartment A2 and moved there. The tags on items such as furniture in Apartment 12 were often left on. This was the pattern of how Bob had been throughout his life. He bought things, but they did not mean a lot to him in the sense of not having sentimental value. In respect of the flats he owned and rented out, Angi confirmed that the same approach was adopted. With assistance from his neighbour, David De Gruchy, Bob made various minor adjustments to the apartment to make things easier for him to move around given the problems he had with his mobility. From a discussion he had with Bob about the respective advantages and disadvantages between Jersey and Guernsey, Mark Grimes, of the then managing agents, believed that Bob wanted to make his home in Jersey. At no time thereafter was Mr Grimes told that Bob had moved to Guernsey.
38. In July 2011, Mr Fattorini received a telephone call from the income tax authorities in Jersey. From that conversation, Mr Fattorini understood that Bob had not registered with the Jersey authorities as a taxpayer, nor had he filed any returns. Mr Fattorini was unable to help their enquiries further because he was, by then, no longer acting for Bob, because of a complaint made by Bob to Mr Fattorini’s professional body.
39. A draft will dated August 2011 was prepared for Bob by a Jersey solicitor in which his domicile would be declared as Jersey. From its wording, it appears that Bob intended to leave his estate to David or, if David pre-deceased him, to Angi and their two children. Bob did not execute this draft will.
40. The minutes of a meeting of the Jersey Circle of the Catenian Association held on 13 July 2011 record that Chris Dwyer had visited Bob in Guernsey about four weeks earlier and that Bob had *“had a slight stroke and taken quite poorly, his son and daughter from England visited him in Guernsey. However he is now back in Jersey, Chris is visiting him every evening and he is much improved”*. The minutes of the meeting on 14 September 2011 simply record that Bob *“is ill in Guernsey”*. The minutes of the meeting held on 11 April 2012 stated that Bob was *“not too well & in Guernsey”*. The minutes of the meeting held on 20 March 2013 simply state *“Bob Cooney in Guernsey”*. The minutes for 5 October, 13 November and 4 December 2013 state *“Bob Cooney currently in Guernsey not well enough for this weekend”*.
41. An expert report dated 25 October 2011 prepared by Mr David Pring following an examination on 25 October 2011 records Bob’s address as Vida Nova. This report dealt with an accident that Bob had on 13 November 2010 at Gatwick Airport en route to Jersey.
42. On 10 February 2012, a Jersey estate agent sent an e-mail to Angi explaining that he had *“been contacted by Bob to market his apartment at West Park and to put 8 Victoria House*

back on to the market". Bob subsequently received an offer to purchase Apartment 12, but rejected it because he considered it was too low.

43. A meeting was held on 27 February 2012 in Guernsey at which Advocate Ashton, as liquidator of Premier Developments Limited, took the chair. It was attended by Bob, Robert and Pauline, as well as Mr Fattorini and Advocate Eades. Advocate Eades had been a director of Premier Developments Limited and continued to play a part in advising some of those involved. (Pauline had spoken to Bob for the first time in many years prior to this meeting taking place.) The discussions at this meeting showed that the deep divisions within the family continued, but an agreement was reached by its end. Accordingly, a formal written agreement was drafted and circulated for comment. During the course of e-mail exchanges with David, Advocate Ashton explained (on 5 March 2012) that "*At the moment the Agreement is structured so that your dad should not contact Robert and Pauline; I deliberately left you out*". It was eventually executed on 21 March 2012 ("the Settlement Agreement"). The parties to it were Bob, Nora, Pauline, Robert, David, Avenue, Mr Fattorini and Advocate Eades. The final version included provision that Bob agreed not to contact Nora or any of the family of Pauline or Robert "*by means of any communication mechanism such as telephone or Skype and be either aggressive or leave aggressive messages*". Mr Fattorini wrote to Bob at Vida Nova on 2 April 2012 and at apartment 2 on 1 May 2012.
44. Ms Hayes visited Bob in Jersey at Christmas 2012. She had from time to time visited for short breaks previously, and had met the Dwyers and the Ozannes. During her visit, David and his family also visited. Bob told Ms Hayes that he was intending to move back to Guernsey because he wanted to go home.
45. On 22 May 2013, the States of Jersey issued Bob with a disabled parking badge, which was valid for three years.
46. On 29 May 2013, Cooper Brouard sent an e-mail to Advocate Mark Ferbrache informing him that Bob's offer to purchase Rousillon had been accepted by the vendor, with the latest completion date being 6 August 2013. Draft Conditions of Sale were forwarded the following day. The property was purchased with assistance from Skipton International Limited. The type of mortgage Bob took was a five-year interest only buy-to-let product. A file note prepared by Advocate Ferbrache on 19 July 2013 relating to this purchase records that he had raised with Bob the question of obtaining permission from the Housing Department to occupy Roussillon lawfully and he had been told by him that it had been sorted out and that Bob would be "*en famille*". The question of Bob's wills was also mentioned. The next file note, dated 25 July 2013, also mentions wills. It records Bob explaining that he saw a Jersey advocate some time ago and that Bob was not happy that he could not deal with his estate how he wanted, adding that he wanted David and his family to get everything. Bob was unsure as to whether to sell or rent his Jersey apartment. On 6 August 2013, Bob completed his purchase of Roussillon. He also consented to a bond in favour of Skipton International Limited in the sum of £450,000, secured on all the personal property belonging to him and Roussillon. This document gave his address as Apartment 12.
47. In May 2013, Bob was diagnosed in Jersey with terminal cancer. His GP in Jersey, Dr Malachy Wilson, was so informed by a letter from a Consultant Gastroenterologist and Hepatologist dated 6 June 2013. Dr Wilson's prognosis was that he would live only for a further 12-24 months. From conversations Dr Wilson had with Bob around this time, Bob explained to him that he wanted to spend his last days prior to his death in Guernsey and intended to move there permanently as soon as suitable accommodation could be found.
48. At around this time, Bob's neighbour, Mr De Gruchy saw him for the final time. They discussed Bob's cancer. Mrs Ozanne was with Bob. Bob explained to Mr De Gruchy that he

was going to be with Mrs Ozanne “so that she could look after him”. Mr De Gruchy was aware since he had known Bob that Bob had been in the habit of going to Guernsey for weeks at a time to stay with Mrs Ozanne.

49. Also at around this time, Maureen Fray, who had known Bob since 1965 in Leicester, spoke to Bob about a planned visit she and her husband were intending to make to Jersey that autumn. By mid-August, they had booked to travel in October and contacted Bob to arrange to visit him whilst there. However, a few days before their scheduled departure, Bob telephoned to say he was in Guernsey and was ill and so unable to see them.
50. In June 2013, Bob was considering buying another apartment at West Park Apartments and offering to exchange parking spaces. The owner of the apartment in which Bob was interested explained in an e-mail dated 6 June 2012 that he would prefer to re-let the apartment but that it had been offered for sale because it was at that time vacant. The parking space transaction was subsequently completed. The price paid was £10,000. As confirmed in a letter from the bank with which Bob had arranged a buy-to-let mortgage in respect of the proposed purchase of the other apartment at West Park Apartments dated 21 October 2013, Bob had decided not to pursue that purchase.
51. In a letter dated 12 July 2013 from Bob’s Advocates to Robert, the latter was informed that Bob “will be moving back to Guernsey in the near future”, with a request that a special registration mark be made available for transfer back to him. In July 2013, Bob stayed at Vida Nova with the Ozannes but appears to have been travelling backwards and forwards between Guernsey and Jersey at this time (as recorded in the file note of Advocate Ferbrache dated 25 July 2013).
52. On an admission form dated 15 August 2013 at the General Hospital in Jersey, Bob gave his address as Apartment 12. He gave his next of kin as Mrs Ozanne with her address being Roussillon, where the telephone number was 253200. The next day, Bob prepared and signed a handwritten document, headed with his address at Apartment 12, in which he stated that, in the event of his death, he wished the Ozannes to take over the mortgage on Roussillon until their house sold after which Roussillon would become their own property “completely paid for”.
53. A file note prepared by Advocate Ferbrache dated 29 August 2013 records a meeting he and Advocate Malyn had with Bob and Mrs Ozanne. In relation to Vida Nova, it was explained that the Ozannes were “keeping it just in case matters don’t work out. They can move back into their own home”. However, both Bob and Mrs Ozanne agreed that the arrangements at that time were working well. In respect of wills, Bob explained that he had already left a note setting out the arrangements he wished to operate. He was advised that his note probably was not good enough. Bob instructed Advocate Ferbrache to “get a will in place leaving Roussillon to Beth and Peter”.
54. On 6 September 2013, Bob executed wills of realty and personalty in Guernsey. He met with Advocates Ferbrache and Malyn at Roussillon. The will of personalty did not declare his domicile. Both wills gave Bob’s address as “care of Roussillon”. A file note explains that these wills were temporary measures until fuller instructions had been provided. The question of domicile was raised. Bob said that he felt it made a big difference living in Guernsey. On the same date, Bob swore an Affidavit in respect of the proceedings he had commenced to set aside the Settlement Agreement. He gave his address as Roussillon. Because of his terminal illness he was requesting that the Court set an expedited timetable for his proceedings. At para. 9, he stated: “Although in Jersey at the time of the diagnosis I have recently returned to Guernsey.” Subsequently, when the question of security for costs

was raised on behalf of some of the Defendants, Bob's Advocates explained that Bob was resident in Guernsey and so there was no issue about security being needed.

55. When Nora received a copy of this Affidavit, she contacted David and told him about Dr Wilson's prognosis. Because David and Bob had not been in contact as a result of Bob commencing proceedings to set aside the Settlement Agreement and suggesting to David that it was best to break off communications for the time being, David had been unaware. Nora asked David to find out if the information was accurate. David spoke to Bob, who confirmed that he had terminal cancer. David duly informed Nora.
56. On 21 September 2013, Terence Thullier from the Jersey Catenians visited Bob in Guernsey. Mr Thullier was at that time the President of the Jersey Circle. He had not previously visited Bob in Jersey but knew he owned a flat at West Park. The next day, Mr Thullier sent an e-mail to some fellow Catenians relaying news about his visit and explaining that Bob would be visiting Jersey to see the specialist about a possible operation the following day. He circulated Bob's telephone number (253200).
57. On 23 September 2013, Bob attended a medical consultation in Jersey. Dr Wilson drove Bob from Apartment 12 to Jersey Harbour that day and discussed with him his ongoing care under Dr Fazakerley in Guernsey. Back in Guernsey, Mrs Ozanne collected Bob from the harbour and took him to Roussillon. En route, they visited Mr McKenna, who noted that Bob only had one small black suitcase with him. Mr McKenna did not know what the suitcase contained.
58. Thereafter, Mr McKenna visited Bob at Roussillon approximately once a week during the final months of Bob's life. He had not previously been to see Bob at that property. On several occasions, Bob asked Mr McKenna to confirm that he would help him get out of town and back to Jersey if things did not work out with the Ozannes. Mr McKenna was worried about how he would get Bob's mobility scooter into his Jeep.
59. On 25 September 2013, Bob executed further wills of realty and personalty, replacing those executed just a few weeks previously. The file note records that Advocates Ferbrache and Malyn again attended at Roussillon. As already noted, Bob's Will declared his domicile as being in Guernsey. The file note mentions that this was discussed; Bob was advised that this was a "*Good opportunity to record his intention to live in Guernsey*".
60. Bob's medical care was transferred from Jersey to Guernsey in September 2013. A letter from the Visiting Consultant at the General Hospital dated 25 September 2013 asked Peter Gomes of the Medical Specialist Group in Guernsey to take Bob under his wing because Bob was living in Guernsey and "*it would be much easier for him if all his treatment took place there*". By a letter dated 26 September 2013, Dr Fazakerley confirmed that Bob's application to join his list in Guernsey had been granted. Dr Fazakerley first saw Bob on 29 October 2013 and has explained that he understood Bob had moved to Guernsey to stay with his carers because previously they had had to travel to Jersey to look after him. On 12 December 2013, Dr Wilson arranged for the general practice medical records he had to be transferred to Dr Fazakerley, following a request dated 27 November 2013.
61. Various invoices in respect of Apartment 12 continued to be sent to that address during this time. The Comptroller of Taxes in Jersey issued a Notice of Assessment to Bob dated 8 October 2013, which was sent to Apartment 12. On 23 October 2013, Bob's Jersey Advocate wrote to him at apartment A2.
62. Bob was admitted to the Princess Elizabeth Hospital as a day patient on a number of occasions (23 October, 13 November, 4 and 27 December 2013) and each time on his private

patient agreements he gave his address as Roussillon. Correspondence to Bob was being sent to Roussillon during this time. On 31 October 2013, Network Insurance issued a home insurance policy to Bob in respect of Roussillon on which Bob's postal address was recorded as Apartment 12. On 13 December 2013, Network Insurance sent to Bob at Roussillon a letter about the renewal of his contents insurance policy in respect of Apartment 12. On 3 January 2014, Network Insurance wrote to Bob at Apartment 12 in respect of the renewal of a property owners policy. Bob took out a subscription with the St John Ambulance & Rescue Service in Guernsey, effective from 11 November 2013, which gave his residential address as Roussillon.

63. On 2 December 2013, the Social Security Department wrote to Bob at Vida Nova rejecting his claim for a Health Benefit Grant because the Department's records showed he had left Guernsey. However, the Department invited Bob to demonstrate that he had moved back to the Island, if that were the case. Bob did, though, have a Guernsey Health Benefit Card by the time of his death. By letter dated 21 January 2014, the Department issued to Bob a Medical Appliance Card.
64. The minutes for the meeting of the Jersey Circle of the Catenian Association held on 4 December 2013 also record that *"President Terry introduced Brother Stephen who had recently visited Bob Cooney in Guernsey; reported Bob was in good humour under the kind caring attendance of Peter and Beth in his Bungalow Roussillon, Catel, Guernsey GY57GB. Steve said Bob had appreciated the gift of biscuits, not to mention the Sloe Gin he brought from La Mare. Although the very sad news was Brother Bob did not think he would ever be able to revisit Jersey, and he sends his best wishes."* On 19 December 2013, Mr Thullier and Dan Hartigan visited Bob in Guernsey, with the former noting that Bob had threatened to attend a Circle meeting in Jersey early in 2014, although Bob was noticeably weaker than when Mr Thullier had visited in September. They all went out for lunch. Mr Hartigan visited because he had formed the impression from what he was being told that Bob's condition was deteriorating and he expected it would be the final occasion on which he would be able to enjoy the banter and Bob's company. On 21 December 2013, Mr Thullier sent an e-mail about this visit to fellow Catenians. Mr Thullier continued to speak to Bob and the Ozannes by telephone.
65. Mr Ozanne contacted David on 29 December 2013 to inform him that Bob's condition had deteriorated. At that time, David was driving back home from leaving his daughters in the Lake District with Nora. They were staying with Nora whilst Angi underwent surgery. David informed Nora. Whilst Nora had not communicated directly with Bob for many years, David offered Nora the chance to travel to Guernsey with him and his daughters in the New Year once Angi had had her surgery. Although Pauline attempted to persuade Nora that she should not visit Bob, Nora decided to go anyway. Pauline transported David's daughters back to Staffordshire on 1 January 2014. Nora had already flown to Guernsey earlier that day.
66. Mr McKenna also suggested to Bob that perhaps Nora and Robert should be contacted. Mrs Ozanne initially objected to having them come to Roussillon, but then agreed. Bob told Mr McKenna to make the call, so Mr McKenna telephoned Robert.
67. David also contacted the Dwyers at the end of 2013. They arranged to visit Bob on 31 December 2013. Mrs Ozanne informed them that Bob was in the hospital. Mr Ozanne collected the Dwyers from the airport and took them to the hospital. Whilst at the bedside, Mr Ozanne mentioned to Bob that he had had a call from Nora who wanted to visit him with Robert. On being prompted, Bob eventually replied "ok".

68. Robert and Nora visited Bob at Roussillon on 1 January 2014. They were taken there by Mr McKenna, but he and Mrs Ozanne then left the three of them together. After talking for a moment or two, Robert asked if there was anything he could do. Bob's reply was to ask him for £750,000 he said he owed him. Robert responded that he had not come to talk about money, rather it was time to make up, but perhaps Bob could explain why he wanted money. Robert and Nora left soon afterwards because Robert did not want to talk about the money matters Bob raised. This was also the first occasion on which Robert met Mrs Ozanne. From her he understood that she had been caring for his father for a number of years and that they had been on holiday together. Bob had been to stay at the Ozannes' house and Mrs Ozanne had travelled to Jersey to care for Bob. Bob had moved to Guernsey because he had become so ill.
69. David and his daughters took the ferry from Weymouth to Guernsey on 2 January 2014. On arriving at 2.15 pm, David telephoned Nora and met her at a café. David did not collect Nora from Robert's house because he and Robert had not spoken for some years. Robert was with Nora when David collected her to go to visit Bob. Nora told David that her visit to Bob the day before accompanied by Robert had not gone well. When the four of them got to Roussillon, on seeing Bob, David's daughters soon became upset and left his room, accompanied by Nora. Whilst they were with Bob, Bob asked Nora why she was there. When Bob and David were alone, Bob relayed to David that he had told Nora and Robert about the terms of his will and further explained that he did not wish to see either of them again. Nora later returned to Bob's room and Bob again told her, in front of David, that he was leaving everything to David and David's daughters. Nora enquired about the others, to which Bob replied that Robert had had enough and he was not interested in Pauline. Nora commented that this was not fair, to which Bob said he did not want to discuss it further. Shortly afterwards, Bob's visitors left and they went to the café at the Strawberry Farm where David's two daughters met Robert's two daughters for the first time.
70. On 3 January 2014, David collected Nora from Robert's house and they went to Roussillon. Nora again tried to raise the issue of Bob's will, but Bob did not wish to discuss it further. It was, therefore, a short visit. On reaching Robert's house, Nora asked Robert if David and his daughters could go into the house, which they did. They did not discuss Bob at all.
71. On 4 January 2014, David collected a couple of Bob's friends from Leicester from their hotel and left them with Bob for a couple of hours. When David returned, although he took his daughters with him, they stayed in the car. David had some time alone with Bob, who reiterated what his wishes were about his will, stating he wanted David's daughters to be taken care of financially. After discussing funeral arrangements with the Ozannes also in the room, Bob wanted to see David's daughters again. They came in from the car, where they had been waiting. Bob directed David to tell his two daughters what Bob had said about his will. After David had done so, Bob spoke to each of David's daughters in turn.
72. On 6 January 2014, the Guernsey branch of HSBC wrote to Bob at Apartment 12 as part of a general review relating to non-residents' accounts, stating "*As you don't live in Guernsey*" the bank proposed to close Bob's account on 10 March 2014 unless additional personal information were provided demonstrating a connection to Guernsey.
73. The managing agent of the Park Heights Apartments in Jersey, Carrie Modral, received a telephone call from Bob approximately a week to 10 days before he died. Prior to that call, she had not been aware that Bob was in Guernsey. The address she had for corresponding with Bob continued to be Apartment 12.
74. On 21 January 2014, Bob died in Guernsey. His funeral took place nine days later. David and Angi attended. They had made arrangements to travel to Guernsey on 22 January 2014 to

see Bob anyway. None of Nora, Robert or Pauline attended the funeral. After Bob's death, David took Bob's mobility scooter to Mr McKenna's house. He also packed his Volvo estate car with Bob's possessions from Roussillon. They filled his car. The black suitcase mentioned by Mr McKenna had files in it. These items were taken to Jersey to be stored there on behalf of Bob's estate. At some stage after September 2013, the Dwyers packed up some of Bob's possessions left at Apartment 12 and stored them both within the flat and in the lock-up store in the underground car park.

75. Bob's executor, the First Defendant, proved and registered his will of personalty in the Ecclesiastical Court on 14 February 2014. At the time of his death, Bob was in receipt of rental income in respect of five apartments in Jersey (including apartment A2) and one parking space in Jersey and also one parking space in Guernsey. Mr De Gruchy attended at Apartment 12 when an open viewing of it was held on 21 February 2015 and noted that the apartment looked much as he remembered it.
76. In late July 2014, David, Angi and their daughters attended a meeting with the Ozannes, during which the Ozannes explained that they understood Bob to have made a very deliberate decision to move to Guernsey so that he could deal with his property as he wished.
77. On 30 April 2015, Anthony Sullivan sent an e-mail to Robert in which he stated that he was aware that Bob had had his reasons for moving to Guernsey and that, to Mr Sullivan, that move had appeared to be a permanent one, especially in view of his condition. Mr Sullivan had previously discussed with Bob the latter's intention to move to Guernsey, with Bob saying "*in the end I will have to go to Guernsey*" and that, following his diagnosis with cancer, this had been high on Bob's list of priorities.

Directions

78. The Deputy Bailiff gave the Jurats general directions about their respective roles: the Deputy Bailiff is the sole judge of questions of law and procedure and the Jurats are the sole judges of questions of fact. The Jurats were directed that they must accept his directions on the law and follow them. The Deputy Bailiff explained that to establish something on the balance of probabilities means to prove that something is more likely so than not so. Whilst the burden of proof generally rested on the Plaintiff, insofar as the Defendants sought to establish any fact, the burden of proof rested on them to prove that fact to the same civil standard. In the context of domicile, though, the burden of proof falls on the person asserting domicile. Consequently, the Plaintiff has the burden of establishing the acquisition by Bob of a domicile of choice in Jersey. If she achieved that, the Second to Fourth Defendants have the burden of establishing that Bob's domicile of choice subsequently became Guernsey. In this way, Bob's domicile at his death would be determined.
79. The Jurats were to have regard to the whole of the evidence presented to the Court, and to form their own judgments about the witnesses, and which evidence they treated as reliable, and which they considered was not. They might take account of the arguments in the speeches they heard, but are not bound to accept them. If at any time the Deputy Bailiff appeared to express any views concerning the facts, or emphasise a particular aspect of the evidence, the Jurats were not to adopt those views unless they agreed with them. The Deputy Bailiff summarised that position by clarifying that, when it comes to the facts on the question of Bob's domicile, it is the Jurats' judgment alone that counts.
80. The Jurats were reminded that the hearing had focused only on the preliminary question of Bob's domicile. The relief Nora sought was in para. 1 of the prayer in the Amended Cause:

“A Declaration by the Court that the Deceased was domiciled in Jersey as at the date of his death”. Nora’s case was summarised in para. 7 of the Amended Cause:

“By 31st December 2008 at the latest Jersey had become his domicile of choice. The Deceased moved to Guernsey in or around August or September 2013 shortly before his death. The purpose of the move to Guernsey was to enable the Deceased to live with his carers, Peter and Maria Ozanne, during the final stages of his illness.”

81. In relation to the assertion that a domicile of choice in Jersey was retained by Bob at the time of his death, Nora pointed to the home and belongings he left in Jersey (para. 8). The consequence is that Nora says Bob *“had no intention of permanent and indefinite residence in Guernsey as would be required to replace Jersey as his domicile of choice”* (para. 9). She further alleges that Bob *“moved to Guernsey for a particular and time-limited purpose, namely so that his preferred carers, who were resident in Guernsey, could care for him during his final months”* (para. 10). She suggests that Roussillon was acquired by Bob because Vida Nova was unsuitable for his needs and this enabled him to bequeath his interest in it to his carers following his death.
82. In their Defences, the Second to Fourth Defendants deny that Bob was domiciled in Jersey: *“Having regard to the lack of freedom of testamentary disposition in Jersey, although there was not the exclusive consideration, he once again established Guernsey as his domicile”* (para. 31). They suggest that Bob’s reasons for wishing to exclude Pauline and Robert from benefiting from his personal estate were that Pauline was a bully and was estranged from Bob and that Robert had already benefited well from the family’s wealth. In relation to Bob’s retention of property in Jersey, this was not as a home but as investment and for convenience if he chose to visit Jersey because it provided somewhere for him to stay. Bob’s intention was recorded in his last will and he had been taking steps since 2006 to return to Guernsey.
83. It was common ground that Guernsey law should look to English law principles on how to ascertain a person’s domicile. This was an approach that had been applied in Jersey (eg, *Re Hawksford Executors Limited* 2013 (2) JLR 357). It is similarly the consistent approach of this Court to derive guidance as to the applicable principles from reference to the private international law regime operating in England and Wales and especially in Dicey, Morris and Collins, *The Conflict of Laws* (14th ed., 2006) (“Dicey”).
84. The Deputy Bailiff first set out some general guidance for the Jurats. The explanation offered by Lord Westbury in *Udny v Udny* (1869) LR 1 Sc & D 441, 458 provides a general explanation of the concept:

“Domicil of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time.”

The fact-specific nature of the exercise of ascertaining a person’s domicile was expressed as follows by Mummery LJ in *Agulian v Cyganik* [2006] EWCA Civ 129 (at para. 46(1)):

“Positioned at the date of death in February 2003 the court must look back at the whole of the deceased’s life, at what he had done with his life, at what life had done to him and at what were his inferred intentions in order to decide whether he had acquired a domicile of choice in England by the date of his death. Soren Kierkegaard’s aphorism that “Life must be lived forwards, but can only be understood backwards” resonates in the biographical data of domicile disputes.”

At para. 6-004 of Dicey, it was further explained that:

“A person may be said to have his home in a country if he resides in it without any intention of at present removing from it permanently or for an indefinite period. But a person does not cease to have his home in a country merely because he is temporarily resident elsewhere; and a person who has formed the intention of leaving a country does not cease to have his home in it until he acts according to that intention.”

85. The Deputy Bailiff then referred the Jurats to a series of Rules set out in Dicey that, when taken together, would assist them in their deliberations. Rule 5 is that *“No person can be without a domicile”* and Rule 6 states that *“No person can at the same time for the same purpose have more than one domicile”*. The purpose in the present case is the laws of succession. The consequences of Bob having a Jersey domicile would be the entitlement of Nora to receive one-third of his personal estate as *légitime* and Robert, Pauline and David sharing in another one-third, leaving just one-third as freely disposable, whereas there is complete freedom of testamentary disposition under the Inheritance (Guernsey) Law, 2011 if Bob were found to have been domiciled in Guernsey. As Arden LJ put it in *Barlow Clowes International Limited v Hamilton* [2008] EWCA Civ 577 (at para. 14):

“Given that a person can only have one domicile at any one time for the same purpose, he must in my judgment have a singular and distinctive relationship with the country of supposed domicile of choice. That means that it must be his ultimate home or, as it has been put, the place where he would wish to spend his last days.”

Her Ladyship added (at para. 15) *“this test by reference to ending one’s days usefully emphasises the need for the subject to have a fixed purpose that he will live in the country of his domicile of choice.”*

86. Rule 7 states that *“An existing domicile is presumed to continue until it is proved that a new domicile has been acquired”*. Referring to *Irvin v Irvin* [2001] 1 FLR 178, it is clear that *“Cogent and clear evidence is needed to show that the balance of probabilities has been tipped, and this is true whether the issue is the acquisition or loss of a domicile of choice”* (Dicey, para. 6-019). Attention was also drawn to Wynn-Parry J in *National Provincial Bank v Evans* [1947] 1 Ch 695, 707:

“... just as it is necessary for the purpose of acquiring a domicile of choice, thus placing the domicile of origin in abeyance, to demonstrate the acquisition by unequivocal intention and act, so for the purpose of abandoning the domicile of choice it is essential to demonstrate that abandonment by unequivocal intention and act. The only real difference in law between the two cases of acquiring a domicile of choice, and placing the domicile of origin in abeyance, on the one hand, and abandoning a domicile of choice, on the other hand, is that less evidence is required to establish the act of abandoning the domicile of choice than is required to demonstrate the acquisition of a domicile of choice. But in either event both the intention and the act must be demonstrated to be unequivocal.”

87. The Deputy Bailiff highlighted the importance of Rule 10: *“Every independent person can acquire a domicile of choice by the combination of residence and an intention of permanent or indefinite residence, but not otherwise”*. The parties’ cases were based on Bob acquiring a new domicile of origin and this was the test the Jurats should apply to that question. Residence relates to physical presence. It is possible to distinguish between residing somewhere as an inhabitant on the one hand and being in a place casually or as a traveller on the other hand. As explained in Dicey:

“It has been suggested that the distinction between an inhabitant and a person casually present is of limited value in cases of dual or multiple residence, as a person

who retains a residence in his domicile of origin can acquire a domicile of choice in a new country if the residence established in that country was his "chief residence". It is, however, submitted that questions as to the quality of residence are primarily relevant in considering whether the propositus has the animus manendi, the intention of permanent or indefinite residence." (para. 6-035)

"It is not, as a matter of law, necessary that the residence should be long in point of time: residence for a few days or even for part of a day is enough. Indeed, an immigrant can acquire a domicile immediately upon his arrival in the country in which he intends to settle. The length of the residence is not important in itself: it is only important as evidence of animus manendi. A person may be resident in a country although he lives in hotels there or in the house of a friend, and although he is staying there for some particular purpose such as conducting business or taking part in legal proceedings. On the other hand, a person spending short periods in a house he owns may be held not to be resident there; he may be there as a visitor and not as an inhabitant." (para. 6-036)

"... it is now settled that in English law the illegality of residence is no bar to the acquisition of a domicile of choice in England. The same would seem to be the case where the issue is the acquisition of a domicile of choice in another country: as Lord Hope observed in Mark v Mark, as our courts do not apply the public policy of a foreign state, the illegality of the residence under that state's law would not be regarded here as inconsistent with the acquisition of a domicile of choice in that country." (para. 6-037)

88. This last factor is one that can properly be taken into account because there has been no evidence that Bob occupied Roussillon lawfully under the Housing (Control of Occupation) (Guernsey) Law, 1994. However, in that regard, the Jurats were reminded that they might further take into account that Bob had previously been granted a housing licence to occupy Vida Nova and, if they considered it appropriate to do so, could draw such inference as they wished about prospects for Bob to have rendered his occupation of Roussillon lawful had he chosen to apply for a licence in respect of Roussillon.

89. Further extracts from Dicey set out that:

"The intention which is required for the acquisition of a domicile is the intention to reside permanently or for an unlimited time in a country. "It must be a residence fixed not for a limited period or particular purpose, but general and indefinite in its future contemplation." This intention must be directed exclusively towards one country. Thus a person who leaves the country of his domicile with the intention of settling in one of several other countries does not acquire a domicile in any of those countries." (para. 6-039)

"A person who determines to spend the rest of his life in a country clearly has the necessary intention even though he does not consider his determination to be irrevocable. It is, however, rare for the animus manendi to exist in this positive form: more frequently a person simply resides in a country without any intention of leaving it, and such a state of mind may suffice for the acquisition of a domicile of choice. The fact that a person contemplates that he might move is not decisive: thus a person who intends to reside in a country indefinitely may be domiciled there although he envisages the possibility of returning one day to his native country. If he has in mind the possibility of such a return should a particular contingency occur, the possibility will be ignored if the contingency is vague and indefinite, for example,

making a fortune or suffering some ill-defined deterioration in health; but if it is a clearly foreseen and reasonably anticipated contingency, for example the termination of employment, or the offer of an attractive post in the country of origin, succession to entailed property, a change in the relative levels of taxation as between two countries, or the death of one's spouse, it may prevent the acquisition of a domicile of choice." (para. 6-040)

Nora's case did not challenge the fact that Bob was residing in Guernsey at the time of his death, but rather asserted that this was not his chief residence, which she said continued to be in Jersey.

90. The breadth of the considerations to be had when ascertaining a person's domicile are explained by Rule 11: *"Any circumstance that is evidence of a person's residence, or of his intention to reside permanently or indefinitely in a country, must be considered in determining whether he has acquired a domicile of choice"*. Further guidance is offered in Dicey as follows:

"Most disputes as to domicile turn on the question of whether the necessary intention accompanied the residence; and this question often involves very complex and intricate issues of fact. This is because "there is no act, no circumstance in a man's life, however trivial it may be in itself, which ought to be left out of consideration in trying the question whether there was an intention to change domicile. A trivial act may possibly be of more weight with regard to determining this question than an act which was of more importance to a man in his life-time." There is, furthermore, no circumstance or group of circumstances which furnishes any definite criterion of the existence of intention. A circumstance which is treated as decisive in one case may be disregarded in another, or even relied upon to support a different conclusion." (para. 6-048)

"Direct declarations of intention call for special comment. The person whose domicile is in question may himself testify as to his intention, but the court will view the evidence of an interested party with suspicion. Declarations of intention made out of court may be given in evidence by way of exception to the hearsay rule. The weight of such evidence will vary from case to case. To say that declarations as to domicile are "the lowest species of evidence" is probably an exaggeration. The present law has been stated as follows: "Declarations as to intention are rightly regarded in determining the question of a change of domicile, but they must be examined by considering the persons to whom, the purposes for which, and the circumstances in which they are made, and they must further be fortified and carried into effect by conduct and action consistent with the declared expressions." Thus in some cases the courts have relied to some extent on declarations of intention in deciding issues as to domicile; indeed, in one case the declaration was decisive. But in other cases the courts have refused to give effect to the declarations on the ground that they were inconsistent with the conduct of the propositus: a domicile cannot be acquired or retained by mere declaration. The courts are, in particular, reluctant to give effect to declarations which refer in terms to "domicile" since the declarant is unlikely to have understood the meaning of the word." (para. 6-051)

This last point relates to Bob's last will dated 25 September 2013. The declaration in Bob's Will amounts to admissible evidence but it is not conclusive of his domicile at the time. It is a fact to be weighed with the other evidence going to his intention of permanent or indefinite residence.

91. Rule 12 states:

“Without prejudice to the generality of the foregoing Rule, in determining whether a person intends to reside permanently or indefinitely in a country, the court may have regard to:

- (1) the motive for which he has taken up residence there;*
- (2) the fact that the residence was not freely chosen;*
- (3) the fact that the residence was precarious.”*

Again, these considerations are elaborated upon in Dicey as follows:

“It is immaterial that the motive is to enjoy a more favourable legal system. Thus a person who resides in a country to evade the rule against accumulations, to achieve freedom of testation, to secure a more favourable tax regime, or to institute or escape from matrimonial proceedings, may acquire a domicile there.” (para. 6-055)

“Conflicting views have been expressed on the question whether a person who resides in a country for the sake of his health acquires a domicile there. Some judges have thought that such a person could not, while others have thought that he might, by such residence acquire a domicile. The two objections to the acquisition of a domicile are that the residence has been taken up for some special motive, and that it may not be freely chosen. But these factors merely make it improbable in fact that a domicile has been acquired: they do not make it impossible in law. A person who is temporarily detained in a country because he is for the time being too ill to be moved, or who goes to a country for the temporary purpose of undergoing a course of medical treatment, clearly does not acquire a domicile of choice there. On the other hand a person who determines to settle in a new country because he believes he will enjoy better health there may well intend to live there permanently or indefinitely, but of course he does not necessarily have this intention. It has been suggested that a distinction ought to be drawn between persons whose move from one country to another is dictated by immediate danger and those who move simply to enjoy better health. But this too appears to be a factual rather than a legal distinction. A person who goes to another country to overcome some immediate danger to his health may well intend to return after the danger has passed; and a person who is mortally ill may well move from one country to another to alleviate his last sufferings, without any intention of breaking up his old home. But if a person is told that he will die in six months if he stays in the country of his present domicile, but will live for ten years if he goes to another country, it is perfectly possible, and indeed likely, that he will form the intention of residing permanently or indefinitely in the second country, and to acquire a domicile there.” (para. 6-062)

Thus, although Nora conceded in correspondence that Bob was aware that his move to Guernsey enabled him to enjoy freedom of testamentary disposition and that Bob desired to be able to exclude Robert and Pauline from benefiting from his estate, this factor is not conclusive but is a further fact to weigh in the balance. The Jurats were invited to consider whether they accepted Nora’s case that Bob’s purpose of coming to Guernsey in 2013 was to come to where his carers were and not to end his days here generally and whether his residence was forced upon Bob because of this and so affected his *animus*. This is another factor that is not in itself conclusive, but something to take into account.

92. The final Rule to which the Jurats’ attention was drawn is Rule 13(1): *“A person abandons a domicile of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently, or indefinitely, and not otherwise”*. This is the converse to acquisition and is further explained as follows:

"A domicile of choice is lost when both the residence and the intention which must exist for its acquisition are given up. It is not lost merely by giving up the residence nor merely by giving up the intention. It is not necessary to prove a positive intention not to return: it is sufficient to prove merely the absence of an intention to continue to reside. The intention is not considered to have been given up merely because the propositus is dissatisfied with the country of domicile of choice. In order to show that the intention has been given up, it may be desirable to prove the formation of an intention to reside in another country, but such proof is not essential as a matter of law. Although it has been suggested that residence is given up by "leaving this country or, perhaps more accurately, arriving in another" it is submitted that residence can simply be given up. The view that residence in one country can only be given up by arriving in another seems to be a relic of the discarded doctrine that a domicile of choice cannot be lost by mere abandonment." (para. 6-075)

93. In the light of these principles, which the Skeleton Arguments of the Advocates set out and emphasised as they applied to their respective cases, the Deputy Bailiff invited the Jurats to review Bob's life and the choices he made at the various stages of it. In doing so, they might consider who says what about key events and, if there is any conflict, choose whose evidence they prefer. In doing so, they should start from the agreed acquisition of a domicile of choice in Guernsey in the 1980s. Thereafter, they would look for the coincidence (or the combination) of residence and intention of permanent or indefinite residence in Jersey. In doing so, they could properly consider whether Bob had abandoned his Guernsey domicile. That would involve considering Bob's intention because it was common ground that he had not been resident in Guernsey for long periods from the 1990s until 2013. The periods of time spent in Jersey and elsewhere were broadly agreed, but neither side has argued that the time Bob spent in Ireland and/or England led to the acquisition of any new domicile of choice in those places (or that any existing domicile of choice was at that time abandoned). In relation to intention, the Jurats were told that they could consider, if they regarded it as relevant, the steps Bob took to try to return to Guernsey earlier than he finally did, and draw inferences from that evidence about his intentions in previous years. If the Jurats concluded that Nora failed to prove that Bob acquired a domicile of choice in Jersey by the end of 2008 at the latest, the Court would not grant the relief she sought.
94. However, if the Jurats concluded that Nora had discharged her burden to prove the acquisition of a domicile of choice in Jersey by that time, they would then have to consider whether the Second to Fourth Defendants had proved that Bob again acquired a domicile of choice in Guernsey prior to his death. To do so, the Jurats would need to be satisfied that Roussillon became Bob's chief residence and that he formed the requisite intention. They should consider whether his actions in 2013 were equivocal. If they were not persuaded that the acquired domicile of choice in Jersey had been abandoned and a new domicile of choice in Guernsey acquired, Nora would be entitled to the declaration she sought.

The evidence

95. The Court heard oral evidence on behalf of the Plaintiff and the Interested Parties from Robert, Mr Fattorini and Mr McKenna and on behalf of the Second to Fourth Defendants from David, Mrs Dwyer and Angi. The evidence of the other witnesses was accepted in the form of witness statements. For the Plaintiff and the Interested Parties, those statements were from Dr Fazakerley, Ms Modral, Pauline, Mr Dene, Mr De Gruchy and Mr Grimes. For the Second to Fourth Defendants, those statements were from Dr Wilson, Mr Dwyer, the Third and Fourth Defendants themselves, Mr Thullier, Mr Hartigan, Mr Sullivan and Ms Hayes.

96. Until the service of a hearsay notice dated 25 November 2015, it had been expected that Nora would attend to give oral evidence. The Second to Fourth Defendants had wished to cross-examine her. The hearsay notice referred to the reasons why Nora was not to be called to give evidence: *“she is 82 years old, resident in England, frail and suffering from ischaemic heart disease”*. It referred to her being taken to hospital suffering from chest pains on 24 September 2015 and that she had seen her GP most recently on 24 November 2015 *“and the GP has expressed concern about the impact of giving evidence on Mrs Cooney’s health”*. The letter from Nora’s GP, Dr Kate Stonehouse, dated 27 November 2015 confirms that Nora was seen by her on 24 and 29 September and 24 November 2015 and states:

“On 24th September 2015 she attended with chest pain, as a consequence she was admitted to Royal Lancaster Infirmary and her cardiac medication was reviewed. Since then Mrs Cooney reports that her angina is well controlled and she has not had any further episodes of chest pain and her activities of daily living are not limited. However Mrs Cooney is concerned that the chest pains that led to that admission may have been brought on by conversations she had with friends that were staying at the time regarding the impending court case. As a consequence Mrs Cooney is concerned about similar chest pains developing as a result of being directly involved in the case.”

97. Although the service of this hearsay notice was far later than required by the Evidence in Civil Proceedings (Guernsey and Alderney) Rules, 2011, pursuant to section 2(5) of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009, which provides that:

“Failure to comply with subsection (1) or with rules made under subsection (2)(b), does not affect the admissibility of the evidence but may be taken into account by the court –

- (a) in considering the exercise of its powers with respect to the course of proceedings and costs, and*
- (b) as a matter adversely affecting the weight to be given to the evidence in accordance with section 4”,*

the Deputy Bailiff ruled that Nora’s original Affidavit in support of her action, sworn on 14 July 2014, and her witness statement dated 16 February 2015 were admissible as her evidence but gave the Jurats directions as to the weight they might wish to give that evidence. In doing so, he referred first to section 4 of the 2009 Law:

“(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings, the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following –

- (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness,*
- (b) whether the original statement was made contemporaneously with the occurrence of existence of the matters stated,*
- (c) whether the evidence involves multiple hearsay,*
- (d) whether the person involved had any motive to conceal or misrepresent matters,*
- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose,*

- (f) *whether the circumstances in which the evidence is adduced as hearsay suggests an attempt to prevent proper evaluation of its weight, and*
- (g) *any other circumstances which the court may, in the interests of justice, consider relevant.”*

98. The Deputy Bailiff highlighted the fact that there had been a pre-trial review held on 2 November 2015 at which no mention had been made of Nora’s admission to hospital in September. Indeed, there was no suggestion at that time that Nora might not attend to give evidence. The Second to Fourth Defendants had lost their opportunity to cross-examine Nora on her evidence. The lateness of her indicating that she would not attend meant that there was no option to consider taking her evidence in some other manner, whether by video-link or through a commission rogatoire.
99. The Jurats have decided that Nora’s evidence must, as a result of finding that she had taken a deliberate decision not to attend the trial, be given less weight than if it had been tested and withstood cross-examination. They note, in particular, that it is highly unusual for a party not to give evidence on her own behalf in a case like this where the declaration sought by her requires such a close analysis of the facts. Given the fractured relationship of Bob with most of his family, Nora potentially had the ability to fill in some of the gaps. The medical evidence provided in support of Nora’s decision not to give evidence does not, in the Jurats’ opinion, support a case where her GP was advising against participating in the trial, but rather relays what Nora herself had told her doctor. Indeed, the doctor’s perception of Nora’s condition was that it was well-controlled through medication. Accordingly, the Jurats have concluded that it would have been reasonable and practicable for Nora to have produced herself to give evidence in support of her case and that her late indication that she would not do so is an attempt to prevent the proper evaluation of the weight to be given to it.
100. In any event, though, Nora’s written evidence can hardly be described as fulsome. Comparatively little of her Affidavit is directed to the history of where Bob lived and his intentions. Her witness statement offers no more than a broad overview of the places where she and Bob lived. It does not, however, deal with the times they spent apart and how they might be viewed. Her suggestion that Jersey was “*the best “next step up” for*” Bob’s image is not borne out by the facts because the places in which they lived in Jersey cannot be equated to a house in Fort George. The decision to sell the first flat Bob purchased in Jersey, where Nora says she felt very happy suggests that generating money for the Gategny Esplanade project was of more importance than a settled home for Bob. But this is something further on which Nora is silent. It is because these aspects of her evidence have not been subjected to questioning that the Jurats do not feel able to accept her bare assertion that the move of Bob and her to Jersey “*was intended to be permanent*”.
101. Turning to the other witnesses from whom the Court heard, the Jurats formed the following impressions of them. Robert is a forceful and assertive character. Robert’s attitude was that, although Bob was his father, a lot of their dealings were business. In evidence, he commented that it was wrong for Bob to leave all his assets to one son who had never worked with him. His motivation in supporting his mother’s claim appears to be because he is not comfortable with what Bob chose to do. Aside from the meeting prior to the Settlement Agreement in 2012, he had had no contact with Bob since 2001, before visiting Bob in the final month of his life. He occasionally saw Bob in Guernsey on his mobility scooter and would also hear from others that Bob was over, but he had no knowledge of what was going on in his father’s life or about his plans throughout all those years. He had shown no real interest in finding out what was happening to his father during that time or indeed why his father had returned to Guernsey in 2013.

102. The Jurats found Mr Fattorini to be a credible witness. Although called on behalf of Nora, he did not appear to take sides. He confirmed that Bob had chosen to cease being resident in Guernsey in 1991 because he was frustrated with what he perceived to be the bureaucracy and did not want the Guernsey tax authorities to scrutinise his affairs too closely. Mr Fattorini, who knew all of the Cooneys reasonably well, described the family dynamic as “*interesting*”. He became distanced from Bob following Bob’s complaint about him and so did not speak with him in the latter part of Bob’s life. In contrast, the Jurats found Mr McKenna less credible because his evidence was inconsistent. The Jurats formed the impression that Mr McKenna wanted to appear as closer to Bob than he really was, but he was candid enough to admit that he was not taken into Bob’s confidence on personal matters. Because the context was rather confusing, the Jurats give less substance to Mr McKenna’s evidence that he had promised to get Bob back to Jersey if things did not work out with the Ozannes.
103. David’s relationship with Bob was demonstrably closer than Bob’s relationships over the final decade or more of his life with Nora, Robert and Pauline. David was a credible witness whose account of his dealings with Bob was not shaken through cross-examination. He was the only family member who could reasonably inform the Court about what had been going on in Bob’s mind because he was the only one of them who had had discussions with Bob about Bob’s intention always to be back in Guernsey. Similarly, Angi appeared to be firm and forthright in her evidence, making no secret of the fact that she and Bob did not get on and did not communicate all that much. Given her profession as an estate agent, it was to her that Bob turned when he needed advice and assistance about what to do with the properties he owned in Jersey. Mrs Dwyer presented as a credible witness who had no axe to grind. Whilst recognising that she and her husband were some of the closest friends Bob had in Jersey, the Jurats find that her awareness of Bob’s intentions of returning to Guernsey when it was appropriate to do so are clearly believable. Mrs Dwyer’s awareness of his intentions also arose from her assistance to him with his correspondence. The Jurats do not find that she could have been mistaken about these intentions and certainly do not find that she had invented them.

The parties’ contentions

104. On behalf of Nora, Advocate Dawes submitted that domicile is an important concept because so much turns on it, meaning that the Court should be slow to accept that it is easily acquired or lost. The principles from Dicey recognise this. His contention was that there was no real issue but that Bob was domiciled in Jersey by 2008 at the very latest. That was where he spent a good amount of time, occupied homes and invested in other properties and continued to be centred there. In relation to Bob’s purpose in moving to Guernsey in 2013, the requirement for there to be a fixed purpose must be viewed in the context of him wishing to be cared for by Mrs Ozanne. Bob went to where they were for the benefit of his health. It should be noted that Bob’s occupation of Roussillon was not lawful under the 1994 Law. Nora concedes that this is not conclusive, but it is a further factor to bear in mind when considering Bob’s purpose in being in Guernsey. Bob’s motive under Guernsey’s laws of succession and his declaration of domicile in Bob’s Will have to be acknowledged but equally do not automatically lead to a conclusion that he was domiciled in Guernsey at the time of his death. Bob’s decision to retain Apartment 12 in Jersey for his use demonstrates that his position in Guernsey was equivocal. He drew attention to a definition in *The Shorter Oxford English Dictionary* of “unequivocal” (“*unmistakable meaning, free from ambiguity*”) to support his contention that Bob’s situation in Guernsey was not sufficiently clear. This showed that his chief residence continued to be Apartment 12 in Jersey and not Roussillon in Guernsey. Advocate Dawes highlighted the fact that Bob clearly had the ability to move to Guernsey earlier than he did, but chose not to do so. His efforts to move to Marina Court in 2006 and 2007 support an inference that Bob was only interested in living there and nowhere else, eg, he did not pursue the option of Hazely Manor. He submitted that the

evidence painted a picture of a man who had made his life in Jersey, where even the witnesses called on behalf of the Second to Fourth Defendants were not from Guernsey, but largely from Jersey.

105. On behalf of David and his two daughters, Advocate Ferbrache suggested the facts led to a different conclusion. The Court should focus on what Bob did and what was in his mind, not what others *ex post facto* seek to impute to him. Bob's view was that Robert had already been well rewarded from the family's wealth. He did not want him to benefit from his personal estate. He was estranged from Pauline and did not want her to benefit. He made provision for Nora to the extent that were she found to need further provision it was available under the will trust, but he principally wanted to benefit David and David's children. He knew that the forced heirship regime in Jersey prevented him from giving full effect to his wishes. He knew that Nora and their children all benefited from freedom of testamentary disposition. That is why he wanted to take steps to confirm his domicile in Guernsey and so purchased Roussillon where he would see out his days. On the question of residence, Advocate Ferbrache acknowledged that there were arguments in favour of both Jersey and Guernsey from 2013, so the determinative factor was potentially Bob's intentions. He suggested that the Court should concentrate on where Bob wished to spend his last days and what he did about that wish. The evidence supported the view that his properties in Jersey, included Apartment 12, were regarded more as investments. Bob was always looking for the next good deal. When considering the quality of the evidence offered by the various witness, he suggested that there were those who were closest to Bob, including David and Bob's Jersey-based friends, who perhaps could be viewed as being more likely to be privy to Bob's thoughts on these matters, and then there were those who were less well-connected to Bob. There was no one saying positively that Bob had intended to stay in Jersey, so Nora was inviting the Court to draw that inference, whereas a number of witnesses for the Second to Fourth Defendants had relayed what Bob had actually said to them more than once. In those circumstances, the Second to Fourth Defendants maintained their blanket denial that Bob ever acquired a domicile of choice in Jersey. However, if the Court found it had been acquired as Nora alleged, they invited the Court to conclude that Bob had then taken steps to re-acquire a domicile of choice in Guernsey in 2013 and so prior to his death.

Discussion

106. The bare facts of where Bob lived at any time are not really in dispute as the Jurats have found in setting out the facts. Because the parties agreed that, whatever domicile Bob had prior to the 1980s was replaced through the acquisition of a domicile of choice in Guernsey during those years, the Jurats have concentrated on what happened thereafter. Bearing in mind the burden on Nora of establishing that Bob acquired a domicile of choice in Jersey, the primary finding of the Jurats is that she has failed to discharge that burden.

107. This is not a case where family members have been able to assist much at all in establishing that Bob had spoken about his intentions. Some of the information that has now come to light was unknown to them at the time. As a result, rather than stating positively what had been said, Nora's witnesses have had to resort to inviting inferences to be drawn from Bob's departure from Guernsey and his move to Jersey. However, the picture is more confusing than if on one day Bob had left his home in Guernsey and moved to Jersey and stayed there for a settled period thereafter.

108. Having left Guernsey in or around 1991, Bob did not immediately go to Jersey. The reason for leaving Guernsey at that time is accepted by the Jurats to have been Bob's frustrations with the authorities here and his wish to avoid closer scrutiny of his affairs. As Mr Fattorini put it, Bob had a different perception from the then Administrator of Income Tax as to what was properly taxable. Accordingly, at the time of ceasing to be resident in Guernsey, Bob did

not acquire an alternative domicile of choice. For a while, he and Nora were nomadic. Bob continued to own property in Guernsey in the early 1990s. Various addresses were used by him at which correspondence was received. As a result, Bob did not take unequivocal steps to acquire a different domicile of choice. In the absence of acquiring a fresh domicile of choice, the Jurats have considered what evidence there is of him abandoning his domicile in Guernsey.

109. When Bob purchased the first flat in Jersey, where Nora states she was happy, he had already had his stroke. During the period of ownership, it is apparent that Bob was not always present. Even Nora spent considerable periods of time away from Jersey in the second half of the 1990s. The Jurats accept the evidence from a number of witnesses that Bob's attitude to property was that his purchases amounted to investments and that they were, therefore, regarded as temporary rather than settled places. Even during this period from 1996 to 1998, Bob was using a Luton address for certain matters. When decisions had to be taken about that first flat in Jersey, the fact that it was where Bob and Nora lived did not prevent it being sold, with the consequence that they spent some time in England. Because Nora's evidence could not be tested, the Jurats do not regard her assertion that this move to Jersey was intended to be permanent as supportive of a contention that Bob intended to remain in Jersey permanently at that time. Whilst there was a period of residence, in the sense of there being a dwelling in which Bob lived, Nora has failed to satisfy the Jurats that it was accompanied by the necessary intention. A similar analysis applies to the second flat purchased by Bob in Jersey. The Jurats note that there is a distinct absence of any other evidence pointing at that time to Bob intending to make Jersey his home indefinitely.
110. Subsequently, when Nora left Bob (and Jersey) and moved to England, Bob's occupation of dwellings in Jersey started at apartment A2, being property held within The Umbrella Trust. It was convenient to be in Jersey, but he then spent a longer time in Ireland at the home of Ms Hayes than he spent in any one place since he was in Guernsey in the 1980s. The length of time he spent in Ireland is regarded by the Jurats as indicative of his unwillingness to settle in Jersey at this time. Through the Trust, he maintained his investments there, but on leaving Ireland, he went to live in England with David and Angi for approximately one year. More significantly, it was during this period that he took active steps to return to Guernsey. The Jurats reject any suggestion, as particularly offered by Robert, that Bob's desire to live at Marina Court was an all or nothing position and that, once Robert thwarted Bob's plans to occupy one of the apartments at Marina Court, Bob's intention of returning to Guernsey disappeared. Instead, they are satisfied that Bob's position throughout was that he intended to return to Guernsey when the time was right. His involvement in the Gategny Esplanade project may not have been as hands on as was Robert's, but the correspondence he exchanged over the years shows clearly that he remained deeply interested in the outcome and that he always expected to be able to reap the benefit of putting together the site by living there. It was, therefore, natural for him to expect that he would see his wishes come to fruition when the apartments were ready for occupation. The Jurats, therefore, treat his trip to Guernsey with Ms Hayes and him arranging for David and Angi to visit and make enquiries as being entirely consistent with Bob retaining throughout the years prior to that time an intention to resume residence in Guernsey when the development was completed. Mr Fattorini raised with him the potential consequences of him resuming residence in Guernsey and how that could well affect The Umbrella Trust, but Bob's response shows that those consequences were not things that mattered to him above his personal wish to live in Guernsey. The fact that Bob did not immediately identify some other property in Guernsey in which to reside is, in their view, quite understandable. He had set his heart on having a flat at the development where he had committed the family's fortunes many years previously and he naturally needed to take stock about the consequences of Robert's actions.

111. When Bob needed to go to a nursing home in 2007, the Jurats regard it as significant that he chose to come to Blanchelande Park in Guernsey and did not at that stage head directly to Jersey. This is further support for the ongoing affection Bob had for Guernsey and his connections with this Island.
112. Bob's return to Jersey in 2008 must, in the Jurats' opinions, be viewed in the context of where he had lived and for what reasons in the years immediately preceding this. He had not resided in Jersey for close on five years. It seems to them more likely than not that Bob would have stayed in Ireland for the foreseeable future but for the ill-health of Ms Hayes. There was no suggestion that he wanted to return to Jersey at this time. Instead, he had taken steps seeking to return to Guernsey, but they had not come to fruition. There was no evidence that his return to Jersey was accompanied by any intention to reside there indefinitely. If anything, it was a move occasioned by convenience because there was property there available for him to occupy. The division of The Umbrella Trust into separate funds for him and Nora was being contemplated and he would have the company owning apartment A2 allocated to his fund, just as Nora would have the property in the Lake District allocated to her fund. Accordingly, whilst he resumed residence in Jersey, the Jurats do not find that this residence coincided with the requisite intention for Bob to have acquired a domicile of choice in Jersey by the end of 2008.
113. The Jurats' conclusion is supported by what happened shortly thereafter. Whilst Advocate Dawes suggested that Bob's application to the Population Office in Jersey lends support to him having been continuously resident there for a good number of years and tending to show that he was settled there indefinitely, Advocate Ferbrache can point equally to the application for a housing licence in Guernsey at around the same time and the offer to purchase a property here. The Court now knows that the confirmation of residential status in Jersey was because the Population Office confused the details of two persons with the same name. Bob's permission to buy the shares entitling him to own and then occupy Apartment 12 was, therefore, more precarious than the documents alone show. Moreover, when he purchased Apartment 12, it was not available for his immediate occupation. It was another of his investments. When it became available to occupy, it took some effort on the part of the Dwyers to persuade Bob that he should move from apartment 2A to Apartment 12. Bob would have sold Apartment 12 had he received an acceptable offer. Again, this is more consistent with it being part of his portfolio of investments than the place where he wanted to see out his days. His housing licence in Guernsey to live at Vida Nova with the Ozannes was granted once the Housing Department was satisfied that Bob's connections to Guernsey justified granting that licence. The Jurats are satisfied that Bob occupied Vida Nova lawfully for periods of time during the validity of that two-year housing licence. They further infer that, had Bob sought to have that licence renewed, the Department was more likely than not to have granted the renewal application. Bob could, therefore, have been lawfully housed in Guernsey in 2013 and 2014. These steps relating to Bob's residence in Guernsey in 2010 to 2012 reinforce the Jurats' conclusion that prior to the end of 2008 Bob did not have the requisite intention to reside in Jersey indefinitely or permanently.
114. Because Nora has failed to satisfy the Jurats on the balance of probabilities that Bob also had, during his periods of residence in Jersey, the intention to remain residing there permanently or indefinitely, the declaration she seeks cannot be granted. However, just in case they should have reached a different conclusion about Jersey, the Jurats have also considered whether such a Jersey domicile was later abandoned and a domicile in Guernsey re-acquired.
115. The Jurats are unimpressed at the suggestion on behalf of Nora that Bob's fixed purpose in coming to Guernsey in 2013 was to be cared for by the Ozannes. Had that been the case, even if Bob wanted to bequeath something to them, knowing that he had terminal cancer, he could have done so without purchasing Roussillon. He had previously obtained his

housing licence for Vida Nova. That was somewhere where he could have gone to live, and probably obtained a new licence, had his purpose been care-related alone. The Jurats find that Roussillon was in a different category to the other properties Bob owned. Because he knew it would be his final residence, he wanted to be comfortable. The bungalow was chosen for his needs. It was preferable to him to be in his own house rather than staying with the Ozannes at Vida Nova. The Jurats note that, when it was purchased, Roussillon might have been Bob's home for a couple of years. In the event, he died much quicker than anyone had envisaged.

116. Bob's trip to Jersey on 23 September 2013 is an indication of Bob's wish to avail himself of whatever treatment could be offered. However, the Jurats regard it as significant that his medical care and his records were transferred to Guernsey very shortly thereafter. This step supports the conclusion that Bob had chosen to arrange for his care to be conducted in Guernsey rather than staying with it based in Jersey. In that regard, Dr Wilson's impression that Bob's move to Guernsey was a permanent one is preferred to the suggestion that Bob was in any way equivocal about being in Guernsey at the end of 2013.

117. In relation to the events of 2013, Robert had no knowledge of what was in Bob's mind because they were not speaking. Mr Fattorini was also no longer in contact with Bob. Indeed, Mr Fattorini did not know that Bob had obtained a housing licence to be able to live at Vida Nova with the Ozannes, but was aware that he had arranged for alterations to be made to that property. Because they were no longer in contact, Mr Fattorini's reference to having to return telephone calls to Jersey must relate to an earlier period. Accordingly, the strongest evidence advanced on behalf of Nora that Bob's return to Guernsey was not him abandoning his Jersey domicile is that of Mr McKenna and, as previously stated, the Jurats did not find him to be a convincing witness. In particular, they do not find that Mr McKenna's statement that Bob had mentioned to him on several occasions that Mr McKenna was to get him out of Guernsey if it did not work out tips the balance in favour of concluding that Bob was in any way ambiguous about his intentions. At best this makes Bob's intention to remain indefinitely in Guernsey subject to a contingency, but it is a contingency which the Jurats regard as being too vague and uncertain to affect their conclusions that Bob was settled in Guernsey and the arrangements he had made were working well. The other witness statements adduced on behalf of Nora do not go as far as asserting positively that Bob had expressed any intention to return to Jersey, but rather point towards Bob not having told any of them that he intended to leave Jersey and move to Guernsey.

118. The Jurats are satisfied from everything they have heard and seen in the documents that Bob made a conscious decision to move to Guernsey once he was diagnosed with terminal cancer. This move was not dictated by his need to get care in Guernsey. The Jurats note that Bob had been receiving care in Jersey and believe that, had he wished to stay in Jersey, Bob would have made appropriate arrangements for his care to be given to him there. However, he did not wish to stay in Jersey at that time and wanted to be in Guernsey for his final months. He believed that he would have longer to live than was the case, and so went to the trouble of buying his own house here in which to live. In doing so, he was giving effect to the wish he had expressed over many years and to a reasonably wide circle of friends, that he would in the end return to Guernsey. His decision was, therefore, not something that came out of the blue, but was consistent with the wishes he had expressed for years. This is one of those rare cases where there was a pre-existing intention to reside indefinitely in Guernsey before the step to moving here to reside was completed.

119. Whilst not regarding it as conclusive, the Jurats place a good amount of weight on the fact that Nora has accepted that Bob was aware that the change of Guernsey laws of succession under the 2011 Law meant that he would enjoy complete freedom of testamentary disposition in Guernsey whereas the advice he had received in Jersey was that he was unable

to leave his estate as he wished. With that underlying motivation combining with his long-held wish to return to Guernsey in the end, the Jurats also regard it as significant that Bob did not immediately execute a will declaring his domicile to be Guernsey, but that this was one of the differences between the will he executed on 6 September 2013 and the final will executed on 25 September 2013. By 25 September 2013, Bob had made his final trip to Jersey. He had discussed his medical condition with his GP, Dr Wilson, and thereafter his medical care was formally transferred from Jersey to Guernsey. Whilst accepting that his declaration in Bob's Will is not determinative of his domicile, the Jurats are satisfied that by 25 September 2013 Bob's mind as to his future was made up. He was by then resident in Guernsey and he had the intention to be resident in Guernsey until he died. There was no equivocality about that. The Jurats do not regard the fact that Bob's occupation of Roussillon was not regularised through an application to the Housing Department for a licence as affecting their conclusion that he was resident in Guernsey and that Guernsey was by that time his chief residence, rather than it remaining in Jersey. All of these facts combine to provide the cogent and clear evidence required that, assuming Bob to have been domiciled in Jersey, he again acquired a domicile of choice in Guernsey.

120. By virtue of those factors, had the Jurats been persuaded that Nora had succeeded in demonstrating that Bob had previously abandoned his domicile of choice in Guernsey and acquired a domicile of choice in Jersey by the end of 2008 at the latest, the Jurats would have moved on to have found that he subsequently also abandoned that Jersey domicile through re-acquiring a domicile of choice in Guernsey prior to his death. The Court would, therefore, have dismissed Nora's application for the declaration she sought in any event.

Conclusion

121. For the reasons given, the Court does not find that Bob was domiciled in Jersey at the time of his death on 21 January 2014. Nora is not entitled to the declaration she seeks. Para. 1 of the Plaintiff's Amended Cause is, therefore, dismissed.

122. The Deputy Bailiff reserves the costs, but will hear any representations relating to the costs of dealing with this preliminary issue at an Interlocutory Court convenient to the parties, or by offering a short hearing for that purpose (about which Counsel are invited to liaise with the Greffe), if the issue of costs cannot be agreed between the two sides.