Application seeking determination as to the deceased's domicile at death and whether their domicile of origin, of England, was displaced through the acquisition of a domicile of choice in Guernsey.

[2021]GRC003

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

Between:

JOHN BERNARD O'CONNOR — **Applicant**

(in his capacity as the Executor of the Estate of Neil Corner (deceased))

-and-

TANIA FAY CORNER — **First Respondent**

-and-

JAMES CORNER — **Second Respondent**

Hearing date: 23 December 2019

Judgment handed down: 16 March 2021

Before: Richard James McMahon, Esq., Bailiff

Counsel for the Applicant: **Advocate J Tee**
Counsel for the First Respondent: **Advocate P T R Ferbrache**
The Second Respondent did not appear

Cases, texts & legislation referred to:

Cooney v AFR Executors (unreported, 7 January 2016)
Dicey, Morris & Collins on the Conflict of Laws (15th ed.)
The Mental Capacity Act 2005
Morton v Paint (1996) 21.GLJ.61
The Mental Health Act 1983
The Mental Health (Bailiwick of Guernsey) Law, 2010
Udny v Udny (1869) LR 1 Sc & Div 441
Inland Revenue Commissioners v Bullock [1976] 1 WLR 1178
In the Estate of Fuld, deceased (No. 3) [1968] P 675
Winans v Attorney-General [1904] AC 287
The False Documents and Domicile, etc. (Bailiwick of Guernsey) Law, 1998
Guidance Note: Residence, Domicile and the Remittance Basis (HMRC, June 2016)

Introduction

1. Neil Corner died in Guernsey on 3 October 2017. For the sake of simplicity, I will refer to him by his first name, Neil, to distinguish him from his relatives, to whom I will also refer by their first names. By his will, executed on 13 October 2000, Neil appointed an English solicitor, John O'Connor, as his executor.

2. By an Application dated 2 October 2019, Mr O'Connor seeks a declaration of what was Neil's domicile as at the date of his death. Rather than table a Cause, his Application is supported by his Affidavit sworn on 16 September 2019, in which he sets out the facts as he understands them to be, including correspondence with Neil's widow, Tania, and Neil's son from a previous marriage, James. Although Mr O'Connor initially took the view that Neil had died domiciled in Guernsey, as a result of the information provided by Tania, he changed his mind. However, James has indicated that he thinks his father died domiciled in Guernsey. This dispute, therefore, lies between Tania's assertion that her late husband died domiciled in England and James' assertion that his late father died domiciled in Guernsey.

3. When this Application was first before the Court on 4 October 2019, I took the view that it was necessary to convene Tania and James to the proceedings. Both of them need to be bound by the declaratory relief sought by Mr O'Connor. On 11 October 2019, Advocate Peter Ferbrache appeared on behalf of Tania. James did not appear, but I was satisfied that he was aware of the hearing and that he was maintaining contact with Mr O'Connor's Advocates by e-mail. I gave directions for the filing of materials by Tania and James. As a result, Tania filed her First Affidavit sworn on 12 November 2019. Nothing has been produced by, or on behalf of, James.

4. The substantive hearing took place on 23 December 2019. I was shown a signification served on James by e-mail in respect of which he had confirmed receipt, also by e-mail. James did not appear at this hearing, but I was satisfied he had been aware of his entitlement to do so and further satisfied that the hearing could proceed in his absence. Neither party appearing wished to cross-examine on the evidence of the other and both indicated that they were content for the Court to be constituted without the Jurats sitting. Accordingly, I sat unaccompanied and, in addition to his oral submissions, I had the benefit of a Skeleton Argument prepared by Advocate Ferbrache.

5. Advocate James Tee, on behalf of Mr O'Connor, confined his comments to re-affirming that Mr O'Connor remained neutral as to Neil's domicile, a stance he made clear from the outset. Having listened to what Advocate Ferbrache had to say, I felt that the evidence could have been fuller in respect of Neil's circumstances between 2004 and 2008. This arose because Tania was saying that their move to Guernsey in 2005 came at a time when Neil's mental health had deteriorated to such an extent that he was really unable to form any intention to change his domicile from that time due to a lack of capacity. I considered that it would be helpful to me if any additional material about his health at that time and his involvement in the business transactions to which Tania had referred in her First Affidavit could be expanded upon. Accordingly, whilst I reserved judgment, I also gave all parties the opportunity to adduce further evidence if they so wished. I indicated that I doubted that I would need to re-convene the parties for any further hearing and, because of the imminence of the holiday period, allowed a generous time in which to provide any such additional evidence.

6. Tania swore her Second Affidavit on 30 January 2020. It helpfully exhibits further information about a company with which they were involved and some medical records, plus some photographs of Neil. Mr O'Connor swore a brief Second Affidavit on 11 February 2020, supplementing his initial account of his dealings with Neil, especially in relation to the period from 2004 to 2008. A month or so later, Guernsey entered its first lockdown arising

from the coronavirus pandemic. Along with some other matters dating back from this time, I am afraid that it has taken me far longer than is ideal to be able to get back to this case and consider those materials properly and put them into the context of what had been submitted at the hearing in December 2019. I apologise to all concerned for this delay. I am, though, satisfied that I am now able to deliver this reserved judgment without needing to hear further from any of the parties and so proceed to set out why I am satisfied that Neil remained domiciled in England and did not acquire a domicile of choice in Guernsey.

Applicable legal principles

7. Before turning to the facts, I will start by setting out the legal principles to apply to them because there is no dispute as between the Advocates as to what they are.

8. In the context of domicile, although Advocate Ferbrache's Skeleton Argument referred to a raft of English case law on the basis that Guernsey's private international law looks to English law for guidance, this was the approach already taken by the Court in *Cooney v AFR Executors* (unreported, 7 January 2016) and I am satisfied that this remains the proper approach to take in this case on the basis of what had already been adopted as reflecting the law of Guernsey on these issues. The summary of the principles that operate can be found by reference to the various rules in *Dicey, Morris & Collins on the Conflict of Laws* (15th ed.).

9. By rule 9, every person receives at birth a domicile of origin and a legitimate child born during the lifetime of his father has his domicile of origin in the country in which his father was domiciled at the time of his birth. By rule 4, no person can be without a domicile. By rule 7, an existing domicile is presumed to continue until it is proved that a new domicile has been acquired. By rule 6, no person can at the same time for the same purpose have more than one domicile. (The purposes with which this Application is concerned relate to the inheritance rules as they apply to Neil, so that has been the focus.) By rule 10, an independent person can acquire a domicile of choice by the combination of residence and intention of permanent or indefinite residence, but not otherwise. By rule 11, any circumstance which 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 in that country. By rule 12, without prejudice to the generality of this, in determining whether a person intends to reside permanently or indefinitely in a country the court may have regard to: (i) the motive for which he has taken up residence there; (ii) the fact that the residence was not freely chosen; and (iii) the fact that the residence was precarious. By rule 13, 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, and when a domicile of choice is abandoned, either a new domicile of choice is acquired or the domicile of origin revives. Finally, by rule 16, a person lacking mental capacity to make decisions as to his future permanent residence cannot acquire a domicile of choice and, through that period of incapacity, retains the domicile he last had when he had the requisite capacity.

10. Because the periods where Neil resided in different places are largely known, Tania's submissions have concentrated on Neil's intentions as to where he would reside permanently and, in particular, whether his final move to Guernsey in around 2005 was accompanied with the requisite intent to stay here thereafter or whether he had already lost capacity to reach such a decision. In other words, if Neil was domiciled in England before that final move, the effect of rule 16 is that he continued to be so domiciled until his death. Similarly, if he were already domiciled in Guernsey by then, that domicile remained fixed until his death.

11. In that regard, Advocate Ferbrache took me to para. 6-109 in *Dicey, Morris & Collins*:

> "*The Rule can be supported by references to cases which use the language of lunacy, insanity, or unsoundness of mind. Those terms and the associated procedures are no*

longer part of English law. The Mental Health Act 1983 makes provision for many kinds and degrees of mental disorder and for the care and treatment of persons suffering from such disorder. Not all those who suffer from one of the recognised types of mental disorder will lack capacity for the purposes of the Rule. Capacity to take decisions is dealt with in the Mental Capacity Act 2005. Persons lack capacity for the purposes of the 2005 Act if they [are] unable to take particular decisions because of an impairment of, or a disturbance in the functioning of the mind or brain. Although the language in the 2005 Act is much more sophisticated, the root idea is that found in one of the earliest cases on the domicile of a lunatic: "he was unable to exercise any will"."

Further, reference was also made to para. 6-111:

"*Where the rule that a mentally disordered person cannot change his domicile applies, it is quite general in scope. Thus it does not seem that such a person's domicile will be changed because he is moved from one country to another by the person in charge of him, or under the direction of the appropriate administrative authority.*"

12. As it is pointed out on behalf of Tania, whilst there is currently no equivalent statute in Guernsey law to the provisions found in the Mental Capacity Act 2005, those principles have been considered by the States of Deliberation and approved, but the resulting Law is not yet in force. This is not, in my view, an instance where the approach set out in *Morton v Paint* (1996) 21.GLJ.61 falls to be engaged, because the customary law principles about when a person lacks capacity apply in any event. Further, the core principles of the Mental Health Act 1983 had already been enacted domestically in the Mental Health (Bailiwick of Guernsey) Law, 2010, the Third Schedule to which makes provision for the powers of Courts with respect to the property and affairs of a patient. It is worth noting that these powers are capable of being exercised within the context of guardianship, with the customary law rules relating to *curatelle* needing to be read in the context of, and if necessary subject to, that Third Schedule (para. 2(1)) and, as explained in para. 6-110 of *Dicey, Morris & Collins*, whilst deciding "*where a person is to live in the immediate future is within the scope of the power, … it is thought that a decision about permanent residence, such as is required for the animus manendi, is not*".

13. In relation to the *animus manendi*, similar principles to those dealt with in *Cooney* arise. It involves residing permanently or for an unlimited time in a country, where that residence is "*fixed not for a limited period or particular purpose, but general and indefinite in its future contemplation*" (*Udny v Udny* (1869) LR 1 Sc & Div 441, 448). Reference was made on behalf of Tania to para. 6-040 in *Dicey, Morris & Collins*:

"*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. If a person intends to reside in a country for a fixed period only, he lacks the animus manendi, however long that period may be. The same is true where a person intends to leave the country at some time."

14. The importance of having regard to every aspect of a person's life in order to determine the individual's domicile is emphasised by rule 11, about which the commentary in *Dicey, Morris & Collins* adds (at para. 6-048):

> "*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 the domicile. A trivial act might 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 the 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.*"

15. Advocate Ferbrache also referred to an example given in para. 6-049 about the form and contents of a will assisting in determining whether a person has the necessary intention, including referring to the cases listed in the footnote. By way of example, I will refer in detail only to *Inland Revenue Commissioners v Bullock* [1976] 1 WLR 1178 (which followed just a few years after the decision of Scarman J in *In the Estate of Fuld, deceased (No. 3)* [1968] P 675, which itself ranged over many similar considerations in the context of probate, rather than taxation), the headnote of which shows the way that this type of issue can lead to differing conclusions:

> "*The taxpayer whose domicile of origin was Canadian lived in Canada until he came to England in 1932 in order to join the Royal Air Force. In 1946, while still serving in the Royal Air Force, he married an English woman. From 1947 to 1961 the taxpayer and his wife visited his family in Canada on a number of occasions. He retired from the Air Force in 1959 and took civilian employment. His father died in Canada in 1960. The money he inherited on his father's death enabled him to retire and he went with his wife to live in Dorset. He wished to return to live in Canada after leaving the Air Force but did not do so because his wife disliked the idea. In 1966 he executed a will that had been prepared in Nova Scotia and which contained a declaration that his domicile continued to be Canadian. By then, in deference to his wife's wishes, he had given up the idea of returning to Canada but he retained Canadian citizenship. However if his wife were to change her mind or predecease him it was his intention to return there immediately. The special commissioners allowed the taxpayer's appeal against the rejection of the Board of Inland Revenue of his claim that he had not acquired a domicile of choice in England during the tax years 1971-72 and 1972-73.*
>
> *On appeal by the Crown, Brightman J., reversing the commissioners' decision, held that as the matrimonial home was permanently established in England, the taxpayer had acquired a domicile of choice in England.*
>
> *On appeal by the taxpayer:–*
>
> *Held, allowing the appeal, that although the establishment of a matrimonial home in a new country was an important factor in deciding whether that new country became*

the permanent home, it was not conclusive and that, as the taxpayer had maintained a firm intention to return to Canada should he survive his wife which was not merely a vague aspiration but amounted to a real determination, he could not have had the intention of establishing a permanent home in England and accordingly had not acquired a domicile of choice in England."

In relation to the will, Buckley LJ indicated (at page 1185F) that "*The declaration as to domicile contained in the taxpayer's will is also a matter to be taken into account, although the weight to be attributed to it must depend on the surrounding circumstances.*"

16. Finally, it is common ground that those who assert a change in domicile bear the burden of proving that change (see, eg, *Winans v Attorney-General* [1904] AC 287). The standard of proof is on the usual civil standard of a balance of probabilities. The position of James, so far as he asserts that Neil acquired a domicile of choice in Guernsey, is that he has chosen not to engage fully in these proceedings and so his means of discharging this burden lies in what he has written to Mr O'Connor.

The contentions of James

17. Mr O'Connor exhibits two e-mails from James in which James sets out his reasoning as to why he says Neil died domiciled in Guernsey. The first (and fullest) was sent to Mr O'Connor on the evening of 13 November 2017. James attached a copy of the False Documents and Domicile, etc. (Bailiwick of Guernsey) Law, 1998 and a *Guidance Note: Residence, Domicile and the Remittance Basis* published in June 2016 by HM Revenue & Customs. The e-mail from James reads:

> "*Since our telephone conversation today I've managed to do about five minutes research on Domicile law in Guernsey. My response to Tania's statement to you would be:- SHE needs to prove that my father intended to move back to the UK. He had no property here, no bank account here, all his assets were in Guernsey. He ran a business over there. He paid tax in Guernsey, if he had come home he would then be liable for paying a lot of the taxes he left for in the first place. He married a "local". All of the previous points are mentioned in Domicile law. Tania would've been liable to pay inheritance tax. Her gesture of (bringing him home) for his funeral was totally false. He never wanted to come home, his pride wouldn't let him because of the Alzheimer's. She proposed that because it ties in with her story to you and the information she was provided regarding domicile law.*
>
> *If my father intended to come home, as she states, why weren't his wishes carried out sooner? On or before 2008 when the guardianship was signed? He was fit to fly! Why did he not keep any form of property here?*
>
> *The e-mail I forwarded to you earlier regarding the Guardianship. This is the first time I have seen or heard of this document??! When was it drawn up? I would have been 32 years old and more than capable of making informed decisions on my father's best interests. Yet even as the closest blood relative, I was not consulted. She chose to send Paul Corner a document allowing her Advocate to act on his behalf, knowing full well, it was, for all intents and purposes, a foreign document which he didn't understand the meaning of. (She told Paul verbally that it needed to be signed to enable her to pay bills etc!) Tania didn't even ask Paul to go to Guernsey, the document was sent to him here in the UK. She did this so that any future business dealings and monetary transfers could be handled by an Advocate, working on her behalf and her two parents, whom most likely never question what they were signing anyway!*

I appreciate you must remain impartial in this matter but surely even you can see some sort of pattern emerging here?

I'm not sure if you've seen the documents below before. Apologies if you have. I'd like to draw your attention to page 13, paragraph ii on the first one and page 25, paragraphs 5.12, 5.16, 5.17 on the second one attached. The second document in particular, I believe, references the fact that his Domicile was actually Guernsey."

18. I understand the first reference James makes to be to paragraph (a)(ii) or (b)(ii) of section 7(1) of the 1998 Law, each of which creates offences relating to obligations associated with search warrants under that Law. I struggle to understand the relevance of James highlighting any such provision in the context of asserting that Neil's domicile had become Guernsey. Paragraphs 5.12, 5.16 and 5.17 of the *Guidance Note* explain that a domicile of origin of someone whose father is not domiciled in the United Kingdom and who moves away is not in the UK and that a domicile of choice can be acquired after the age of 16 if a person leaves the current country in which he is domiciled to settle in another country, intending to remain there permanently or indefinitely. I understand that James contends that Neil chose to acquire a domicile of choice in Guernsey, having moved away from the United Kingdom, although he does not state when that might have occurred.

19. The second e-mail from James exhibited by Mr O'Connor was sent by him on 29 July 2019 to Mr O'Connor's Advocates. He indicated he had spoken to a firm of Advocates but had not instructed them. He continued:

"*I would like to add that my position has not changed. I still maintain that my Father's Domicile was Guernsey. He had a Home, a Business and paid Tax on the Island. People cannot simply suggest that he was Domiciled elsewhere when it suits. His Guardianship was granted under the jurisdiction of Guernsey (For which I did not give consent because I was never consulted.)*

If my Father was to return to the mainland, as has previously been suggested, why didn't he leave any property or hold any bank accounts in the U.K. anymore? When he became ill, why was he not returned to the mainland to further his care here?

If any of my Father's close Family, Friends or Former Employees were ever to be consulted, I am sure they would all maintain that my Father had made a permanent move to Guernsey and cut all business and property ties in the U.K. because he never intended to return here again. Whenever he and I spoke, he always referred to Guernsey as home."

20. I have set out these two e-mails as fully as I have on the basis that they contain the contentions through which James asserts that Neil was domiciled in Guernsey at the date of his death. Because James chose not to appear in these proceedings, these contentions have not been developed in any argument, whether written or oral. I have, however, borne them in mind when considering the facts that have been established relating to Neil's life and, in particular, whether there was any time at which Neil evinced an intention to stay in Guernsey permanently and make it his domicile. I have also borne in mind, even though it has not been described in quite this manner by James, that the principal difference for James between Neil having died domiciled in Guernsey or England rests on the need to read into the provision made by Neil's will the impact of the *légitime* applicable to James, and also to Tania, if Neil had been domiciled in Guernsey, which would not arise if Neil had been domiciled in England at his death.

The facts

21. Neil was born on 21 April 1947. Tania exhibits a copy of his short-form birth certificate that states he was born in England. Her evidence is that Neil's parents were English. On the marriage certificate of Neil and Tania, Neil's father is shown as Francis John Corner, a retired builder.

22. Neil was first married to James' mother (whose name has not been mentioned). Tania thinks Neil was in his 20s when this marriage occurred. From the age to which Mr O'Connor refers in his Attendance Note from 19 December 1998 and as mentioned by James himself, it seems that James was born in or about 1976. Mr O'Connor's Attendance Note records that Neil's first marriage was dissolved about 10 years earlier, after which James' mother re-married. By 1998, Neil was not aware of any financial obligation to James' mother, although his former mother-in-law, Gladys, was living in a property in Paignton owned by Neil. Tania describes Neil's first marriage as being relatively short-lived and that Neil and James were estranged for some years prior to Neil's death.

23. Neil is described by Tania as a self-made man, who began his working life as a bricklayer and who had an interest in building projects and property. This interest evolved into a business undertaking property construction and development being established, which Neil sold in 1994 or 1995. His professional advisers suggested that it would be advantageous to him for tax purposes if he were not to be resident in the United Kingdom for at least three years following the sale of his business. He purchased a motor boat with the intention of sailing around France and Spain and so spending the years he needed to be outside the United Kingdom in the Mediterranean visiting various marinas and destinations. However, his boat was damaged shortly after he set off, which led to him coming to Guernsey as the closest place at which to effect the required repairs. Neil lived on his boat in the marina whilst the repairs were undertaken.

24. It was whilst he was in Guernsey in 1995 that Neil met Tania Brehaut. She was managing the St Pierre Park Hotel Health Club. They formed a relationship and Neil decided not to pursue his intention of sailing off to the Mediterranean. Instead, with Tania, he purchased and developed Kings Sports Club in 1995. Mr O'Connor's 1998 Attendance Note refers to an address in York Way, Fort George, at which Tania says they lived together. From that Note, it appears that Neil owned this property.

25. Mr O'Connor's 1998 Attendance Note records in respect of Neil:

> "*His domicile is uncertain – he intends to retain a home in Guernsey but he also has a yearning to return to Devon to do some property development. If there is an IHT advantage in being domiciled in Guernsey, he will find it fairly easy to adopt the appropriate settled intention to make the island his home. His girlfriend, Tania Fay Brehaut, aged 34, is a native 'Guern' and this is a fairly permanent relationship.*"

The list of assets for Neil set out in this Attendance Note includes the Fort George property, a flat in Torquay, both of which contained contents, the property in Paignton occupied by his former mother-in-law and another property in Paignton in which Neil's own mother lived. He apparently had bank accounts in Torquay and Guernsey, as well as the shareholding in Kings Leisure Limited, which was his single most valuable asset.

26. Mr O'Connor referred the issue of domicile as it impacted on Neil's tax affairs to his colleague, Peter Macdonald, by way of a memorandum, in which Mr O'Connor wrote:

> "*The main complication is that Neil is currently resident (and ordinarily resident) in Guernsey and has been since April 1994. He would like to choose Guernsey as his domicile if this results in the whole or a substantial part of his estate being treated as excluded property for IHT purposes. I am not able to advise him on this point or*

whether, if he chooses a non-UK domicile, a will made under English law will be effective to dispose of his Guernsey property. Do you know the rules in this regard?"

Mr Macdonald responded by memorandum the following day:

"*The main preliminary issue is the question of domicile. On the assumption that his domicile of origin was English, I think there is little doubt from the information you have given to me that the Revenue would argue that he has retained this.*

At the moment therefore he could look forward to all his world assets being liable to Inheritance Tax with the possible exception of Shares in Kings Leisure Limited, if it is treated as a trading company, being liable to Inheritance Tax on his death.

If he does sell Kings Leisure and not reinvest this in another business, then we are talking about an Estate of around £4.35 million, the whole of which would be taxable and would produce a tax liability of over £1.6 million.

There is accordingly, something of an incentive for him to lose his U.K domicile, and to do this he would need to demonstrate that he had severed connections with England and Wales and intended to live permanently in the Channel Islands.

If this is a feasible possibility, then I would be tempted to seek advice of a Specialist Tax Counsel to ensure that he has taken all necessary steps to achieve this, and, to obtain some advice of the sort of lifestyle he would have to adopt, viz a viz the United Kingdom, in order to avoid reasserting the domicile."

27. Mr O'Connor met with Neil on 28 January 1999 and prepared a further Attendance Note in which he records that Neil "*acknowledged the difficulties involved in establishing a domicile of choice outside the U.K. and gave me some information on this subject supplied to him by his accountants which as [Mr Macdonald] had done) emphasised the importance of severing ties with the country of origin. Neil has not given up hope of being able to do this – but he is prepared to investigate other ways of mitigating his IHT liability and to accompany me at a meeting with [Mr Macdonald] to explore the possibilities.*" Mr O'Connor was instructed by Neil that he wished to make a will largely in the form of the draft previously prepared, which was engrossed for Neil to take with him and Mr O'Connor advised Neil "*to obtain advice as to the effect of the will in relation to his property in Guernsey*", because Mr O'Connor could not be sure to what extent the draft will he had prepared would be effective in that regard.

28. On 7 February 1999 Neil executed his will. David and Gladys Brehaut were the witnesses. Mr O'Connor was named as the executor. In that will he dealt with the estates of real and personal property. The property in Paignton occupied by his mother was left to his brother, Paul, on condition that his mother be permitted to live there rent-free for as long as she wished. The property in Paignton occupied by his former mother-in-law was left to James, again with a similar condition. Specific monetary bequests were made to James, to Neil's mother and to his brother. He directed the release of any liability remaining from Tina Fry in respect of a loan secured by a charge over a flat in Torquay. He left the residue of his estate to Tania but, if that residuary estate failed, it was to pass instead to James, some immediately and the balance when he attained the age of 30.

29. On 16 April 1999, Neil caused a company called Borkum Riff Construction Limited to be incorporated in England. As Tania explains, she was also involved in this business, which bought and sold properties in England. It was a property development company. Mr O'Connor acted as the company's solicitor. He confirms that Neil "*bought various properties in Devon as residences or to develop and sell on at a profit*".

30. Kings Sports Club was sold by Neil in early 2000. Neil's yearning to return to Devon, which Tania says he missed tremendously, had become overwhelming. On 16 June 2000, Neil and Tania married in Torquay. She says they were living in a flat in Torquay. Mr O'Connor states that between 1999 and 2005 Neil lived between and visited both Guernsey and Devon. Tania further explains that, following their marriage, she and Neil established new jointly held investment and banking accounts into which the proceeds of all property disposals and investments were transferred, with all new property purchases being in joint names.

31. On 13 October 2000, Neil executed the will of which Mr O'Connor is the executor. No later will has been found, so this is believed to be Neil's last will. It is in very similar form to the will he executed in 1999, although there is no reference to the Paignton property in which his mother-in-law had been living and the references to Tania now refer to her as his wife and by their surname. This will, like the earlier one, is silent as to Neil's domicile.

32. In 2002, Neil and Tania purchased an open market dwelling in Guernsey by way of share transfer. Montville Holdings Limited had been incorporated in Guernsey on 8 August 1996 and on 8 October 1996 Cote des Vardes in Montville Road, St Peter Port was purchased by the company. Tania states that this property was purchased by them as an investment. She and Neil used it when visiting Guernsey to come across to see her parents when they were still alive. She says they moved there from 2005 as a result of Neil's deteriorating health.

33. In her First Affidavit, Tania says that it was in 2004 that she first noticed changes in Neil. She explains that dementia has been hereditary in Neil's family and that his mother had similarly suffered. By 2005, when Neil was aged 58, she says that Neil felt embarrassed by his condition and did not want his friends and family to become aware of it. They decided to move to Guernsey and occupy Cote des Vardes. Eventually, Neil was diagnosed with Alzheimer's Disease in 2006. His GP, Dr Chankun, advised in 2008 that placing Neil under guardianship would be appropriate. Tania was appointed sole guardian on 6 May 2008. The members of the family council were Tania's parents, David and Gladys, and Neil's brother, Paul, who appeared through Advocate Le Marquand by way of power of attorney.

34. Tania's Second Affidavit supplements this account as a result of further detail provided by Dr Chankun in a letter dated 6 January 2020. Neil had re-registered with the Queen's Road Medical Practice on 10 September 2003. Dr Chris Monkhouse had noted that Neil "*used to live on the Island and has now returned*". It was on 27 November 2003 that Neil attended feeling he had memory problems, which resulted in a referral for a brain CT scan. That scan reported that there were some changes in cerebral atrophy that would not normally be expected of someone Neil's age. On 13 February 2004, Dr McKeough, a consultant psychogeriatrician, wrote to Dr Monkhouse about Neil, referring to a history of "*gradual and progressive problems with short term memory over a period of several years, with difficulties more noticeable in recent months*". Dr McKeough was surprised at finding "*quite marked and significant cognitive defects, … not confined to short term recall, though this was moderately impaired*". His conclusion was that all this suggested an early onset dementia of Alzheimer type. Dr McKeough saw Neil again on 11 May 2004, reporting that the medication prescribed had helped but that Neil "*remained disorientated to time and place*". Dr Chankun took over as Neil's GP in November 2006. In a letter dated 11 September 2007 to the consultant geriatricians at the hospital, Dr Chankun stated that the maximum dosage of medication had "*kept things reasonably stable and [Neil] and his wife have been able to lead a relatively normal life.*" This led to an assessment by Dr Olagunju on 23 October 2007, whose letter the next day refers to Tania confirming a recent rapid deterioration in Neil's mental state and the doctor acknowledging that "*there has been significant progression in [Neil's] dementia illness*". Dr Chankun's summary of Neil ends with: "*The episode from 2003 to 2008 showed a gradual decline in his cognitive ability and his capacity to make decisions varied on a day to day basis over that time I suspect.*"

35. Tania's Second Affidavit also deals more fully with Borkum Riff Construction Limited and a property in Torquay that was purchased by her and Neil on 21 November 2005, with further detail being provided in Mr O'Connor's Second Affidavit. That property was 24 Thatcher Avenue. Neil and Tania were registered as proprietors on 13 February 2006. It was a substantial 4-bedroomed property on a corner plot with three bathrooms and three reception rooms. Mr O'Connor acted for Neil under the terms of a general power of attorney given by Neil on 28 September 2005. Tania gave a similar general power of attorney to one of Mr O'Connor's colleagues. Their address is given as the Guernsey address. Tania recalls that they bought this property with the intent that they would move back there. 24 Thatcher Avenue was sold on 13 June 2007. Mr O'Connor acted under the 2005 power of attorney without knowing that its validity might be affected by Neil's capacity, explaining he would not have done so if he had been aware that Neil's capacity was questionable. Tania explains that, as Neil had already been diagnosed with dementia by the time of the sale, it was clear that he was not going to be fit to return to England.

36. Borkum Riff Construction Limited was dissolved on 5 May 2009. The decision that it be wound up voluntarily was taken at a general meeting of the company held on 19 September 2008. Tania signed the resolutions on behalf of Neil as his guardian. Prior to that Neil had signed the company's annual return on 10 May 2007 and he signed the financial statements to March 2007 on 29 May 2007. The same pattern of signing the annual return and statements had been followed in respect of the preceding years. The documents signed by Neil in April 2004 show a switch of the address given for him and Tania from an address in Torquay to the Guernsey address. Tania explains that the couple continued to live at the address previously used in Torquay until that property was sold in early 2005. She adds that Neil relied upon her and other professional advisers, and it was her role to perform the active administration of this company (and also deal with the purchase and sale of 24 Thatcher Avenue). All the documents in respect of this company appear to have been prepared by the firm of accountants at which the company had its registered office.

37. Tania was able to nurse Neil at home until December 2009, when Neil had a fall and was hospitalised. Thereafter, because Neil needed 24-hour care, he lived at various places for a couple of years before moving into Browhill Nursing Home where he remained until his death on 3 October 2017. His funeral took place in Torquay and his body was then cremated. Tania explains that this happened because all Neil's family and friends were in Devon and that she knew his wishes.

38. As regards Neil's relationship with James, Tania states that the pair were estranged from around 1997 for a variety of personal reasons after Kings Sports Club was developed and that Neil only saw James on a handful of occasions from 2002 until his death in 2017.

39. Following Neil's death and the funeral, Mr O'Connor, who had attended, contacted Tania by e-mail on 23 October 2017. He indicated that he would collect Neil's will and proceed to deal with the administration of the estate. Later the same day, he sent another e-mail to Tania seeking clarification about whether the witnesses were still alive, when Neil's mother had died and whether the property in which she lived had been sold in Neil's lifetime. Tania responded explaining that her father, David, had died on 19 March 2014 but her mother was still alive. Neil's mother had died on 7 April 2011 and the property mentioned in the will that she was entitled to occupy had been sold in Neil's lifetime.

40. A short time afterwards, he sent Tania a further e-mail in which he wrote:

> "*Having discussed the obtaining of a Grant of Probate and the administration of Neil's estate with a colleague who deals with Wills & Probate at Ford Simey, we have concluded that the Grant will have to be taken out in Guernsey on the basis that Neil was domiciled in Guernsey at the time of his death.*"

Tania responded the next morning, in which she set out her understanding:

> "*Firstly on what basis did your colleague reach the conclusion that Neil was domiciled in Guernsey? Neil was born in the UK, lived most of his life in the UK and all his family and friends were in the UK. The only reason he moved to Guernsey was because he was at loggerheads with the UK Tax Authorities and he was advised that to become tax resident in Guernsey for some time would be advantageous to his situation. He therefore changed his tax residence but he did not choose to the best of my knowledge to become domiciled in Guernsey and so I would have thought he retained his domicile of origin unless he specifically elected to revoke it. The fact that neither his 1999 and 2000 wills (virtually identical but the 2000 one executed with your guidance I believe) did not make a statement that he wished to be domiciled in Guernsey supports this. Furthermore why would he with your advice make a will in the UK if he wished to be domiciled in Guernsey – surely you would have advised him to make a Guernsey will then? So do not believe he was domiciled in Guernsey at all as most people retain their domicile of origin unless they choose by election or behaviour another domicile.*
>
> *Secondly, are you saying that his will is invalid in the UK or are you saying that it is valid but as his bank account is in Guernsey it needs to be administered under Guernsey Law? Assume the latter – as if invalid Neil's wish for your appointment as Executor under the will would also not be able to be honoured – perhaps you could guide me as I am not clear from your email what the position is.*"

Mr O'Connor replied apologising for jumping the gun, but he believed Neil was domiciled in Guernsey at his death, adding that if Neil did not have the intention of making Guernsey his permanent home when he became resident here, he agreed that his UK domicile of origin would remain. Mr O'Connor relayed the information Tania had supplied to a colleague of his and later told Tania that they were satisfied the firm could administer the estate on the understanding that Neil was domiciled in England at the date of his death. Tania replied that, to the best of her knowledge, and having intimate knowledge as Neil's wife, she was able to "*confirm that he had no intention of ever relinquishing his UK domicile*", which Mr O'Connor indicated was good enough for him to proceed.

41. The following month, Mr O'Connor sought financial information about Neil's estate from Tania. James then sent the e-mail to which I have already referred. When Tania enquired of Mr O'Connor about receipt of her earlier e-mail, on 30 November 2017 he replied:

> "*I confirm that I did receive your earlier email but, in the meantime, James Corner has raised some concerns about the extent of his father's estate and I understand that he has instructed a lawyer in Guernsey to make enquiries to ascertain what has happened to the bulk of Neil's assets (which he estimates had a value of between £5,000,000 and £6,000,000) when he moved to Guernsey. James also believes that Neil had adopted a domicile of choice in Guernsey before he became ill.*"

42. The uncertainty as to the domicile of Neil at the date of his death has not been resolved to Mr O'Connor's satisfaction and so he caused his Advocates to write to Tania's Advocates and to James informing them that he felt he had no option but to bring this Application.

Discussion

43. In the light of those facts, it appears to me to be common ground that Neil acquired a domicile of origin in England and Wales at birth. Although the details about his father and what his father did are sketchy, the clearest indication I have is that his father was English and Neil

was born in England. I am satisfied, therefore, applying rule 4 from *Dicey, Morris & Collins*, that there was a domicile of origin in England and so the next issue is whether or not that domicile of origin was ever displaced through the acquisition of a domicile of choice here in Guernsey.

44. The first occasion on which this might have arisen is when Neil became resident here in the 1990s. It is unclear whether this is what James has in mind, or whether he refers more particularly to a domicile of choice being acquired at a later time, but this is the first occasion on which Neil took up residence in Guernsey, and so outside England, and so is the earliest time at which changing his domicile became possible. However, I am not persuaded that Neil did have the requisite intent during that period of time, which I will consider as being the time before he married in 2000, to acquire a domicile of choice in Guernsey. In my judgment, there are more factors that point away from any change of domicile during this period.

45. The first thing I note is that Neil ended up in Guernsey in the 1990s more by chance than through design. When he left the United Kingdom, I am satisfied that he was doing so more to avoid being found to be resident in the United Kingdom for a number of years so as to minimise his tax exposure rather than with a fixed intention to settle somewhere else. Indeed, the strongest evidence is that he would be itinerant around the Mediterranean. Further, on arrival in Guernsey, it appears that it was meant to be temporary. That changed when he met Tania. It is true that Neil then purchased a house in which to live in Guernsey. However, that residence alone is insufficient. I am satisfied from Mr O'Connor's 1998 Attendance Note that Neil retained a place to live in Torquay. He also owned other real property in England. He had bank accounts in both England and Guernsey. However, most tellingly, it is clear that he was taking advice from his accountants and from his English solicitor about his affairs and that they did not form the impression that he had already decided to settle permanently in Guernsey. I am satisfied that Neil was receiving advice as to how he might go about making that decision to change his domicile, from which it is apparent that he had not yet made such a decision. Had that been the case, I think that he would have been considering making a Guernsey will as opposed to an English one. It would have been comparatively simple for him to have declared his domicile to be Guernsey in his will. His decision not to do so is a significant indicator that he had made a conscious decision not to hold himself out as having changed his domicile. I am satisfied that the surrounding evidence supports that position.

46. The earlier of the e-mails from James refers to Neil running a business in Guernsey. I take the view that that must be a reference to Kings Sports Club because there is no suggestion that Neil ran any other business in Guernsey. Indeed, the evidence points firmly to the new business of Borkum Riff Construction Limited operating in England. I am satisfied that the commencement of using this English company broadly coincided with the plans to move away from Guernsey and for Neil to sell his interest in Kings Sports Club. Whilst it is true that Neil ran a business in Guernsey for a number of years and paid his taxes here, it is also clear, for example, as shown by ***IRC v Bullock***, that this is not a determinative factor. In my judgment, the balance is clear that, during the period from 1995 to 2000, Neil did not acquire a new domicile of choice just because he had settled here for that time. It is also noticeable that the length of this period of residence took Neil a little over the three years that he had been advised to stay out of England for tax purposes, although not by very long. It is consistent with Tania's evidence that Neil longed to return to Devon. That is, of course, what then happened. As a result, I find that Neil did not acquire a domicile of choice in Guernsey during this period of his life.

47. However, to the extent that Neil did acquire such a domicile, contrary to that conclusion, I am further satisfied that the move to England at around the time Neil and Tania got married, coupled with the new business there using Borkum Riff Construction Limited, would support the conclusion that any domicile of choice in Guernsey was then abandoned, with a domicile in England arising once again. This is the effect of rule 13 from *Dicey, Morris & Collins*. As

a result, even if I am wrong to find that there was no domicile of choice in Guernsey in the 1990s, the step of settling into married life in England and running a business there would result in either the acquisition of a new domicile of choice or the revival of Neil's English domicile of origin. Either way, it is quite clear to me that in the early 2000s, Neil intended to remain in England indefinitely and this coincided with a period of settled residence in that place.

48. James also refers to what others who might have been consulted about Neil's intentions would have said, although again it is not clear whether this refers to this earliest period in the 1990s or to a later time. Had James chosen to do so, he could have approached the close family, friends and former employees to whom he refers and adduced evidence for the Court's consideration. In the absence of such evidence, what James wrote does not assist when it comes to weighing the evidence that has been provided in this case. As a result, I am not persuaded that there is any material relating to what others may have perceived that assists one way or the other.

49. On the basis that Neil's domicile of origin continued unchanged (or, if it changed, his domicile again became England), looking at events in those following years further supports Tania's assertion that the couple saw their future principally in England, although they retained some interest in Guernsey and were regular visitors. The acquisition of an open market property in Guernsey in 2002, when it was permitted for them to occupy a local market property, also supports the view she has expressed that this was intended at the time as an investment and not preparatory to returning to Guernsey as full-time and long-term residents. I have, though, considered whether they could be said to be based in Guernsey throughout and using England as somewhere else to go, but I prefer the conclusion that they had chosen to begin their married life in England with Guernsey being a place they visited from their base in Devon. Tania's parents were here and Neil's wealth was such that they could afford to have a second home here. This may be an example of dual residences, but I find that the primary residence had become Torquay. My primary conclusion is that Neil's domicile of origin continued unchanged throughout these years or, in the alternative, he resumed having an English domicile.

50. The more difficult period of Neil's life comes from around 2003. I am starting from 2003 and not from 2005 because of the additional information contained in Tania's Second Affidavit relating to Neil having re-registered with a Guernsey GP towards the end of 2003. This suggests that the amount of time being spent in Guernsey, rather than in Torquay, was envisaged to increase to such an extent that it made sense for Neil to have a local doctor. Equally, though, I am not persuaded that Neil and Tania became resident in Guernsey from late 2003 because I am satisfied that they continued to have property in England in which they also lived. I accept that the shift in where they were living was such that, by 2005, Guernsey was where Neil resided. The key issue, therefore, is whether the requisite intention of permanent or indefinite residence arose to coincide with any of that period of residence from late 2003 or early 2005 and thereafter.

51. Working backwards, I am satisfied that when Neil was placed under guardianship in May 2008 his capacity was such that he was incapable thereafter of forming that requisite intention. This is the effect of rule 16 from *Dicey, Morris & Collins*. The medical evidence indicates that the question of absence of capacity probably dates back to an earlier period. The earliest reference to an early onset of dementia of an Alzheimer type is Dr McKeough's letter dated 13 February 2004. By the time of Dr Olagunju's letter of 24 October 2007, there is reference to significant progression in Neil's dementia illness. In between, the diagnosis of that illness was formalised. From that later letter, I am satisfied that I can properly find that Neil lost capacity to form the requisite intention no later than October 2007 and I am prepared to infer that I can also properly find that Neil's loss of capacity pre-dates that examination by at least some months. However, I am not satisfied that I can find that the loss of capacity

starts as early as Tania seeks to contend. In particular, I am not satisfied that Neil lacked the capacity to form the requisite intention before the final move to Guernsey in 2005. As Dr Chankun notes, the progression of Neil's illness from 2003 to 2008 was gradual and his capacity was not impaired throughout that period. There may have been days throughout that period when Neil's ability to reach a rational decision was affected, but there were other days on which he could do so, at least until some time in early to mid-2007, by which time I am satisfied that he did not have capacity to decide these matters for himself. The language used referring to lunacy or insanity is no longer appropriate because the legislation refers more accurately to mental disorder. From the evidence that has been adduced, I am satisfied that Neil suffered from such a mental disorder from early to mid-2007 at the very latest, meaning that he lost the capacity to decide for himself whether he was forming the requisite *animus manendi*. This narrows the timeframe for considering the coincidence of residence and intention from late 2003 or some time thereafter to early to mid-2007.

52. As a result, it is necessary to look more closely at why Neil lived where he did from 2003 to mid-2007 and how conscious he was of choosing where he lived. In this regard, I have paid particular attention to the acquisition and subsequent sale of 24 Thatcher Avenue. This purchase took place in November 2005. I accept Tania's evidence that the decision to live for the time being in Guernsey was borne out of convenience because Neil was coming to terms with his memory loss. There is no suggestion that the acquisition of 24 Thatcher Avenue was solely for investment purposes. Accordingly, I find that it was purchased as somewhere to which Neil and Tania could move when it was feasible to do so. In the event, Neil's illness developed at such a rate that the property was then sold. This occurred in June 2007. There are two possibilities at that time. The first is that Neil himself had sufficient capacity to reach a decision that he could not return to England to live at 24 Thatcher Avenue. If that were so, then it would point to him having made the decision that he would be spending the rest of his days in Guernsey. The second possibility is that Tania on behalf of the couple realised that Neil's illness was progressing at such a rate that there was no realistic prospect of them being able to return to England. In other words, this was a decision reached without Neil taking an active part in it. That is what Tania says happened. I have no reason to disbelieve her and so, because I have considered both possibilities, I have decided to prefer the outcome that means Neil was not deciding to acquire a domicile of choice in Guernsey. In doing so, I am satisfied that Neil retained the desire to return to Devon throughout this short time, as evidenced by the acquisition of 24 Thatcher Avenue and that his resolve did not waver whilst he still had the capacity to take decisions for himself.

53. The contentions of James seem to me to be based on the fact that he believes his father Neil had chosen to settle in Guernsey. He refers to his father calling Guernsey home, but I am not persuaded that that is an indicator of the level of intention to remain that is required. I have further taken into account Tania's evidence that, from the late 1990s onwards, the relationship between James and Neil was not a close one. In particular, it seems that it broke down during Neil's stay in Guernsey in the 1990s and James' view about his father may relate more to what he wanted to believe than what actually happened. He has concentrated on the wealth Neil had at that time as shown by his investment in Kings Sports Club. James also appears to be aggrieved about what happened when Tania applied to become Neil's guardian, but uses the fact that the guardianship was sought in Guernsey rather than in England to support his claim that Neil was already domiciled here. There is, though, nothing unusual or untoward about that. Neil was present in Guernsey at the time, had assets here that needed to be administered for his benefit and the Court was not concerned with whether he had his domicile here or not when deciding if a guardian needed to be appointed. I take the view that James has not focused on the key considerations about the coincidence of residence and an individual's intentions, but looked instead at why Neil left England in the first place rather than why Neil ended up here after having returned to England for as many years as he had spent in Guernsey in the 1990s. He has not discharged the burden that falls on him and was wrong to suggest to Mr O'Connor that that burden fell on Tania.

54. In summary, I am satisfied to the civil standard that Neil remained in Guernsey from around 2005 (or even from 2003) until his death in 2017 without during that period forming the intention that he was intending to remain in Guernsey indefinitely. At the start of that period of residence, Neil still had the intention of returning to England. Ultimately, he was unable to do so and he lost the capacity to take such a decision for himself during the first part of 2007. In effect, Neil was forced to stay in Guernsey rather than deciding to do so and I am not persuaded that he acquired a domicile of choice here. As a result, by the time he lost capacity, his domicile of origin in England had not been changed and so it continued until his death.

Conclusion

55. For the reasons I have given, I find that Neil was domiciled in England all his life. Although James has contended that Neil had a home, a business and paid tax in Guernsey, for the relevant periods, Neil also had homes and a business in England. For some of the time, he had homes in both jurisdictions and used both, but the focus of his life from 2000 to 2005 certainly appears to have been England (and, were it necessary to do so, I would have found that this re-established his domicile as being in England). Even when Neil and Tania spent more time in Guernsey from around late 2003 and certainly from 2005, the ongoing interests in England, of types that James highlights as pointing towards Neil having acquired a domicile in Guernsey, support my conclusion that Neil had not given up his domicile of origin. Accordingly, I will make a declaration as sought by Mr O'Connor that Neil was domiciled in England at the time of his death in 2017.

56. I am also satisfied that the costs of these proceedings should be regarded as being costs coming out of Neil's estate and will so order unless any of the parties makes any contrary representations within 14 days of this judgment being handed down.