Neutral Citation Number: [2024] EWFC 94

Case No: 1702-9210-7583-3315

IN THE FAMILY COURT SITTING AT
THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/05/2024

Before :

SIR JONATHAN COHEN

Between :

AN	**Applicant**
- and -	
NO	**Respondent**

- -

Ms S Hillas KC & Mr S Charles (instructed by **McAlister Family Law**) for the **Applicant Wife**
Ms S Singer & Mr J McEvoy (instructed by **Farrer & Co**) for the **Respondent Husband**

Hearing dates: 25-26 April 2024

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Approved Judgment

This judgment was handed down remotely at 2.00pm on 9 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives once anonymised.

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SIR JONATHAN COHEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

SIR JONATHAN COHEN :

1. I am dealing with a jurisdiction dispute in which the overarching issues before the court are rightly agreed as being:

   i) Whether the courts of England and Wales have jurisdiction to entertain W's divorce application and;

   ii) Whether, if there is jurisdiction, England and Wales is the forum conveniens.

   In each instance W supports the proposition and H disputes it.

2. The relevant chronology of the proceedings is as follows:

   On 7 December 2023 W's divorce petition was sent to the online portal;

   On 13 December 2023 W's divorce petition was issued by the court;

   On 29 December 2023 H commenced divorce proceedings in the European Country;

   It appears to be agreed that at the time that H issued his European Country divorce proceedings he had not been served with W's English proceedings.

   On 20 February 2024 H acknowledged service of the English divorce proceedings, disputing jurisdiction.

   6 March 2024 H's application to stay financial remedy proceedings on the basis of lack of jurisdiction was issued, followed by

   On 13 March 2024 H's application for a stay of divorce proceedings.

   On 15 March 2024 the first hearing before me took place and I listed the substantive jurisdiction hearing before me on 25-26 April 2024.

3. These proceedings in England and Wales are not the first proceedings that there have been between the parties. I shall set out later the history of proceedings in the European Country.

The Law: Jurisdiction

4. Pursuant to section 5 (2) of the Domicile and Matrimonial Proceedings Act 1973 the courts of England and Wales shall have jurisdiction in relation to divorce or judicial separation if (and only if) on the date of the application:

   (a)both parties to the marriage are habitually resident in England and Wales;

   (b)both parties to the marriage were last habitually resident in England and Wales and one of them continues to reside there;

   (c)the respondent is habitually resident in England and Wales;

   (ca)in a joint application only, either of the parties to the marriage is habitually resident in England and Wales;

(d)the applicant is habitually resident in England and Wales and has resided there for at least one year immediately before the application was made;

(e)the applicant is domiciled and habitually resident in England and Wales and has resided there for at least six months immediately before the application was made;

(f)both parties to the marriage are domiciled in England and Wales; or

(g)either of the parties to the marriage is domiciled in England and Wales.

5. Although W initially pinned her case on both sub-paragraphs f and g, she now argues only that on the date of the application she was domiciled in England and Wales. It is her case that having been born with a Russian domicile of origin she has, either in 2012 (a difficult proposition, as will be seen) or in 2014 acquired a domicile of choice in England and Wales.

6. It is established law that a domicile of origin can only be replaced by clear, cogent and compelling evidence that the relevant person intended to settle permanently or indefinitely in the alleged domicile of choice – see Cyganik v Agulian [2006] EWCA Civ 129.

7. The modern law has been helpfully summarised by Arden LJ in Barlow Clowes International Ltd & ors v Peter Stephen William Henwood [2008] EWCA Civ 577 where at paragraph 8 she sets out:

The following principles of law, which are derived from Dicey, Morris and Collins on The Conflict of Laws (2006) are not in issue:

(i) A person is, in general, domiciled in the country in which he is considered by English law to have his permanent home. A person may sometimes be domiciled in a country although he does not have his permanent home in it (Dicey, pages 122 to126).

(ii) No person can be without a domicile (Dicey, page 126).

(iii) No person can at the same time for the same purpose have more than one domicile (Dicey, pages 126 to128).

(iv) An existing domicile is presumed to continue until it is proved that a new domicile has been acquired (Dicey, pages 128 to 129).

(v) Every person receives at birth a domicile of origin (Dicey, pages 130 to 133).

(vi) 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 (Dicey, pages 133 to138).

(vii) 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 (Dicey, pages 138

to143).

(viii) In determining whether a person intends to reside permanently or indefinitely, the court may have regard to the motive for which residence was taken up, the fact that residence was not freely chosen, and the fact that residence was precarious (Dicey, pages 144 to151).

(ix) 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 (Dicey, pages 151 to153).

(x) When a domicile of choice is abandoned, a new domicile of choice may be acquired, but, if it is not acquired, the domicile of origin revives (Dicey, pages

151 to 153).

8. The use of the phrase "permanently or indefinitely" is apt. I have heard argument as to how this interplays with what Arden LJ said at paragraph 14 which reads:

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 it must be his ultimate home or, as it has been put, the place where he would wish to spend his last days. Thus, in Bell v Kennedy (1868) LR 1 Sc and Div 307, 311, Lord Cairns, having held that it was unnecessary for him to examine the various definitions that have been given of the term "domicile", held that the question to be considered was in substance whether the appellant:

> *"had determined to make, and had made, Scotland his home, with the intention of establishing himself and his family there, and ending his days in that country?"*

9. I do not think that I should read the acquisition of a domicile of choice as being dependent on whether or not it is where the person wishes to spend his last days. That would be inconsistent with other authorities to which I have been referred, but, it is clear that a temporary period of residence will not suffice. What is required is the intention to reside permanently or for an unlimited time in a country.

10. I agree with H that it must be a residence fixed not for a limited period or a particular purpose but be general and indefinite in its future contemplation. Thus, a period spent in a country for work or for the education of children or medical treatment is insufficient by itself to establish a domicile of choice.

11. I have been referred to and adopt the words of King LJ in Kelly v Pyres [2018] EWCA Civ 1368 at paragraph 69:

It follows that the reference to 'singular and distinctive' and 'ending his days in that country' must be considered in the context of the requirement for there to be a fixed intention to reside in a country for the indefinite future. In my judgment, temporary residence of eleven months, but with an expressed intention to retire to this country in several decades time is not enough without more cogent evidence with which to loosen the strong ties with a domicile of origin and to create a replacement domicile of choice. In the present case, far from establishing herself and her family in England following her period of residence between 2001 and 2002, the wife chose not to

marry, holiday, spend her maternity leave or even to give birth to her second child, in this country (emphasis added).

12. I need only refer further to paragraphs 37-38 of Divall v Divall [2014] 2 FLR 1104, where Moor J said:

[37] My attention was also drawn by Miss Faggionato, for the husband, to two further authorities, namely Irvin v Irvin [2001] 1 FLR 178 and Re Furse (Deceased); Furse v Inland Revenue Commissioner [1980] 3 All ER 838. Whilst Irvin is a case that does lend support to the contention that the wife abandoned her domicile of origin and acquired a domicile of choice in this country, I do not consider that it supports the husband's case that she has retained that domicile of choice. All these cases turn on their own facts. In Irvin, the husband was found to have a resolve to return to this country to retire, as evidenced in part by his acquisition of a property in Brighton and his plan to return to a business consultancy there on retirement. The wife in this case has no such intention.

[38] As for the case of Furse, it reinforces the need for caution when an individual is in a country for a time limited and specific purpose. Moving to England to bring up your children is not of itself sufficient to result in the acquisition of a domicile of choice here. On the facts, however, Furse supports the wife's contentions as it was held that the testator had acquired a domicile of choice in England because he intended to continue to live here on a farm so long as he was able to lead an active life. His intention to return to the USA if he could not do so was only on a vague and indefinite contingency. It was therefore insufficient to lead to a finding that he had retained his domicile of origin.

13. It is therefore necessary to analyse the facts with care.

The background facts

The Wife

14. W is in her forties and was born in Russia. As a child she moved to what is now the Former USSR Country and was then part of the Soviet Union. Her domicile of origin was Russia. She was brought up in what was the Soviet Union and met H in 1998 in the Former USSR Country when she was acting as an interpreter.

15. She holds Russian and the European Country passports. She does not have British citizenship although recently acquired pre-settled status.

16. The relationship continued at a distance until 2003 when W left the Former USSR Country to join H who was by then working in China.

17. The parties married in December 2004 in the Former USSR Country. Following the marriage they returned to China where they continued to live until 2007.

The Husband

18. H is in his fifties. He was born in England where his parents, who both worked for the European Country's main airline, were posted. At age 1 year he and his parents returned to the European Country. H was principally educated in the European

Country but he spent two years as a boarder in England between the ages of 8-10 and 16-18, returning to the European Country for holidays. He did his degree in England. At the end of that course in 1995, he returned to work in the European Country and apart from short periods, which did not include any time in England, he lived there until 2002 when his work took him to China.

19. The early years of the parties' married life was spent as follows:

2004-2007 China, 2007-2009 Russia, 2009-2011 the European Country, 2011- 2012 China.

20. It was whilst the parties were living in the European Country in 2009 that their two children, twins, were born in the European Country.

21. H wanted to replicate the educational experience that he had enjoyed himself for his own sons and W was likewise enthusiastic about English education.

22. The first part of the children's education was typical of an international family. Between 2011-2012 the family lived in China and the children attended a nursery school there. In March 2012 they moved to England for 5 months and the children attended a nursery school in London.

23. In August 2012 the parties' moved to City X, in the European Country, for what H described to the letting agent as a move to where their permanent home was to be. W who had already applied for citizenship in the European Country, not obtained until 2014, registered in the population register of City X, in the European Country. The children attended the British School there.

24. In July 2013 the parties moved to Malaysia, for a year and the children went to school there.

25. At or about the start of 2014 the parties purchased a very substantial property in City X which needed a large amount of work done to it. They also purchased a 3 bedroom flat to live in close to their intended new home. The flat remained in their ownership until 2016 when the renovations to the main house were completed. At about the same time W's mother relocated to the European Country, obtained a residence card for that country and initially lived in an apartment owned by H's mother.

26. In 2014 the parties were on the move again and the children were entered into M School, in England. In an email to the school in April 2014, H made it clear that the nature of his job meant that he was unable to guarantee how long the children would be in the school and the family in the UK. In August 2014 the parties rented a property near to M School. It is W's case that from that time onwards she had acquired a domicile of choice in England. It is H's case that the parties were in England only during term time for the purposes of the children's education and that domicile in England was not acquired.

27. The boys attended M School for two academic years until 2016. The detailed description of where the parties were at any given time show clearly that although broadly equal amounts of time were spent in England and in the European Country

the division of time was that term times were spent in England and holiday times in the European Country or elsewhere.

28. In February 2015 the parties purchased a flat near to M School in England. It was a 2 bedroom flat with a square footage of about ⅓ the size of the property in City X. The children shared a bedroom.

29. The children were taken out of M School for a period in May and June 2016 when their parents needed to be in the European Country and the boys went to school in City X for that period. In total they missed about two months of schooling in England and spent one month of that time in the European Country school.

30. In September 2016 the children started at N School, in England, attending for 1 year before moving again to Malaysia for the next academic year in order to meet the requirements of the family business. During the year 2017-2018 the children were home schooled.

31. In September 2018 the children entered P School in England. This was the first time that the boys had been to boarding school. The parents very much divided their time between the European Country, England and elsewhere for the first two terms of the children's boarding experience for fiscal reasons. It was only at the end of April 2019 that the pattern of the parents spending term-time in England and holidays elsewhere was substantially resumed.

32. In 2019 the parties attended some sessions of marriage counselling but my impression is that they were of limited duration.

33. One child thrived at boarding school but the other did not and became unhappy. Accordingly the parties began to make other plans for his education. Both boys had been offered places at the Elite School, in England, but the parents agreed that this would not be suitable for one of their children. Accordingly, whilst one child remained at P School until he was 13 in July 2022, the other child left in July 2020 and was admitted to a day school.

34. The parties' future place of residence had begun to become a difficulty between them. W enjoyed being in England more than H did. H would have liked he and W to have returned to live in the European Country in 2020 whilst W was reluctant.

35. In an email dated 17 October 2020 H recorded that he and W had agreed (with the typographical error removed) that they would live in England during term times until June 2022 and would then move full time to the European Country. W says that this was not agreed but she accepts that she did not express her disagreement with the plan and I accept H's evidence on this issue.

36. In 2021 the family purchased a family dog who was kept permanently in the European Country; this was the only pet that they had during the marriage.

37. The plans for the non-boarding child's secondary school continued to be a difficulty. His parents looked at schools for him both in the European Country and in England. Eventually, it seems that it was agreed that he would be entered into R School in England, and a place was offered to him in February 2022. The parties looked for a

home in the vicinity of the school and alighted on a building that would need substantial renovation just a few doors away. An offer was made and the deposit monies lodged with the parties' English solicitors.

38. However, this coincided with the Russian invasion of Ukraine. W is proud of her Russian heritage and she found the anti-Russian sentiment expressed in England to be very difficult and unsettling. She frequently voiced her support for the Russian actions.

39. In May 2022 the parties withdrew from their prospective English purchase and W wrote to the surveyors who were instructed in respect of the pre-purchase enquiries explaining that the "difficulties relating to the current political situation in the UK because of my Russian nationality …" was their reason for pulling out of the purchase.

40. The decision was taken to move back to the European Country with effect from July 2022. I am satisfied that this was as a result of a number of factors which I do not place in any particular order. First, the anti-Russian feeling in England had reduced W's appetite for living here; secondly, the parties had previously agreed to return to the European Country with effect from summer 2022; thirdly, W recognised that H would be upset if in the circumstances that did not happen and she felt that she owed it to him and to the marriage to go along with it.

41. From July 2022 until December 2023 the parties' home was in City X in the European Country. The English property was left unoccupied for virtually the entire time.

42. In September 2022 on child began his schooling at the Elite School in England as a boarder and the other began at the English school in City X in the European Country as a day boy. The parties lived in the home in City X.

43. It is undoubtedly the case that during 2022 W's Russian nationality assumed a greater significance to her. She wanted to support her country, which she felt was the subject of unjustified world criticism. She encouraged H to obtain Russian citizenship and ceased letting out one of the flats that she owned in Russia so that it could be available for the family. The whole family visited Ukraine, where W had relatives, for a summer holiday in July 2022. In September 2022 a third Russian property was bought.

44. Between November 2022 and February 2023 the parties attended some further sessions of marriage counselling in the European Country.

45. In February 2023 the family car which had been left in England was sold. This symbolic step is not without significance. It was not replaced.

46. In March 2023 W registered herself again in the municipal population register of City X and with the City Hall as living at the home in City X.

47. In May 2023 W's father moved to live in the European Country and stayed in a studio flat which the parties bought as an initial base for him.

48. In May 2023 the parties separated and W left the family home to live in one of the other residences owned by the parties in City X. They each engaged lawyers in the European Country with a view to resolving the issues that arose from their separation.

49. With effect from January 2023 the parties became tax resident in the European Country and their accountants informed HMRC that from April 2023 they were no longer resident in the UK, they previously having been registered as having non-domicile status.

50. On 13 August 2023 W claimed that she was assaulted by H in the European Country. She had returned to the family home on or about 9 August 2023 and it was there that the incident took place. At the police's suggestion H moved out and into the parties' flat across the road.

51. Domestic abuse proceedings were started in the European Country. It is not entirely clear from the evidence put before me whether the proceedings were instituted by the government agency or by W, but it is clear that W tacked onto the summons against H various requests which included the attribution to her of custody of the children, sole occupation of the family home and interim maintenance of €10k pm.

52. A very damaging dispute arose in relation to the boarding child's education. The child was happy at the Elite School in England but W took the view that he was spending far too long on his laptop and other devices without any proper control and was at risk. Unilaterally, she decided that he was not going to return to school and she wrote to the Elite School to say that she intended "to try to keep the boys in [the European Country] during this year". She withheld the child's passport to stop him leaving the European Country and returning to the Elite School in England.

53. Accordingly, H issued a summons in the court in the European Country for the release of the passport and for the child to return to the Elite School. The child had to attend court and see the judge and express his own views. The judge ordered the release of the passport and allowed the child to return to school in accordance with his wishes. This episode has been very harmful to W's relationship with the child.

54. As part of the European Country judgment the court ordered that H should be attributed the power to decide on the school at which the child should continue his studies.

55. On 13 September 2023 the domestic abuse proceedings came before the specialist court in City X in the European Country, which dismissed W's complaint.

56. On 18 September 2023 W sought to appeal the decision relating to the boarding child. In these proceedings, W claimed that the appeal that she lodged was only against that part of the order in respect of which entrusted the future control of the child's education to his father. An examination of the documents shows that this clearly is not the case. She appealed the whole of the decision. She says that if that is the case then her lawyers misunderstood her instructions. The appeal has very recently been dismissed.

57. Between 4-7 December 2023 W was in England, seeing her lawyers and making arrangements for the lodging of her application for divorce. The application was issued on 13 December 2023.

58. W returned to the European Country on 7 December for about a week, returning to England on either 15 or 17 December 2023, she thinks the latter date.

59. In the days and weeks thereafter W took various steps. These included the purchase of a car, the setting up of a company in England (which is not trading) and applying for pre-settled status. She says that she had never applied for settled status before because H had told her that it was unnecessary. H denies that he ever said that and I accept his evidence.

60. W has remained in England. Her relationship with the child at school here has not been repaired and she is in the very unhappy position of having her only relative in England at school just down the road from her property here but with her son unwilling to talk to her. She says that when she attended at school on several recent occasions, he ignored her.

Commentary

61. I have reached the clear view that W has failed to demonstrate the degree of permanence necessary to acquire a domicile of choice as of 7 December 2023. Her presence in England has never been other than for the school education of their sons. It was purely transactional and was time limited.

62. I do not think that it is necessary for me, or indeed possible, to determine whether or not W has lost her Russian domicile of origin. This was not the focus of the evidence.

63. The amount of time that she has spent in the European Country in fact exceeds the time that she has spent in England, even excluding 2023 which was spent virtually entirely in the European Country. There may well be an argument that she had established a domicile of choice in the European Country. It would in my view be a stronger argument than that she has acquired a domicile of choice in England.

64. I bear in mind particularly the following factors which have led me to my conclusion. Once again I state them in an order which is not significant:

    i) The relative size and nature of the accommodation which the family enjoyed in City X in the European Country as opposed to England;

    ii) W has brought to live in the European Country her housekeeper, her mother and her father;

    iii) She has no relatives living in England. It is her case that none of her birth family relatives ever visited her in England, although H says that her mother did for a short period in 2014;

    iv) The family pet was kept in the European Country;

    v) She had no car in England from the start of 2023, indicative of a departure intended to be permanent;

vi) In the European Country each boy had his own room, whilst in England they had to share a room in the English flat on the rare occasions they were both there (as one or both were always boarding after 2018);

vii) By the time that she came back to England in December 2023, W was not even speaking to the one family member, their son, who was still in England;

viii) During the years that the English flat was owned, the parties never used it other than in connection with schooling the children. It was not used in holiday time.

ix) There were no trips to other parts of England and Wales, apart from day visits, almost entirely to London;

x) If W's application in 2023 in respect of their son's education had succeeded in the European Country court, she would never have even returned to England and she would have remained in City X to look after him.

xi) The agreement that I find that the parties reached in 2020 that from summer 2022 they would be living in the European Country.

xii) The absence of an application for pre-settled status until after W had filed her application for divorce

xiii) The absence of time outside school holidays spent in England

xiv) The fact that since July 2022 W scarcely visited England until December 2023

xv) Having made her complaint to the European Country police in August 2023, her seeking of additional remedies from the European Country court

xvi) Their mutual declarations to the European Country tax authorities that from 2023 they were resident in the European Country.

65. Some of the points pressed upon me I have found to be less persuasive. Included amongst them are:

i) The fact that H's business was engaged in established British exports around the world, with the majority of the staff being English qualified. That the parties had a high regard for the British exports is not in dispute;

ii) The parties' declarations about their tax domicile. These are self-serving statements and the result of the professional advice that they had received. They cast no light on the reality of their domestic arrangements.

iii) The depth of W's connection with Russia and whether it was so great that she still retains her Russian domicile. It would not be safe for me to draw any conclusion from what I have heard.

iv) The language that was spoken at home. I accept that the majority of the communications between members of the family was in English but at many

times W communicated to the children in Russian and H used the European Country language.

66. For the avoidance of doubt I accept that the absence of British citizenship and, until recently, a right to reside on a permanent basis is not decisive as to the acquisition of a domicile of choice.

67. I have considered carefully W's revised position that each party had a different intention in respect of their permanent home and thus their domicile. It was argued on her behalf that W was committed to England while H saw his permanence as being in the European Country. Attractively put though the argument was, I reject it. In my judgment the return to the European Country in summer 2022 was meant to be for good. The English property was retained simply to provide a base for visiting the child at the Elite School in England.

68. It follows therefore that I dismiss the petition filed in England by W.

Forum Non Conveniens

69. It is unnecessary for me to deal with this argument at length, or indeed at all, but having received detailed submissions upon it, it is appropriate that I should briefly state my conclusions.

70. Where there are concurrent proceedings in England and another jurisdiction in respect of the same marriage, section 5(6) of the Domicile and Matrimonial Proceedings Act 1973, together with Schedule 1, paragraph 9 of the same Act, provide that the English proceedings may be stayed if the Court thinks fit and if it appears to the Court*:*

Sch 9, Paragraph 9(1)

Where before the beginning of the trial or first trial in any matrimonial proceedings which are continuing in the court it appears to the court— ……. (b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for the proceedings in [the other jurisdiction] to be disposed of before further steps are taken in the proceedings [in England] ...

the court may then, if it thinks fit, order that the proceedings in the court be stayed or, as the case may be, that those proceedings be stayed so far as they consist of proceedings of that kind."

Subsection (2) provides that:

"(2) In considering the balance of fairness and convenience ... the court shall have regard to all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed, or not being stayed."

71. I adopt the helpful summary of the law set out by HHJ Hess – in SA v FA [2022] EWFC 115 at paragraph 20 which is in the following terms

'(i) Fairness and convenience depends on the facts of each case and all the circumstances have to be considered. The court should take a broad view of all the

facts and circumstances, not just those directly relating to the litigation.

(ii) The court will consider what is the 'natural forum', that is the forum with which the parties have most real and substantial connection. These will include not only factors affecting convenience and expense (such as the availability of witnesses), but also other factors such as the law governing the relevant transaction and the places where the parties respectively reside and carry on business (per Lord Goff in Spiliada).

(iii) A stay will only be granted where the court is satisfied that there is some other available forum having competent jurisdiction which is the appropriate forum; that is to say where the case may be tried more suitably for the interests of all parties and the ends of justice. It is for the party seeking the stay to prove the existence of some other available forum which is clearly or distinctly more appropriate (per Bodey J in Chai v Peng).

(iv) If the court decides that there is no other available forum which is clearly more appropriate, then a stay will (almost certainly) be refused (per Bodey J in Chai v Peng).

(v) If, however, the court concludes that there is some other available forum which is clearly more appropriate, then a stay will ordinarily be granted unless the applicant who resists the stay can show that a stay would deprive him or her of some legitimate personal or juridical advantage, or can show some other special circumstances by virtue of which justice requires that the trial should nevertheless take place here. If the applicant succeeds in showing this then the court must carry out a balancing exercise considering all the broad circumstances of the case, in order to determine the stay application, ie to decide where the case should be tried in the interests of the parties and the ends of justice (per Bodey J in Chai v Peng).

(vi) A stay should not be refused simply because the applicant will be deprived of some personal or juridical advantage if the court is satisfied that substantial justice will be done in the available appropriate forum (per Bodey J in Chai v Peng).

(vii) The mere fact that one party might be likely to achieve a better outcome in one forum than the other cannot be decisive.'

72. There seem to me to be very strong reasons why convenience and the balance of fairness dictate that the European Country proceedings should take priority:

i) It is where the parties have their main home and where a greater part of the parties' marriage has taken place when compared with England.

ii) The scale of assets in the European Country is significantly higher than those in England. W says that this would not have been the case if the purchase of a new English property had gone ahead, but it did not. The parties have a portfolio of properties in the European Country with, according to W's Form E, a value of several times that of the English flat.

iii) W has already twice had recourse to the jurisdiction of the courts of the European Country. That means, that not only have the courts of the European

Country been seized with proceedings relating to the children, but also to allegations of domestic abuse and to interim maintenance. It also means that W's assertion that she would be handicapped in the European Country court by reason of her difficulty with the language needs to be taken with a degree of scepticism.

iv) These parties' business interests are worldwide. Their connection with England is limited. I do not accept that the fact that the English trade is held within a charity registered with the Charity Commission carries weight as an argument.

v) As I have already found, the connection of the parties and the children is closer with the European Country than to England. The matters set out in paragraph 64 all point to this conclusion.

73. In the circumstances, while it is not necessary for me to deal with forum conveniens, I would have stayed the English proceedings, it being clear that the connection of the parties is significantly closer to the European Country than England.