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BR 2022 000154

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF HRH PRINCE HUSSAM BIN SAUD BIN ABDULAZIZ AL SAUD
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 18/05/2023

Before :

ICC JUDGE BARBER

- -

Between :

HRH PRINCE HUSSAM BIN SAUD BIN ABDULAZIZ AL SAUD

Applicant

and

MOBILE TELECOMMUNICATIONS COMPANY KSCP

Respondent

- -

John Wardell KC and Andrew Shaw (instructed by **Millbank Solicitors)** for the Applicant
Stephen Moverley Smith KC (instructed by **Pillsbury Winthrop Shaw Pittman LLP**) for the Respondent

Hearing dates: 20 and 21 February 2023

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Approved Judgment

This judgment was handed down remotely by email. It will also be sent to The National Archives for publication. The date and time for hand-down is 9.30 a.m. on 18 May 2023.

ICC Judge Barber

1. On 1 June 2022 the Respondent ('MTC') presented a bankruptcy petition ('the 2022 Petition') against the Applicant ('the Debtor') in relation to debts of US$885,800,268.67 and £3,292,847.55 arising under a series of arbitration awards made in 2015-2018 ('the Arbitration Debts').

2. On 14 July 2022 MTC applied for permission to serve the 2022 Petition on the Debtor out of the jurisdiction by substituted service on his solicitors in London, or alternatively outside the jurisdiction and by alternative means. That application was granted by ICCJ Prentis on 19 July 2022 ('the Service Order').

3. On 2 August 2022 the Debtor applied to set aside the Service Order ('the 2022 Set Aside Application'). He maintains that (1) the Court has no jurisdiction to make a bankruptcy order against him under s.265 of the Insolvency Act 1986 ('IA 1986') and (2) the Service Order was flawed because ICC Judge Prentis did not consider whether the case was a proper one for service out of the jurisdiction, as he should have done given the Debtor's residence in Saudi Arabia.

4. MTC has renewed its application for leave to serve the 2022 Petition out of the jurisdiction and by alternative means ('the Renewed Service Application').

5. The court now has before it (1) the 2022 Petition (2) the 2022 Set Aside Application and (3) the Renewed Service Application.

6. The 2022 Set Aside Application raises one issue, namely, whether MTC has a good arguable case that, for the purposes of s.265(2)(b)(i) IA 1986, the Debtor had at any time during the period 1 June 2019 to 1 June 2022 a place of residence in England and Wales ('the Residence Issue').

7. The Debtor does not, in this jurisdiction, dispute the Arbitration Debts. His lawyers have confirmed that his only defence to the 2022 Petition is the Residence Issue.

8. It is accepted by the Debtor that, if MTC has a good arguable case in relation to the Residence Issue, then MTC is entitled to an order granting it permission to serve the 2022 Petition out of the jurisdiction on him. In the event that such an order is made, the Debtor's solicitors have confirmed that service can be effected on their firm in London.

9. Accordingly, the only issue for the court to decide at this stage is whether MTC has a good arguable case on the Residence Issue.

Background

10. The background to this matter is largely uncontentious.

11. The Debtor is a member of the Saudi royal family. He was born in 1960 and is the only child of HRH Princess Noorah Bint Abdullah Fahad Al-Damir ('Princess Noorah'). His father died in 1969 when he was eight years old. His mother, as a businesswoman with her own means, provided for him following the death of his father.

12. In 1976, when the Debtor was 15, Princess Noorah purchased 24 York House, York House Place, London W8 4EY ('York House'). It is a substantial apartment, comprising around 2,700 square feet. Princess Noorah spends (at most) between 10 to 13 weeks there each summer. Her settled or usual place of abode is in Saudi Arabia.

13. At paragraph 6 of her statement dated 3 September 2019 (the '2019 Statement'), Princess Noorah describes York House as follows:

> 'York House is a substantial apartment and has room for family members to stay and reside there with me. This is what has happened over the years. This has included [the Debtor], his wife and my grandchildren'.

14. In 1983, the Debtor began an English language course in London. He subsequently studied for a master's degree in economics at the LSE in 1984 and 1985 before returning to Saudi Arabia for a period. Between 1987 and 1990, he worked on a doctorate in economics at the University of London. During the period of his studies in London, the Debtor lived at York House for the academic year. His mother, Princess Noorah, would then occupy York House over the summer, usually travelling with one or more of her sisters and nieces.

15. The Debtor married and had two children during the course of his studies in London in the 1980s/90s. He married Princess Sarah in 1983. Their first child, Prince Saud was born in 1985 and their second, Prince Khaled, was born in 1987. Princess Noorah's reaction to the birth of her second grandchild, Prince Khaled, was to modify York House to 'create a room for [her] second grandchild', converting York House from a three to four-bedroom apartment to accommodate the needs of the Debtor's growing family: witness statement of Princess Noorah dated 13 September 2022 at [16].

16. After completing his studies in 1990, the Debtor returned to Saudi Arabia and went into business. He and Princess Sarah went on to have a further three children, Prince Abdulaziz, Prince Mohammad and Princess Noura, born in 1991, 1996 and 1998 respectively.

17. Princess Noorah continued to support the Debtor after the completion of his full-time studies in 1990. In 2002 and again in 2011, for example, she allowed York House to be used as security for loans which she and the Debtor took out as joint borrowers, for the Debtor's own purposes. These included funding medical treatment for his mother-in-law in France and America and the attendant costs of travelling with her. The mortgages securing these loans have since been redeemed.

18. Princess Noorah also allowed three of the Debtor's sons to live at York House whilst they were students in London. According to the evidence of Mr Hanjra, the family secretary, Prince Saud lived there during term time from 2011-2013, Prince Abdulaziz from 2009-2014 and Prince Mohammad from 2014-2017.

19. By 2015, the Debtor was embroiled in expensive litigation. In 2015, MTC was the successful claimant in arbitration proceedings in London against the Debtor regarding a loan agreement ('the Arbitration'). The main award in the Arbitration, made on 23 December 2015, was for US$527 million ('the Main Award'). Together with default

commission and costs, the total amount awarded against the Debtor in favour of MTC was US$817 million. The Debtor has failed to pay any part of this sum.

20. In late 2016/early 2017, Princess Noorah arranged the purchase of three further properties near York House, (54 Adam & Eve Mews, 56 Adam & Eve Mews and 1 Phillimore Terrace; collectively, 'the New London Properties'). These purchases were largely funded by Princess Noorah, save for a mortgage on 54 Adam & Eve Mews, which was taken out by Princess Sarah with the assistance of Princess Noorah.

21. Princess Noorah explained the thinking behind these purchases at paragraph 6 of her witness statement dated 18 January 2021 as follows:

> 'As the family expanded (I have five grandchildren and five great-grandchildren), it became increasingly difficult to accommodate them in York House when they came to London. So, I decided that additional properties need to be acquired for their use. In December 2016 and February 2017, three other properties.. [the New London Properties] .. were purchased in London, such purchases largely funded by me'.

22. The New London Properties have been the subject of a number of trust structures. At paragraph 15 of the 2019 Statement, Princess Noorah openly acknowledged that beneficial ownership of the New London Properties had been carefully arranged to ensure that the Debtor had no interest that could be attached, saying:

> 'I was, as I say, of course, aware of the arbitration and the award made. Having been involved in matters of business for many decades, I was quite well aware of the potential ramifications of giving [the Debtor] a beneficial interest in any of the London Properties…'

23. 1 Phillimore Terrace and 56 Adam & Eve Mews were purchased in December 2016 in the names of Princess Sarah and three of her children. At the time of purchase, the legal owners entered into a declaration of trust, declaring these properties to be held on trust for Princess Sarah and all five of her children. 54 Adam & Eve Mews was purchased in February 2017 in Princess Sarah's sole name.

24. On 2 August 2017, Princess Sarah and each of her children made declarations that they held their respective interests in the New London Properties as nominees and bare trustees for Princess Noorah, who in turn made similar declarations that she held them as nominee and bare trustee for two Jersey trusts. The Jersey trusts provided for a lifetime interest for Princess Noorah alone and thereafter discretionary trusts for family members, with side instructions from Princess Noorah that under no circumstances should the Debtor (one of the discretionary objects) benefit. That Jersey trust structure was later unwound. In late 2019/early 2020, the private client department of Withers, the solicitors acting for Princesses Noorah and Sarah, advised 'that there were a number of issues with the Trust Structures and that they were of no effect': witness statement of Mr Wood dated 21 February 2023. Accordingly, an application was made to the Jersey Court for a declaration that the trusts were of no effect. This was granted on 8 December 2020. The current position is therefore that (i) 54 Adam & Eve Mews is held in Princess Sarah's sole name and (ii) 56 Adam &

Eve Mews and 1 Phillimore Terrace are held in the names of Princess Sarah and three of her children, on trust for Princess Sarah and all five of her children.

25. The Debtor was unhappy with the Main Award. He took steps to try to challenge it and other awards in the Arbitration and to avoid enforcement, including reviving proceedings in the Saudi courts in breach of the arbitration clause contained in the loan agreement and ignoring the Main Award.

26. On 18 May 2018, on MTC's application, the High Court granted a permanent anti-suit injunction against the Debtor to restrain proceedings in the Saudi courts in breach of the underlying arbitration clause and in defiance of the Main Award (which had addressed and decided the issues raised in the Saudi proceedings). The injunction required him to discontinue the proceedings in the Saudi courts then on foot.

27. The Debtor failed to comply with this injunction. Accordingly, on 10 August 2018, on MTC's application, the High Court declared the Debtor to be in contempt of court and committed him to prison for a period of 12 months from the date of his apprehension. The proceedings in England gave rise to a number of costs orders against the Debtor ('the Judgment Debts').

28. On 4 June 2019, MTC sought a charging order in respect of what was at that time understood by MTC to be the Debtor's interest in York House and the New London Properties ('the charging order proceedings'). In light of evidence filed in the charging order proceedings, including the 2019 Statement, which asserted that the Debtor had no beneficial interest in any of the relevant properties, the charging order application was dropped.

29. On 21 February 2020, MTC presented a bankruptcy petition ('the 2020 Petition') against the Debtor in relation to the Judgment Debts and applied ex parte for permission to serve that petition on him in Saudi Arabia by alternative means ('the 2020 Service Application').

30. In the context of that application, MTC maintained (for the purposes of establishing an arguable case on bankruptcy jurisdiction under s.265) that the Debtor had a place of residence in England and Wales in the 3 years preceding the presentation of the 2020 Petition ie between 21 February 2017 and 21 February 2020 ('the First Relevant Period').

31. On 17 March 2020, ICC Judge Jones granted the 2020 Service Application ('the 2020 Service Out Order'). According to an approved note of his judgment dated 22 March 2020, ICC Judge Jones concluded that the evidence before him established 'on the balance of probability that the requirements of s.265 had been met.' He considered the most important evidence before him to be that contained in Princess Noorah's 2019 Statement, which in the judge's view 'established that if during the prescribed three-year period [the Debtor] wanted to reside at the property at York House he could do so and use it as his place of residence'. Section 265, the judge observed, 'did not require evidence of actual use or residence'.

32. On 7 April 2020, the Debtor applied to set aside the 2020 Service Out Order ('the 2020 Set Aside Application'). He did not dispute his liability for the Judgment Debts

but maintained that he had not had a place of residence in England and Wales in the First Relevant Period.

33. The 2020 Set Aside Application was heard and dismissed by Deputy ICC Judge Schaffer on 14 December 2020 ('the Schaffer Judgment'). Noting that ICC Judge Jones had found on a balance of probabilities that the Debtor had had a place of residence in this jurisdiction in the First Relevant Period, Deputy ICC Judge Schaffer held that there was nothing in the evidence before him to undermine that conclusion. In doing so he accepted MTC's submission that it did not have to show that the Debtor was a regular visitor, observing that '[all] the court has to consider is whether he has had a place of residence to which he could come, had he chosen to, within that three year period'. He also noted that the Debtor was registered for Council Tax at York House until December 2019, observing at [56] that this **'**could, without any further explanation, show some evidence of a place of residence'.

34. The Debtor was refused permission to appeal Deputy ICC Judge Schaffer's decision by Bacon J on paper but was granted permission on two out of eight grounds of appeal on an oral renewal before Marcus Smith J. The two grounds of appeal in respect of which permission was granted were (in summary):

(i) that the judge had erred in distinguishing Re Brauch on the basis that it was decided under the old law and in holding that a more flexible approach applied because of the change in statutory wording from 'dwelling-house' to 'place of residence'; and

(ii) that the judge was wrong in failing to consider the degree of control which the Debtor exercised over the property: in particular, it was contended that it could not be his place of residence if he did not exercise de facto control over occupancy of the property.

35. The appeal came before Roth J in March 2022. The judge gave a written judgment ('the Roth Judgment') reported at [2022] EWHC 744 (Ch). In relation to ground (i), Roth J (at [26]) held that In re Brauch continued to retain its precedential effect, even though decided under the Bankruptcy Act 1914. Roth J also disagreed with the deputy's observations on the impact of the change of wording from "dwelling house" to "place of residence". In light of these conclusions, Roth J went on to review the evidence afresh. In doing so, he proceeded on the basis that the finding that the Debtor had permission from his mother to stay at York House at any time could not be challenged ([42](ii)).

36. In relation to ground (ii) (de facto control), Roth J did not consider the authorities to establish that de facto control was a necessary condition. He considered that In re Brauch of itself showed that the imposition of de facto control as a necessary condition would be inappropriate. The cases were, in the judge's view (at [37]), 'simply illustrations of the broad range of factual considerations which may be relevant in determining whether an individual has "a place of residence" in this country within the meaning of the statute. The expression should be given its ordinary meaning and the assessment depends on all the facts.' The second ground of appeal was accordingly dismissed.

37. On the evidence overall, Roth J concluded (at [43]) that applying the lower standard of proof applicable in 'service out' cases (ie a 'good arguable case'), he had 'no doubt that the Creditor has shown a good arguable case that the Debtor had a place of residence in the jurisdiction, or that it has "the better of the argument" on the material available.' On that basis, he dismissed the appeal.

38. In the meantime, on 21 December 2020, MTC had served a statutory demand ('the Statutory Demand') on the Debtor in relation to the Arbitration Debts.

39. On 18 January 2021, the Debtor applied to set aside the Statutory Demand ('the SD Application').

40. On the same day, the Debtor paid the amount of the Judgment Debts into MTC's solicitors' account.

41. Following the Roth Judgment, on 24 April 2022, an order was made by consent dismissing the SD Application and authorising MTC to present a bankruptcy petition in relation to the Arbitration Debts. MTC applied to amend the 2020 Petition to include the Arbitration Debts but that application was dismissed by ICC Judge Prentis on 25 May 2022. The 2020 Petition debt and costs having been paid, the 2020 Petition was dismissed and the 2022 Petition was in due course presented.

42. Following the making of the 2022 Service Order and the filing of the 2022 Set Aside Application and the Renewed Service Application, the court gave directions on 16 September 2022, listing both applications for hearing on 25 January 2023. At that hearing, Deputy ICC Judge Curl KC considered an application by MTC for directions (1) as to whether the Debtor should be entitled to rely on new witness statements filed in relation to the 2022 Set Aside Application ('the New Evidence') in support of that application and (2) if so, whether MTC should be permitted to cross-examine the makers of those witness statements. The learned deputy held that the Debtor could rely upon the New Evidence and that cross-examination was not appropriate at the 'service out' stage.

Test for Service Out: Principles

43. As the Debtor is resident in Saudi Arabia, the court must be satisfied that the petition may be served out of the jurisdiction, even if it is intended that service by alternative means be effected within England: Marashen Ltd v Kenvett Ltd [2018] 1 WLR 1706 (Ch) per David Foxton KC at [17].

44. By Schedule 4 to the Insolvency (England and Wales) Rules 2016 ('IR 2016'), CPR Part 6 applies to the service of documents outside the jurisdiction. Schedule 4 also provides that a bankruptcy petition is to be treated as a claim form for the purposes of CPR Part 6.

45. CPR 6.37 provides that the court's permission is required for the service of a claim form out of the jurisdiction. One of the conditions for permission to serve out to be granted is that the claim falls within one of the jurisdictional gateways at paragraph 3.1 of PD 6B.

46. The standard of proof required to show that a claim falls within one of the jurisdictional gateways is not the balance of probabilities, but rather, the lower standard of 'good arguable case'. This standard applies both where the issue going to jurisdiction will also be an issue at trial and where it will not: Roth Judgment at [11]-[13].

47. The correct approach to determining these jurisdictional requirements has been the subject of recent consideration by the Supreme Court and the Court of Appeal.

48. In Brownlie v Four Seasons Holdings Inc. [2017] UKSC 80, Lord Sumption, referring to the explanation of the 'good arguable case' test in terms of finding that 'one side has a better argument on the material available' set out the position at [7] as follows:

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

49. In Kaefer Aislamientos SA v AMS Drilling Mexico SA [2019] EWCA Civ 10, Green LJ (Davis and Asplin LJJ concurring) observed in relation to limb (ii):

> 'Limb (ii) is an instruction to the court to seek to overcome evidential difficulties and arrive at a conclusion if it "reliably" can. It recognises that jurisdiction challenges are invariably interim and will be characterised by gaps in the evidence. The court is not compelled to perform the impossible but, as any judge will know, not every evidential lacuna or dispute is material or cannot be overcome. Limb (ii) is an instruction to use judicial common sense and pragmatism, not least because the exercise is intended to be one conducted with "due despatch and without hearing oral evidence"…'

50. Limb (iii) is engaged where the court is unable to say on the evidence before it which party has the better argument. Green LJ addressed this situation at [80]:

> 'What does the judge then do? Given that the burden of persuasion lies with the claimant it could be argued that the claim to jurisdiction should fail since the test has not been met. But this would seem to be unfair because, on fuller analysis, it might turn out that the claimant did have the better of the argument and that the court should have asserted jurisdiction…
>
> The solution encapsulated in limb (iii) addresses the situation. To an extent it moves away from a relative test and, in its place, introduces a test combining good arguable case and plausibility

> of evidence. Whilst no doubt there is room for debate as to what this implies for the standard of proof it can be stated that this is a more flexible test which is not necessarily conditional upon relative merits'.

Jurisdictional grounds

51. The grounds of jurisdiction for a creditor's bankruptcy petition are set out in s.265 IA 1986:

> '(1) A bankruptcy petition may be presented to the court under section 264(1)(a) only if –
>
> (a) the centre of the debtor's main interests is in England and Wales, or
>
> (ab) the centre of the debtors main interests is in a member state (other than Denmark) and the debtor has an establishment in England and Wales, or
>
> (b) the test in subsection (2) is met.
>
> (2) The test is that –
>
> (a) the debtor is domiciled in England and Wales, or
>
> (b) at any time in the period of three years ending with the day on which the petition is presented, the debtor –
>
> (i) has been ordinarily resident, or has had a place of residence, in England and Wales, or
>
> (ii) has carried on business in England and Wales.'

52. The ground relied upon by MTC in relation to the petition is that at s265(2)(b)(i) IA 1986, namely, that the Debtor has had a place of residence in England at any time in the three years ending with the date on which the petition was presented i.e., 1 June 2019 to 1 June 2022 ('the Relevant Period'). Accordingly, in order for the court to be satisfied that it is proper for the petition to be served out of the jurisdiction, MTC must establish that there is a good arguable case, as defined in Brownlie, that the Debtor had a place of residence in England in the Relevant Period.

Place of Residence

53. The question of what constitutes a place of residence for the purposes of s.265 IA 1986 has been considered in a number of authorities. It is clear from the Roth Judgment that the term 'dwelling house' used in s.4 of the Bankruptcy Act 1914 (the predecessor provision of s265) is to be treated as the same concept as a 'place of residence' under s.265.

54. I shall start with the case of In re Brauch [1978] Ch 316. This was not a 'service out' case but a jurisdictional challenge to a bankruptcy petition where the debtor, who did

not have an English domicile, worked much of the time from an office in London. He was the lessee of a house in London occupied by the mother of his son whom he visited there. The Court of Appeal dismissed an appeal from the registrar's decision finding that there was jurisdiction over the debtor on the basis that during the relevant 12-month period, the debtor had ordinarily resided, carried on business and had a place of business in England within the meaning of s.4 BA 1914. Any of those grounds was sufficient to dispose of the case.

55. The relevance of In re Brauch in the current context concerns the approach adopted by the registrar and appellate court on whether the 'dwelling house' ground had also been established. At first instance the registrar had not accepted that the debtor also had a dwelling house in England and that conclusion was challenged by a respondent's notice. Goff LJ (Orr and Buckley LJJ concurring) dealt with this aspect fairly briefly at the end of his judgment, confirming, among other things:

> 'I do not see why a licensee should not be held to have a dwelling house': 334G;

and

> 'I think it may be possible to find that the debtor had a dwelling house in England although he was not in fact in occupation of it at any time during the year. If it be established that he had a dwelling house to start with but he happened to be away throughout the year for a temporary purpose but with intent to return, it may be that on the facts of a particular case one could find he had a dwelling house, but the more there is actual occupation, the easier it is to reach the conclusion that there was a dwelling house, and the shorter the actual occupation, the more difficult it becomes': 335A-B.

56. At 335D Goff LJ continued:

> 'In my judgment, here again one has to look at all the facts and see whether or not they do lead to the conclusion that within the relevant year the debtor had a dwelling house in England. In the present case it is pointed out that whilst the debtor was not in fact in residence at 51, Connaught Street for any part of the year, he had installed the mother of his son there, and it appears from the evidence that he did at least go to see her there and may well have stayed nights, although whether he ought to be regarded as her guest or she as his might be a somewhat difficult question. I do not think, however, that we really can reach a conclusion from these matters. The registrar said the petitioning creditors fail because they know so little. In my judgment, that is a correct appraisal of the situation in this case. In my view, there is insufficient evidence upon which to form a conclusion whether or not the debtor had a dwelling house within the meaning of the section, and, in my judgment, therefore the respondents' notice fails'.

57. Reflecting on these conclusions in the Roth Judgment, Roth J observed at [29]:

> 'I do not regard Goff LJ's observation that it was unclear whether the debtor there may have stayed in the property that he owned (as lessee) as the guest of the mother of his son who was living there or whether she was there as his guest as establishing a rule that if a person in occupancy of a property is as a guest of someone else, the person cannot be said to have a place of residence in the property. In my judgment, what Re Brauch makes clear is that the determination depends on all the evidence and is very much a matter of fact and degree.'

58. Skjevesland v Geveran Trading Co Ltd (No 4) [2003] BCC 391 was a case concerning an appeal by a debtor from a decision that a bankruptcy petition could be presented against him in England, inter alia, because he had a place of residence in England during the relevant time. A company controlled by the debtor held a lease on a flat in London which provided that the flat was for the occupation of the debtor and his family. The debtor's son was living at the flat but the debtor would stay at it when he came over from Switzerland. Before he planned to come over, the debtor would call his son, who would move out for the short period involved to enable the debtor to stay there.

59. At first instance in Skjevesland, the registrar had noted that in In re Brauch, 'Goff LJ clearly considered that a licensee, which effectively is what Mr Skjevesland is, could be held to have a place of residence in the premises of which he was a licensee'.

60. On appeal, Judge Howarth (sitting as a judge of the High Court) stated at [50]:

> 'I do not find fault with the registrar's comment about what is to be found in the case of Re Brauch … It seems to me where you are saying that a person has a place of residence, you are looking at a de facto situation, not necessarily matters of legal right.'

61. At [52] Judge Howarth continued:

> 'It seems to me that a moral claim is quite sufficient in a family context.'

62. Judge Howarth went on to find that the flat was the debtor's place of residence for the purposes of s265, reasoning at [53]:

> 'Flat 8, in this case, was normally occupied first of all by Anna [the debtor's daughter], and then by John [the debtor's son], and finally by John and Charlotte [John's fiancée] together. But the evidence seems to be clear that Mr Skjevesland would phone up on a regular basis, and he and John between them would discuss when Mr Skjevesland could come over and stay there. On those times, first of all, John would move out to Charlotte's flat. Then after Charlotte had given up her flat, they

> would both move out and go somewhere else. It seems to me on those facts it was open to the registrar to conclude that Mr Skjevesland called the tune in regard to that flat. If he decided that he wanted to go there and stay there for a period of three or four days in a week or two weeks' time, he would get his own way. It was certainly open to the registrar to conclude that. Thus it seems to me that the registrar was entitled to conclude that Flat 8 was a place of residence in this country for Mr Skjevesland,… That being so, that ground of appeal must fail.'

63. In Reynolds Porter Chamberlain LLP v Khan [2016] BPIR 722, Chief Registrar Baister dealt with both ordinary residence and having a place of residence, noting that there was an overlap between the factors relevant to the two concepts although the concepts were distinct. He summarised at [26] some principles which he derived from earlier authorities:

> '(1) Having a place of residence is a de facto situation rather than a matter of legal right (Skjevesland paragraph 50 and the passage from Brauch there cited). So a licensee may have a place of residence (Brauch 334).
>
> (2) A moral claim to premises may be sufficient (Skjevesland paragraph 52).
>
> (3) The person concerned may well have to phone to make arrangements to occupy because others use the premises as well as him but this is no obstacle to a finding of having a place of residence (Skjevesland paragraph 53).
>
> (4) It is possible to have a dwelling house without being in occupation in the relevant period (Brauch, 335) but the greater the occupation the more likely the finding; but not perhaps if the relevant property has been abandoned (Nordenfelt and Brauch, 335).
>
> (5) Living in a place with one's family as a tenant in rooms makes those rooms a dwelling house (Hecquard 74)'.

64. On the facts, the court in Khan held that the conditions for both ordinary residence and place of residence were satisfied. The debtor was resident in Pakistan where he had business and political interests. His children were being educated in England and he came here to visit them and also came to England for business. The debtor did not himself own any property in England but he was able to stay during his visits to London in one or more flats in an apartment building in Knightsbridge that was owned by given companies and he received mail addressed to him at that address. The Chief Registrar stated, at [31]:

> '… it is plain from the oral evidence that the respondent was able to and did reside in one or more of the flats when he was here.'

65. At [40] the Chief Registrar went on to observe in Khan:

> 'It is of no significance that the respondent did not own the property or have a tenancy or licence agreement or anything of that kind. It is plain from his evidence that he could get a key and enter and use a flat in the building whenever he wished to. There is no evidence to suggest that he required permission to reside in or use one or more of the flats.'

66. As previously noted, in the Roth Judgment, Roth J (at [37]) confirmed that he did not regard these and other authorities as establishing that de facto control of the property is a necessary condition. His view was that In re Brauch of itself showed that the imposition of de facto control as a necessary condition would be inappropriate.

67. The reference to 'Nordenfelt' in paragraph 26(4) of RPC v Khan was a reference to In Re Nordenfelt 1895 QB 151. In Nordenfelt, a debtor had resided in a house of his own in England but had then gone to reside abroad in November 1891, leaving instructions with a house-agent to let the house, furnished or unfurnished. A board was put up announcing that the house was to be let. In May 1892, the house not having been let, the furniture was offered for sale by auction. A large part of it was then sold. The unsold furniture was packed up ready for removal. The debtor sold the house in December 1892. The petition was presented in November 1893. According to the report, at first instance the judge found that the debtor had left the house in 'circumstances which shewed an intention of never coming back to reside there – that he had left the house for good – and the house had therefore ceased to be his dwelling-house'. The creditor's appeal was dismissed, the Court of Appeal upholding the judge's conclusion that the debtor had abandoned the house as his dwelling house for more than a year prior to presentation of the petition.

68. In PJSC VTB Bank v Laptev [2020] EWHC 321 (Ch), ICC Judge Burton considered that period of occupation was a relevant factor when considering the place of residence test, but that it was not solely determinative.

69. The concept of a place of residence was recently considered in Lakatamia Shipping Co Ltd v Su [2021] Bus LR 1285. This concerned an application by the debtor (Mr Su) for a bankruptcy order under s263I of the IA 1986, but the same qualifying conditions apply under that provision as for a creditor's petition under s265.

70. In Lakatamia, the debtor, who was domiciled abroad, arrived in England in January 2019 and lived in various hotels and serviced apartments before serving a prison sentence. After his release from prison in April 2020, the debtor, who was prohibited by a court order from leaving the jurisdiction, stayed first with a friend for a few weeks, and then from late April 2020 in a small flat in Maida Vale which had been leased by someone he met in prison. He applied for a bankruptcy order under s263I of the IA 1986 on 4 July 2020. The bankruptcy order was made and a creditor sought its annulment on the basis that the insolvency adjudicator had lacked jurisdiction to make it. The creditor's application for summary judgment on his annulment application was refused, the deputy ICC Judge holding that at times in the three year period running up to the application for the bankruptcy order, the debtor had had a place of residence in England and Wales for the purposes of s263I(2)(b)(i) and that accordingly, the jurisdictional test was satisfied. The creditor appealed on the ground that the deputy

ICC Judge had erred in his construction of the term 'place of residence' and/or had failed to take account of the wholly involuntary nature of the debtor's occupation of some of the places in which he had stayed while in England.

71. Giving judgment on the appeal, Bacon J observed at [19]:

> 'The judge did, however, decide that Mr Su had a place of residence in England and Wales during the relevant period, which he said must necessarily mean something different from having a place of ordinary residence. While the judgment did not make clear exactly which of Mr Su's addresses were considered to be his place of residences, para 55 of the judgment recorded the submissions of Mr Su's solicitor as having been that Mr Su was resident at HMP Pentonville, followed by a stay at his friend's property in Surrey, and subsequently his occupation of the flat in Maida Vale. It appears, therefore, that the judge considered that Mr Su had a place of residence in the jurisdiction on the basis of one or more of those locations.'

72. The debtor did not positively contend on appeal that HMP Pentonville was a place of residence. Nor did he contend that he 'resided' as such in any of the places that he occupied since his arrival in England. Rather, his submission was that the statutory language 'has had a place of residence in England and Wales' has to be interpreted as meaning no more than that the debtor had an entitlement, which could be a licence or moral entitlement rather than a legal entitlement, to occupy a place that was capable of being described as a place of residence of someone, whether or not the residence was that of the debtor. On that basis, the debtor maintained that he had places of residence at the Intercontinental Hotel, the Cromwell Apartments, the friend's house in Surrey and the current flat in Maida Vale. All those premises, he said, were places in which somebody was capable of residing, and where Mr Su had some sort of entitlement to stay: Lakatamia, [21]-[22].

73. Addressing these submissions, Bacon J reasoned as follows:

> '[24] On the basis of the submissions made before me today the appeal comes down to a very short point of statutory construction: does the test of having a place of residence in section 263I simply mean, as Mr Underwood submitted, that the debtor should have had an entitlement of some sort to occupy a place that is capable of being described as someone's place of residence or does it require an assessment of the quality of the residence of the debtor, as Mr Phillips submitted ?
>
> [25] On that point I have no hesitation in rejecting Mr Underwood's submission. In the first place, it is not supported by the statutory language. As set out in section 263I(2), the test is that "the debtor .. has had a place of residence". On the plain meaning of those words, therefore, the residence must be that of the debtor not someone else. Mr Underwood's construction

effectively asks the court to rewrite the statutory language and replace the concept of residence with one of mere occupation. But that is not the wording used in section 263I.

[26] Secondly, Mr Underwood's construction is not supported by any authority whatsoever. Mr Underwood referred me to the judgment of Chief Registrar Baister in [RPC v Khan] in which the judge considered both the concept of ordinarily resident and the alternative test of having a place of residence for the purposes of section 263I. At para 26 of that judgment the Chief Registrar summarise some of the applicable principles, noting in particular that having a place of residence is a de facto situation rather than a matter of legal right such that a licensee may have a place of residence; that a moral claim to premises may be sufficient; that the premises may also be occupied by others; and that it is possible to have a dwelling house without being in occupation during the relevant period.

[27] Nothing in that summary, however, remotely suggests that a debtor may have a place of residence where the debtor has not in fact ever resided, but which is the residence of a third party which the debtor is temporarily occupying with the permission of that third party.

[28] Thirdly, Mr Underwood's construction would diminish the test in section 263I to complete triviality, in a way that would make no sense in the context of the statutory provision. As Mr Phillips pointed out, the primary jurisdictional test under section 263I is that the centre of the debtor's main interests should be in England and Wales. As a derogation from that test, jurisdiction is established where one of the four conditions in section 263I(2) is satisfied, namely that (1) the debtor is domiciled in England and Wales, (2) the debtor has during the relevant three-year period been ordinarily resident in England and Wales, (3) the debtor has had a place residence in England and Wales during that period, or (4) the debtor has carried on business in England and Wales during that period.

[29] The conditions of domicile, ordinary residence and carrying on business all connote a degree of substantiality and continuity of the connection of the debtor with the jurisdiction. By contrast, on Mr Underwood's case a debtor could invoke the jurisdiction of the insolvency adjudicator simply on the basis that they had permission to occupy the residence of a third party for some period of time during the three years preceding the bankruptcy application, no matter how fleeting and transient that occupation was - and indeed on Mr Underwood's submission irrespective of whether the debtor even did occupy those premises at all. That would be an absurd result that would render effectively nugatory the jurisdictional test in section 263I of the Insolvency Act 1986.

> [30] I therefore reject Mr Underwood's construction of section 263I. On that basis the appeal must succeed, since Mr Underwood's statutory construction point was the only point on which Mr Underwood relied to oppose the appeal.'

74. Bacon J went on (at [31]-[38]) to make some 'brief comments' on what she considered the correct approach to be, 'without in any way suggesting that the following should be regarded as an exhaustive exposition' ([31]):

(1) While there is a clear difference between the concept of 'ordinarily resident' and a separate test of having a 'place of residence', that does not mean that the two tests are wholly separate; it may be that similar factors are relevant to both tests. It did not follow however that all of the factors that are relevant to one of those tests will necessarily be relevant to the other ([32]).

(2) The starting point should be that the phrase 'has had a place of residence' should be given its natural meaning. In that regard it was relevant to have regard to authorities on the interpretation of the concept of residence even if those authorities arose in different statutory contexts. In this regard, Bacon J noted that:

(a) In Levene v Comrs of Inland Revenue [1928] AC 217, 222, a tax case, Viscount Cave LC defined the word 'resided' by reference to the OED definition of 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place'.

(b) In Dubai Bank Ltd v Abbas [1997] IL Pr 308, Savile LJ said of the Levene case 'Although this was a tax case, it is clear that the meaning given to the word in that case was its ordinary meaning, uncoloured by the fact that it was used in a revenue context' and held that a person was resident for the purposes of the relevant statutory provision in a particular part of the United Kingdom 'if that part is for him a settled or usual place of abode'.

On this basis, Bacon J (at [36]) considered that in determining whether a debtor has had a place of residence in England and Wales during the relevant period for the purposes of establishing whether there is jurisdiction to make a bankruptcy order, it is 'relevant to ask' whether the place was for the debtor 'a settled or usual place of abode or home'.

(3) On the basis of the Court of Appeal's judgment in Revenue and Customs Comrs v Grace [2009] STC 2707, citing with approval at para 6 the summary given by Lewison J at first instance, residence: "connotes some degree of permanence, some degree of continuity or some expectation of continuity".

(4) Whether a person was involuntarily in England and Wales was a relevant factor as to whether that person has a place of residence in the jurisdiction but was not determinative: [38]-[39].

75. At [40] – [41] Bacon J concluded:

> '40. Applying those principles to the facts of the case, as I have noted Mr Underwood accepts the evidence does not indicate

> that Mr Su "resided" at any of the properties that he occupied during the period since he arrived in England in January 2019. His presence at each of them was temporary and transient with no degree of permanence or expectation of continuity. The longest period of time appears to have been spent at the Maida Vale flat, which Mr Su's own evidence describes as a "squalid little flat" that his prison cell mate allowed him to use. Mr Su says that he has very few possessions at the flat and feels like he is still living in a prison.
>
> 41. It follows that Mr Su cannot be described as having had a place of residence at any of the places that he has occupied since arriving in England for the purposes of section 263I. In concluding otherwise, the deputy judge, respectfully, in my judgment, fell into error.'

76. Addressing Lakatamia in the Roth Judgment, Roth J observed at [41]:

> 'I respectfully agree that the factors set out by Bacon J are relevant considerations but I do not read her judgment as specifying that any of those factors are essential requirements for a debtor to be held to have "a place of residence" for the purpose of these provisions of the insolvency regime. For example, I think it is well-established that a debtor may have a place of residence in the jurisdiction although his home is elsewhere: see RPC v Kahn and PJSC Bank Ltd v Laptev. I note that the reference to "a settled or usual place of abode" is derived from a Court of Appeal decision on whether the defendant was "resident" in the jurisdiction for the purpose of s41(3) of the Civil Jurisdiction and Judgments Act 1982, so as to satisfy the test for domicile: Dubai Bank v Abbas [1996] EWCA Civ 1342… However, being "resident" in England and Wales is not the same as having "a place of residence" in England and Wales: the former is closer to the alternative test under s.263I(2)(b) and 265(2)(b) IA 1986 of being ordinarily resident here'.

77. Roth J went on to consider whether the Debtor had a place of residence in England and Wales in the First Relevant Period.

78. First, Roth J took account of the fact that the Debtor had stayed for several years at York House in the 1980s and 1990s while a student at LSE. At 42(i) he observed:

> 'Although a long time ago, Mr Wardell realistically accepted that it would have been difficult to contend that at that time the Debtor did not have a place of residence in the jurisdiction (although I do not think that the Debtor had de facto control of the property where his mother was living).'

79. Second, York House was a 'substantial apartment' and the express finding of the judge below that the Debtor had permission from his mother to stay there at any time

could not be challenged on appeal (permission to appeal against the judge's appraisal of the evidence having been refused). That said, quite independently of the finding of the judge below, Roth J went on to observe on the evidence that the Debtor's mother had said that the Debtor, his wife and their children have stayed at York House 'over the years'. This was a reference to the 2019 Statement. Roth J considered it legitimate to conclude from such evidence 'that the permission which the Debtor had while a student continued after he had his own family' and that 'it appears that this was his and his mother's expectation': [42](ii).

80. Third, the Debtor had not occupied York House at any time during the First Relevant Period. This, Roth J considered, was 'clearly relevant'. Whilst his lack of occupation after August 2018 was readily explicable (since if he came to England he would have gone to prison to serve the sentence imposed for contempt), there had been a period of 18 months in the First Relevant Period prior to the imposition of the prison sentence and he did not occupy York House then. That, Roth J considered, was a 'factor pointing against it qualifying as his place of residence'.

81. Fourth, the Debtor had argued that since he was appointed governor in a province of Saudi Arabia in April 2017 and travelled with a large entourage, York House was too small to accommodate them all and therefore it could not be his place of residence. Roth J observed that there was a two-month period at the start of the First Relevant Period before his appointment as governor, noting that the statute refers to having a place of residence in the jurisdiction "at any time" in the three-year period, which in Roth J's view 'means that a period which is not de minimis is sufficient'.

82. He continued at [42](iv):

> 'In any event, if someone has a permanent place where they can stay on their visits to London, but chooses instead to stay in a hotel, e.g. because they would like the benefit of a hotel's facilities or because they accompanied by too many friends or relations to accommodate, I do not consider that they cease on that account to have a place of residence in London. When the Debtor came to England after being appointed governor in February/March 2018 with his entourage, when 24 York House was therefore too small for them, he stayed at 1 Phillimore Terrace…. That was possible because a nearby property (which as I understand it similarly belonged to the Debtor's wife and three of his children) was vacant, so that they could use that to provide extra accommodation. So for a visit when 24 York House was unsuitable, the Debtor was able to use other properties belonging to his family.'

83. Fifth, Roth J noted that York House was not the Debtor's settled or usual place of abode or home.

84. Sixth, Roth noted that the Debtor had been registered for Council Tax in relation to York House while he was a student and that he continued to be so registered until December 2019. Roth J observed: 'As Mr Wardell had to accept, a person does not undertake the liability to pay Council Tax on a property with which they have no connection'. He considered that explanations given in witness evidence filed by

Princess Noorah and her solicitor, Mr Wood (to the effect that the Debtor's registration for Council Tax assisted as proof of address for the purposes of opening bank accounts and applying for visas for members of the Debtor's family and their staff) to be 'very unsatisfactory'; noting in particular, that it was obviously 'not a requirement to be registered for Council Tax in order to obtain a visa to visit this country or to open a bank account; nor is it a requirement that your father is registered here for Council Tax to obtain a student visa'. Roth J considered the registration of the Debtor for Council Tax purposes at York House 'a significant factor pointing to this address being a place of residence for the Debtor'.

85. Roth J also took into account the fact that he was dealing with a case of service out and that a number of the authorities which he had considered fell to be decided on the balance of probabilities. In both RPC v Khan and PJSC VTB Bank v Laptev, for example the debtor had been cross-examined on his evidence. As matters stood before Roth J, the Debtor had given no evidence at all, still less had he been cross-examined on the same. At [43] he concluded:

'Applying the lower standard of proof which I have held here applies and taking all the above matters into account, I have no doubt that the Creditor has shown a good arguable case that the Debtor has a place of residence in the jurisdiction, or that it has "the better of the argument" on the material available. At the hearing of the petition, the Court will have to assess the matter on the balance of probabilities and it will be open to the Debtor to give evidence explaining matters more fully.'

The evidence

86. For the purposes of this hearing, I have read the following witness statements and their respective exhibits, namely:

(1) the first, second, third and fourth witness statements of Deborah Ruff, the Petitioner's solicitor, dated respectively 14 July 2022, 12 August 2022, 12 August 2022 and 3 November 2022;

(2) the first and second witness statements of the Debtor (Hussam 1 and Hussam 2), dated respectively 13 September 2022 and 14 November 2022;

(3) the witness statement of Princess Noorah, the Debtor's mother, dated 13 September 2022;

(4) the witness statement of Princess Sarah, the Debtor's wife, dated 13 September 2022;

(5) the first and second witness statements of Khalid Hanjra, a family employee (Hanjra 1 and 2) dated respectively 13 September 2022 and 14 November 2022;

(6) the second witness statement of Jatinder Pamar, the Debtor's solicitor, dated 13 September 2022;

(7) the witness statement of Mr Wood, Princess Noorah's solicitor, dated 21 February 2023.

87. I have also read and considered evidence filed in previous proceedings between the parties, including the following witness statements, namely:

(1) two witness statements of Ms Luce, the managing director of the entity responsible for setting up the Jersey Trusts, dated 2 and 9 September 2019 and their exhibits, filed in connection with the charging order proceedings ('the Luce statements');

(2) the witness statement of Princess Noorah dated 3 September 2019, filed in connection with the charging order proceedings;

(3) the first witness statement of Mr Wood dated 7 April 2020, filed in support of the Debtor's 2020 Set Aside Application;

(4) the witness statement of Mr Jatinder Pamar dated 12 June 2020, filed in support of the Debtor's 2020 Set Aside Application;

(5) the witness statement of Princess Sarah dated 13 December 2020, filed in support of the Debtor's 2020 Set Aside Application;

(6) the witness statement of the Debtor dated 18 January 2021, filed in support of the SD Application;

(7) the witness statement of Princess Noorah dated 18 January 2021, filed in support of the SD Application;

(8) the witness statement of Princess Sarah dated 18 January 2021, filed in support of the SD Application;

(9) the witness statement of Prince Khaled dated 18 January 2021, filed in support of the SD Application;

(10) the witness statement of Prince Saud dated 18 January 2021, filed in support of the SD Application;

(11) the witness statement of Prince Mohammed dated 18 January 2021, filed in support of the SD Application.

The Luce statements

88. At the outset of the hearing, I granted the Petitioner permission to rely on the Luce statements.

89. The Luce statements addressed the issue of beneficial ownership of the New London Properties, outlining the Jersey trust structure in place at the time of the charging order proceedings (under which Princess Noorah was sole beneficiary during her lifetime) and confirming Princess Noorah's instructions to the trustees that the Debtor (as a discretionary object) should not benefit after her death. They went to a fairly short point outlined at paragraph 94 of the Petitioner's skeleton argument, namely, the likelihood of family members seeking the express permission of Princess Sarah and her children as the 'beneficial owners' of the New London Properties to use those properties (as suggested in the January 2021 evidence filed by Princess Sarah and her

children in the SD Application) when on 2 August 2017 the Jersey trust structure was put in place.

90. Having heard submissions from both leading counsel, I granted permission to rely on the Luce statements on condition that they be formally produced in evidence as exhibits to a short witness statement by Ms Ruff. I also gave permission for the Debtor to file and serve evidence in response overnight, Mr Wardell KC having confirmed on instruction that the Jersey trust structure had since been unwound.

91. The Luce statements were relevant to the 'permission' issue and their contents will have come as no surprise to the Debtor or his family, having been evidence filed on behalf of Princess Noorah, Princess Sarah and the Debtor's children in the charging order proceedings. The Petitioner had given notice to the Debtor by email dated 13 February 2023 that it wished the Luce statements to be included in the hearing bundle, one week before the hearing. Given that the Debtor has a very able and experienced legal team wholly familiar with the background to this application, in my judgment this was reasonable notice in context.

92. This is a preliminary stage in the proceedings and will not involve any final ruling on jurisdiction. Other witness statements from the charging order proceedings were already included in the bundle, together with witness statements from the 2020 Set Aside Application and the SD Application; no objections had been raised to those being adduced in evidence before the court or included in the hearing bundle. The Luce statements were extremely short and went to a very limited issue, clearly signposted at paragraph 94 of the Petitioner's skeleton argument.

93. The Debtor's legal team were given a reasonable opportunity to respond to this evidence overnight and did so, adducing Mr Wood's witness statement dated 21 February 2023, which confirmed that since the filing of the Luce statements, the Jersey courts had declared the Jersey structure ineffective. Counsel for the Debtor was also given an opportunity to address the impact of the Luce statements in oral submissions.

94. It was in these circumstances that permission was granted.

Submissions on approach

95. On behalf of MTC, Mr Moverley Smith submits that the position is quite straightforward; the starting point should be to focus on the six factors considered by Roth J to lead to the conclusion that MTC had a good arguable case that the Debtor had a place of residence in the jurisdiction in the First Relevant Period, and see whether there was any change in relation to each factor between the First Relevant Reriod and the current Relevant Period with which this court is now concerned.

96. Mr Wardell disagrees. He maintains that the court should consider the matter afresh, on the basis of the evidence now before it.

97. I accept Mr Wardell's submissions on this issue, up to a point. It is undoubtedly the case that the court must consider the matter afresh, on the basis of the evidence now before it.

98. In considering the evidence, however, the court draws guidance from previous authorities, including the Roth Judgment, as to how it should approach section 265 and the question of whether a debtor has a place of residence. To the extent that the evidence now before the court highlights factors considered relevant by Roth J on the last occasion, it is open to the court to take that into account in its overall appraisal of the evidence and the conclusions to be drawn from it. Moreover, the court's evaluation of the evidence must be on the basis of all the evidence before it and not simply on the written evidence that the Debtor has chosen to file, after consideration of the Roth Judgment, in support of the 2022 Set Aside Application.

99. I would add that if there is any conflict between Lakatamia and the Roth Judgment on a point of legal principle going to ratio, the guidance given by Nourse J in Colchester Estates (Cardiff) v Carlton Industries Plc [1986] Ch 80 at 84F-85H shall be applied.

Discussion and conclusions

100. In my judgment, when considering whether the Debtor had a place of residence in England and Wales in the Relevant Period, the following considerations are relevant.

101. First, I consider the timing and purpose of the purchase of York House to be a relevant consideration. York House was purchased by the Debtor's mother as a family home in 1976, when the Debtor, her only son, was just 15 and still in her care.

102. Second, the fact that the Debtor lived for several years during term-time at York House over the period 1983 to 1990, while he was a student in London, is in my judgment a relevant consideration. The Debtor has a long-standing connection with York House. As noted by Roth J at [42](i) of his judgment, the Debtor plainly had a place of residence in this jurisdiction over the period of his studies in England. In submissions before me, Mr Wardell accepted that York House was a place of residence for the Debtor when he was a student.

103. Third, I take into account the fact that Princess Noorah herself only uses York House for 10-13 weeks over the summer months each year. The rest of the year, the property is furnished but vacant and available for members of the family to use. The only other use to which York House is put is as a portered address for post and deliveries for various members of the family.

104. Fourth, I take into account the clear evidence of Princess Noorah's continued commitment to ensuring that her family (including the Debtor) have access to family accommodation in London as and when required, as exemplified by:

(1) Princess Noorah's description of York House as set out at paragraph 6 of her 2019 witness statement in the charging order proceedings, quoted at [13] above (as repeated at paragraph 4 of her 2021 statement and at paragraph 14 of the Debtor's 2021 statement in support of the SD Application). Whilst Princess Noorah has since (by her 2022 witness statement) sought to qualify the words 'with me', on the evidence as a whole it is plain that the remainder of quoted passage from paragraph 6 of the 2019 Statement holds good;

(2) The Debtor's extended residence at York House during his studies in London, in the 1980s/1990s, addressed at [102] above;

(3) Princess Noorah's reaction to the birth of her second grandchild, born in the late 1980s when the Debtor was still studying in London, quoted at [15] above, which was to convert York House from a three to four-bedroomed apartment '*to create a room for [her] second grandchild*'; an action strongly suggestive of an expectation or understanding that the Debtor and his family would continue to have use of York House as a residence as and when needed following completion of his studies;

(4) a letter from Princess Noorah's solicitors, Withers LLP, dated 14 August 2019, written in the context of the charging order application which, relaying their instructions, stated (with emphasis added):

> 'Until the other London Properties were purchased, 24 York House was the only property in London owned by the family and, *therefore*, Princess Noorah has allowed various family members, including the [Debtor], to reside and stay there from time to time. That does not, of course, create a beneficial interest in it. *It is quite natural for a mother to let her son live in a property which she owns….*
>
> All of the purchase monies for the other London Properties were provided by Princess Noorah. They came entirely from her own funds in which no other person had any legal or beneficial interest…. Princess Noorah wished for properties to be available for her immediate family, mainly her five grandchildren and some great-grandchildren in the vicinity of 24 York House so that the family could enjoy time together in London.'

As noted by Mr Moverley Smith, throughout this letter, there are references to the 'family'. Whilst Mr Wardell was at pains to remind me that this letter, as with Princess Noorah's 2019 statement, was written in the context of the charging order proceedings, when the focus was on the issue of beneficial interest rather than place of residence, in my judgment these 'guileless statements' to adopt a phrase employed by Deputy ICC Judge Curl, form a significant probative backdrop to the carefully drafted evidence which has since followed.

(5) Princess Noorah's actions (addressed at [18] above) in allowing each of Princes Saud, Abdulaziz and Mohammad, the Debtor's sons, to live at York House during term-time during the course of their respective years of study in London over the period 2009-2017;

(6) Princess Noorah's purchase of (or substantial contribution to the purchase of) the New London Properties and her reasons for arranging such purchases, as summarised at paragraph 6 of her statement dated 18 January 2021 in support of the SD Application, quoted at [21] above.

105. As noted by Mr Moverley Smith in submissions:

> 'What you see … is properties in London being acquired for the use of the family, being funded by Princess Noorah, and additional properties being purchased because of the expanding

> nature of the family. The important point to note is that it is for the use of the family.'

106. Fifth, notwithstanding the recent attempts of the Debtor and his mother to assert otherwise, the evidence as a whole in my judgment strongly supports the conclusion that the Debtor has at all material times since completing his studies in 1990 (including the Relevant Period) continued to enjoy ongoing permission to use York House as his personal place of residence when in London, subject only to checking availability and making arrangements to collect the keys.

107. Naturally I am mindful of the general rule that, unless and until the evidence of a witness is tested in cross-examination, it is ordinarily not possible for the court to disbelieve the word of the witness in his witness statement and it will not do so. This is, however, not an inflexible principle: it may in certain circumstances be open to the court to reject an untested piece of such evidence on the basis that it is manifestly incredible, either because it is inherently so or because it is shown to be so by other facts that are admitted or by reliable documents: Coyne v DRC Distribution Limited [2008] EWCA Civ 488 per Rimer LJ at [58]; Re Hopes (Heathrow) Ltd [2001] 1 BCLC 575 at 581-2 per Neuberger J.

108. In this case the self-serving suggestion, introduced to an extent in the evidence of the Debtor and his mother in the SD Application, and since developed more fully in the evidence in support of the current application, that the Debtor only had 'limited permission' to use York House during the period of his studies and that this came to an abrupt end in 1990 when his studies finished and he returned the keys to Mr Hanjra, is in my judgment shown to be incredible by other facts which are not in issue and by reliable documents, including the facts and documents referred to at [101] to [104] above.

109. The fact that keys were handed over to Mr Hanjra in 1990 is an irrelevance, given Mr Hanjra's evidence that he is the custodian for all keys to York House and the other London properties in between visits by family members: Hanjra (1), [37].

110. As noted by Mr Moverley Smith, no explanation has been given why the evidence filed in support of the current application was not filed in support of the 2020 Set Aside Application.

111. The witness statement of Mr Wood (Princess Noorah's solicitor), dated 7 April 2020, made in support of the 2020 Set Aside Application and so after sight of ICC Judge Jones' judgment, does not state that Princess Noorah gave the Debtor a limited licence to reside at York House in the 1980s and 1990s which came to an end on completion of his studies in 1990. Quite the contrary, at paragraph 30, Mr Wood states:

> '… As for Princess Noorah's [2019] statement, it is accepted that in paragraph 6, she says that over the years [the Debtor], his wife and children have stayed with her. However, it should not be forgotten that she has owned York House since 1976 or that she goes on to say that it is no longer practical for everyone to stay with her there'.

112. Whilst, in a later statement filed by Mr Pamar (the Debtor's solicitor) dated 12 June 2020 in the 2020 Set Aside Application, Mr Pamar stated that Princess Sarah had told him that the Debtor had no right to stay at any of the London properties, Princess Sarah's own witness statement dated 13 September 2020, filed after exchange of skeleton arguments in the 2020 Set Aside Application, largely addressed the New London Properties, rather than York House. Other than stating at paragraph 5.1 that 'in recent years [the Debtor] has stayed in London hotels even when 24 York House was largely empty because he did not consider that property as his residence', no reference, implied or otherwise, was made regarding the arrangements between the Debtor and his mother in relation to York House. There was certainly no mention made of a limited licence to reside which terminated in 1990 when the Debtor completed his studies in London and handed back the keys to Mr Hanjra.

113. In my judgment, Mr Moverley Smith is right in observing by his skeleton argument:

> 'In the light of DICCJ Schaffer's finding that the Debtor had a right to stay in the family home and that there was no evidence that that right was withdrawn (see §56 of the Schaffer Judgment), which Roth J found meant the Debtor had permission from his mother to stay in York House at any time (see §42(ii)), the Debtor and his mother have now become very keen to portray their relationship as a formal one, where permissions needed to be sought and granted before he could stay'

114. The language of 'permission' took on an increased emphasis in the evidence filed in support to the SD Application, after the Schaffer judgment but ahead of the Roth Judgment. That evidence addressed not only York House but also the New London Properties. In relation to the New London Properties, statements were filed (inter alios) by Princess Sarah and each of her children in January 2021, suggesting that arrangements for use by a family member of 56 Adam & Eve Mews and 1 Phillimore Terrace involved the family member asking the relevant 'beneficial owners' for permission. As rightly observed by Mr Moverley Smith, the artificiality of the children's 'cut and paste' evidence on this issue does not sit at all well with the fact that, for a significant period of time since their purchase in late 2016/early 2017, the New London Properties were held (or at the very least perceived to be held) on the Jersey trusts, under which Princess Noorah was named as sole beneficiary during her lifetime; a fact (or perception) of which Princess Sarah and her children would have been aware, having each signed the requisite declarations of trust (see para [24] above).

115. That artificiality is even more pronounced in the suggestion (at [20] of Princess Sarah's statement dated 18 January 2021 and at [21] of the Debtor's statement of the same date) that the Debtor had asked his own wife, Princess Sarah, for her permission to stay at 1 Phillimore Terrace when he visited London on holiday in late February/early March 2018. Princess Sarah stated (with emphasis added) that 'I recall that I checked with *the beneficial owners* that *they* had no need for the property at the time and that *we* agreed he could use it'. Leaving aside the inherent implausibility of a husband in what appears to be a happy marriage seeking formal permission from his wife in such a way, such evidence is irreconcilable with the undisputed (and indisputable) facts that (1) the Debtor's own mother paid for 1 Phillimore Terrace, (2)

Princess Sarah did not live at 1 Phillimore Terrace; her private residence was said to be 54 Adam & Eve Mews and (3) 1 Phillimore Terrace was, at all material times leading up to and at the time of the Debtor's visit in February/March 2018, held (or perceived by all concerned to be held), on trust *solely for the Debtor's mother for her lifetime,* under the terms of the Jersey trusts: see [24] above.

116. The manner in which the evidence filed by the Debtor has evolved over the course of the various applications, starting with the charging order proceedings (which I acknowledge focused on the issue of beneficial interest), followed by the 2020 Set Aside Application, followed by the abandoned SD Application, and culminating in the current 2022 Set Aside Application, forms part of the context in which the latest round of evidence relied upon by the Debtor falls to be considered. There are also inconsistencies between the latest evidence and earlier iterations; and between the latest evidence and professionally drafted letters sent by solicitors, on instruction, in earlier times.

117. In such circumstances the language of permission now firmly at the forefront of the Debtor's evidence must be considered against the 'hard facts'; to adopt, with gratitude, a term used by Neuberger J in Re Hopes (Heathrow) Ltd [2001] 1 BCLC 575 at 581-2. Princess Noorah has through her actions over the years demonstrated a clear longstanding commitment to providing for her family and ensuring that all family members have access to family accommodation in London as and when required. Whilst, in light of the arbitration and the awards made, the beneficial ownership of the New London Properties has been carefully arranged with a view to ensuring that the Debtor has no beneficial interest that could be attached (see [15] of the 2019 Statement), the suggestion that Princess Noorah would wish to continue to provide London accommodation for everyone else in her family to use except her only son, the Debtor, is manifestly incredible.

118. As observed by Mr Moverley Smith KC, it would be wholly unsurprising if, over the years, there were discussions between mother and son about the latter's proposed visits to London. It is highly unlikely that such discussions would have been couched in the language of permission; no documentation has been produced evidencing the seeking or giving of any such permission, so the court is left with the bald self-serving statements of the Debtor and his mother, untested by cross-examination. Whilst others, such as Princess Sarah and Mr Hanjra now refer in their evidence to the Debtor seeking permission, neither has stated that they were party to any conversation in which any such permission was sought or granted. It is much more likely the discussions as between mother and only son would have concerned the *timing* of any proposed stay at York House, rather than whether the Debtor would be *permitted* to stay. As noted by Chief Registrar Baister in Reynolds Porter Chamberlain LLP v Khan [2016] BPIR 722 at 26(3), the fact that the person concerned may well have to phone to make arrangements to occupy because others use the premises as well as him 'is no obstacle to a finding of having a place of residence (Skjevesland paragraph 53)'.

119. Moreover, even if 'permission' of sorts was habitually sought before visits, the evidence as a whole does not suggest that this would be anything other than a pure polite formality. As accepted by Mr Wardell KC in submissions: 'Princess Noorah was happy for Prince Hussam to make use of York House when such use did not interfere with her own'. Princess Noorah herself states (at [12] of her 2022 statement)

that 'I would ordinarily grant him permission to stay there if I was not there'. In my judgment, the term 'ordinarily' is consistent with an ongoing understanding that the Debtor was free to use York House if it was available; that is to say, an ongoing personal licence to reside, subject to availability. For these purposes 39 or 40 weeks of each year is plainly more than de minimis, to adopt a phrase used in the Roth Judgment. In this regard I note that the only example given in either the Debtor's or his mother's witness evidence of an occasion when permission was in fact refused was one occasion when York House was being prepared for refurbishment.

120. The list of occasions when the Debtor accepts that he stayed at York House as over the period 2010 and 2018 speaks for itself.

121. In paragraph 19 of the Debtor's first 2022 witness statement, these are described as follows:

(1) 26 August 2010: This was 'a brief visit for a number of hours only in which I had a connecting flight stopover in between my flight from New York to Saudi Arabia. I had asked Princess Noorah if I could travel to York House to freshen up between my flights, and she confirmed I could, and so I liaised with Mr Hanjra and he arrange [sic] a private transfer from Heathrow to York House and was available to give me access for a few hours'. Whilst this is not an occasion when the Debtor stayed at York House overnight, the fact that he bothered to travel all the way to York House from Heathrow for the sake of just a few hours, in order to recharge between flights, rather than simply checking into a hotel at Heathrow to freshen up, clearly demonstrates the place of affection that York House holds in the Debtor's heart and his long term association with the property. It is also inconsistent with the evidence of the Debtor and his mother that the Debtor prefers hotels.

(2) 7 October 2013 to 11 November 2013: on this occasion, the Debtor explains, 'I travelled to London to support Princess Sarah who was recovering from a surgical procedure. My mother had given permission for my wife to stay at York House in order to recover in private and in the comfort of surroundings that she knew, and she was happy to agree to me staying there with her during this period.' Again, the draw of familiar surroundings is noted; as is the manifestly incredible suggestion that the Debtor himself would need to seek separate permission from his mother to stay at York House with his wife, when his mother had *already* given permission for his wife to stay there.

(3) 19 December 2014 to 25 January 2015: On this occasion, the Debtor explains 'my niece was married in England during this time, at Cliveden hotel. I was very closely involved in the organisation of the wedding. It was therefore agreed with my mother that I could stay at York House to meet my niece and her family members to discuss the wedding and its preparations.' Again, this example is entirely consistent with the ongoing availability of York House as a place of residence as and when the Debtor wanted it.

(4) 4 March 2015 to 16 March 2015: in this regard the Debtor explains that 'I was suffering back problems and came to London for treatment. As my then preferred hotel, the Milestone hotel required me to go up steps to enter the hotel lobby and the duplex two-floor suite at the hotel required stairs to gain access to the second floor, I asked my mother if I could stay at York House in order to try and avoid unnecessary

aggravation to my back problems. She agreed. The medical visit also coincided with the arbitration proceedings and so I therefore use the opportunity to meet with my lawyers at York House… This was helpful, as it was not only a private setting, but also minimised the discomfort to my back by reducing my travel to a minimum'. Again, this example is entirely consistent with the ongoing availability of York House as a place of residence as and when the Debtor wanted it.

(5) 20 March 2016 to 24 March 2016: according to the Debtor, this was the last time he stayed at York House. He explains (with emphasis added) 'it was a last-minute trip to London as my son Mohammad (then a student staying in York House during term time) had indicated to Princess Sarah and me that he wanted to quit his university studies. The purpose of my visit was to try and persuade him to continue with his studies. It made sense to Princess Sarah and me *that if my mother agreed* (which she did) that I should stay with my son at York House. It allowed us to have some frank discussions father to son in the confines of York House and at the same time, for me to spend some close time [with] Mohammad, during what was a difficult time, without any distractions.'

122. Again, this example is entirely consistent with York House being available to the Debtor as a place of residence as and when needed or wanted. I would add that the suggestion in the Debtor's (and Princess Noorah's) 2022 evidence that the Debtor had to seek his mother's express permission for him to stay with his son Mohammad at York House, when his son was already living there during his studies with his grandmother's permission, is manifestly incredible. I have no hesitation in rejecting such evidence.

123. Overall, for the reasons given, the evidence as a whole in my judgment strongly supports the conclusion that the Debtor has at all material times had continuing permission to use York House as his personal place of residence when in London, subject only to checking availability and making arrangements to pick up the keys. In my judgment, the court can reliably 'take a view' on the material available on this issue.

124. I would add that, even if, contrary to my conclusion at [123] above, no reliable assessment can be made at this stage on the issue of permission, this is but one of a number of factors which fall to be considered and the court's ultimate appraisal of the evidence overall will involve consideration not only of the Brownlie (i) and (ii) thresholds, but also Brownlie (iii).

125. The fact that the Debtor may not have had 'de facto control' over York House over the Relevant Period does not stand in the way of a finding that he had a place of residence at York House over that period: Roth Judgment at [37]. Nor would a finding that any use of York House by the Debtor was as his mother's *guest*: Roth Judgment at [29], quoted at [57] above.

126. Sixth, I accept that the scarcity of the Debtor's use of York House over the years 2010 to date is a relevant consideration. The evidence suggests that in the twelve years leading up to presentation of the 2022 Petition, the Debtor only stayed at York House on five occasions. I remind myself that 'the more there is actual occupation, the easier it is to reach the conclusion that there was a dwelling house, and the shorter the actual occupation, the more difficult it becomes': In re Brauch at p335A-B. This is

undoubtedly a factor pointing against York House being a place of residence. This, however, is but one factor of a number to consider. The court has to consider the evidence as a whole.

127. Seventh, I accept that the Debtor does not keep any personal possessions at York House. Whilst this is undoubtedly a relevant consideration, however, it is only one factor of many to consider and must be seen in context; York House is a fully furnished property managed by Mr Hanjra, who gets it ready for any family members coming to stay in the run-up to their arrival. As a long-standing trusted family employee responsible for managing the logistics of the day to day lives of the family, I consider it legitimate to conclude that he gets in anything family members may require for their stay in advance: see generally paragraphs [36] and [37] of Princess Noorah's statement dated 13 September 2022.

128. Eighth, I accept that the Debtor has not occupied York House at any time during the Relevant Period. Whilst this is undoubtedly a relevant factor, it must be seen in the context of the order for the Debtor's committal to prison made in August 2018. Had he set foot in this jurisdiction in the Relevant Period, he would have been sent to prison.

129. Counsel for the Debtor contended that in light of the prison sentence, the Debtor should now be treated as having 'abandoned' any place of residence that he might otherwise have had at York House. This was not supported by any evidence, however, despite several carefully drafted witness statements in support of the 2022 Set Aside Application, including two from the Debtor himself. It was an afterthought, raised only in submissions (not even in the Debtor's skeleton argument), without any evidential support. Indeed, the Debtor's own evidence is inconsistent with a settled intention of abandonment. At paragraph 7(e) of his statement dated 18 January 2021 (in support of the SD Application), having referred to his last visit to England in the spring of 2018, he states 'When I left in March 2018, I did not know when or if I would return to England'. This does not support a settled intention to abandon York House as a place of residence. Nor does the deliberate continued registration of the Debtor at York House for Council Tax purposes following the committal order made on 10 August 2018: see generally [133] to [143] below.

130. Ninth, I take into account that since the Debtor's appointment as governor of a province of Saudi Arabia, he often travels with a large entourage and that York House would be too small to accommodate them all. I also take into account the fact that for cultural reasons both the Debtor and his mother consider that it would be inappropriate for the Debtor to stay at York House with his entourage. In this regard however, I consider Roth J's observations on this issue to be equally applicable to the present application. Roth J observed that if someone has a permanent place where they can stay on their visits to London, but chooses instead to stay in a hotel, for example because they would like to benefit from the hotel's facilities, or because they are accompanied by too many colleagues or relations to accommodate, they do not cease on that account to have a place of residence in London. I respectfully adopt that reasoning.

131. Tenth, I take into account that York House is not the Debtor's settled or usual place of abode or home. In this regard, however, the guidance given by Roth J in the Roth Judgment at [41] when addressing Lakatamia remains relevant:

> 'I think it is well-established that a debtor may have a place of residence in the jurisdiction although his home is elsewhere: see RPC v Kahn and PJSC Bank v Laptev. I note that the reference [in Bacon J's judgment in Lakatamia] to "a settled or usual place of abode" is derived from a Court of Appeal decision on whether the defendant was "resident" in the jurisdiction for the purpose of s.41(3) of the Civil Jurisdiction and Judgments Act 1982, so as to satisfy the test for domicile: Dubai Bank Ltd v Abbas [1996] EWCA Civ 1342… However, being "resident" in England and Wales is not the same as having "a place of residence" in England and Wales: the former is closer to the alternative test under s.263I(2)(b) and 265(2)(b) IA 1986 of being ordinarily resident here'.

132. I respectfully adopt Roth J's reasoning on this issue. In my judgment, whilst the fact that the Debtor's settled or usual place of abode or home is elsewhere is undoubtedly a relevant factor, it is only one of many factors to be taken into account when determining whether or not the Debtor has a place of residence in this jurisdiction. It is not of itself determinative of that issue.

133. Eleventh, I take into account that the Debtor was registered at York House for Council Tax purposes while he was a student and continued to be so until December 2019, almost thirty years after he ceased to be based in London as a student and some time into the Relevant Period. This was considered by Roth J to be a highly significant factor in relation to the First Relevant Period and, having considered the issue of Council Tax registration afresh in the light of the further evidence filed since the Roth Judgment, in my judgment it continues to be significant in the context of the current application.

134. As Roth J observed in his judgment: 'a person does not undertake the liability to pay Council Tax on a property with which they have no connection'. He considered the explanations given in the evidence for the Council Tax position to be 'very unsatisfactory'. In the 2019 Statement, Princess Noorah had suggested (at [6]) that the registration had enabled the Debtor and his wife and children 'to use 24 York House as an address in the UK for various purposes such as visas, including student visas when grandchildren were studying in London, obtaining bank accounts etc'. Mr Wood sought to elaborate on this, stating at paragraph 23 of his statement dated 7 April 2020 (in his summary of the evidence given in the 2019 Statement on the subject) 'the address at 24 York House was used by [the Debtor's] family from time to time for the purposes of obtaining student visas. Evidence of payment of Council Tax by [the Debtor] was accepted as sufficient proof for the purpose of the visas'. Roth J was wholly unconvinced by these explanations, observing:

> 'This begs the question: proof of what? Obviously, it is not a requirement to be registered for Council Tax in order to obtain a visa to visit this country or to open a bank account; nor is it a requirement that your father is registered here for Council Tax to obtain a student visa.'

135. These matters had been extensively addressed in Ms Ruff's evidence before Roth J and were similarly addressed in evidence before me.

136. The period during which the Debtor was registered for Council Tax spans a more than de minimis part of the Relevant Period, so the issue remains live. The registration of the Debtor for Council Tax purposes was removed only in December 2019, after MTC pointed to it in the charging order proceedings.

137. In the Debtor's 2021 witness statement, filed in support of the (ultimately abandoned) SD Application, at [15], the Debtor said:

> 'I registered to pay Council Tax and remained registered until December 2019 because the family in the past would use evidence of payment of Council Tax by me to enable the children to obtain student visas.'

138. This explanation, however, was one of those later to be roundly rejected by Roth J.

139. It was also inconsistent with what was said in a letter dated 14 August 2019 from Withers LLP, written on behalf of Princess Noorah and the Debtor's wife and children in the context of the charging order proceedings, in which Withers state (with emphasis added):

> 'Paying the Council Tax does not mean that a person has beneficial interest. There can be many reasons why it is expedient for a person to assume responsibility. *In this case, it was so that [the Debtor] had an address in London.'*

140. In the light of the Roth Judgment, the Debtor has sought to improve on the evidence filed on the issue of Council Tax, filing two witness statements from the family secretary, Mr Hanjra. If anything, Mr Hanjra's evidence makes matters worse for the Debtor rather than better, as paragraph 10 of Mr Hanjira's second witness statement (supported by Hussam (1) at [31]) confirms that it was a deliberate decision to keep the Debtor registered for Council Tax purposes, rather than an administrative oversight.

141. At paragraph [29] of his first witness statement, Mr Hanjra stated that he was tasked with travel arrangements for the Al Saud family and their staff and had assisted them in obtaining multiple travel visas. He continues at [29]-[31]:

> '[29] … In this regard, to obtain UK travel visas, applicants during the application process were asked to give proof of an accommodation address for their stay in the UK. As Prince Hassam was registered for Council Tax at York House, and the visas generally either concerned his family or staff working for his family, I used the York House address for all visa applications.
>
> [30] Although I cannot recall with certainty, I expect that this practice was first communicated by me to the secretary of the Al Saud Family's Riyadh family office either in the late 1980s or early 1990s. The Riyadh family office then dealt with the formal visa applications process, and I understand my

> suggested practice was followed until Prince Hussam was no longer registered for council tax in 2019.
>
> [31] I should also mention that in relation to visas these also extended to student visas. In particular, Prince Saud, Prince Abdulaziz and Prince Mohammad all studied university degrees in London and had the permission of Princess Noorah to live at York House during their studies … Therefore, the York House address was used to obtain all of the student visas…'

142. There is an inconsistency between the evidence of the Debtor in his 2021 statement and that of Mr Hanjra in his 2022 statements as to who registered the Debtor for Council Tax purposes.

143. Of more importance, however, are the explanations given in Mr Hanjra's first witness statement, as amplified by his second, on the question of why the Debtor was and remained so registered. In my judgment these explanations are entirely unsatisfactory. In this regard I note in particular:

(1) Even if the initial registration of the Debtor for Council Tax purposes occurred, as Mr Hanjra suggests at Hanjra (1) para [16], when the Debtor was living at York House during the 1980s as a student, to assist with such matters as opening a bank account and sorting out a mobile phone, no explanation has been given why none of Princes Saud, Abdulaziz, or Prince Mohammad was registered for Council Tax purposes in place of the Debtor when they subsequently each began living at York House as students for similar periods of time.

(2) Even if there was a requirement that proof of an accommodation address be given in order to obtain UK travel visas or student visas, and even if the applicants for those travel or student visas were genuinely staying at York House, the requirement would plainly not be met by proof that the Debtor, as opposed to the applicants, was registered there for Council Tax.

(3) The New London Properties were purchased in late 2016/early 2017. No persuasive explanation has been put forward in the evidence regarding why the Debtor remained registered for Council Tax purposes at York House even after late 2016/early 2017, when, on the Debtor's own case, the New London Properties were purchased for use by his wife and children (and presumably their staff). The fact that York House may have been used as a portered address for post and deliveries for various members of the family plainly did not require registration of the Debtor at that address for Council Tax purposes.

In short, having considered the New Evidence with some care, the continued registration of the Debtor at York House for Council Tax purposes until December 2019 in my judgment remains a significant factor which points to York House being a place of residence of the Debtor.

Conclusion

144. Applying the lower standard of proof which Roth J has confirmed applies to the present application and taking all of the above matters into account, I conclude that MTC has shown a good arguable case on the evidence that the Debtor had a place of residence in the jurisdiction during the Relevant Period and that MTC has the better of the argument.

145. I would add that even if I had concluded that this court could not make a reliable assessment of whether the gateway provisions were satisfied, I would have concluded that MTC has at the very least met the Brownlie (iii) threshold i.e., it has shown that there is a plausible (albeit contested) evidential basis for the application of the relevant jurisdictional gateway.

146. For the sake of completeness, I would add that on the evidence before me MTC has demonstrated 'a good reason' to authorise service on the Debtor out of the jurisdiction and by alternative methods for the purposes of CPR 6.15(1), both as at the date of the Service Order and at all material times since.

147. For all these reasons, I shall dismiss the 2022 Set Aside Application. I shall hear submissions on any further relief and directions required on the handing down of this judgment.

ICC Judge Barber