

THE HIGH COURT

[2019 No. 37 M]

BETWEEN:

A

APPLICANT

– AND –

B

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 2nd December 2021.

SUMMARY

Ms A has commenced proceedings under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Under s.196(3) of that Act, the court may only exercise jurisdiction in her proceedings if, amongst other matters, both Ms A and Mr B were ordinarily resident in Ireland throughout the one-year period prior to their relationship ending. Mr B claims that this criterion is not met in this case. He requests that the court (i) declare that it cannot exercise jurisdiction in these proceedings, and (ii) strike them out. The court considers that both parties met the statutory residence requirement throughout the relevant one-year period. It has, therefore, declined the reliefs sought.

I

Background

1. By special summons of 27th June 2019, Ms A seeks certain reliefs under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.
2. By notice of motion of 2nd December 2019, Mr B seeks various reliefs, the sole principal reliefs now arising for consideration being an order (i) declaring that the court cannot exercise jurisdiction to determine the relief sought as neither party was ordinarily resident in Ireland throughout the one-year period prior to the end of the relationship between them (which Ms A claims was in December 2018); (ii) striking out Ms A's proceedings on the basis that this Court cannot exercise jurisdiction for the reasons set out in (i).
3. To put a statutory gloss on matters, what the court is being asked to do is determine whether Ms A will be able to establish that she satisfies the criteria set out in s.196(3) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Section 196(3) provides as follows:

“The court shall only exercise its jurisdiction to hear and determine an application for an order for redress referred to in section 173 if both of the cohabitants concerned were ordinarily resident in the State throughout the one-year period prior to the end of their relationship, and either of the cohabitants – (a) is domiciled in the State on the date on which the application is made, or (b) is ordinarily resident in the State throughout the one-year period that ends on that date.”

4. (Section 173 allows application for redress in respect of an economically dependent qualified cohabitant. Under s.173(2) if such a cohabitant “*satisfies the court that he or she is financially dependent on the other cohabitant and that the financial dependence arises from the relationship or the ending of the relationship, the court may, if satisfied that it is just and equitable to do so in all the circumstances*” make an order under any or all of certain provisions of the Act of 2010).

II

Grounding Affidavit of Mr B

5. In his grounding affidavit, Mr B avers, amongst other matters, as follows:

“5. *I say that when I read the Special Summons, I was very concerned by the assertions made therein. I beg to refer to paras. 2 and 3 of the special indorsement of claim to the Applicant’s Special Summons. In the said paragraphs, the Applicant claims as follows:*

‘2. The Parties herein were ordinarily resident in the State throughout the one-year period to the end of their relationship. The relationship ended in or about December 2018.’

‘3. The Applicant...resides temporarily since December 2018 in...[EU Member State 1]’.

6. *I say that these assertions are incorrect and that neither this deponent nor the Applicant were ordinarily resident in Ireland throughout the one-year period prior to December 2018....*

7. *I say that the Applicant at paras. 4 and 5 of her grounding affidavit...avers as follows:*

‘4. I say that the Respondent and I were ordinarily resident in the State throughout the one-year period prior to the end of our relationship. The relationship ended in or about December 2018.

5....I resided temporarily for two months from December 2018 until mid-February 2019 in [EU Member State 1]’.

8....[B]y virtue of s.196(3) of the 2010 Act, this...Court shall only exercise its jurisdiction to hear and determine the Applicant’s claim for financial relief under s.173 if the Applicant can establish that both this deponent and the Applicant were

ordinarily resident in Ireland throughout the one-year period prior to the end of the relationship.

9. *I say that the Applicant is a [non-EU Member State]...national and she travels on a [non-EU Member State passport]. I say that the Applicant was not ordinarily resident in this jurisdiction throughout the period of one year prior to December 2018 (which is [the] month [in] which the Applicant avers that our relationship ended). The Applicant, throughout that one year period ending in December 2018 resided in EU Member State 2 and during that period she travelled to and from Non-EU Member State 1, EU Member State 3, EU Member State 4, and Ireland. The Applicant was not ordinarily resident in Ireland for the requisite one-year period prior to the date [on which] she avers that our relationship ended.*
9. [sic] *I say that this deponent was also not ordinarily resident in this jurisdiction throughout the one-year period ending in December 2018. I say that I was primarily living in EU Member State 2 throughout that period. I say that [the] Applicant cannot satisfy the pre-conditions set out in s.196(3) of the Act of 2010, to allow this Court to exercise its jurisdiction....*
13. *I say that the Applicant cannot satisfy the preconditions set out in s.196(3) of the 2010 Act, to allow this Court to exercise its jurisdiction.”*

III

Replying Affidavit of Ms A dated 21st January 2020

6. In her replying affidavit of 21st January 2020, Ms A avers, amongst other matters, as follows, under the heading “*Ordinary Residence in Ireland for One-Year Period Prior to the End of the Relationship*”:

- “37. *I say and believe that both your deponent and the respondent were ordinarily resident in Ireland throughout the one-year period prior to the end of our relationship in or around December 2018. The respondent is domiciled in Ireland.*
38. *I currently reside temporarily [in EU Member State 1].*

39. *I first visited the Respondent's property at [Stated Address in Ireland] in November 2012. We thereafter developed a pattern of alternating between the two properties in [Ireland]...and EU Member State 2. We both kept wardrobes of clothes, cars, golf clubs and other items in both locations.*
40. *We also travelled frequently during our relationship to include travel to [Stated Locations],...*
41. *Between December 2017-December 2016, save for the five months of May and November, I travelled to and from Ireland in all the other months of that period. My [Stated Parent] is [old]...and is [widowed]....Because of this, I regularly visit my mother in Non-EU Member State 1.*
42. *We spent Christmas 2017 in [Ireland]....*
43. *The Respondent's medical advisors were in [Ireland]....The Respondent also had ongoing meetings with his professional advisors in [Ireland] to include solicitors, his accountant and other financial advisors.*
44. *The Respondent never had a bank account in EU Member State 2. The Respondent sent money to the management company which manages the [residence in EU Member State 2]...and they dealt with all the bills. The Respondent also used his credit card. I had an account if we required cash.*
45. *Save for the Respondent's [residence in EU Member State 2], his main assets are in [Ireland]....I attended most meetings with the Respondent financial and legal advisors in Ireland.*
46. *While I continue to reside on a temporary basis in EU Member State 1, I have an Irish Public Service Card and PPS Number. I have an [Irish]...bank account and an Irish credit card. I did travel on a...passport [from Non-EU Member State 1]...as I am a non-EU Member State 1 national but non-EU Member State 1 is not my place of residence....I am registered to vote in local elections in Ireland?.*

IV

Affidavit of Mr Harding and Oral Evidence of Ms A

7. Mr Harding is a chartered accountant. He was requested by the solicitor for Mr B to review and analyse certain bank and credit card transactions of the parties with a view to establishing

the whereabouts of the users of those bank and credit card accounts during that period. Between that affidavit evidence and the oral evidence of Ms A (which, in truth, was not especially enlightening) it appears that in the one-year period prior to the end of the relationship between herself and Mr B (which Ms A claims was in December 2018), Mr B spent about 85 days in Ireland, about 89 days in Non-EU Member State 1, somewhere above 180 days in EU Member State 2, with in or about 8 days spent in other EU Member States. It is not possible to be much more exact than this. My general sense, having observed and listened to Ms A in the witness box, was to incline to prefer the evidence of Mr Harding, which has been calculated on a fair, reasonable, scientific, and objective basis; the figures just mentioned derive from his analysis. It may be that there are slight ups or downs in the figures but, on the balance of probabilities, the foregoing seems about right. It was clear from the evidence of Mr Harding and that tendered by Ms A in the witness-box that there was going to be a degree of uncertainty as to the precise number of days involved.

V

Affidavit of Mr B of 20th May 2020

8. In his affidavit of 20th May 2020, Mr B avers, amongst other matters, as follows:

“18. I...deny that I was ordinarily resident in Ireland throughout the one-year period prior to the purported end of our relationship in and around December 2018. I also deny that the Respondent was so ordinarily resident....I deny that we kept wardrobes of clothes, cars, golf clubs, and other items in both locations. I say that I have established my permanent residence in EU Member State 2 over the past number of years and that I visit [Ireland]...on occasion to see family members and for medical appointments. In particular during the calendar year of 2018 I spent most of the time in EU Member State 2.

19. ...I deny that the Applicant travelled to Ireland on the occasions on which she says she did. I say that the Applicant has never owned or maintained a residence in this jurisdiction and has no connection with this jurisdiction at all. The Applicant spent more time in Non-EU Member State 1 than in Ireland

and I do not believe that the Applicant spent any settled time in Ireland during 2018 and could not be said to be ordinarily resident there.

20. *I say that during the course of 2018 I maintained my permanent residence in EU Member State 2. I say that all of my outgoings in relation to EU Member State 2 are paid through a direct debit into [a]...management company....This pays for my household bills, ground maintenance, and pool maintenance. In addition, I withdraw cash from my accounts to pay for any of my other household and personal expenses. I say that during the course of 2018 I visited Ireland on a number of occasions. I consider myself to be permanently resident in EU Member State 2. My house in EU Member State 2 has [X]...bedrooms, [Y]...bathrooms, extensive grounds and a swimming pool and the climate year around suits me. I visit Ireland on a regular basis to maintain contact with my family here and to attend medical and dental appointments and to obtain footwear, but I see myself at all times as ordinarily resident in EU Member State 2.*
21. *I say that in the course of 2018 I spent the following time in Ireland. I was in Ireland over the 2017/2018 Christmas period to see family....I returned to EU Member State 2 in and around the 20th January 2018. I came [to] Ireland again around the 21st February 2018 [to make a particular health-related purchase]...During this period, I also attended...[a stated medic]. I stayed in Ireland until after St Patrick's Day when I then returned...to EU Member State 2. During that visit home I also attended [a particular family event]....I say that I spent almost all of April and May in my home in EU Member State 2, other than visiting Ireland for three very short visits. The visit around 25th of May was [for a stated medical reason]....I spent all of June in EU Member State 2 other than for approximately three days when I visited Ireland. I then spent all of July in my home in EU Member State 2 and would have spent all of August there [but for a health reason which]....necessitated my spending a substantial time in Ireland in August 2018 returning to EU Member State 2 around the 27th of August 2018. I say that I did not return to Ireland again until October and stayed until the end of the month approximately when I had to re-attend at [the medic visit in August]....I was back in EU Member State 2 at the start of November. I spent a few days in Ireland in November. At this time I had become extremely concerned in relation to the Applicant's*

behaviour and I was taking steps to remedy the situation, including organizing a change in my will. I came to Ireland at the start of December.

22. *I say that I have a doctor in EU Member State 2, one Dr [Stated Name]....I have accountants and lawyers in both Ireland and EU Member State 2.*
23. *I wish to emphasise that when I was in Ireland the Applicant was not always here with me...”.*

9. So, Mr B was in Ireland for the Christmas of 2017 and quit Ireland for EU Member State 2 on 20th January 2018. He spent a month in EU Member State 2, returning to Ireland on 21st February. He avers that he returned to EU Member State 2 after St Patrick’s Day. If one assumes a nominal return date of 25th March, he spent about two months in EU Member State 2, returning to Ireland on 25th May for a specific medical reason. He then spent all of June in EU Member State 2 other than for approximately three days. He spent all of June in EU Member State 2, and most of August in Ireland. He returned to EU Member State 2 in the last days of August, staying there until October when he returned to Ireland. He was back in EU Member State 2 at the start of November, and he came to Ireland for personal reasons at the start of December.

VI

Supplemental Affidavit of Mr B dated 30th June 2020

10. On 30th June 2020, Mr B swore a further affidavit in which he gives a more general sense of his life history and his move to, and life in, EU Member State 2:

- “3. *I say that in [the late-1980s] I bought my last principal residence in Ireland [from which Mr B operated what appears to have been a successful business]....*
4. *In [the very early years of this century]...I sold my business and I bought my [residence in EU Member State 2]....[The following year] I moved to reside full-time in EU Member State 2....*
5. *I say that because I continued to have family in Ireland and in particular at that time [certain stated family members]...I later bought [a property [Property A]]...in order to allow me to stay there whenever I visited Ireland.*

In 2003 I bought [a neighbouring property [Property B] for a child]....I say that the property...is...small....It is designed to be comfortable and to accommodate me when I visit Ireland....

6. *I say that the principal private residence at [the residence purchased in the late-1980s] [and] where I lived for a long number of years by contrast shows the accommodation that I am used to living in. This is the standard of accommodation that I purchased for myself in EU Member State 2 as my principal residence. In this regard I beg to refer to photos of my [residence in EU Member State 2]....It [is very big]...including [X] double bedrooms all en suite, numerous reception rooms, outdoor living and dining facilities, secluded gardens and [a] swimming pool.”*

VII

Replying Affidavit of Ms A dated 7th October 2020

11. On 7th October 2020, Ms A swore a replying affidavit in which she avers, amongst other matters, as follows:

- “39. *Contrary to the...Respondent’s Affidavit...I say that in addition to having personal effects consisting of clothes, cars, golf, clubs, personal papers, jewellery and so on, in our home in [Ireland]....it was completely equipped with the usual appliances together with books and family photographs. I say that we entertained regularly in [Ireland]...with family, friends and some of the Respondent’s business colleagues....*
40. *I further say that we both had cars in Ireland....When I met the Respondent I had two cars in EU Member State 2 which the Respondent pressured me into selling....*
41. *....I never maintained that I owned a residence in Ireland. My years in Ireland were spent living with the Respondent. I also say that I have a bank account with [the private banking division of an Irish bank]...which is not something that a person of my means would normally merit but which was arranged for me...by the Respondent with the Respondent’s...private banking contact person.*

- 42 *....The Respondent is not registered with [a stated municipal body]...to qualify for residence status [in EU Member State 2]. All of the Respondent's property costs were dealt with by the management company to whom he made a monthly payment. For cash expenditure, the Respondent drew euro from his Irish bank account from...ATMs [in EU Member State 2]. Every year since I met the Respondent, I attended meetings with his professional advisors in Ireland to discuss his tax liabilities. At these meetings the matter of whether the Respondent should become fiscally resident in [EU Member State 2]...was considered and rejected....*
- 43 *...The Respondent first purchased Property A...and subsequently bought Property B. The Respondent purchased Property A as first as an investment...and to stay over in when he visited [Ireland, at a time when]...he still owned [the property purchased in the late-1980s]. The Respondent decided also to buy Property B a little later [in order to have more space and privacy]....The Respondent did not purchase Property B [for a child]...as averred to nor did [that child]...ever live in it as suggested....[The child] did stay for a short while in Property B, before [moving]...to [Stated Place], but at no time did [the child]...own it....[After a particular life event] the Respondent bought [a]...house...and gifted it to [the child]....*
- 44 *...To claim that [Property A and Property B are small]...is risible. [T]he combined square meterage is actually larger...than his [property purchased in the late-1980s]....To say there is no storage is also untrue....*
46. *Regarding the Respondent's description of [the property in EU Member State 2], it is a lovely holiday home and does have [X] double bedrooms all en suite. However, it only has a sitting room, small dining room and a small kitchen and not 'numerous reception rooms' as stated. It was designed as a holiday home and not as a full time residential home.*
- 47 *....I say that the exact number of days we lived in Ireland and EU Member State 2 depended on the year in question. On a number of occasions we went to [Stated Place] and spent several weeks there....I say that what is revealing about the Respondent's averment about his living arrangements for 2018 is that he acknowledges that he returned 'home' to Ireland for all his [various] medical...needs and consultations. In addition, he dealt with his financial and business affairs always exclusively in Ireland. The reality is that the*

Respondent is and has always been ordinarily resident in Ireland with various periods being spent in EU Member State 2.

48. *I say that when the Respondent was living in Ireland, EU Member State 2 or on holidays I was generally with him. The only difference in our living arrangements is that I had family commitments in Non-EU Member State 1 and I visited [an aged parent]...for a few days every month and the Respondent encouraged me in this regard. I would generally go alone as my [aged parent]...needed things to be done...and my time there was busy. I say that I would also see my son when I visited....I occasionally visited my daughter in EU Member State 1 although mostly they would visit in Ireland or [EU Member State 2]....Since [the last decade]...I have looked after my [stated parent and my stated parent's] financial and health affairs. The Respondent strongly encouraged me to do this...he suggested that I should visit my [stated parent] for a few days every month which I did. Usually my visits were for 4-6 days, however there were 2 visits during February/March 2018 and June/July 2018 which were slightly longer. During 2018 my [stated parent] had a small cancerous growth...which required several trips to hospital for assessment and removal. I booked all [the stated parent's]...appointments and surgery to coincide with my visits to Non-EU Member State 1. [This stated parent]...also needed some dental work and visits to opticians. Again, I organised and accompanied...[the stated parent] on these visits. During the trip to Non-EU Member State 1 in June/July 2018 it was my [grandchild's]...christening...and [a milestone birthday party for the stated parent] which I had organised. The Respondent was invited to both these events and originally was going to come. However, in the end he was unable to visit because [a child]...planned a visit to EU Member State 2 and the dates clashed.*
49. *Between us we had [G] children and [H] grandchildren, many of whom were in different countries, and I had an elderly, recently widowed [stated parent]....It was quite a challenge to keep up with them all.*
50. *....I too was registered with Dr [Stated Name in EU Member State 2]. Like the Respondent, if I had medical needs while in EU Member State 2, I consulted him. I was also registered with [stated doctors]...in Ireland.*

However, the Respondent's main medical providers are in Ireland. I also had [private medical cover] in Ireland....

51 *...It is not correct to say that I was the sole authorised user of the two credit cards detailed...”.*

VIII

Affidavit of Mr B of 18th May 2021

12. On 18th May 2021, Mr B swore a further affidavit in which he avers, amongst other matters, as follows:

“21. *I say that the Irish Public Services Card is entirely irrelevant to the fact that the Applicant has not been resident within this jurisdiction for the requisite period of time. She continues to hold a card even though she, on her own admission, has not been present in this jurisdiction, since at least 2018.*

22. *...It is clear that the Applicant and I had been in [Ireland]...since the start of December 2017. The Applicant was never a light traveller. It is also clear that the applicant had come to Ireland from Non-EU Member State 1. She had been absent from EU Member State 2 since....*

23. *...I say that [Property A and Property B] is small in comparison to [the residence purchased in the late 1980s] and is small in comparison to my home in EU Member State 2. I say that the Applicant did not know me when I purchased these properties and can give no evidence in relation to my intentions at this time. Although [Property A and Property B are nice]...they are not the type of accommodation which I wish to have as my home that is my home in EU Member State 2.*

24. *...[A] brief appraisal of the bank and credit card statements in the relevant year where it is clear that my visits to Ireland were for visits for the purpose of liaising with medical and other professionals....I say that I am advised and truly believe that 2018 is the year throughout which the Applicant must establish that we were both cohabiting together in Ireland throughout the last year of our alleged relationship which she says ended in December 2018.*

25. *At times I refer to Ireland as home as that is where I am from and where I lived until I settled in EU Member State 2. However, I also refer to EU Member State 2 as home in that it is my present home as that is where I live the majority of time since [the early years of this century]...I say that the reality is that throughout 2018 the Applicant spent more time as she calls it visiting her [aged parent] than she did [in EU Member State 2]...during that period. During that year the Applicant has spent much longer outside of Ireland than in Ireland and cannot show that we cohabited together in Ireland throughout that year.”*

IX

Ordinary Residence

13. It will be recalled that s.196(3) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 provides as follows:

“The court shall only exercise its jurisdiction to hear and determine an application for an order for redress referred to in section 173 if [A][1] both of the cohabitants concerned were [2] ordinarily resident in the State [3] throughout the one-year period prior to the end of their relationship, and [B] either of the cohabitants – (a) is domiciled in the State on the date on which the application is made, or (b) is ordinarily resident in the State throughout the one-year period that ends on that date.”

14. [A] is concerned with the one-year period prior to the end of the relationship. [B] is concerned with the date on which the application for the order for redress is made. For the court to exercise its jurisdiction to hear and determine an application for redress as referred in s.173 of the Act of 2010, both of the cohabitants must satisfy the criteria referred to at [A], and either of the cohabitants needs to satisfy the criteria referred to at [B]. The test to be applied is one of ordinary residence, not continuous residence, and not habitual residence.

15. Notably, the reliefs sought in this application are an order (i) declaring that the court cannot exercise jurisdiction to determine the relief sought as neither party was ordinarily resident in

Ireland throughout the one-year period prior to the end of the relationship between them (which Ms A claims was in December 2018); (ii) striking out Ms A's proceedings on the basis that this Court cannot exercise jurisdiction for the reasons set out in (i). In other words the court is asked to treat only with [A] and not with [B]. Mr B has, to use a colloquialism, 'pinned his colours to the mast' in terms of positing that neither party was ordinarily resident in Ireland throughout the one-year period prior to the end of the relationship.

16. The leading recent appellate court judgment on ordinary residence is *Chubb European Group SE v. The Health Insurance Authority* [2020] IECA 91. That case synthesises existing case-law and identifies clearly how this Court ought now to identify the ordinary residence of Ms A and Mr B during the relevant periods. The court accepts that *Chubb* was concerned with the concept of ordinary residence (or, more exactly, "*ordinarily resident*") for the purposes of the Health Insurance Act 1944. At para.98 of his judgment, Murray J. observes that "[s]ubject of course to the implication of any particular legislative scheme" (and the court does not see any particular implication of the Act of 2010 that would prompt a departure from the approach/criteria identified by Murray J in *Chubb*) the meaning of the words "*ordinarily resident*" in any one context "*fall to be determined having regard to the following*":

“(i) The critical inquiry is directed to whether the subject has a settled and usual place of abode in the place in question. To that end, his or her residence there must be neither casual nor uncertain (Goertz).”

As to the relevant period for [A], the parties had a settled and usual place of abode in both Ireland and EU Member State 2. Their residence in each place was neither casual nor uncertain; rather it depended on personal/familial/medical reasons presenting at any one time, albeit with perhaps a strong desire for the climate and ambience of EU Member State 2. It is true that there are a significant number of 'away' visits by Ms A to perform her familial duties towards an aged parent in Non-EU Member State 1 but they are (understandable) 'away' visits, 'away' from her places of ordinary residence and not involving any abandonment or yielding any loss of that ordinary residence. (In passing, to the extent that there was suggestion that by meeting with an adult child or attending a seminar, *etc.* while she was tending to her aged parent's needs that somehow transformed Ms A's visits

to Non-EU Member State 1 into something other than visits the primary focus of which was to attend to Ms A's aged parent that, on the evidence before the court, is not accepted by it to be correct).

“(ii) In determining whether the subject has established such a residence, the focus is properly on the question of whether the person has adopted an abode in the jurisdiction for settled purposes and as part of the regular order of his life for the time being, whether of short or long duration. Education can comprise such a purpose (Shah).”

The court has brought this focus to bear and reiterates the conclusion reached at (i), save to note that education is not a relevant purpose on the facts of this case.

“(iii) That purpose, while settled, may be for a limited period, it may be a limited purpose and it may be contingent. All that is required is that there be a sufficient degree of continuity to be properly described as settled (Shah). The fact that the person has subjectively determined that if certain eventualities come to pass they will change their residence, is similarly not determinative (Deutsche Bank v. Murtagh).”

It seems to the court that the requisite continuity presents in respect of each of the residences in Ireland and EU Member State 2. The second sentence of the above-quoted text is not relevant here.

“(iv) Absent legislative provision to the contrary, it is possible to be ordinarily resident in more than one place at the same time (Quinn).”

This seems a classic example of such a case. Ms A and Mr B appear to have been ordinarily resident in Ireland when matters concerning personal or business affairs required attention, and they appear to have been ordinarily resident in EU Member State 2 when minded to seek sun and sport.

“(v) In a legislative context where public bodies have to reach determinations based upon where a person is ordinarily resident, the Court should incline towards a test which is objective and readily capable of application without a detailed inquiry into whether the subject has established a permanent home in the jurisdiction (Shah).”

This the court has done.

“(vi) Proof of ordinary residence will depend more upon the evidence of matters susceptible of objective proof than upon evidence as to state of mind or subjective intention (Murtagh). While, necessarily, a consideration of the ‘purpose’ of a person’s presence in the State requires an understanding of their intention, this can be ascertained from the objective facts (Shah).”

It would be fair to say that the evidence before the court typically offers objective proof (in terms of where the parties spent their time and why), rather than focusing on state of mind, thus enabling the court to proceed in accordance with this observation.

“(vii) It is not correct to frame this test by reference to where a person has their ‘real home’ in the sense of where they have, on a long term basis, the centre of their social, economic or familial interests (Shah).”

Noted.

17. As to the meaning of the word “*throughout*” in s.196(3), the court would make three observations. (1) If it is (and it is) possible as a matter of Irish law to be ordinarily resident in more than one place it would seem to be a logical corollary of that fact that in any one year one can live “*throughout*” the year at both residences whilst flitting between them in accordance with the demands of life and one’s personal desires at any one time. (2) If the court is wrong in discerning this logical corollary to present, it considers that, consistent with *DC v. DR* [2015] IEHC 309, para.100, the Act of 2010 can be described as a remedial statute, which yields the conclusion, to echo McGuinness J. in *Western Health Board v. KM* [2002] 2 I.R. 493, that it should be construed as widely and liberally as can fairly be done. Bringing this standard to bear

yields the conclusion already reached as to the application, meaning, and scope of the word “*throughout*” as deployed in s.196(3)). (3) The court notes that s.193 of the Act of 2010 vests jurisdiction but also provides that the court shall exercise this jurisdiction if certain criteria are met. The decision of the House of Lords in *Anisminic Ltd v. Foreign Compensation Commission* [1969] 2 AC 147 indicates that if legislation can be interpreted in two ways, the way which allows a court to exercise jurisdiction and which facilitates a legal remedy is to be preferred. Again, this suggests that the court should adopt a pragmatic approach to the meaning of “*throughout*” which allows for due mobility in people’s lives, whilst remaining true to the intention of the Oireachtas (an ever-important consideration).

Conclusion

18. For the reasons stated above, the reliefs identified at para.2 above will respectfully be declined.

**To Ms A/Mr B:
WHAT DOES THIS JUDGMENT MEAN FOR EACH OF YOU?**

Dear Ms A/Mr B

In the previous pages I have written a quite long judgment about your case. The judgment is full of legal language and you may find it less than easy to understand. I am aware that family law judgments touch on important issues in people's personal lives. So I now typically add a 'plain English' note to the end of my family law judgments explaining briefly what I have decided. That is the least you deserve. Everyone else in this case will get to read this note but really it is for your benefit.

Because lawyers like to argue over things, I should add that this note, though a part of my judgment, is not intended to replace the detailed text in the rest of my judgment. It is merely intended to help you understand better what I have decided. Your lawyers will explain my judgment in more detail to you.

I have referred to you in my judgment as Ms A and Mr B. This makes my judgment (and this note) a bit impersonal but it is done to preserve your anonymity.

Ms A has commenced proceedings under the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Mr B argues that both of you were not ordinarily resident in Ireland throughout the one-year period prior to the ending of your relationship. As that ordinary residence requirement is a pre-condition to the court having jurisdiction in this matter, he has asked me to declare that the court cannot exercise jurisdiction and also to strike out Ms A's proceedings. I consider that you both met the statutory residency requirement throughout the one-year period prior to your relationship ending. So I have respectfully refused the reliefs sought by Mr B at this time.

Yours sincerely

Max Barrett (Judge)