Neutral Citation Number: [2024] EWHC 1724 (Ch)

Appeal ref: CH-2023-000124

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (ChD)

IN THE MATTER OF HRH PRINCE HUSSAM BIN SAUD BIN ABDULAZIZ AL SAUD
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Rolls Building
Fetter Lane
London, EC4A 1NL

16 May 2024

Before :

MRS JUSTICE BACON

- -

Between :

HRH PRINCE HUSSAM BIN SAUD BIN ABDULAZIZ AL SAUD	**Appellant**
- and -	
MOBILE TELECOMMUNICATIONS COMPANY KSCP	**Respondent**

- -
- -

MR J WARDELL KC, MR P ARDEN KC, and MR M GLOVER appeared on behalf of the Appellant
MR S MOVERLEY SMITH KC appeared on behalf of the Respondent

Hearing date: 16 May 2024

- -

Approved Judgment

MRS JUSTICE BACON:
Introduction

1. This is an application for permission to appeal, with the appeal to follow if permission is given, in respect of an order dated 18 May 2023 of ICC Judge Barber. In that order the judge dismissed an application to set aside an order of ICC Judge Prentis giving permission to the Respondent (**MTC**) to serve a bankruptcy petition on the Appellant (**Prince Hussam**) out of the jurisdiction. The order also set out directions for the hearing of the bankruptcy petition.

2. The sole issue before this court is also the sole disputed issue before the judge, which is whether MTC has a good arguable case for the purposes of s. 265 of the Insolvency Act 1986 that Prince Hussam had a place of residence in England and Wales at any time during the three years prior to presentation of the bankruptcy petition – that is to say during the period of 1 June 2019 to 1 June 2022 (**the Relevant Period**).

3. The judge refused permission to appeal on the grounds that no reasons were given and no grounds of appeal articulated. The Appellant's notice was filed on 8 June 2023. On 15 January 2024 Adam Johnson J ordered the present rolled up hearing of the application for permission, with the hearing of the appeal to follow if permission is given. The petition hearing listed in consequence of the disputed order is due to be heard, subject to this appeal, in December 2024. The directions for evidence in respect of that hearing have, however, been stayed pending the final determination of this appeal.

4. Counsel at the hearing today sensibly proceeded on the basis that they should make full submissions on the issues. I have also had the benefit of detailed skeleton arguments on both sides. In the case of Prince Hussam, a replacement skeleton argument was filed in place of the original skeleton lodged in support of the application for permission to appeal. The replacement skeleton argument largely reformulates the first two of the five grounds of appeal while maintaining the third to fifth grounds as originally advanced.

Background

5. The background to the appeal is rather convoluted and is fully set out in the judgment of ICC Judge Barber at §§10–42. For present purposes, the following short summary suffices.

6. Prince Hussam is a member of the Saudi royal family and is the only child of Princess Noorah bint Abdullah Fahad Al-Damir (**Princess Noorah**). He is resident in Saudi Arabia, and is married to Princess Sarah with whom he has five children who are now all adults.

7. In 1976, when Prince Hussam was 15, Princess Noorah purchased a large flat in Kensington known as 24 York House, York House Place, London, W8 4EY. It is this flat which is relied upon by MTC for the purposes of establishing bankruptcy jurisdiction in respect of Prince Hussam.

8. In 2015 MTC was successful in arbitration proceedings against Prince Hussam relating to a loan agreement. The total amount of the award in the arbitration, including default commission and costs, was US$817 million, which has not been paid.

9. Prince Hussam took various steps to challenge the award, including through proceedings in the Saudi courts. On 18 May 2018, the High Court granted a permanent anti-suit injunction against the Prince, restraining proceedings in the Saudi courts on the basis that they were in breach of the arbitration clause in the loan agreement, and contrary to the arbitration award: *Mobile Telecommunications Company v Prince Hussam bin Saud* [2018] EWHC 1469.

10. In breach of the anti-suit injunction, the proceedings in the Saudi courts were pursued by Prince Hussam. MTC then commenced committal proceedings, and on 10 August 2018 Jacobs J found him to be in contempt of court and committed him to prison for 12 months from the date of his apprehension in the jurisdiction. Prince Hussam did not attend court for that hearing and, in light of the committal order, has not returned to the jurisdiction since.

11. The committal proceedings gave rise to various costs orders against Prince Hussam. Those were initially unpaid, and MTC presented a bankruptcy petition in respect of those debts applying for permission to serve out of the jurisdiction (**the 2020 petition**). MTC maintained, as it does now, that Prince Hussam had a place of residence in England and Wales in the three preceding years for the purposes of s. 265. ICC Judge Jones granted the application for service out on the 17 March 2020. Prince Hussam's application to set that aside was dismissed by Deputy ICC Judge Schaffer on 14 December 2020.

12. Permission to appeal the order of Deputy ICC Judge Schaffer was refused by me on the papers but granted by Marcus Smith J following an oral renewal hearing, but only in relation to some of the grounds of appeal. The appeal was then dismissed by Roth J on 31 March 2022: *Prince Hussam bin Saud v Mobile Telecommunications Company* [2022] EWHC 744 (Ch) (**the Roth J judgment**).

13. Meanwhile, on 18 January 2021 Prince Hussam paid the costs debts which had occasioned the 2020 petition. MTC had, however, also served a statutory demand in relation to the main arbitration debts, and (also on 18 January 2021) the Prince applied to set that aside, filing numerous witness statements in support of that application. Following the Roth J judgment, the application to set aside the statutory demand was dismissed by consent.

14. MTC then sought to amend the 2020 petition to include the arbitration debts, but that application was refused and the 2020 petition was dismissed on 25 May 2022. A further petition was then presented by MTC on 1 June 2022 in respect of the main arbitration debts (**the 2022 petition**). That petition is the subject of this appeal, which is therefore round two of the bankruptcy proceedings.

15. On 19 July 2022 ICC Judge Prentis gave permission to serve the 2022 petition on Prince Hussam out of the jurisdiction, by substituted service on his solicitors in London. Prince Hussam applied to set that aside, maintaining that the court does not have jurisdiction under s. 265. He accepted that if contrary to that position MTC does have a good arguable case under s. 265, then MTC is entitled to an order granting it permission to serve the 2022 petition out of the jurisdiction on him. The only issue before ICC Judge Barber on the application to set aside was therefore the question of whether there was a good arguable case under s. 265.

Relevant legal principles

Test for service out

16. Schedule 4 to the Insolvency (England and Wales) Rules 2016 provides that service is to be carried out in accordance with Part 6 of the CPR (§1(2)), and that a bankruptcy petition is to be treated as a claim form for the purposes of CPR Part 6 (§1(6) and accompanying table).

17. CPR 6.37 provides that the court's permission is required for the service of the claim form out of the jurisdiction. For permission to be given, the claimant must (among other things) satisfy the court that there is a good arguable case that the claim falls within one of the jurisdictional gateways in PD 6B, §3.1. The relevant gateway here is gateway (20): where a claim is made under an enactment which allows proceedings to be brought, and those proceedings are not covered by any of the other grounds under §3.1.

18. The application of the standard of "good arguable case" in this context was explained by Lord Sumption in *Brownlie v Four Seasons Holdings* [2017] UKSC 80. After referring at §7 to the observation of the Court of Appeal in *Canada Trust v Stolzenberg (No 2)* [1998] 1 WLR 547, p. 555, that "'Good arguable case' reflects … that one side has a much better argument on the material available", Lord Sumption continued:

> "The reference to 'a much better argument on the material available' is not a reversion to the civil burden of proof … 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. I do not believe that anything is gained by the word 'much', which suggests a superior standard of conviction that is both uncertain and unwarranted in this context."

19. That formulation was repeated by Lord Sumption in *Goldman Sachs v Novo Banco* [2018] UKSC 34, §9. In *Kaefer Aislamientos v AMS Drilling Mexico* [2019] EWCA Civ 10, Green LJ considered the application of the *Brownlie* formulation. I do not consider that it is necessary to set out his comments in full. They may for present purposes be summarised as follows.

    i. Limb (i) is a reference to an evidential basis, showing that the claimant has the better argument – in other words, the relative test in *Canada Trust*. It is, however, not necessary to show that the claimant has "much" the better argument. Moreover, in expressing a view on jurisdiction, the court must be astute not to express any view on the ultimate merits of the case, even if there is a close overlap between the issues going to jurisdiction and the ultimate substantive merits (§§73–77).

ii. Limb (ii) requires the court to overcome evidential difficulties and arrive at a conclusion, if it reliably can, recognising that jurisdiction challenges are invariably interim and will be characterised by gaps in the evidence. It 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."

iii. Limb (iii) addresses the situation where the court is unable to form a decided conclusion on the evidence before it as to who has the better argument. In that situation, limb (iii) moves away from a relative test and instead introduces a test combining good arguable case and plausibility of evidence. That is a more flexible test which is not necessarily conditional upon relative merits.

20. I do not read those comments as encouraging the court to reach a final view on disputed factual matters rather than a provisional view for jurisdictional purposes. On the contrary, Green LJ expressly recognised that jurisdiction challenges are interim, and are likely to be determined in the context of evidential gaps and without hearing oral evidence; and he had emphasised that the court should be careful not to express a view on the ultimate merits of the case. The point being made in relation to limb (ii) was rather that the court should in principle attempt to reach a view on whether the claimant has the better argument, recognising the limitations of the material before it. Of course, in doing so the court may need to consider factual issues in relation to which, if it feels able to, it may reach a view. The overall test is however a provisional view of good arguable case, rather than a concluded view as to the merits.

21. Limb (iii) then addresses the situation where, despite best endeavours, the material before the court is too finely balanced, or too inconclusive, for the court to reach a conclusion one way or the other as to the overall relative plausibility of the overall evidential basis for the application of the relevant jurisdictional gateway. In such a case the court may determine a good arguable case on the basis of an assessment of plausibility which does not necessarily require a conclusion that the claimant has the better argument. There must, nevertheless, be sufficient support in the material before the court for it to conclude that a plausible evidential basis has been established.

Jurisdiction under section 265

22. Section 265 of the Insolvency Act 1986 sets out the grounds of the jurisdiction for a bankruptcy petition as follows:

> "(1) A bankruptcy petition may be presented to the court under section 264(1)(a) only if –
>
> (ii) the centre of the debtor's main interests is in England and Wales, or
>
> (ab) the centre of the debtor's 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."

23. In the present case MTC relies on s. 265(2)(b)(i), asserting that Prince Hussam had a place of residence at York House during the Relevant Period.

24. The question of whether a debtor "has had a place of residence" in England and Wales for the purposes of s. 265(2)(b)(i) or the identical provision in s. 263I(2) has been the subject of extensive consideration in the authorities. The judge referred at §53–85 of her judgment to *Re Nordenfelt* (1895) QB 151, *Re Brauch* [1978] (Ch) 316, *Skjevesland v Geveran Trading (No 4)* [2003] BCC 391, *Reynolds Porter Chamberlain LLP v Khan* [2016] BPIR 722, *PJSC VTB Bank v Laptev* [2020] EWHC 321 (Ch), my judgment in *Lakatamia Shipping v Su* [2021] EWHC 1866 (Ch), and the Roth J judgment.

25. There is no challenge to the judge's analysis of the legal principles, and I do not therefore need to repeat that detailed analysis. The parties do, however, unsurprisingly emphasise different aspects of the principles set out in those cases. In the context of issues arising in this case the following points may be noted, but these are by no means exhaustive, and other considerations may be relevant in other cases:

    i. The phrase "has had a place of residence" should be given its ordinary and natural meaning, and there is no single or conclusive test. A broad range of factual considerations may be relevant: *Lakatamia v Su,* §33; Roth J §37.

    ii. Having a place of residence is a *de facto* situation rather than a matter of legal right. A licensee may therefore have a place of residence: *RPC v Khan* §26.

    iii. *De facto* control of the property is in that regard a relevant consideration but not a necessary condition. The premises may be occupied by others, and a moral claim to occupation may be sufficient, particularly in a family context: *RPC v Khan* §26; Roth J §37.

    iv. The period of occupation is a relevant factor to consider, but it is possible to have a place of residence without being in occupation during the relevant period: *RPC v Khan* §26; *PJSC VTP Bank v Laptev* §115.

    v. It is, however, not sufficient for the debtor to have an entitlement of some sort to occupy a place that is capable of being described as someone's place of residence. Rather the question is whether the premises are a place of residence for the debtor: *Lakatamia v Su* §§25 and 27.

    vi. Residence connotes some degree of permanence, some degree of continuity, or some expectation of continuity: *Lakatamia v Su* §37.

vii. It is relevant to ask whether the place was for the debtor a settled or usual place of abode or home, but that is not an essential condition. A debtor may have a place of residence in the jurisdiction, even though their home is elsewhere: *Lakatamia v Su* §36; Roth J §41.

viii. The nature of someone's presence in and connection to a particular place is also a relevant factor in determining residence. It is therefore relevant to consider whether the debtor's presence is voluntary or not: *Lakatamia v Su* §38.

The judge's assessment

26. The judge had before her a great deal of evidence, consisting of witness statements from (i) MTC's solicitor, (ii) Prince Hussam's solicitor, (iii) Prince Hussam himself, (iv) Princess Noorah, the Prince's mother, (v) Princess Noorah's solicitor, (vi) Princess Sarah, the Prince's wife, and (vii) Khaled Hanjra, an employee of the family. She also considered evidence filed in the earlier stages of the litigation, including the evidence in relation to the 2020 petition and the evidence in support of the 2021 application to set aside the statutory demand in relation to the main arbitration debts.

27. She accepted that the court was required to consider the matter afresh on the basis of the evidence before it, although she noted that in doing so the court would draw on guidance from previous authorities, including the Roth J judgment on the question of how it should approach the application of s. 265. To the extent that the evidence before the court included factors considered in the Roth J judgment, the court was entitled to take into account the previous analysis (§98). There is no criticism of that approach in this appeal.

28. On the basis of the evidence before her the judge set out 11 matters which she considered were relevant in her assessment of whether Prince Hussam had a place of residence at York House. In short summary, these were:

i. The fact that York House was purchased by Princess Noorah as a family home in 1976 when Prince Hussam was 15.

ii. The fact that Prince Hussam and his family lived there for several years during term-time from 1983–1990 when he was a student in London, which gave him a long standing connection to the property.

iii. The fact that Princess Noorah only uses York House for 10–13 weeks each year over the summer months, and for the rest of the year the property is furnished and available for members of the family to use.

iv. The clear evidence of Princess Noorah's commitment to ensuring that her family, including Prince Hussam, have access to family accommodation in London as and when required. That included the fact that when Prince Hussam's second child was born in 1987, York House was modified to convert it from a three- to a four-bedroom apartment, to provide a bedroom for the new child. The judge also referred to a statement by Princess Noorah in earlier related proceedings in 2019 that 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 [Prince Hussam], his wife and my grandchildren."

v. The judge's conclusion that Prince Hussam has at all material times since completing his studies in 1990 continued to enjoy ongoing permission to use York House as his personal place of residence when in London, subject to checking availability and making arrangements to collect the keys from Mr Hanjra. In that regard, the judge considered that the evidence of Prince Hussam and Princess Noorah to the effect that Prince Hussam only had "limited permission" to use the property during his studies and had not subsequently had ongoing permission to use it, was manifestly incredible on the basis of the other evidence before her.

vi. The scarcity of Prince Hussam's use of York House over the years 2010 to date, which in general terms pointed against York House being a place of residence for the Prince. The judge noted, however, that the evidence about the occasions when the Prince did use York House between 2010 and 2016 were consistent with her conclusion as to the ongoing availability of the property as a place of residence when he wanted to use it.

vii. The fact that Prince Hussam did not keep any personal possessions at York House, which the judge considered relevant but not decisive in the context of a property which is fully furnished and made ready for family members prior to their arrival.

viii. The fact that Prince Hussam had not occupied York House at any time during the Relevant Period which the judge found was again undoubtedly a relevant factor, although this had to be seen in the context of the committal order in August 2018 which meant that if Prince Hussam had returned to the jurisdiction thereafter he would have been sent to prison.

ix. The fact that since Prince Hussam's appointment as a governor of a province in Saudi Arabia he travels with a large entourage, as a result of which Prince Hussam and Princess Noorah both say that he cannot stay at York House, not least because the flat would be too small to accommodate them all.

x. The fact that York House is not Prince Hussam's settled or usual place of abode or home, which again was undoubtedly relevant, but only one of many factors to be taken into account.

xi. Finally, the fact that Prince Hussam was registered at York House for council tax purposes when he was a student, and continued to be so until December 2019. This was considered by Roth J to be a highly significant factor, and the judge also considered it to be significant in the light of the further evidence before her.

29. On the basis of the judge's assessment of all these factors, the judge's conclusion was that MTC had shown a good arguable case on the evidence that Prince Hussam had a place of residence in the jurisdiction during the Relevant Period, in the sense that MTC had the better of the argument. If that was not the case, however, she considered that applying the *Brownlie (iii)* threshold there was at least a plausible albeit contested evidential basis for the application of the relevant jurisdictional gateway.

The test on appeal

30. It follows from what I have just said that the judge's conclusion was based on the multi-factorial assessment of the considerable volume of evidence before her. The

judge was of course not making that assessment following trial having heard oral evidence from the witnesses. Her conclusions were, however, based upon an evaluative assessment of evidence from multiple witnesses as well as documentary evidence.

31. It is common ground that where an appeal challenges an evaluative assessment of that nature, the task of the appellate court is not to carry out that assessment afresh. It must be remembered that this is an appeal and not a re-hearing. The question is rather whether the decision of the judge was wrong by reason of an identifiable flaw in the judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take account of a material factor: *Re Sprintroom* [2019] BCC 1031, §76.

32. With that in mind, I turn to the grounds of appeal.

Grounds 1 and 2

33. The first two grounds of appeal, as originally cast, were that the judge did not correctly apply the *Brownlie* test and the place of residence test. Those grounds have now been somewhat reformulated by Mr Wardell KC, appearing today for Prince Hussam. His submission is that the judge did not seek to identify the evidential basis provided by MTC, and test that against Prince Hussam's evidence before deciding who would have the better of the argument. In his submission, if the judge had applied the tests correctly on the basis of the evidence before her, she could not properly have concluded that MTC had established a good arguable case as to jurisdiction under s. 265. As it was, Mr Wardell submits that the judge effectively reversed the burden of proof.

34. Although that argument is couched as a failure to apply the test correctly suggesting an error of approach, I do not accept that the judge erred in her approach to the issue before her. She appreciated that it was for MTC to demonstrate a good arguable case on the basis of the *Brownlie* standard, and that in principle this required a conclusion that MTC had the better of the argument. That test does not, however, impose a straitjacket on the court as to the precise way in which it conducts its analysis of the evidence. Particularly when the question in issue as regards jurisdiction turns on a multifactorial factual evaluation, the court is entitled to set out its consideration of the relevant factors in the way that seems most appropriate, provided always that the court is directing itself properly as to the questions that it must decide.

35. The judge was therefore not required to set out in a formulaic way the positive evidence relied on by MTC and then test that against the evidence of Prince Hussam. It was entirely open to her to proceed as she did, by setting out in turn a series of factors which she considered relevant to the analysis of the place of residence, commenting on whether those factors supported the position taken by MTC or Prince Hussam, before taking a final view as to whether, considered as a whole, the evidence before her showed that MTC had established a good arguable case on jurisdiction. That is also, I note, the approach taken in the Roth J judgment at §42. Nothing in that approach suggests that the judge wrongly reversed the burden of proof.

36. Ultimately, therefore, Mr Wardell's objection comes down to a challenge to the outcome of the judge's assessment, and the weight given to the factors referred to by the judge. In particular, his submission is that decisive weight should have been placed on the fact that Prince Hussam has not stayed at York House since 2016, and stayed

there only five times between 2010 and 2016, did not keep personal possessions there, did not have a set of keys, was not permitted to stay at York House while Princess Noorah was in residence, cannot for cultural and logistical reasons stay there with his entourage, and cannot stay there in the foreseeable future in any event due to the committal order. Those factors should, in Mr Wardell's submission, have led to a conclusion that York House did not meet the threshold of permanence, continuity and control that the test requires.

37. Mr Wardell has, however, not identified any specific error in the judge's assessment which could form a basis for appeal. The judge took account of the factors on which Prince Hussam relies and set out her assessment of these in her judgment. In particular:

    i. As the judge correctly explained, while the fact that Prince Hussam has not occupied York House at any time during the Relevant Period is undoubtedly a relevant factor, it must be seen in the context of the committal order, as a result of which the Prince has not been able to set foot in the jurisdiction. She rejected the suggestion that the Prince should be seen to have abandoned any place of residence in the jurisdiction, as not supported by the evidence (§§128–129).

    ii. The judge also took account of the infrequency of the Prince's use of the house during the years 2010 to 2016 as a relevant consideration. The unchallenged evidence before her showed that of the 21 occasions on which the Prince visited the country during that time he stayed at York House on only five occasions. That was however only one of a number of factors which the judge had to consider (§126). The question was therefore the weight to be given to this factor, which was a matter for the judge.

    iii. The judge noted that Prince Hussam did not keep personal possessions at the property. Again, while relevant, this was not a decisive factor, particularly in circumstances where it is apparent that York House is a fully furnished property which Mr Hanjra gets ready for any family members who go to stay there (§127). I note that it is clear from the authorities that a debtor may have a place of residence which is shared with other people. While keeping personal possessions at a property may indicate a degree of permanence and continuity, the absence of such possessions does not necessarily indicate the contrary, but will need to be assessed in context as the judge rightly found.

    iv. Given that Mr Hanjra's evidence was that he was the custodian for all of the keys to York House and the other London properties in between visits by family members, the judge rightly regarded the fact that Prince Hussam did not retain keys himself as irrelevant (§109).

    v. The judge took account of the fact that Prince Hussam could not stay at the property while Princess Noorah was in residence, but noted that the Princess only used the property for 10–13 weeks over the summer months of each year, leaving the property available for other family members for the rest of the year (§103).

    vi. Regarding the fact that Prince Hussam's entourage could not stay at York House, the judge found that this did not undermine the conclusion that York House was a place of residence for the Prince. She referred in that regard to the reasoning at §42(iv) of the Roth J judgment (§130). Roth J there made the point that if

someone has a permanent place where they can stay on their visits to London, but chooses to stay elsewhere because they are travelling with too many others, they do not cease to have a place of residence in London. The judge was entitled to adopt that analysis. The point was one of principle and relevance, which on this point was the same as the point before Roth J.

vii. There was no appeal from the decision of Roth J. Mr Wardell nevertheless takes issue with the analysis in that judgment, submitting that if you cannot stay in a particular place, it becomes a place of *potential* residence rather than a place of *actual* residence. The evidence before me does not, however, show that it would be impossible for Prince Hussam himself to stay at York House. Rather, it is that he would not as a matter of practicality and security be able to stay there because the current and usual size of his entourage could not be accommodated there. Mr Wardell said that the evidence was that this was *always* the case since the Prince's appointment as province governor, rather than *often* the case as suggested at §130 of the judgment. I do not consider that minor error in wording to undermine the analysis of the judge and indeed Roth J on the point. The essential point is that the fact that a person cannot, for whatever reason, make use of a particular place of residence at a particular time does not mean that it ceases to be a place of residence for them in and of itself. I accept that this is a factor that points against permanence and continuity. That is however a matter of weight. The judgment shows that the judge considered this factor as one of the factors which was relevant to take into account. The weight to be given that factor, as against the other matters before her, was a matter for the judge, not the appellate court.

38. The judge did not therefore omit material factors or err in her assessment of any of those factors. So far as material, they were weighted against the other factors identified by the judge and which I have summarised above.

39. Mr Wardell repeatedly submitted that the sole positive foundations for the judge's overall conclusion in favour of MTC were the 2019 statement of Princess Noorah, and the fact that Prince Hussam had remained registered for council tax at York House until December 2019.

40. That mischaracterises the judgment. As I have already set out, the judge referred to 11 factors which she considered in the round. Significant matters supporting the position of MTC included the fact that the property was bought for use by the family when Prince Hussam was a teenager, the fact that the Prince had used this as his term-time residence for a period of around seven years, and that his family had also stayed there which was the reason for the modification of the property to accommodate his second son. The judge also took account of other evidence that Princess Noorah sought to provide London accommodation for her children, including a statement and letter from the solicitors for the Princess and other family members in August 2019 confirming that Princess Noorah "has allowed various family members including [Prince Hussam] to reside and stay there from time to time. … It is quite natural for a mother to let her son live in a property which she owns."

41. Mr Wardell objected that this was all historic and of no relevance. I disagree. The evidence showed that this was a family home, which had been used from the outset as a family home where the Prince had stayed for many years during his studies in London,

including at a time when he was married and had a family, and where he had, as the 2019 documents confirmed, an ongoing general permission to stay.

42. I will address Mr Wardell's challenge to the judge's conclusions on permission below in relation to Ground 3. For the purposes of Grounds 1 and 2, it suffices to say that this was a relevant factor that the judge took into account, and was one of the numerous reasons why she ultimately decided that MTC had the better of the argument as to Prince Hussam's residence in the jurisdiction.

43. Mr Wardell also took issue with the judge's findings as to the significance of the Prince's registration for council tax. The judge explained in detail why she regarded the evidence on behalf of the Prince in that regard as being entirely unsatisfactory. The judge's conclusions were ones that she was entitled to reach on the material before her. The exercise was an evaluative one in relation to which no appeal or error has been identified.

44. Mr Wardell also said more generally that the judge did not specifically evaluate the evidence by reference to the considerations referred to in *Lakatamia v Su*, in particular the questions of whether the quality of Prince Hussam's connection with York House established a sufficient degree of permanence and continuity. The judge had, however, referred to those factors in her analysis of the legal test, and in substance she considered those factors in her discussion of Prince Hussam's long-standing and continued connection with York House. It is right to say that permanence and continuity have to be considered in relation to the Relevant Period. But that does not mean that the analysis has to be carried out in a vacuum, without any regard to the history of the debtor's connection with the property. The judge therefore rightly referred to that history as relevant to her analysis.

45. I therefore refuse permission to appeal on Grounds 1 and 2. An appeal on those grounds would have no real prospect of success.

Ground 3

46. Ground 3 objects that the judge rejected aspects of Prince Hussam's evidence despite there being no cross-examination. The judge recognised the principle that the court should not ordinarily reject evidence given by a witness without the benefit of cross-examination, unless it is manifestly incredible, either because it is inherently so or because it is shown to be so by admitted facts or reliable documents: *Coyne v DRC Distribution* [2008] BCC 612, §58. The judge applied that test to the evidence before her, rejecting as incredible various aspects of the evidence given by Prince Hussam and Princess Noorah. Her assessment was based on the evidence before her, including other evidence from the Prince and his mother as well as what Green LJ describes as "judicial common sense".

47. The disputed findings all, in essence, turn on or relate to the judge's rejection of the contention of Prince Hussam and his mother that following the end of Prince Hussam's studies in London, the Prince no longer had a general entitlement to stay at York House, but was required to obtain permission from his mother on each occasion. That contention was reflected in a number of specific points made in the evidence.

48. As the judge explained, it was noticeable that the detailed evidence regarding the Prince's limited permission to use the property had emerged since the proceedings relating to the 2020 petition, and there was no explanation of why this was not mentioned in the evidence given in the earlier proceedings. The judge could perhaps have said, more precisely, that there was no *adequate* explanation – what had been said by Mr Wardell was that there was limited time available for evidence to be provided for the application to set aside the 2020 petition. But, as Mr Moverley Smith KC for MTC noted, that evidence could have been supplemented in the months prior to the hearing before Deputy ICC Judge Schaffer, particularly at the stage at which reply evidence was filed. The short deadline for the initial evidence did not, therefore, explain why the permission point was not subsequently raised if it was indeed relevant.

49. It is fair to say that the cases on both sides have developed somewhat during the course of this litigation. The basic point, however, is that a new point has arisen which is not only unsupported by the earlier evidence, but is in fact contradicted by the earlier evidence. That is a point which the judge was entitled, and indeed bound, to have regard to in her assessment.

50. In any event, the judge's assessment did not turn decisively on this point. The more important problem with the new evidence on permission was that the judge considered it to be implausible in light of the other evidence before her, including the earlier statements made in 2019. The judge's assessment was that there was in fact an ongoing understanding that Prince Hussam was free to use York House if it was available. In other words, he had an ongoing personal licence to reside, subject to availability (§119).

51. Prince Hussam may take issue with the judge's conclusions. They were, however, conclusions that she was entitled to reach on the evidence before her. They were, contrary to Mr Wardell's submissions, findings that were relevant to the judge's overall assessment, because they went to the question of the Prince's long-standing entitlement to reside at the property when in London, and the basis of that entitlement, which in the judge's assessment went back over four decades. That had been a relevant factor in the conclusions of Roth J, and it was a relevant factor in the judge's assessment. As the authorities establish, having a place of residence is a *de facto* situation and a moral entitlement to reside may be sufficient, particularly in a family context.

52. I therefore refuse permission to appeal on Ground 3, on the basis that it has no real prospect of success.

Ground 4

53. Ground 4 presents a miscellany of challenges to the assessment by the judge of individual pieces of evidence before her. The grounds of appeal set out 15 specific alleged errors. Mr Wardell helpfully confirmed at the hearing that all of these had already been covered in his submissions under Grounds 1–3. I therefore do not need to say anything more about these points, save to say that none of them discloses any error of the type that would justify a different conclusion being reached on appeal, for the reasons that I have already given.

Ground 5

54. Ground 5 is that the judge wrongly concluded that Prince Hussam had not abandoned any place of residence that he might have in the jurisdiction. Mr Wardell relied on the *Nordenfelt* case, in which the court found that the debtor had abandoned the disputed house by selling or packing up all his furniture such that the house could not, without some trouble and expenditure, be placed in a position to be used.

55. There is not, as I understand it, any dispute that abandonment is to be assessed as a question of fact and need not be permanent. There must, however, be facts from which abandonment can be inferred, as opposed to the fact that a debtor is for particular reasons simply choosing not to occupy a particular place of residence during the period of time. A wealthy person may have a number of places of residence in different locations, and the fact that one or other of them is not visited for a number of years does not equate to abandonment.

56. Mr Wardell said that the committal order means that Prince Hussam will not in fact be able to reside at York House in the foreseeable future. That may well be correct, as a matter of practicality – the Prince is extremely unlikely to return to a jurisdiction where he knows that he will be arrested on arrival and sent to prison. As the judge noted, however, the contention that the Prince should on that account be treated as having abandoned any place of residence he might have at York House was not supported by any of the evidence, including two witness statements from the Prince himself specifically in support of the set aside application before her (§129). If that had been the Prince's position he could easily have said so, but he did not. The judge was therefore entitled to reject the abandonment submission on the basis of the evidence before her.

57. Finally, Mr Wardell referred me to two reasoned judgments in other cases where it was found that the relevant debtors did not have a place of residence in the jurisdiction. Those cases turned, however, on very different facts.

58. In *Re Jones* [2023] EWHC 1359 (Ch), the key points summarised at §19 of the judgment were that the debtor had not ever used the disputed property as a place of residence, there was nothing to indicate that he had any other place in which to reside, and brief periods spent at his parents' home or in hotels were not enough. Those facts are quite different to those of the present case, where it is apparent from the evidence that York House was purchased as a family home by Princess Noorah many decades ago, was in fact used by Prince Hussam as his place of residence for seven years while he was studying in London, including with his young family, and where the judge found that the Prince had ongoing permission to reside when his mother was not there.

59. The second case referred to is *Portrait v Minai* [2023] EWHC 1605 (Ch). Again, however, the facts are very different. §§96–98 of that judgment record that the property was almost completely unfurnished and empty, and that Miss Minai had never lived in it for any significant period of time. By the time of the relevant period in that case, the house was merely an asset which Miss Minai was in the course of selling.

60. I do not therefore think that these judgments concerning very different factual situations take matters any further. Ground 5 does not, in my judgment, have any real prospect of success.

Conclusion

61. It follows that permission to appeal is refused on all grounds.