Neutral Citation Number: [2024] EWFC 111

Case No: 1700-5851-0983-4664

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Date: 23 May 2024

Before:

MR JUSTICE POOLE

- -

V v W (Jurisdiction: Dissolution of Pacte Civil de Solidarité)

Between:

V

Applicant

- and -

W

Respondent

- -
- -

Max Lewis (instructed by Russell-Cooke) for **the Applicant**
Charanjit Batt (instructed by Kingsley Napley LLP) for **the Respondent**

Hearing dates: 13-14 May 2024

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Judgment

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

Mr Justice Poole:

Introduction

1. The issues for determination are (i) does this Court have jurisdiction to hear dissolution proceedings in relation to a French *pacte civil de* solidarité, a form of civil partnership entered into by the parties and registered on 7 January 2022 and, if so, (ii) is the *forum conveniens* for dissolution proceedings nevertheless in France?

2. A French *pacte civil de solidarité* ("PACS"), is treated as an "overseas relationship" under the Civil Partnership Act 2004 ("CPA 2004") such that the parties have all the rights and obligations that flow from a domestic civil partnership, including the right to financial remedies on dissolution. On 15 November 2023, the Applicant applied in the Family Court in England and Wales for the dissolution of the parties' PACS, claiming that the Family Court had jurisdiction to entertain the application on the grounds that he was domiciled in England and Wales. The Respondent contends that the Applicant is domiciled by choice in France, that this Court does not have jurisdiction, and that even if it does it should decline to exercise that jurisdiction on the grounds that the courts in France provide the most appropriate forum for the dissolution of the PACS.

3. By CPA 2004 s215:

> "(1) Two people are to be treated as having formed a civil partnership as a result of having registered an overseas relationship if, under the relevant law, they—
> (a) had capacity to enter into the relationship, and
> (b) met all requirements necessary to ensure the formal validity of the relationship."

An "overseas relationship" is defined by CPA 2004 s212, whilst CPA 2004 Schedule 20, Part 2 expressly refers to a French PACS as being a relationship that falls within that definition. There is no issue about the conditions of capacity and formal requirements having been met, hence the parties are treated as having formed a civil partnership.

4. CPA 2004 lays down conditions for the High Court or the Family Court in England and Wales to have jurisdiction to entertain proceedings for the dissolution of a civil partnership. CPA 2004 s219 provides:

> "219 Power to make provision corresponding to EC Regulation 2201/2003 as to jurisdiction in relation to civil partnerships
> (1) The Lord Chancellor may by regulations make provision—
> (a) as to the jurisdiction of courts in England and Wales in proceedings for the dissolution or annulment of a civil partnership or for legal separation of the civil partners in cases where a civil partner—
> (i) is or has been habitually resident in England and Wales, or
> . . .
> (iii) is domiciled in England and Wales"

5. The regulations made under s219 are the Civil Partnership (Jurisdiction and Recognition of Judgments) Regulations 2005 ("CP(JRJ)R 2005"). Regulation 4, as amended, provides:

> "Jurisdiction: England and Wales
> 4. The courts in England and Wales shall have jurisdiction in relation to proceedings for the dissolution or annulment of a civil partnership or for the legal separation of civil partners where on the date of the application—
> (a) both civil partners are habitually resident in England and Wales;
> (b) both civil partners were last habitually resident in England and Wales and one of the civil partners continues to reside there;
> (c) the respondent is habitually resident in England and Wales;
> (ca) in a joint application only, either civil partner is habitually resident in England and Wales;
> (d) the applicant is habitually resident in England and Wales and has resided there for at least one year immediately before the application was made...
> (e) the applicant is domiciled and habitually resident in England and Wales and has resided there for at least six months immediately before the application was made or
> (f) both civil partners are domiciled in England and Wales."

In the present case it is not suggested that either party is or has been habitually resident in England and Wales for many years not is it contended that both partners are domiciled in England and Wales. Hence, the CP (JRJ)R 2005 made under CPA 2004 s219 do not give the court jurisdiction.

6. That, however, is not the end of the matter. CPA 2004 s221 provides:

> "221 Proceedings for dissolution, separation or nullity order
> (1) The court has jurisdiction to entertain proceedings for a dissolution order or a separation order if (and only if)—
> (a) the court has jurisdiction under section 219 regulations,
> (b) no court has, or is recognised as having, jurisdiction under section 219 regulations and either civil partner is domiciled in England and Wales on the date when the proceedings are begun, or
> (c) the following conditions are met—
> (i) the two people concerned registered as civil partners of each other in England or Wales,
> (ii) no court has, or is recognised as having, jurisdiction under section 219 regulations, and
> (iii) it appears to the court to be in the interests of justice to assume jurisdiction in the case."

Hence, by s221(1)(b), no court having or being recognised as having jurisdiction under s219 regulations, if either civil partner is domiciled in England and Wales on the date when proceedings were begun, the Court in England and Wales has jurisdiction to entertain proceedings for a dissolution of the PACS which is to be treated as a civil partnership.

7. During closing oral submissions, Mr Lewis for the Applicant, properly alerted the Court to a potential argument that CPA 2004 s215 operates so as to preclude the court from treating the PACS as a civil partnership for the purpose of a dissolution application. This was not a point taken by Ms Batt for the Respondent. I have already set out s215(1) above. CPA 2004 s215(3) to (5) provide:

> "(3) If the overseas relationship is registered (under the relevant law) as having been entered into before this section comes into force, the time when they are to be treated as having formed a civil partnership is the time when this section comes into force.
> (4) But if—
> (a) before this section comes into force, a dissolution or annulment of the overseas relationship was obtained outside the United Kingdom, and
> (b) the dissolution or annulment would be recognised under Chapter 3 if the overseas relationship had been treated as a civil partnership at the time of the dissolution or annulment,
> subsection (3) does not apply and subsections (1) and (2) have effect subject to subsection (5).
> (5) The overseas relationship is not to be treated as having been a civil partnership for the purposes of any provisions except—
> (a) Schedules 7, 11 and 17 (financial relief in United Kingdom after dissolution or annulment obtained outside the United Kingdom);
> (b) such provisions as are specified (with or without modifications) in an order under section 259;
> (c) Chapter 3 (so far as necessary for the purposes of paragraphs (a) and (b))."

8. The term "they" in s215(3) refers to the "two people". Similarly, it seems to me that s215(5) must refer to and be limited in its application to overseas relationships described at s215(3) and (4). Otherwise, as Mr Lewis raised, s215(5) would disapply the main provisions of this part of CPA 2004, including those set out above, to this and many other overseas relationships, thereby undermining the intended purpose of this part.

9. The exceptions to the general rule set out at CPA 2004 s215(5) do not apply to the present case. CPA 2004 s215(5)(b) is of no relevance in the current context and can be disregarded. As stated in CPA 2004 s215(5)(a), Schedules 7, 11 and 17 concern financial relief in the UK *after* dissolution "obtained outside" the UK. For example, by Schedule 7 - "Financial Relief in England and Wales after Overseas Dissolution etc. of a Civil Partnership" – the court is given jurisdiction to entertain an application

for financial relief if one or more conditions are satisfied. They include that either of the civil partners was domiciled in England and Wales on the date when the leave was applied for. However, Schedule 7 applies after "overseas dissolution". Here, the Applicant is asking this Court to dissolve the PACS in this jurisdiction – there has been no overseas dissolution - and so Schedule 7 would not appear to apply. Schedules 11 and 17 apply in similar terms to financial relief sought in Scotland and Northern Ireland respectively after dissolution overseas.

10. Chapter 3, referred to at s215(5)(c), includes ss219 and 221 (above) which give the court jurisdiction in relation to proceedings for the dissolution of a civil partnership, but those provisions are not related to or "necessary for the purposes of paragraphs" (a) or (b). Does it follow that the "overseas relationship" in the present case is not to be treated as a civil partnership? If that were to follow, then the provisions of Chapter 3 and the s219 Regulations would be inapplicable to this and many other overseas relationships, thereby precluding the Court from exercising powers that the Act was designed to provide.

11. Seeking to apply a coherent interpretation to the whole of s215 so as to give it a meaning consistent with the purpose of the provisions within Chapter 3 and the Act as a whole, it seems to me that s215(5) must be read by reference to s215(3) and (4). Cumulatively, they refer to specific cases where (i) the overseas relationship in question was registered before s215 came into force (s215(3)), but (ii) when in such cases, again before the section came into force, a dissolution was obtained outside the UK (s215(4)). In those cases, s215(5) applies such that "the overseas relationship is not to be treated as having been a civil partnership" save for the defined purposes, including Sch 7 and those parts of Chapter 3 so far as necessary for the defined purposes. So s215(5) only applies to overseas relationships registered and dissolved outside the UK before the CPA 2004 came into force. The references to Schedules 7, 11, and 17 are inapposite to overseas relationships which are to be treated as civil partnerships which subsist at the time of an application for dissolution. I note the reference at s215(1) is to two people who are to be treated as "having formed a civil partnership", whereas at s215(5) refers to an overseas relationship not being treated as "*having been* a civil partnership" (emphasis added). S215(5) refers to the civil partnership in the past tense – it has ceased to be. I am quite satisfied that s215(5) does not apply to an overseas relationship which has not been dissolved outside the United Kingdom and therefore has no application to the present case.

12. Returning to the main path: the Applicant contends that if, as he maintains, he was domiciled in England and Wales on the date when the proceedings were begun then the Court has jurisdiction to entertain proceedings for a dissolution of the PACS. In his application he claimed that he "alone" was domiciled in England and Wales. He has not sought to contend that jurisdiction is provided by way of the Respondent's domicile. The Respondent accepts that as a matter of law if the Applicant was domiciled in England when he made the application herein, the court has jurisdiction but contends that he was domiciled in France at the relevant time.

13. The Applicant followed his application for dissolution with notice of an application for permission to apply for financial relief dated 21 November 2023. The Respondent filed her answer, disputing jurisdiction. The Applicant sought and obtained a *Hemain* injunction (*Hemain v Hemain* [1988] 2 FLR 388) preventing the Respondent from

pursuing her application in France until the determination of the issue of jurisdiction on the application in England and Wales. Mr Justice Hayden made that injunction on 22 January 2024 and gave directions leading to the hearing before me on 13 and 14 May 2024.

14. The issue of jurisdiction is not one only of academic importance. Upon entering the PACS, by ticking a certain box on the form, the parties chose a "legal regime of undivided ownership of the assets we'll acquire, jointly or separately, from the time of the Pacs registration". The PACS form did not provide an option to treat their existing assets as jointly owned. Accordingly, the PACS which the parties agreed to in 2022 provides that, financially, each party shall take from the partnership what they brought into it. The Respondent received a large inheritance many years ago. Were the PACS to be dissolved in France then the Applicant will have no entitlement to any share of the assets that the Respondent owned prior to the registration of the PACS. If this Court assumes jurisdiction then the Applicant *will* be able to claim a share. The Applicant denied that he was financially motivated to make his application for dissolution in this country. The Respondent denied that she was raising the issue of jurisdiction for financial reasons and has referred to a substantial open offer of settlement she has made to the Applicant which she says she will leave open for acceptance even if this court finds that it does not have or should not exercise jurisdiction.

15. A person acquires a domicile of origin at birth. They may later abandon it and acquire a domicile of choice. Subsequently they may abandon that domicile of choice and either revert to their domicile of origin or acquire another domicile of choice. At the outset of the hearing the parties clarified that:

    a. It was accepted that the Applicant's domicile of origin was England and Wales. In principle it would have been open to the Respondent to contend otherwise but she has elected not to do so.
    b. The Applicant asserts jurisdiction only on the grounds of *his* domicile and does not seek to contend that the Respondent is domiciled in this jurisdiction. Again, in principle it would have been open to the Application to contend that jurisdiction was established either by his domicile or the Respondent's domicile, but he elected not to do so.
    c. The Applicant does not put forward an alternative case that if, contrary to his primary position, he has previously acquired domicile of choice in France, he has subsequently abandoned it, thereby reverting to his domicile of origin in England.

16. Hence, the first question for the Court is whether the evidence establishes that by the time he made the application herein, the Applicant had abandoned his domicile of origin in England and acquired domicile of choice in France ("the domicile issue"). If he has done so, then it is not submitted that he has abandoned that domicile of choice prior to the issue of this application and it is conceded that this court would have no jurisdiction to entertain his application for dissolution. If the Applicant's domicile of origin persists then it is agreed that this Court has jurisdiction to entertain his application for dissolution but must consider whether France is the more convenient forum to consider the dissolution of the PACS ("the issue of forum").

Legal Framework

17. It is not disputed that in relation to the domicile issue the burden of proof is on the Respondent to establish that the Applicant has abandoned his domicile of origin (England and Wales) and acquired France as his domicile of choice (see *Re Fuld (no. 3)* [1968] P 675. As to the standard of proof, Scarman J in *Re Fuld* referred to the need for the "conscience of the court" which must be "satisfied as to the proof of the whole". He expressly rejected the application of the criminal standard of proof but held that "unless the judicial conscience is satisfied by evidence of change, the domicile of origin persists" and that the acquisition of a domicile of choice is a "serious matter not to be lightly inferred from slight indications or casual words". Accordingly, I must apply the civil standard of proof but, as the authorities referred to below demonstrate, domicile of origin is adherent and domicile of choice is not easily acquired. Mr Lewis for the Applicant contended that the standard of proof required is higher than the civil standard but I do not accept that submission. There is no sliding scale as appears to have been conceded in *Barlow Clowes International v Henwood* (below) and found in *Buswell v IRC* [1974] 1 WLR 1631 - see paragraph [87] of *Barlow Clowes* - the civil standard of proof applies.

18. In *Re Fuld* (above) Scarman J adopted the concept of domicile as described in *Henderson v Henderson* [1967] P 77. He held:

> "Domicile Law
> Domicile is " that legal relationship between a person . . . and a territory subject to a distinctive legal system which invokes the system as [his] personal law ...": see *Henderson v. Henderson*. It is a combination of residence and intention. It takes two forms - domicile of origin and domicile of choice. A classic description of the concept is to be found in Lord Westbury's speech in *Udny v Udny* (1869) LR 1 Sc & Div. 441. Two features of his description are of particular importance in the present case. First, that the domicile of origin prevails in the absence of a domicile of choice, i.e., if a domicile of choice has never been acquired or, if once acquired, has been abandoned. Secondly, that a domicile of choice is acquired when a man fixes voluntarily his sole or chief residence in a particular place with an intention of continuing to reside there for an unlimited time."

19. In *Barlow Clowes International Ltd v Henwood* [2008] EWCA Civ 577 Arden LJ set out the general principles of law applying to domicile:

> "8. The following principles of law, which are derived from Dicey, Morris and Collins on The Conflict of Laws (2006) are not in issue:
> (i) A person is, in general, domiciled in the country in which he is considered by English law to have his permanent home. A person may sometimes be domiciled in a country although he does not have his permanent home in it (Dicey, pages 122 to126).
> (ii) No person can be without a domicile (Dicey, page 126).

> (iii) No person can at the same time for the same purpose have more than one domicile (Dicey, pages 126 to128).
> (iv) An existing domicile is presumed to continue until it is proved that a new domicile has been acquired (Dicey, pages 128 to 129).
> (v) Every person receives at birth a domicile of origin (Dicey, pages 130 to 133).
> (vi) Every independent person can acquire a domicile of choice by the combination of residence and an intention of permanent or indefinite residence, but not otherwise (Dicey, pages 133 to138).
> (vii) Any circumstance that is evidence of a person's residence, or of his intention to reside permanently or indefinitely in a country, must be considered in determining whether he has acquired a domicile of choice (Dicey, pages 138 to143).
> (viii) In determining whether a person intends to reside permanently or indefinitely, the court may have regard to the motive for which residence was taken up, the fact that residence was not freely chosen, and the fact that residence was precarious (Dicey, pages 144 to151).
> (ix) A person abandons a domicile of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently, or indefinitely, and not otherwise (Dicey, pages 151 to153).
> (x) When a domicile of choice is abandoned, a new domicile of choice may be acquired, but, if it is not acquired, the domicile of origin revives (Dicey, pages 151 to 153)."

20. Arden LJ amplified the principle at (vi) – the acquisition of domicile of choice:

> "10. The intention of residence must be fixed and must be for the indefinite future. It is not enough for instance that at any given point in time its length has not been determined."

Arden LJ illustrated this principle by reference to the leading case of *Udny v Udny* (1869) LR 1 Sc & D 441, in which, at 458, Lord Westbury made the following observations about the acquisition of a domicile of choice which also emphasise the fixed nature of the requisite intention:

> "Domicil of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time. This is a description of the circumstances which create or constitute a domicil, and not a definition of the term. There must be a residence freely chosen, and not prescribed or dictated by any external necessity, such as the duties of office, the demands of creditors, or the relief from illness; and it must be residence fixed not for a limited period or particular purpose, but general and indefinite in its future

> contemplation. It is true that the residence originally temporary, or intended for a limited period, may afterwards become general and unlimited, and in such a case so soon as the change of purpose, or animus manendi, can be inferred the fact of domicil is established"

Arden LJ explained:

> "Given that a person can only have one domicile at any one time for the same purpose, he must in my judgment have a singular and distinctive relationship with the country of supposed domicile of choice. That means it must be his ultimate home or, as it has been put, the place where he would wish to spend his last days. Thus, in *Bell v Kennedy* (1868) LR 1 Sc and Div 307, 311, Lord Cairns, having held that it was unnecessary for him to examine the various definitions that have been given of the term "domicile", held that the question to be considered was in substance whether the appellant:
>
> > "had determined to make, and had made, Scotland his home, with the intention of establishing himself and his family there, *and ending his days in that country*?" (emphasis added)
>
> 15. In my judgment this test by its reference to ending one's days usefully emphasises the need for the subject to have a fixed purpose that he will live in the country of his domicile of choice."

21. On the other hand, contemplation of the possibility of a return to a person's domicile of origin does not of itself preclude a finding that they have acquired a domicile of choice. In *Re Fuld*, having reviewed the authorities to that date, Scarman J held at 67F:

> "In the light of these cases, the law, so far as relevant to my task, may be stated as follows: (1) The domicile of origin adheres - unless displaced by satisfactory evidence of the acquisition and continuance of a domicile of choice; (2) a domicile of choice is acquired only if it be affirmatively shown that the propositus is resident within a territory subject to a distinctive legal system with the intention, formed independently of external pressures, of residing there indefinitely. If a man intends to return to the land of his birth upon a clearly foreseen and reasonably anticipated contingency, e.g., the end of his job, the intention required by law is lacking; but, if he has in mind only a vague possibility, such as making a fortune (a modern example might be winning a football pool), or some sentiment about dying in the land of his fathers, such a state of mind is consistent with the intention required by law. But no clear line can be drawn: the ultimate decision in each case is one of fact - of the weight to be attached to the various factors and future contingencies in the contemplation of the propositus, their importance to him, and the

> probability, in his assessment, of the contingencies he has in contemplation being transformed 'into actualities. (3) It follows that, though a man has left the territory of his domicile of origin with the intention of never returning, though he be resident in a new territory, yet if his mind be not made up or evidence be lacking or unsatisfactory as to what is his state of mind, his domicile of origin adheres."

22. Moor J in *Divall v Divall* [2014] EWHC 95 (Fam) pointed to two differences between domicile of origin and domicile of choice:

> "27a) A domicile of origin is more tenacious: "its character is more enduring, its hold stronger, and less easily shaken off" (*Winans v Att-Gen* [1904] AC 287). b) If a person leaves the country of his domicile of origin, intending never to return to it, he continues to be domiciled there until he acquires a domicile of choice in another country. However, if a person leaves a country of his domicile of choice, intending never to return to it, he forthwith ceases to be domiciled in that country; and unless and until he acquires a new domicile of choice his domicile of origin revives.
> 28. Domiciles of origin are notoriously adhesive. Clear evidence of a change is required. The acquisition of a domicile of choice (whether changing from a domicile of origin or of choice) requires physical presence, although it need not be long, plus an intention to remain permanently or indefinitely."

23. The principles set out in *Spiliada Maritime Corpn v Consulex Ltd* [1987] 1 AC 460 apply to the forum issue. At p476 it was held that:

> "The basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice."

The burden of proof lies on the Respondent who seeks a stay on the basis of forum. The Court should not lightly interfere with the Applicant's right to choose his forum if it has jurisdiction to hear his application.

24. In *De Dampierre v De Dampierre* [1988] 1 AC 92, the House of Lords held at 108A:

> "The effect is that the court in this country looks first to see what factors there are which connect the case with another forum. If, on the basis of that inquiry, the court concludes that there is another available forum which, prima facie, is clearly more appropriate for the trial of the action, it will ordinarily grant a stay, unless there are circumstances by reason of which justice

> requires that a stay should nevertheless not be granted: see the *Spiliada* case [1987] A.C. 460, 475-478. The same principle is applicable whether or not there are other relevant proceedings already pending in the alternative forum: see *The Abidin Daver* [1984] A.C. 398, 411, per Lord Diplock. However, the existence of such proceedings may, depending on the circumstances, be relevant to the inquiry. Sometimes they may be of no relevance at all, for example, if one party has commenced the proceedings for the purpose of demonstrating the existence of a competing jurisdiction, or the proceedings have not passed beyond the stage of the initiating process. But if, for example, genuine proceedings have been started and have not merely been started but have developed to the stage where they have had some impact upon the dispute between the parties, especially if such impact is likely to have a continuing effect, then this may be a relevant factor to be taken into account when considering whether the foreign jurisdiction provides the appropriate forum for the resolution of the dispute between the parties."

And at 110B:

> The weight to be given to what has been called a "legitimate personal or juridical advantage" was considered by your Lordships' House in the *Spiliada* case [1987] A.C. 460, 482-484. The conclusion there reached was that, having regard to the underlying principle, the court should not, as a general rule, be deterred from granting a stay of proceedings simply because the plaintiff in this country will be deprived of such an advantage, provided that the court is satisfied that substantial justice will be done in the appropriate forum overseas. Reference was made, in particular, to cases concerning discovery where, as is well known, there is a spectrum of systems of discovery applicable in various jurisdictions; and the opinion was expressed that, generally speaking, injustice cannot be said to be done if a party is compelled to accept one of these well recognised systems of discovery in another forum. If I follow that approach in the circumstances of the present case, I find that French matrimonial law contains provisions for "compensation" which, unlike our own, place emphasis upon the question whether the breakdown of the marriage was due to the exclusive fault of one of the parties, providing (subject to an important exception) that a party so at fault is deprived of the right to an award of compensation. Such an approach is no longer acceptable in this country, though it bears a close resemblance to the principles applicable here not so very long ago. But it is evidently still acceptable in a highly civilised country with which this country has very close ties of friendship, not least nowadays through our common membership of the European Community; and I find it impossible to conclude that, objectively speaking, justice would not be done if the wife was compelled to pursue her remedy for

> financial provision under such a regime in the courts of a country which provide, most plainly, the natural forum for the resolution of this matrimonial dispute."

Evidence and the History of Events

25. I have received a bundle of written evidence including witness statements and an opinion from Ms Mulon, a lawyer at the Paris Bar. In addition I heard oral evidence, given remotely by the parties. I was also provided with a helpful chronology which, with some revisions, was agreed by the time of closing submissions. The main differences between the parties are in relation to the weight to be given to the events and circumstances set out below and to what, if anything, they establish in terms of the Applicant's intentions. The court has to be cautious before accepting a party's assertion now as to what their intentions were in the past. Firstly, there is an inherent risk of interpreting past events in retrospect to fit a preferred narrative. Secondly, in this case there are significant financial incentives to characterise an event as evidence of certain intentions or the lack of certain intentions. Even if those incentives act sub-consciously they are liable to affect the interpretations now given. I am concerned with the Applicant's intention permanently or indefinitely to live in France. I take into account what he says about his intentions over the time I am considering but I have to weigh what he says alongside all the circumstances and other evidence before me.

26. The Applicant and Respondent are both intelligent people who fully understand the issues and the ramifications. I found the Applicant to be occasionally argumentative when cross-examined. Mostly he was frank, but he was so determined to keep to his position that he has always intended to return to England, that he would sometimes be evasive in his answers. It is not that he would refuse to answer but that he would give answers that were indirect or prolix. The Respondent was a calm and thoughtful witness who answered questions reasonably and openly. She was asked by Mr Lewis to accept that the Applicant "bumbled along" in life but she immediately rejected that characterisation as "too harsh" and that the Applicant had done well to set up and develop his business in France. I did not think that she gave that answer with a view to gaining an advantage in the case – she was being spontaneous and sincere. I shall now set out the history of events, indicating any disputes of fact and my findings.

27. The Applicant was born in 1974 in England to a French father and English mother. At 14 months the family moved to live in France, returning to England four years later. He was educated to the age of 21 in England. He has siblings who still live in England as, I understand, do his parents. He is not particularly close to his siblings. He is bilingual and has always had dual nationality. He has British and French passports. At the age of 21 he went to Z for the ski season (which would have lasted about six months). Z is a mountain resort in France. He then travelled to Austria and, on his oral evidence to the court, spent a few years working during ski seasons and travelling in Europe at other times. However, he settled in Z and purchased with a co-owner two apartments there.

28. In 2005 the Applicant was appointed a director of a company later known as XX Ltd. He had by then been living in Z for a number of years. The company was UK based but his role was to work with businesses predominantly based in the area where he

lived in France. In mid-2007 the Applicant was allotted one third of the shares in XX Ltd. In 2009 the Applicant became a tax resident in France.

29. The Respondent was born in 1970 in the United Kingdom (but not in England). She is a British citizen who was educated to PhD level. She lived in the UK until moving to France after meeting the Applicant in Z in 2006. There is a dispute about the date when the Respondent moved to Z but I rely on the Respondent's evidence in her first statement that she and the Applicant began to live together in one of his co-owned apartments in Z in late 2007. When she was much younger, the Respondent received a substantial inheritance. She has managed that inheritance with care and with the benefit of professional advice. She owned a three bedroom property in London but that was occupied by tenants after she moved to Z and until she sold it in 2010, then purchasing a two bedroom flat in London ("the London flat") which, whilst smaller, was nevertheless of higher value than the property she had sold earlier that year. She describes this as a "lock up and leave" flat. She has an informal arrangement with a lodger who uses the London flat on weekdays. The Applicant describes the London flat as the family's London home. I shall make my findings about that dispute later in this judgment. The London flat was purchased by the Respondent alone and is in her sole name.

30. In early 2013, when the Respondent was pregnant with the parties' daughter, Y, the Respondent purchased a two bedroom apartment in Z for the parties and their daughter to live in. It was in the Respondent's sole name. Y was conceived naturally but the parties had undergone IVF treatment in England. The Respondent chose to give birth to Y in England – she has good French but is not fluent and she wanted to be able to communicate fully with those caring for her, in particular in case of any difficulties during the labour. The parties' daughter, Y, was born in mid- 2013 and a few weeks after her birth the family returned to Z.

31. In 2015 the Respondent lent the Applicant £50,000 to allow him to buy out one of his two business partners.

32. In 2016 the Respondent sold the apartment in Z and purchased a larger property, a chalet, in the same town. Again this was, and remains, in the Respondent's sole name. The chalet required renovation work which continued for a few months. The parties spent Christmas in England at the end of 2017 whilst work was being done on the chalet. Y started at school in Z in September 2016. This first school used an English syllabus and some lessons were in English but most were in French. After the Covid pandemic this school shut down and Y moved to another, wholly French speaking, school in Z.

33. In 2020 the Respondent moved her tax residency to France with effect from 1 January 2021. In September 2020, I find, the Respondent put the London flat on the market but then removed it when it was apparent that Covid made viewings difficult. She then received and accepted an offer from neighbours for the flat but later the sale fell through. In December 2020 the parties entered what is called a concubinage agreement in France. I understand this effectively to be a declaration of cohabitation which was helpful for tax purposes but did not give rise to any entitlements or rights, the one party against the other, in the event of the breakdown of the relationship.

34. From 2020 to 2022, the parties suffered a number of personal setbacks, as well as going through the Covid pandemic. On 7 January 2022 the parties entered into the PACS.

35. More recently, the parties considered arranging for Y to have her secondary education abroad as one of the possibilities for her future schooling. They looked at options elsewhere in Europe but also explored the option of a school in London. The Applicant and Respondent attended open days at a well-known girls' school and a French school in London. Ultimately, Y received offers from two other London schools. It is therefore possible that she would have attended a London school, as a day pupil not a boarder, from September 2024 but tragically in December 2023 she was diagnosed with a form of cancer that has required her to undergo prolonged chemotherapy which is likely to continue until early August 2024. The evidence I received indicates that Y wishes to remain in France rather than to start school in London when she is fit to do so. She has friends in Z and does not want to move.

36. Over the summer of 2023 the relationship between the parties broke down. Either party could have dissolved the PACS in France by notifying a commissioner of justice but instead the parties entered into discussions about new practical and financial arrangements for the family. However, on 15 November 2023, the Applicant made his application for the dissolution of the PACS as a civil partnership in this jurisdiction and in January 2024 the court injuncted the Respondent from taking any steps to dissolve the PACS.

37. I have regard not only to the circumstances and events set out above, but also to other evidence relevant to the Applicant's general conduct, his preferences, and his social and personal life. He referred in his evidence to ordering his preferred coffee from Harrods, to watching English television, supporting English sporting teams, and having English speaking friends. He accepted that his best friend was a Frenchman whom he has known since his young childhood who lives in Paris, but many from his social circle in Z are not French. Mr Lewis asked the Respondent whether, when she first met the Applicant, he seemed to her to be English or French and he submitted to the Court that the Applicant comes across as English. Indeed, he spoke English fluently with no hint of a French accent when giving his evidence. However, he is fully bilingual and I do not know how he would come across to a French person.

38. I note that Z is a resort in which many people from parts of the world other than France choose to visit and to live. It has a large international community and many of the Applicant and Respondent's friends there are English speaking. Mr Lewis sought to persuade me it is a required feature of acquiring a domicile of choice that the subject person must be "at home" in any place within that jurisdiction including, for example, a small rural village. I cannot find any authority to support that submission which, with respect, does not sit easily with the principles and authoritative guidance set out above. Rather, the fact that the Applicant has settled in a town that has an international flavour means that he would not be expected to be steeped in what in any event may be a rather cliched view of traditional French culture.

39. The Respondent has made an open offer, to remain open for acceptance whatever the outcome of this Court's decision on jurisdiction, for the Applicant to receive the higher of 50% of the proceeds of the sale of the chalet in Z, or EUR 1.5 m, other

assets to remain where they lie, the Respondent to meet Y's school fees if any, broadly equal care of Y, and no child maintenance.

Analysis and Conclusions

The Issue of Domicile

40. The ease of modern international travel and communications may not have been envisaged in Dicey's time. The Applicant has enjoyed extensive freedom to choose where to live and work. I am bound by principles set out in the appellate judgments set out above, and regard the first instance judgment of Scarman J in *re Fuld* to be highly persuasive, but I have to apply those principles and dicta to the modern circumstances of this Applicant and his family.

41. Domicile is a combination of residence and intention. In the present case it is agreed that the Applicant's domicile of origin is in the jurisdiction of England and Wales and that this domicile adheres unless displaced by satisfactory evidence of the acquisition of a domicile of choice. It is accepted that if the Applicant has at some point before the issue of these proceedings acquired a domicile of choice, that domicile has continued – it has not been lost or abandoned. Mr Lewis for the Applicant does not submit that the Applicant is not resident in France but does submit that he has never formed the intention to reside there indefinitely or permanently or, more particularly, that there is insufficient evidence to establish such an intention. The Court might find that the Applicant has never formed an intention one way or the other about staying indefinitely in France or that he has positively decided that he would not do so. It is only if the Court can be satisfied that he has decided to stay indefinitely that a finding of domicile of choice in France could properly be made.

42. For the Respondent, Ms Batt submits that the evidence is very clear that the Applicant's retrospective characterisation of him and the family having one foot in England and one in France, with a persistent intention to return to England, is inaccurate. The objective evidence is that the Applicant had laid down permanent roots in France and that is sufficient evidence of his true intention to reside there indefinitely.

43. I have to consider all the evidence and circumstances – "any circumstances that is evidence of a person's residence, or of his intention to reside permanently or indefinitely in a country, must be considered…" per Arden LJ in *Barlow Clowes* (above). Each case is unique and turns on its own facts. What might be relevant or of weight in one case might not in another. Evidence as to the place of a person's work might be very significant for one party and less so for another. I make my determination on domicile of choice only after consideration of all the evidence.

44. There is no dispute about the Applicant's domicile of origin but it is relevant that his father is French, the Applicant has always had dual nationality – French and British – and he grew up bilingual. He spent four years during his young childhood living in France. Hence, when the Applicant settled in France in his early to mid-20's he did

not take up residence without any prior connections with that country. Indeed, he already had very strong associations with France.

45. In contrast, by his mid-20's the Applicant was quite clearly no longer resident in England – he had, since the age of 21, spent the great bulk of his time away from England. He had physically and emotionally moved away from his parents and he had, I find, no property that he would have called home in England.

46. From then until the issue of the application herein, the Applicant has not owned any real property in England. He refers to the Respondent's London flat, and before that her other London property, as home, but the evidence suggests a very different arrangement. Firstly, the Respondent owned the other London property herself well before the parties met. She had tenants in that property once she had moved to Z. She sold it and purchased a smaller property – the London flat – in 2010. The parties had met then and were cohabiting in Z, but the Respondent's transactions in selling the other London property and purchasing the London flat seem to me to have been her decisions, not joint decisions with the Applicant, and were motivated by the desire to have, as she has described it, a *pied à terre* in London, and an investment. Even now, eleven years after Y's birth, the family do not have a property in England where Y has a bedroom. There is an informal lodger at the London flat. The Respondent tried to sell the flat in 2020 and had an offer that later fell through. Again, the evidence satisfies me that the decision to try to sell the London flat was hers alone. It was not considered by either party to be the Applicant's home in England, but rather as the Respondent's property which could provide a useful base for both parties when visiting England.

47. The Applicant has set out a list of his trips to England since 2014. In fact, as became clear during oral evidence, these are the trips for which he has claimed travel expenses from his company. There have been additional family visits volunteered by the Respondent in her evidence for which she paid. The majority of the trips have been for fewer than 10 days. It was accepted during submissions that the trips set out by the Applicant, when added together, made up about 7% of his time over those ten years. Noticeably, however, the trips have diminished in number and duration in the last few years. Partly this was due to Covid, but even so, there were none on the Applicant's list in 2023 prior to the issue of the application herein, and 36 days for the whole of 2018 and 2019 combined. These trips were for the purpose of the business even though, I accept, the Applicant will have seen friends and used his visits for non-business purposes as well. Some trips to London, it was accepted, were for the purpose of transit on to the USA. The evidence as a whole paints a picture of the London flat being a useful base for occasional, usually short, visits to England with very occasional longer stays which have been for a variety of reasons including accompanying the Respondent to another part of the UK to visit an ill relative. The Respondent has calculated that since 2016 the Applicant has travelled to England for pleasure for no more than 107 out of 2,555 days. She was not challenged on that evidence.

48. The Applicant works for a UK based company and his earnings are paid into his English bank account (he has one account in England and other accounts in France). I note the Board Meeting Minutes for 19 October 2022 in which it is recorded that there was a discussion about a possible "move from France back to the UK" for the

Applicant. The Applicant's business partners considered that his "being based in the UK office was, in their opinion, undoubtedly the best way forward from a Company standpoint at least…" I have not been provided with any later minutes or correspondence addressing that issue. The Applicant has stayed in France.

49. The Applicant's ability to speak French fluently and his location in Z have been advantages for the business and therefore for his career.

50. The Applicant has clearly loved living in Z with access to skiing and other outdoor sports and activities. It is a beautiful place. He could however have decided to relocate or have planned to do so. He had the means to relocate. He is resourceful and could have worked elsewhere. He could certainly have chosen to live and work in England, having British citizenship, fluent English, and business connections here. There were no apparent pressures exerted on him to remain in Z or in France. His residence in France has been his choice.

51. I accept that the Applicant has cultural affiliations with England, such as supporting English sporting teams. I take these cultural aspects into account although a person can intend to live permanently abroad whilst maintaining cultural and other affiliations to their country of birth or some other country to which they feel close.

52. The Applicant has been a tax resident in France since 2009. He is eligible to vote in France. He and the Respondent have co-habited in France since late 2007. They renovated and lived in one apartment before moving to the chalet in 2016. These were all choices made by the Applicant either alone or in conjunction with the Respondent which have tied him to France.

53. I take into account that the parties sought IVF treatment in England and that Y was born here. On her birth certificate the parties London flat was given as their usual address. The evidence shows that that was only their usual address when in England. Their home in Z was the address at which they spent the great majority of their days.

54. The parties took their newborn child to live with them at their family home in France shortly after her birth in England. She has been schooled in France since 2016. The fact that Y now wishes to remain in France, in circumstances where she is very vulnerable due to her needed chemotherapy for her cancer, is telling – she regards France as her home.

55. By the end of 2016 the Applicant had lived in Z for over 16 years and had spent substantial time in Z even before then. He had an interest in two properties in the town. The Respondent had chosen to move to Z to live with him. They had started a family and were settled into family life in Z with a daughter in school there and them all living in a beautiful, large family home. That home required a lot of work to renovate it. The Applicant and Respondent were making a personal investment in living together with Y in Z. The Applicant worked in Z. He may have worked for a UK based company but he paid tax in France. He may have ordered his coffee from Harrods in London but his day to day shopping, eating, and all other daily living activities were in France. He spoke French fluently and had French citizenship. He made some trips to England and could use the London flat when there, but there is no doubt where his home was – it was in France.

56. By the end of 2016, the Applicant was in a committed relationship with the Respondent. She had made her own choices to move to Z, to buy an apartment and then a chalet there, and to start a family in France. It is relevant evidence of the Applicant's intentions that, as I find, his life partner, the Respondent, had no intention of leaving France. She was choosing to live there indefinitely.

57. What of the Applicant's intent? It is possible for a person to be "buffeted by the winds" as Mr Lewis put it and not to apply their minds at all to matters such as their home country but the evidence overwhelmingly points to the Applicant having made up his mind, by the end of 2016 at the latest, to settle in France. The Respondent had herself made choices which were based on the Applicant's intention to make his permanent home in France or which were at least compatible with the Applicant's decision to remain there indefinitely. Later, when together they added Y to their family and put her in a French school, there can be no doubt that the Applicant had made a decision to maintain his and the family's home in Z for an indefinite time. His partner and his daughter were putting down their roots in France with no plan to leave. He had made his own choice and was now part of a family which was staying put indefinitely. Y would regard France as her home, as subsequent events have demonstrated. It was of course possible that she might go to secondary school elsewhere, including in England, but her home was going to remain in France. There was no end point either planned or envisaged for the Applicant's residence in France. There is no evidence of any arrangements made to facilitate him moving away at any particular time in the future or at all. In the absence of persuasive evidence of an intent to move your home to another jurisdiction at some identifiable point in the future, the fact that you and your life partner have chosen to plant your child firmly within family and societal life within a country is strong evidence that you, as their parents, intend to stay there indefinitely yourselves. That at least is where the evidence points in this particular case. The Applicant, being committed to his relationship with the Respondent, as well as to his daughter, planned to remain with them in the place they had chosen as their permanent home, and there was no end date for that plan or commitment.

58. The Applicant had not moved from one work location to another around the world, or at all, over the years before the end of 2016. He had worked in the same place. There was no pattern of residing in one place for five years or so and then moving on. By his choices, the Applicant's working life, as with his family life, was firmly rooted in France.

59. As further evidence of the Applicant's intention to commit to life in the jurisdiction of France, he and the Respondent entered into the PACS in 2022. It is recorded on the agreement, as translated, that they each wished to enter the PACS to "organise [their] common life … in the jurisdiction of [their] joint residence." They had to present themselves before the Civil registrar of the municipality "within which you fix your common residence". I accept that this is not a statement of intent to live in the municipality indefinitely, but it is evidence that points strongly to a choice by the Applicant to submit his relationship to the jurisdiction of the municipality of Z and therefore to the jurisdiction of France. The Applicant says that this agreement was entered into to mark the fact that the parties had been through some very difficult times. However, he accepted that there was no celebration or event with friends to

mark the occasion. I prefer the evidence of the Respondent that this was done for tax purposes. Nevertheless, it further demonstrates the fact that the parties had committed to life in France. I find that they had already done so some years earlier, by 2016 at the latest, but everything that happened after 2016 until the breakdown of the relationship, including the PACS, only supports the conclusion that they were continuing to intend to stay resident in France indefinitely and permanently.

60. It is important to note that the Applicant is an adult who can exercise free will. His choices to work in Z, to set up home there with the Respondent, to raise a child there, to remain there, and to enter into the PACS under the law there, were acts of will by him. He exercised autonomy. He was not under duress or otherwise forced or under pressure of circumstances to make those choices. Other choices were open to him but he did not make those other choices. He chose to fix his home in France on an indefinite basis.

61. I reject the submission that the Applicant had in fact always planned to return to England. I can see no evidence of any such plan or intention. He had no arrangements in place to make that happen and he has not adduced any contemporaneous evidence to show that that was in his mind. All the evidence points the other way – he intended to remain permanently in France. I do not doubt that the Applicant had sometimes thought about a possible return to England (or indeed moving to live elsewhere in the world) but the evidence is that he had not formed any intent or plan to do so, either imminently, on the happening of some future event, or at all. I stress that the possibility of Y going to secondary school in London would not, without more, have entailed a change in her home, let alone the Applicant's home. Clearly any adult might contemplate the future and wonder whether they might always stay in the same place. I do not read the authorities as requiring a finding that come hell or high water the subject person will never leave the jurisdiction in question - Scarman J's dicta in *Re Fuld* (above) at 684G apply. In *IRC v Bullock* [1976] 1 WLR 1178, Buckley LJ held at 1185A:

> "I do not think that it is necessary to show that the intention to make a home in the new country is irrevocable or that the person whose intention is under consideration believes that for reasons of health or otherwise he will have no opportunity to change his mind. In my judgment, the true test is whether he intends to make his home in the new country until the end of his days unless and until something happens B to make him change his mind."

62. As it is, in this case, I have evidence, which the Applicant accepted, that he had expressed a wish for his ashes to be scattered at a certain beautiful location in the Z area. By itself this would not be evidence determinative of an intention indefinitely to remain resident there, but it certainly adds to the evidence of such an intent in all the circumstances of this case.

63. I have reminded myself that domicile of origin is adherent and that the burden of proof is on the Respondent to establish on the balance of probabilities that the Applicant was not only resident in France but had formed the intention to reside in France indefinitely or permanently. Having considered all the circumstances for the reasons set out above I am satisfied that the Applicant had acquired domicile of choice in France by the end

of 2016 at the latest. In fact, the registration of the PACS and other events after the end of 2016 only provide yet further evidence of the acquisition of domicile of choice in France at the time of the issue of proceedings herein.

64. I have chosen a point in time – the end of 2016 – by when it is clear to me on all the evidence that the Applicant had formed an intention indefinitely and permanently to reside in France. That is not a finding that the evidence does not establish the formation of that intention prior to that date. I have used that date because it is before the issue of the application herein, most of the significant evidence or factors probative of intent were in place by then, and the Applicant has conceded that if France was his domicile of choice at any point, he did not subsequently abandon or lose that domicile before issuing proceedings. It is convenient to contemplate the end of 2016 and ask whether the Respondent has established by reference to all the circumstances and evidence, on the balance of probabilities, that the Applicant had acquired domicile of choice in France by that date. I am satisfied that he had.

65. There being no dispute that the domicile of choice, once acquired in France, continued to the date when the application herein was made, I find that the Applicant was domiciled in France and not in England at the date of this application. Hence, there being no other route to jurisdiction than his domicile, this Court has no jurisdiction to entertain his application for dissolution of the PACS.

The Forum Issue

66. Given my conclusion as to domicile, the forum issue does not arise. However, in case I am wrong on domicile, and given that I have received submissions on the issue, I shall briefly address *forum conveniens*. I do so on the assumed basis that the Respondent fails to establish a change of domicile and that the Applicant's domicile of origin in England persists. The Family Procedure (Civil Partnership: Staying of Proceedings) Rules 2010 ("FP(CPSP)R 2010") apply to civil partnership proceedings, as defined by the CPA 2004, so far as they are for a dissolution order or other specified orders or declarations. The FP(CPSP)R 2010 provide for obligatory or discretionary stays of civil partnership proceedings in this jurisdiction in certain circumstances. By Rule 4, the court is given a discretion to stay proceedings, including dissolution proceedings, where "any relevant proceedings are continuing in another jurisdiction" ("another jurisdiction" being defined within the Rules) and "the balance of fairness (including convenience) as between the parties makes it appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings before the court". Rule 4(3) requires the court "in considering the balance of fairness and convenience" to have regard to "all factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed or not being stayed." Here, there are no continuing proceedings in France and so the Rules would not apply. It was not contended that the Court has no power to stay outside the FP(CPSP) R 2010. Nevertheless, the criteria for considering balance of fairness and convenience" are relevant to the consideration of the forum issue.

67. Even if I had found that the Applicant was not domiciled in France, the Applicant is resident there as are the Respondent and their daughter. Their family home is there, they pay their taxes there, and they entered into the PACS there. The Applicant's only assets, other than the balance of his English bank account, are in France. The

Respondent does have the London flat, but she also owns the chalet. Given Y's illness, treatment, and preference to stay in France, it is likely that the parties will be living in France for the foreseeable future. Importantly, the partnership to be dissolved is the recently registered French PACS and those who entered into that partnership continue to reside in France. Both are habitually resident there. In my judgement for reasons of convenience and connection, France is a more appropriate and suitable forum than England and Wales for any dissolution and related proceedings.

68. However, the most significant challenge made by the Applicant to the issue of forum is that in France the PACS will simply be terminated with no enquiry as to financial relief. There will be no related proceedings. I have the benefit of the opinion of Ms Mulon, Lawyer at the Paris Bar, to the effect that in French law there is no duty upon a partner to help the other partner financially after the dissolution of the PACS – the Applicant could not seek financial support from the Respondent on the basis of needs for example. As for the "undivided" assets agreed to be treated as shared assets after registration of the PACS, the law in France exempts the partners' gains and salaries, property created by a partner, the personal assets of each partner, assets acquired using funds received prior to the PACS, and property acquired with funds received by gift or inheritance. It was accepted at the hearing that the effect is that there would be no division of assets due upon dissolution of the PACS under French law. There would be no financial relief for the French authorities or judicial system to consider.

69. Mr Lewis submits that given there would be no exercise of any meaningful function by French legal system, it cannot or should not be found that the French "forum" is more appropriate. In the event of a finding that the Applicant is able by reason of domicile to bring his application for dissolution, and then for financial relief, in England and Wales, the court should not effectively remove that entitlement by staying his application on the grounds of *forum non conveniens* when by doing so he would be deprived of any right to apply for financial relief.

70. The contrary view, as submitted by Ms Batt, is that the parties chose to enter the PACS knowing its legal consequences. The fact that the operation of the legal system of England and Wales would be more advantageous to the Applicant cannot dictate the question of which forum is more appropriate – see *De Dampierre* (above).

71. Ms Batt's reliance on *De Dampierre* raises the question about whether the Court can be satisfied that "substantial justice will be done in the appropriate forum overseas." (*De Dampierre* at 110B). Is it right to characterise the Applicant as seeking a mere advantage or would he be deprived of "substantial justice"? In that regard I am mindful that, as Ms Mulon advises, the provisions of the French Civil Code concerning a PACS are very different from those concerning a marriage. Hence, two people in a relationship in France can choose to regulate their affairs in very different ways. In England and Wales, financial provision for partners on the dissolution of a civil partnership is much closer to that for partners following the end of a marriage. The French Republic has decided to take a different approach. It is not unfair to the Applicant that he has chosen to enter a PACS in France rather than to do nothing (or to remain under the "concubinage" declaration only, or to marry, had the Respondent so agreed). There has been no suggestion of any misunderstanding, mistake, or misrepresentation leading to the registration of the PACS. The system in France is not obviously substantially unjust. The fact that in this particular case, the French Civil Code would not afford the

Applicant any financial relief arising out of his partnership with the Respondent, does not of itself lead me to conclude that substantial justice would not be done in the appropriate forum overseas even given that it is very unlikely that within that forum the Applicant will be able to obtain any financial relief following dissolution of the PACS. It is a consequence of the facts of this particular case, the parties' respective financial positions, their relationship, and the choices that this couple have made. I would not be persuaded to find, even had the Applicant invited me to do so, that the legal system governing PACS in France is inherently unjust. There is a clear difference of approach between the legal regime in England and Wales governing the dissolution of a civil partnership and the legal regime in France governing the dissolution of a PACS, but that difference does not persuade me to find as unsuitable what would otherwise be the more appropriate forum. There is certainly a financial disadvantage to the Applicant, and advantage to the Respondent, of ceding forum to France, but that is not a sufficient reason not to do so when convenience and close connection makes France the appropriate forum.

72. Ms Batt has invited the Court to take into account the Respondent's open offer which will persist even if this Court finds that jurisdiction does not lie in England and Wales. I am not persuaded that I should regard that offer as counterbalancing or mitigating the lack of a legal financial remedy to the Applicant under the Civil Code. If the offer remains open even if the dissolution proceeds in France, it is not an offer that is in any way associated with the legal process of dissolution or any risk to the Respondent arising out of that process. I was impressed by the Respondent's sincerity in considering financial provision for the Applicant. She genuinely appeared to contemplate further negotiations as to a suitable financial settlement whatever this Court's decision on jurisdiction and/or forum. The offer is not, in my judgement, relevant to the choice of forum.

73. I have considered the relevant authorities and the circumstances of this case. In the event that this Court did have jurisdiction to entertain the application for dissolution of the PACS, I would have stayed the proceedings on the basis that the more convenient and appropriate forum was in the jurisdiction of France. As it is, for the reasons given, I have found that the Applicant was domiciled in France at the time when he made this application and that the Court does not have jurisdiction to entertain his application for dissolution of the PACS.