COLLAS CRILL

A question of domicile: O'Connor v Corner & Corner

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The judge was recently asked to determine the domicile of the late Mr Neil Corner (deceased) following his death in Guernsey in 2017.

By his will, Mr Corner appointed Mr O'Connor as his executor. Mr O'Connor sought a declaration as to Mr Corner's domicile following correspondence with Mr Corner's widow and son which led him to question Mr Corner's domicile as at the date of his death.

Mrs Corner asserted that her husband died domiciled in England, and Mr Corner's son (James) asserted that his father died domiciled in Guernsey.

This article explores the particulars of the case and the factors that the court will consider when determining the domicile of an individual after their death.

The legal principles

When it comes to determining the issue of domicile, Guernsey generally looks to English law for guidance; an approach previously taken in *Cooney v AFR Executors* (unreported 7 January 2016). The judge confirmed that this continues to be the correct approach to adopt.

Every person receives, at birth, a domicile of origin, no person can be without a domicile. An existing domicile is presumed to continue until it is proven that a new one has been acquired.

Further, no person can, at the same time for the same purpose, have more than one domicile. A person can, however, acquire a domicile of choice by the combination of residence and intention of permanent or indefinite residence, but not otherwise.

The judge confirmed that any circumstance which 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 in that country. In determining whether a person intends to reside permanently or indefinitely in a country the court may have regard to: (i) the motive for which he has taken up residence there; (ii) the fact that the residence was not freely chosen; and (iii) the fact that the residence was precarious.

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, and when a domicile of choice is abandoned, either a new domicile of choice is acquired or the domicile of origin revives. Finally, a person lacking mental capacity to make decisions as to his future

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permanent residence cannot acquire a domicile of choice and, through that period of incapacity, retains the domicile he last had when he had the requisite capacity.

The facts

During his lifetime, Mr Corner resided in different places during different stages of his life. It was submitted by Mrs Corner that Mr Corner's intention was to remain domiciled in England.

James' submissions were that Mr Corner obtained a new domicile in Guernsey during his lifetime.

Mr Corner was born in England and his parents were English. He ended up in Guernsey purely by chance as a result of the boat he was sailing needing some mechanical work and Guernsey being the closest port. During his stay in Guernsey he met Mrs Corner and began to form a life with her, including the purchase of various businesses and real property.

It is noted in the judgment that an attendance note was produced of a meeting which was produced by Mr O'Connor in which it is said Mr Corner's domicile was uncertain as he intended to retain a home in Guernsey, but also had a yearning to return to Devon to do some property development. It also referred to the tax advantages of being domiciled in Guernsey.

As the issue of domicile impacted on tax affairs, Mr O'Connor referred it to a colleague who noted that there appeared to be little doubt from the information held that the Inland Revenue Service would argue that Mr Corner had retained his English domicile.

In 1999 Mr Corner incorporated a new company in England and later, in 2000, sold his Guernsey-based business and went on to marry Mrs Corner in Torquay. At that time, Mr Corner and Mrs Corner began living in a flat in Torquay, but up until 2005, regularly spent time in both Guernsey and Devon.

In 2002, Mr & Mrs Corner purchased an open market dwelling in Guernsey. Mrs Corner's evidence stated that this property was purchased by them as an investment. Mr & Mrs Corner later moved to that property in 2005 as a result of Mr Corner's deteriorating health.

Mrs Corner looked after Mr Corner at the Guernsey property until circa 2009 when he started to require specialist residential care until his death in 2017. Mr Corner's funeral took place in Torquay.

It was only when, following Mr Corner's death, Mr O'Connor contacted Mrs Corner indicating his intention to collect Mr Corner's will and proceed to deal with the administration of the estate, that the question of Mr Corner's domicile arose.

Mr O'Connor believed Mr Corner was domiciled in Guernsey at his death, adding that if Mr Corner did not have the intention of making Guernsey his permanent home when he became resident there, he agreed that his UK domicile of origin would remain.

It was James that then raised some queries which led to an application being made in order that Mr O'Connor could gain clarity in relation to Mr Corner's domicile so he could proceed with the estate administration.

The judgment

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The judge considered the evidence provided to him, and came to the conclusion that Mr Corner was domiciled in England all his life. He noted that: "*Although James has contended that Neil [Mr Corner] had a home, a business and paid tax in Guernsey, for the relevant periods, Neil also had homes and a business in England. For some of the time, he had homes in both jurisdictions and used both, but the focus of his life from 2000 to 2005 certainly appears to have been England*". He further noted that, were it necessary to do so, he would have found that this re-established Mr Corner's domicile as being in England.

It is therefore quite clear that the court will consider a wide range of factors including financial and personal facts when being asked to determine whether someone had, in their lifetime, obtained a different domicile to that of their birth, and will be inclined to follow English law so far as it possibly can in order to assist it in making that determination.

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