# Peters Roger May v Pinder Lillian Gek Lian
# [2009] SGHC 90

**Case Number** : P 73/2004, SIC 2374/2005

**Decision Date** : 17 April 2009

**Tribunal/Court** : High Court

**Coram** : Andrew Ang J

**Counsel Name(s)** : Jason Lim Chen Thor and Goh Kok Yeow (De Souza Lim & Goh) for the executor; Deborah Barker SC and Audra Balasingam (KhattarWong) for the caveator; Phua Siow Choon (Michael BB Ong & Co) for the residuary beneficiaries

**Parties** : Peters Roger May — Pinder Lillian Gek Lian

*Probate and Administration – Grant of probate – Executor's application for notation on grant of probate – Whether deceased died domiciled in Singapore*

17 April 2009 Judgment reserved.

**Andrew Ang J:**

1 This is an executor's application filed pursuant to s 7 of the Probate and Administration Act (Cap 251, 2000 Rev Ed) for a notation to be endorsed on the grant of probate for the deceased, Mr Dennis William Pinder ("Pinder"), that he died domiciled in Singapore ("the notation proceedings"). The executor is a practising solicitor in London and also the trustee of Pinder's estate. He was appointed in his professional capacity, being a solicitor of the firm whose services Pinder engaged to draft his will, and is not a beneficiary under Pinder's will. The caveator is Pinder's lawful widow and is a Singapore citizen resident in Singapore. It is the caveator's case that Pinder died domiciled in England.

2 Pinder passed away on 22 January 2004 in England. On 28 April 2004, the executor filed a petition seeking the grant of probate of the will made with Gordon Dadds Solicitors in England on 29 June 1984 ("the Will"). Under the Will, the bulk of Pinder's estate (estimated by the executor to be worth $16m) would go to his two sons from his first marriage while the caveator would inherit his personal chattels excluding money and securities. On 21 May 2004, the caveator entered an appearance and, on 4 August 2004, she filed affidavits objecting to the issue of the grant of probate on the grounds, *inter alia*, that Pinder was domiciled in England. The caveator had been surprised by the Will and had contended that it was not Pinder's last will but was ultimately unable to find any later will. The caveator thus agreed to withdraw and remove the caveat lodged, and I granted probate for Pinder's estate on 4 August 2004, but, by consent, did not make any finding as to Pinder's domicile so that this issue could be decided separately. On 12 May 2005, the executor commenced the notation proceedings. The caveator applied for a stay of the notation proceedings on the ground of *forum non conveniens* but V K Rajah J dismissed the application in *Peters Roger May v Pinder Lillian Gek Lian* [2006] 2 SLR 381 ("the stay proceedings").

3 The implications of the notation proceedings are clear: if I find that Pinder died domiciled in Singapore, his estate would be subject to estate duty in Singapore at 5% for the first $12m of its principal value, and at 10% thereafter. If he died domiciled in England, his world-wide estate would be subject to English inheritance tax at 40%; the caveator also asserts that, as the widow of an English-domiciled deceased, she would have a good chance of recovering 50% of his estate on an application to the English court pursuant to the English Inheritance (Provision for Family and Dependants) Act 1975.

**Facts**

4 Pinder was born in England on 26 January 1924, joined the British Armed Forces in 1942 and fought for Britain in the Second World War. After the war, he returned to England, qualified as a chartered accountant and married his first wife Joyce in 1948. In 1953, Pinder went to Malaya to work as the chief accountant of Sime Darby Ltd. In 1959, he was posted to Sime Darby's Singapore office.

5 Pinder's two sons by his first wife were Paul Nigel Pinder (born in Singapore on 13 November 1963) and Charles Hilary Pinder (born in Singapore on 22 October 1965). Pinder and his first wife were divorced in the late 1960s and she returned to England with their two sons. He became the managing director and chairman of the Sime Darby group in 1965. On 7 March 1972, Pinder became a Singapore citizen. In July 1972, he married the caveator in South London and his two sons returned to live in Singapore with them and the caveator's daughter from her first marriage.

6 In 1973, Pinder was dismissed from Sime Darby and, in October 1975, he was convicted of three charges of criminal breach of trust in connection with financial irregularities in Sime Darby. He was sentenced to 18 months' imprisonment and released after serving 12 months of his sentence. Upon his release from prison on 20 October 1976, Pinder was interviewed by the press and quoted in The Straits Times on 21 October 1976 as saying:

> I'm a Singapore citizen and I have no intention of leaving.

The Business Times of the same day quoted him to similar effect. A further article in The Business Times of 23 October 1976 reported that Pinder intended to take a trip to London with his family for a short holiday and to undergo an operation on his left leg after which he would "be coming back to Singapore to find a job". He further declared:

> I am a citizen of Singapore, my wife is a citizen, and this is our home.

7 While in prison, Pinder made a will in December 1975 naming the caveator as sole executrix and sole beneficiary of his estate. However, on 29 June 1984, apparently without the caveator's knowledge, he made the Will in England with Gordon Dadds Solicitors. As earlier mentioned, this was the Will proved in the present probate issued in Singapore on 10 November 2005.

8 In 1977, Pinder purchased a property at 28 Victoria Park Road in the joint names of the caveator and himself, and they occupied it as their matrimonial home. Pinder and the caveator sold the property at 28 Victoria Park Road in 1993 and purchased another property at 128 Yuk Tong Avenue in October 1993 as tenants in common in equal shares. They then jointly made an announcement to family, friends and associates that they would be taking up residence at 128 Yuk Tong Avenue, which they described as their "new permanent home", and that correspondence should be addressed there from 24 September 1993.

9 From 1993, Pinder was engaged as a business consultant by one Lee Thor Seng for the latter's companies. The terms of his engagement included rent-free accommodation at 28 Leonie Hill, #24-30 Leonie Towers ("the Leonie Towers apartment"). While Pinder and the caveator moved there after a brief period of residence at 128 Yuk Tong Avenue, they never let out the latter property. Extensive renovations – at a cost of over $400,000 and completed only in 2001 – were carried out to the property and Pinder continued to pay property tax thereon at an owner-occupied rate. The caveator has been residing at 128 Yuk Tong Avenue since Pinder's death.

10 In September 1994, Pinder purchased a flat at No 89 Whitehall Court in the name of Whitehall

Court Ltd, a company registered in Hong Kong. Pinder and the caveator each owned 49% of its issued shares. He had earlier bought a flat at No 74 Whitehall Court in or about 1968 and had transferred it to the caveator around 1976 before it was further transferred to Whitehall Court Ltd. No 74 Whitehall Court was sold sometime between 1993 and 1994.

11 In February 2003, Pinder left Singapore for England on a holiday but, owing to illness, was there detained on medical advice for his recuperation for about 11 months before he died, suddenly and unexpectedly, on 22 January 2004 at St Thomas' Hospital, London. At the time of his death, Pinder held a Singapore passport and a UK passport obtained in or before 1992.

12 The sole issue to be determined is whether Pinder was domiciled in Singapore or England at the time of his death. The executor produced a wealth of documentary evidence indicating the former, including a letter from Pinder's doctor dated 17 June 2004 explaining why Pinder had been obliged to stay on in England for about 11 months prior to his death.

13 The caveator submits that Pinder had never abandoned his domicile of origin, having always intended to retire in England and never having acquired any domicile of choice in Singapore. Alternatively, the caveator argues that even if Pinder had abandoned his domicile of origin when he obtained Singapore citizenship, he had abandoned this domicile of choice and reverted to his domicile of origin in England subsequently when, intending to retire in England, he decided not to reside in Singapore.

14 In particular, the caveator contends that, on various occasions, Pinder had expressed his intention to return to England to her and to other persons close to him. According to the caveator, Pinder had always considered England to be the place where he belonged, and intended to retire to. It is not disputed, however, that up to the time of his death, a few days short of his 80th birthday, Pinder had still not retired. Thus the caveator's primary case is necessarily that Pinder had never acquired a domicile of choice in Singapore, rather than that, having acquired a Singapore domicile, he reverted to his domicile of origin, the latter being the caveator's alternative contention.

**The law**

15 The concept of domicile under Singapore law is based on the traditional concept of domicile in English law. No person can be without a domicile. The origin of this rule lies in the need to connect every person with a particular legal system by which a number of legal relationships may be governed. It follows that a person cannot have more than one domicile at any given time. (We need not concern ourselves here with the sometimes controversial judgments in other jurisdictions which suggest that a person may have different domiciles for different purposes.)

***Domicile of origin***

16 Everyone acquires at birth a domicile of origin; the father's domicile if he is legitimate and born within the father's lifetime, and the mother's if he is illegitimate or born after the father's death: *Udny v Udny* (1869) 1 LR Sc & Div 441.

17 The domicile of origin stays with him until he acquires a domicile of choice or of dependence: *Theobald on Wills* (Sweet & Maxwell, 16th Ed, 2001) at para 1–02 ("Theobald"). Dicey, at para 6–031, points out the difference between domicile of origin and domicile of choice in two respects. Firstly, domicile of origin is more tenacious, it being more difficult to prove that a person had abandoned his domicile of origin than to prove that he had abandoned a domicile of choice. (See *Jopp v Wood* (1865) 4 DJ & S 616; *Douglas v Douglas* (1871) LR 12 Eq 617; *Re Wills-Sandford* (1897) 41 SJ 366; *Ramsay v*

*Liverpool Royal Infirmary* [1930] AC 588.) Secondly, if a person leaves the country of his domicile of origin, intending never to return, he continues to be domiciled there until he acquires a domicile of choice in another country. In contrast, if a person leaves the country of his domicile of choice, intending never to return to it, he immediately ceases to be domiciled in that country and his domicile of origin revives unless and until he acquires a new domicile of choice (see Dicey, Rule 13 at para 6R-074).

***Domicile of choice***

18 The classic statement on domicile of choice is that of Lord Westbury in *Udny v Udny* ([16] *supra*) at 458:

> 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 of particular purpose, but general and indefinite in its future contemplation. It is true that 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.

19 A domicile of choice is acquired by the combination of residence and intention of permanent or indefinite residence, but not otherwise: Dicey, Rule 10 at para 6R-033 (at para 6–034):

> **Residence**. For the purpose of this Rule "residence" means very little more than physical presence.

It was held in *IRC v Duchess of Portland* [1982] Ch 314, 318–9 that:

> Residence in a country for the purposes of the law of domicile is physical presence in that country as an inhabitant of it.

The length of residence is not important in itself but only as evidence of the *animus manendi*, *ie*, the intention to reside permanently or indefinitely in that country. Thus, if a person intends to reside in a country for a fixed period only, he lacks the *animus manendi*, however long that period may be: (cf. *Att.Gen v Rowe* (1862) 1 H&C 31 and the majority view in *Eilon v Eilon*, 1965 (1) SA 703).

20 In *Morgan v Cilento* [2004] EWHC 188 (Ch), Justice Lewison said:

> 9. Thus the two components necessary to establish a domicile of choice are (1) voluntary residence as an inhabitant rather than as a casual visitor; and (2) an intention to remain indefinitely.
>
> 10. In *I.R.C. v. Bullock* [1976] 1 W.L.R. 1178 Buckley L.J explained the nature of the intention required. He said:
>
> > "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 to make him change his mind."

11. I should also add that it is possible for a person to have two homes, each in a different territory. In that event, the relevant inquiry is which of the residences is the chief residence.

21 Where a person's intention is clear, any residence, however short, suffices to establish a domicile of choice: Theobald at para 1–06. Thus an emigrant's firm intention to live permanently in a particular country, coupled with his arrival in that country immediately confers on him a domicile of choice in that country: See *Bell v Kennedy* (1868) LR 1 Sc & Div 307 at 319. The intention which is required for the acquisition of a domicile of choice is the intention to reside permanently or for an unlimited time in a country: *Udny v Udny* at 458 ([16] *supra*); *Doucet v Geoghegan* (1878) 9 Ch D 441 (CA); *Waddington v Waddington* (1920) 36 TLR 359; *Gulbenkian v Gulbenkian* [1937] 4 All ER 618, 626–627.

22 Dicey observed that the *animus manendi* rarely is manifested positively in the form of a person's determination to spend the rest of his life in a country, it being more frequently the case that a person simply resides in a country without any intention of leaving it. Dicey further points that such latter state of mind may suffice for the acquisition of a domicile of choice. Case law establishes that the fact that a person contemplates that he might move is not decisive: see *Re Steer* (1858) 3 H&N 594; *Att-Gen v Pottinger* (1861) 6 H&N 733; *Att-Gen v Kent* (1862) 1 H&C 12; *Drevon v Drevon* (1864) 34 LJ Ch 129; *Doucet v Geoghegan* ([20] *supra*).

23 Thus, a person who intends to reside indefinitely in a country may be domiciled there in spite of his envisaging the possibility of returning one day to his native country: *Stanley v Bernes* (1830) 3 Hag Ecc 373, 438; *Henderson v Henderson* [1967] P 77, 80–81; *Hyland v Hyland* (1971) 18 FLR 461, 480. Much will depend on the nature of that possibility, whether it is some vague and ill-defined contingency or a clearly foreseen and reasonably anticipated contingency. In the latter case, it may prevent the acquisition of a domicile of choice (see, for example, *In the Estate of Fuld (No 3)* [1968] P 675, 684 (termination of employment); *IRC v Bullock* [1976] 1 WLR 1178 (CA) (the death of one's spouse)).

24 Of the twin requirements for the acquisition of a domicile of choice, residence is rarely a problem; most disputes turn on the question whether the propositus had the requisite intention to reside permanently or indefinitely in the country of residence. Often, arriving at an answer to this question involves examination and evaluation of complex and intricate issues of fact. It was stated in *Drevon v Drevon* ([21] *supra*) that (at 133):

there is no act, no circumstance in a man's life, however trivial it may be in itself, which ought to be left out of consideration in trying the question whether there was an intention to change the domicile. A trivial act might possibly be of more weight with regard to determining this question than an act which was of more importance to a man in his lifetime.

Dicey observes, at 6–048, that there is no circumstance or group of circumstances which supplies any definite test for the existence of the intention. That it is frequently very difficult to determine a person's domicile is perhaps best brought out in Dicey's summary of the outcome of decided cases in 6–049 as follows:

Thus in some cases long residence in a country has, while in others it has not, given rise to the inference of *animus manendi*; in some cases the purchase of land or the taking of a lease or the building of a house has, while in others it has not, given rise to necessary inference; in some

cases residence in furnished lodgings or hotels has led to a finding of *animus manendi*, while in others this very mode of residence has been relied upon to negative the intention; in some cases the fact that a person has married a native of the country of the alleged domicile has supported the inference of *animus manendi*, but this fact is clearly not decisive; in some cases, great importance has been attached to the presence of a man's wife and children in a country, but this again is not decisive; in some cases the fact that a person has business interests in a country has been relied on to support a finding of *animus manendi*, while in others the fact that a person went to a country of pursuance of business interests has negatived the intent; and the desire of a person to be buried in a country has in some cases been treated as an important factor, but in others discounted. Many other circumstances have been taken into account in order to determine whether a person has the necessary intention: for example, the place in which his papers and personal belongings are kept; or in which the bulk of his property or investments are to be found, the form and contents of a will, the exercise of or refusal to exercise political rights such as serving as a member of a legislative body, voting or being registered as a voter or as a resident, the fact of naturalisation, decisions made as to the nationality of children, the education of children, the membership of clubs or of religious or charitable associations, decisions about where to seek employment, the relations between a man and his family, the place where he was divorced (especially where divorce or re-marriage is socially unacceptable in one of the relevant countries), his character, his social habits, learning or not learning the local language, and even the way in which he spells his name have all been treated as relevant to the issue of intention. It must be emphasised that this list is not exhaustive: a person's "tastes, habits, conduct, actions, ambitions, health, hopes and projects" are all regarded as "keys to his intention." Thus it is frequently very difficult to determine a person's domicile, and the resulting uncertainty has given rise to criticism and to proposals for reform of the law.

***Abandonment of domicile of choice***

25 Theobald states as follows (at para 1–08):

> A person abandons his domicile of choice in a country if he (a) ceases to reside there and (b) no longer has the intention of permanent or indefinite residence there. Both requisites must be satisfied: a domicile of choice is not lost merely by ceasing to reside or merely by giving up the intention of permanent residence.

Similarly, Dicey states (at para 6–075):

> A domicile of choice is lost when both the residence and the intention which must exist for its acquisition are given up. It is not lost merely by giving up the residence nor merely by giving up the intention.

As earlier stated, upon abandonment of his domicile of choice, a person's domicile of origin revives unless, meanwhile, he acquires a new domicile of choice.

**(I) Whether Pinder had acquired a Singapore domicile of choice**

***The executor's case***

26 It is common ground that Pinder's domicile of origin was England. The executor submits that by March 1972 (if not earlier) he had obtained a domicile of choice in Singapore and retained it until his death. The caveator argues principally that Pinder never acquired a Singapore domicile and, alternatively, that, if he did, he eventually reverted to his domicile of origin. The executor thus bears

the burden of proving that Pinder changed his domicile to Singapore whereas the caveator has to prove that (even if he did acquire a Singapore domicile of choice) he eventually abandoned his Singapore domicile.

27 The executor submits that Pinder had acquired a domicile of choice in Singapore, at the latest by 7 March 1972 when he became a Singapore citizen after having lived in Singapore for 13 years. In order to obtain Singapore citizenship, Pinder had to swear an Oath of Renunciation, Allegiance and Loyalty to Singapore, and (perhaps more importantly for the purposes of determining domicile) satisfy the Singapore Government that he intended to reside permanently in Singapore under Article 57(1)(d) of the Constitution (1963 Rev Ed). The House of Lords in *Udny v Udny* clarified that domicile should not be confused with allegiance, but Singapore citizenship may be unusual in that Article 57(1)(d) [now Article 123(1)(d) of the 1999 Rev Ed] requires an intention to reside permanently in Singapore as a pre-condition to becoming a citizen. Thus Pinder not only had to swear allegiance to Singapore but also had to declare his decision to make Singapore his domicile of choice.

28 Apart from the facts set out in [6] and [8] above, the executor also lists the following communications, amongst others, as evidence that Pinder had obtained a domicile of choice in Singapore: first, in a private letter dated 27 September 1990 to his banker at National Westminster Bank PLC, Pinder wrote:

> As you know, I am a citizen and resident of Singapore, a frequent traveller to Europe and elsewhere and your comment on repayment of the overdraft before returning home came as a surprise.

This was a private letter to Pinder's banker and is relied upon by the executor to show that Pinder considered Singapore his home.

29 Second, in his application for a war disability pension to the War Pensions Directorate dated 10 December 1992, Pinder provided the following information (in bold italics) to questions in the application form:

> Home: ***28 Victoria Park Rd, Singapore 1026***.
>
> Are you living permanently abroad? ***Yes***
>
> What date did you leave the UK to live permanently abroad? ***23/8/53***

30 Pinder also put his signature to the following declarations in the application:

> ***I understand that if I give information that I know is incorrect or incomplete, action may be taken against me***.
>
> ***I declare that the information I have given on this form is, to the best of my knowledge and belief, correct and complete***.

The executor points out that Pinder provided his Singapore address as his home address even though he had a flat in London at No 74 Whitehall Court then. The executor submits that by stating that he had left England to live "permanently abroad" since 1953, Pinder clearly showed that he had no intention of returning to reside permanently in England and had therefore acquired a domicile of choice in Singapore.

31 Third, the executor points to an announcement, issued by Pinder and the caveator, in or about September 1993 to their friends, family and associates informing them of "the address of our new permanent home" at 128 Yuk Tong Avenue. The card bearing the announcement further stated:

> We take up residence on Friday 24th September, 1993 and ask you to address communications which will arrive on or after that date to our new address.

The executor points out that no notice was thereafter ever sent by Pinder or the caveator of any change of their permanent home. He therefore submits that 128 Yuk Tong Avenue remained the home of the caveator and Pinder until his death. In fact, the caveator continues to reside there. Pinder also successfully made a claim for a concessionary property tax rate based on owner-occupation of 128 Yuk Tong Avenue with effect from 24 September 1993 from the Comptroller of Property Tax, Singapore.

32 As for the London flat owned by Pinder and the caveator (first at No 74, then later at No 89 Whitehall Court), the executor submits that this was merely a second home kept for occasional use when Pinder and the caveator visited London, their chief residence or main home still being Singapore. In support of this submission, the executor relies on an attendance note dated 22 September 1994 by the solicitor instructed by Pinder in the purchase of No 89 Whitehall Court which read:

> Attending Mr Pinder. ….
>
> He does not intend to let the flat. It is pied-a-terre for his wife when she is in England.

Also, in a letter dated 26 November 1995 to the Director of Finance, Westminster City Council, regarding council tax for No 89 Whitehall Court, Pinder wrote:

> This property is my second home, *I am domiciled in Singapore* and I should be grateful if you would grant the 50% discount to me for 1994/95 and the current year. [emphasis added]

Similarly, the City of Westminster "Council Tax demand notice" for 2001 to 2002 in respect of No 89 Whitehall Court reflected the following tax adjustment for the period 1 April 2001 to 31 March 2002:

> Discount 50% : Unoccupied/second Home

33 In Pinder's application to the Standard Chartered Bank for an account in Jersey, Channel Islands, he gave his residential address as: "*28 Leonie Hill, #24-30, Blk A, Leonie Towers, Singapore 239227*". To the question, "*How long have you lived in your present country of residence*", he stated "*45 years*". To the question, "*How long do you hope to remain in your present country of residence*", he wrote "*Permanent*". To the question, "*In which country do you intend to retire*", he had answered "*Same*". The executor submits that Pinder's answers are significant for the declaration that he hoped to reside permanently in Singapore and intended to retire in Singapore.

34 In a manuscript letter to House of Fraser/D.H. Evans on 22 October 2000 on his account with them, Pinder stated:

> We live in Singapore, **visit London twice a year** and it is otherwise easy for bills/statements etc to lie unattended if not settled by Giro. [emphasis added]

35 In a letter dated 9 April 2002 addressed to Pinder, the Singapore Elections Department referred to his application to restore his name to the Register of Electors, and confirmed that it had been

restored. Further checking of the Register of Electors on 16 March 2005 confirmed that Pinder was on the Register of Electors for Jurong and that his address was 128 Yuk Tong Avenue. The executor submits that these documents from the Singapore Elections Department show that Pinder had taken the trouble to restore his name to the Register of Electors because he valued his right to vote as a citizen of Singapore, contrary to the testimony of the caveator and other witnesses that Pinder remained in Singapore merely for work and did not regard it as his home.

36 The executor argues that the fact that Pinder also remained on the electoral roll in London was not a significant factor evidencing his intention to exercise full rights and privileges of a British citizen. There was no evidence that Pinder had ever voted in London and, as V K Rajah J observed in his judgment in the stay proceedings at [28(d)] ([2] *supra*), it appeared that any citizen of a Commonwealth country (such as Singapore) with a residential address in an English electoral district was eligible to be registered on the relevant electoral roll. In other words, this eligibility was not dependent on the resident having an English domicile.

37 In paragraph 1 of a letter from Pinder to Dr Frank Kistler dated 18 October 2002, Pinder stated:

> I am now back in Singapore after our pleasant **visit** to Germany and London. [emphasis added]

38 In a fax dated 11 February 2003 from Pinder to his sons, headed: "Absence From Singapore", he informed them that he will be "away from Singapore from 26.02.2003 to approx. 28.05.2003". He further stated that they should revert to his Singapore address from "20.05.2003". This was the last letter written by Pinder from Singapore. It shows that he intended to be away from Singapore for only three months. The heading of the fax as "Absence From Singapore" indicated that Pinder continued to regard Singapore as his home, 11 months before his death.

39 In a fax dated 16 March 2003 from Pinder to Fair Wind Secretarial Services Ltd, Hong Kong (which provided company secretarial services to his companies, Pinder stated:

> I now enclose copy of my Singapore passport for transmission to the Bank. **My citizenship is Singapore**. [emphasis added]

The executor pointed out that 11 months prior to Pinder's death, he was still declaring that he was a Singapore citizen.

40 In Pinder's handwritten note dated 3 May 2003 to Pictet Asia Pte Ltd, he stated in item 2 of his note:

> Please contact me again about mid-July, when I should be back in Singapore.

Thus, eight months prior to Pinder's death, he continued to regard Singapore as his base and home.

41 In a fax dated 10 September 2003 from Pinder to UOB London, Pinder stated in a postscript:

> It now seems likely I will return to Singapore toward the end of September. Will advise later.

Thus, five months prior to Pinder's death he was still writing to his banker that he would be returning to Singapore with no indication of any intention to reside elsewhere on a permanent basis.

42 In a fax dated 30 November 2003 from Pinder to his sons, Charles and Paul, headed "Absence From Singapore", he mentioned in paragraph 4:

We hope to return to Singapore on 29th January 2004.

Thus, two months prior to Pinder's death, he was still describing his stay in London in his correspondence as "Absence from Singapore".

43 In a fax dated 11 January 2004 from Pinder to Lloyds TSB-Singapore concerning his investment portfolio, he enquired about certain companies that had been recommended to him in the nanotechnology field. In the postscript, Pinder wrote:

We now expect to leave for Singapore on 27th January.

Thus, 11 days prior to his death, Pinder was still making enquiries for possible investments. The executor submitted that the fax also refutes the caveator's claim that Pinder intended to return to Singapore to wind-up his business.

44 Just ten days before his demise, Pinder faxed Lee Thor Seng a note dated 12 January 2004 and also captioned "Absence From Singapore":

1. We are now cleared to travel by air, and are scheduled to leave London on Tuesday, 27th January, arriving Singapore the following evening.

2. ***This will be a considerable relief, having been away for such an extended period!***

3. Would you please amend your records to dispatch communications to me in Singapore as follows:

By Mail: ***As and from Friday, 16th January, 2004***

By Fax: ***As and from Friday, 23rd January, 2004***

[emphasis added]

It will be noted from para 3 of his note of 12 January 2004 that there was no cut-off date by which communications were to be addressed to him in Singapore. Pinder also expressed "considerable relief" to be returning to Singapore. The executor submits that this rebuts claims by the caveator that Pinder was unhappy to reside in Singapore. I further note that although the caveator stated in her affidavit of evidence-in-chief that Pinder "was very critical of Singapore … and used to denigrate it often", she twice stated, under cross-examination, that Pinder liked Singapore.

45 In a fax dated 21 January 2004 to Dr Jens Ehrhardt regarding his investment portfolio, Pinder wrote at paragraph 2:

As regards our Chinese friend, **I will shortly return to Singapore and hope to convince him as to maintaining his investment at its'** [*sic*] **present level and, if possible, increasing it to nearer the USD1000000/- mark**. [emphasis added]

Further in paragraph 5, he wrote:

> As already mentioned, we leave for Singapore on Tuesday, 27th January. **Despite our extended stay** this time, we did not have the opportunity to meet and I hope this can be remeded [*sic*] **during our next visit** about the middle of the year. [emphasis added]

This letter was written the day before Pinder's death. Contrary to the caveator's claim that Pinder was returning to Singapore to wind-up his business, this letter shows that he was still very much pursuing his business activities. Moreover, it rebuts the caveator's claim that he was winding-up his business to retire in England as he stated that he would "visit" Germany/London in about six months.

46 In a letter dated 17 June 2004 to Pinder's son (Paul Pinder), Dr John R Muir wrote:

> Following his discharge from hospital I saw him for review on 29 July and on that occasion I told him that on no account should he fly for at least a further 2 weeks. However, I subsequently saw him on 7 August and he was still complaining of discomfort in his leg. Fortunately a repeat venous duplex showed no further fresh clot, but the previous thrombus was not fully organised. I therefore told him that he should not return to Singapore until at least the middle of September, in order to allow the problems with the leg to settle completely. At that time I told your father that it would be very unwise, in my professional opinion, for him to undertake any long air travel prior to that time.

This letter explained the reason for Pinder's extended stay in England of about eleven months prior to his death. He was following his doctor's advice not to travel by air.

47 Pinder had a Singapore passport as well as a UK passport. A table of particulars prepared by the executor setting out the immigration endorsements in Pinder's Singapore and UK passport shows that Pinder used his Singapore passport as his principal travel document when travelling. There were over 90 immigration endorsements in the Singapore passport as compared to five only in the UK passport (the last endorsement in the UK passport being in February 1997). Pinder even used his Singapore passport to enter the United Kingdom ("UK") numerous times, showing that he intended to visit the UK as a Singapore citizen.

48 The evidence of Pinder's sons, Paul and Charles, was to the effect that Pinder had regarded Singapore as his home and that Singapore was his domicile of choice. They also testified that Singapore was where his heart was. In addition, Pinder's sister, Gladys Francis's affidavit evidence at paragraphs 6 and 16 of her affidavit dated 6 July 2004 was as follows:

> During the visits to Singapore it was obvious to me that [Pinder] was completely at home in Singapore. I did ask him if he would ever come back to England, but he replied that his home was in Singapore. He never indicated the slightest intention of coming back to England.
>
> …
>
> Throughout all the period since [Pinder] left for the Far East in 1953, he never suggested coming back to England, or leaving Singapore. He was in prison briefly in Singapore and when he was released I asked him if he wanted to come home to England to stay with me, but he said no. He would say that he was a Singapore Citizen and it's where he belonged. I am certain that it was his intention to live in Singapore for the remainder of his lifetime, and his occasional visits to England were no more than that.

However, as she was not available for cross-examination, I gave little weight to her evidence.

**The caveator's case**

49 The caveator's case is that Pinder never acquired a domicile of choice in Singapore because he intended at all times to return to England and had expressed this intention to persons close to him on a number of occasions. The caveator relies on her own evidence and the evidence of:

(a) William H Cutts (Pinder's former colleague and close friend);

(b) Ian S Neville (the husband of Pinder's niece);

(c) Norman E Wright (close friend of Pinder based in Germany);

(d) Barry Caselton and Bettina Hertlein (close friends of Pinder based in Germany); and

(e) Dr Harry H G Eastcott (a physician who had treated Pinder since 1973).

Norman Wright, Bettina Hertlein and Dr Harry Eastcott were unable to travel to Singapore to give evidence for various reasons (including the recent onset of dementia, ill health and age) and their attendance at these proceedings was dispensed with pursuant to a consent order made on 18 August 2008. During the hearing, the executor's counsel, Jason Lim ("Mr Lim") also agreed to cross-examination of Barry Caselton being dispensed with.

50 The caveator's evidence is that Pinder came to Singapore and remained here as it was a place in and from which he could and did make money. However, he regarded England as his true home, and intended to retire and end his days there. That was why he maintained "such close links with England for so many years". All along, up to the time he passed away, he regarded himself as an Englishman and England as the place to which he belonged. He was very critical of Singapore, no doubt as a consequence of his conviction and prison experience and used to denigrate it often.

51 It is not the caveator's position that Pinder had already retired at the time of his death or that when he travelled to England in February he never intended to return to Singapore. He intended to retire in England but her position is that he had not relinquished his responsibilities to Lee Thor Seng at the time of his death. He was thinking about taking this step from 2002 and was looking forward to retirement in England. He had acted on this by taking steps to wind down his business in Singapore from about 2002. Pursuant to this, he had ceased to act for Lee Thor Seng's son (Colin Lee) and restricted himself to acting for Lee Thor Seng only.

52 The caveator says that her evidence that Pinder regarded England as his true home and had expressed an intention to retire in England is supported by her witnesses.

***Caveator's witness: Ian S Neville***

53 Ian Neville stated in para 4 of his brief affidavit of evidence-in-chief as follows:

> I believe that the Deceased had never given up his UK domicile. During many of my various stays at his Singapore home I would often query as to why [Pinder] chose to remain in Singapore after the system had been so unkind to him. He would tell me that he wanted to achieve one or two more things before going home to retire and enjoy life with Lillian. I have therefore always had the impression that he remained due to his business interests, and that it was England that he regarded as his home.

Although in his affidavit of evidence-in-chief he referred to his letter of 9 July 2004, that letter (which it is unnecessary to quote from) does not assist in the determination of Pinder's domicile, serving, as it does, only as a testimonial to the caveator's virtues and as an indictment of the character of Pinder's sisters and his sons. The caveator's counsel, Miss Deborah Barker ("Ms Barker") explains in her submissions that the caveator "had asked him to write a letter setting out his experiences in relation to the family generally", but this was not in evidence.

54 Ian Neville himself said that he could not recall what the conversation was that he had with her and that he was trying to provide an overview of some of the things that Pinder had mentioned to him. The letter is perhaps significant for the total absence of any mention of Pinder's intention to return to England despite its stating that the witness and Pinder became "good friends who confided in each other on both business and personal matters" and also that the last time he was with Pinder they "talked about [Pinder's] affairs as he was unwell and … was thinking about his personal affairs in regards [*sic*] to his estate".

55 I found the evidence of Ian Neville to be of little probative value. A finding as to domicile is not to be lightly undertaken, least of all by a lay person not known to be cognisant of its meaning. And yet he boldly asserted, in paragraph 4 of his affidavit of evidence-in-chief, that Pinder had never given up his UK domicile. He sounded to me too much like a man with a mission. Although he stated in his letter of 9 July 2004 that he and Pinder had confided in each other on both business and personal matters, at the end of cross-examination he said they did not discuss family matters at length. This was perhaps because, under cross-examination, he was unable to explain why Pinder had made the many public and private declarations brought up by the executor and was driven to repeating the mantra that Pinder would manipulate the system so that he got what he sought. (This was the same response the caveator and William Cutts gave.)

56 The witness also gave different accounts as to how he came to be asking Pinder why the latter was staying in Singapore. On the one hand he said he could not recall what Pinder said to cause him to ask "why do you stay here then?" On the other hand, when he was asked why he asked Pinder the question so many times, his answer was:

> Well, I was just fascinated, you know, [Pinder] would constantly go on about the UK, and, you know, he's an Englishman and --- and I asked him, "Why do you stay here?"

57 Observe also that to his allegedly frequent query as to why Pinder chose to remain in Singapore despite the system having been so unkind to him, Pinder was said to have replied "that *he wanted to achieve one or two more things before going home to retire* and enjoy life with Lillian". If the conversations did take place, Pinder's reply suggests that they would likely have taken place late in Pinder's life.

***Caveator's witness: William H Cutts***

58 William Cutts testified in his affidavit of evidence-in-chief that Pinder took up Singapore citizenship in compliance with Sime Darby's wishes. When he was cross-examined, it became clear that he got his facts mixed up. He admitted that Sime Darby's policy of encouraging expatriate staff with British passports to take up Singapore citizenship was imposed by Angus Scott (the former chairman of Sime Darby) who returned to England some time between 1962 and 1964 and that the policy "petered out" about 1965. That being so, the evidence suggests that Pinder could not have applied for Singapore citizenship by reason of that policy since he did not become a citizen until March 1972. By then he had been chairman and managing director of Sime Darby for seven years.

***Caveator's witness: Norman E Wright***

59 The evidence of Norman Wright that Pinder applied for Singapore citizenship because his employer Sime Darby Ltd believed that it was prudent for all British senior staff to do so, would appear to be similarly mistaken.

***Caveator's witnesses: Barry Caselton and Bettina Hertlein***

60 Barry Caselton and Bettina Hertlein both recalled in their respective affidavits of evidence-in-chief that Pinder had mentioned to them his intention to retire in England during his visits to Garmisch, Germany. Even taking the evidence at face value, it should be noted that Barry Caselton only got to know Pinder in 1997 – about seven years prior to Pinder's death – and it was in the course of business dealings during that period that he heard that Pinder intended to retire in England. There is no evidence that the intention to retire had been formed much earlier. Ms Barker herself suggests that it was more likely that Pinder would have talked about retirement in his last years. (The significance of this question will be addressed later.)

61 Paragraph 6 of Barry Caselton's affidavit of evidence-in-chief repeats the averment that Pinder mentioned his intention to retire in England several times and goes on to say:

> The deceased was every inch an English gentleman and [Pinder] made it clear to me that [Pinder] never had any intention of relinquishing his roots.

The statement attributed to Pinder (about his never having had any intention to relinquish his roots) seems gratuitous and improbable in the absence of some explanation. What the witness understood Pinder to mean by that statement and how it came about that Pinder made that statement are matters which cross-examination would have shed further light on. In its absence, I would treat the statement with caution.

62 Bettina Hertlein similarly got to know Pinder and the caveator sometime in 1997. She recalled that Pinder had often mentioned that he intended to retire in England. According to her, he was looking for a house in Garmisch to serve as his "holiday home" upon his retirement.

63 Ms Barker submits that as Barry Caselton and Bettina Hertlein had been asked to help look for a holiday home in Germany for Pinder's use after his retirement, it was not surprising that they should have been told about his retirement plans. That sounds reasonable enough. But, as earlier noted, it does not explain why Pinder would have gone on to tell Barry Caselton that "he never had any intention of relinquishing his roots".

***Caveator's witness: Dr Harry H G Eastcott***

64 Finally, we have the evidence of Dr Harry Eastcott (Pinder's doctor in England) who had known Pinder in a medical professional context since 1973 and had operated on him in 1976. Dr Eastcott said that, since then, he had seen Pinder on many occasions up to the time of his death in 2004 and became acquainted with his retirement plans. Although Dr Eastcott said he had "always had the clear impression that [Pinder] had planned to live in England upon retirement and regarded England as his home", he did not say how he got that impression or when, if at all, Pinder had mentioned his plan to him. I agree with Ms Barker that Pinder would have been more likely to talk about retirement in his last years.

65 Without cross-examination, it is unsafe to accord much probative value to such a statement as

to a mere impression. The risk is brought into sharper relief by the witness' unsubstantiated and unexplained "knowledge" that Pinder had a "permanent home" in London. Without cross-examination, we will not know how Dr Eastcott would respond if he was shown Pinder's unequivocal declarations in writing that his permanent home was in Singapore.

66 Apart from the declarations of an intention to retire, the caveator adduced evidence which, according to her, showed that Pinder maintained "close links" with England and never abandoned his domicile of origin. She pointed to the fact that there was a residence at Whitehall Court for their use, that they spent time in England each year and that he renewed his British passport twice. She also averred that:

(a) he maintained membership of clubs and associations in England;

(b) he was on the electoral roll in London;

(c) he held a National Health Service ("NHS") card up to the time of his death and was registered with a medical practitioner in England;

(d) his medical treatments were primarily in England;

(e) he had relatives in England;

(f) he had a UK mobile phone;

(g) he maintained two cars in England (one a gift to his wife and the other an Audi(due to be replaced by a newer model before his death) for use in Germany);

(h) he received a UK pension;

(i) he received a war disablement pension;

(j) he kept up national insurance contributions to the Department of Social Services on behalf of his sons who live in the US;

(k) he had UK credit cards and bank accounts, and a London Transport Freedom pass;

(l) he read the London Financial Times everyday;

(m) his will was prepared by London solicitors; and

(n) he married the caveator in England in July 1972.

67 The caveator also argued that Pinder's conduct in relation to his sons also demonstrated that he did not regard Singapore as his permanent home. Firstly, he sent them to international schools and not to local schools. Secondly, he arranged for them to leave Singapore to avoid national service.

68 A further point raised by the caveator (quoting Dicey at para 6–050) is that there is a presumption against the acquisition of a domicile of choice by a person in a country whose religion, manners and customs differ widely from those of his country of origin.

69 I shall deal first with this last point. It is true that in determining whether a person has the requisite intention to make his permanent home in a foreign country, the court takes into consideration not only the mode but also the place of residence. However, this presumption is rebuttable. As noted in Dicey at 6–050, this presumption:

> applies not only to Englishmen and Scotsmen going to e.g. India or China, but also to e.g. Indians or Pakistanis [going] to England. But this presumption is rebuttable: there is no rule of law against the acquisition of a domicile of choice by such a person in such a country.

Singapore cannot be said to be a country altogether alien to an Englishman. Besides, there is evidence that Pinder did adopt the local custom of giving "ang-pows" during the Chinese New Year, and even the caveator conceded, under cross-examination, that Pinder was "very Chinese" in his choice of house numbers (28 Victoria Park Road and 128 Yuk Tong Avenue) and phone numbers (67352128 and 96717128). Furthermore, the evidence of Ian Neveille was that Pinder's home in Singapore was furnished with a lot of oriental furniture. Indeed, one can hardly expect that Pinder would have lived in Singapore for almost 45 years if local conditions did not conduce to his lifestyle.

70 Next, as regards Pinder's conduct in relation to his sons, it could be argued, as Ms Barker has done, that had Pinder considered Singapore his home, he would have wanted to assimilate them into the local community by sending them to local schools. No evidence was led on his possible reasons for not doing so. I suppose it can as well be argued that he might have wanted to give them an international education, bearing in mind that their mother, an English woman lives in England. Admittedly, it is not easy to explain away his participation, together with his first wife, in arranging for his sons to leave Singapore to avoid national service. Such action clearly suggests a lack of allegiance to Singapore at least on behalf of his sons but does not necessarily bespeak an intention on his part to give up residence in Singapore. In any event, allegiance must not be confused with domicile. One does not have to give up being an Englishman in order to acquire a Singapore domicile. Save in connection with the acquisition of citizenship, neither is loyalty a prerequisite. As was observed earlier ([24] *supra*), what is required is an intention to reside permanently or indefinitely in the country.

71 In *Udny v Udny* ([16] *supra*), the distinction between allegiance and domicile is explained thus by Lord Westbury at 457:

> The law of *England*, and of almost all civilized countries, ascribes to each individual at his birth two distinct legal states or conditions; one by virtue of which he becomes the subject of some particular country, binding him by the tie of natural allegiance, and which may be called his political *status*; another, by virtue of which he has ascribed to him the character of a citizen of some particular country, and as such is possessed of certain municipal rights, and subject to certain obligations, which latter character is the civil *status* or condition of the individual, and may be quite different from his political *status*. The political *status* may depend on different laws in different countries; whereas the civil *status* is governed universally by one single principle, namely, that of domicil, which is the criterion established by law for the purpose of determining civil *status*.

He then went on to state at 458:

> 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.

Then at 459, with reference to Lord Justice Storey's *Conflict of Laws*, he stated:

> I am obliged to dissent from a conclusion stated in the last edition of that useful book, and which is thus expressed, "The result of the more recent English cases seems to be, that for a change of national domicil there must be a definite and effectual change of nationality." In support of this proposition the editor refers to some words which appear to have fallen from a noble and learned lord in addressing this House in the case of *Moorhouse v Lord* (1), when in speaking of the acquisition of a French domicil, Lord *Kingsdown* says, "A man must intend to become a Frenchman, instead of an Englishman."
>
> These words are likely to mislead, if they were intended to signify that for a change of domicil there must be a change of nationality, that is, of natural allegiance.
>
> That would be to confound the political and civil states of an individual, and to destroy the difference between *patria* and *domicilium*.

72 I move on now to consider the links referred to by the caveator.

73 I have already found that the apartment at No 89 Whitehall Court was only a "pied-a-terre" as Pinder described it. As against the fact that the Pinders had two cars in London, it is noted that likewise they had cars in Singapore, including one which he bought in September 2002, about five months before his final visit to Europe. Apart from the gift of one of the cars to the caveator, the other was for use in Europe and in particular Germany which they visited during their trips to England. Like the rest, this link is to be taken into account together with the rest of the evidence for the caveator.

74 As in London, likewise in Singapore, Pinder was a member of clubs and associations. However, he resigned from the Singapore clubs because of his conviction. He read the Financial Times but also read The Straits Times and the Business Times. The fact that he received a UK pension and a war disablement pension arose from service to England before he took up residence in Singapore. I do not see that link as indicative of any intention to retain his domicile of origin. In fact, when he applied for the War Disablement Pension in November 1992, he had declared unequivocally that he had left the UK to live permanently abroad since 23 August 1953 and that his "home" was 28 Victoria Park Road, Singapore ([29] above).

75 The fact that Pinder had used UK credit cards is another link. However, it may not be that significant. Given that he had a UK bank account into which he paid his pension, it made sense to use a UK credit card to avoid foreign exchange charges which the use of his Singapore credit card would have incurred. Likewise payment for the utilities at No 89 Whitehall Court by direct debit from his UK bank account was not only convenient but avoided foreign exchange charges which would otherwise have been incurred if payments were made from his Singapore bank accounts. Admittedly, no evidence was adduced to that effect, but it seems to me to be commercially sensible.

76 I also do not think that the fact that Pinder's parents resided in England until they died nor that his sisters continue to live there is of any particular significance. Pinder married the caveator, a Singapore citizen and (save for visits abroad) resided with her in Singapore until his death. However, the fact that he made his Will in England is of some significance.

77 It would appear from the attendance notes of Gordon Dadds of 27 June 1984 (exhibit "LGLP-17" in the caveator's affidavit of evidence-in-chief) that Pinder decided to make one will in England because the UK Inland Revenue maintained that he was domiciled and resident in the UK for tax

purposes. No documentary evidence of such a position taken by the UK Inland Revenue was produced. In any case, the evidence does not suggest that he himself was of the same view. Pinder apparently never paid income tax in the UK since becoming a Singapore citizen in March 1972. On the other hand, he declared and paid Singapore income tax as a Singapore tax resident at all times. Furthermore, the undisputed evidence, both in the caveator's affidavit of evidence-in-chief and from her cross-examination, was that he always took pains to ensure that he did not became a tax resident in the UK.

78 Pinder had doctors in Singapore as well as in London. It was suggested that he was registered with the NHS because it was free of charge but I am inclined to believe he had a preference for London doctors. The renewal of his British passport (of which little use was made) on two occasions after he had acquired Singapore citizenship probably attest to feelings he retained for his country of birth. Nonetheless, Pinder had chosen to live abroad permanently for close to 50 years, indulging whatever feelings he had for England with about two short visits each year. It would appear that such feelings as he might have had for England were not strong enough to cause him to give up the life he had chosen to live when he adopted Singapore as his permanent home and acquired Singapore citizenship.

**Declarations**

79 It would have been observed that much of the evidence relied upon by both the executor and the caveator consists of declarations by Pinder as to his intention. The evidence includes direct declarations [*eg*, Pinder and the caveator's joint announcement to friends, family and associates informing them of the address of their new "permanent home" ([31] above) and Pinder's application to Standard Chartered Bank ([33] above)] and others where such intention may be inferred. It will also be noted that whereas the evidence adduced by the executor as to such intention is all documentary, similar evidence adduced by the caveator is oral and based upon hearsay with the exception of a card written by Pinder to the caveator dated 3 October 1986 to which I shall refer later. (There was no objection taken by Mr Lim to the evidence being hearsay and I do not consider it necessary to deal at length with the question whether the evidence in question is admissible. Suffice it to say that, at common law, evidence of declarations of intention may be given by way of exception to the hearsay rule (*Bryce v Bryce* [1933] P 83; *Scappaticci v AG* [1955] P 47) although the weight to be given to such evidence is another matter. It would appear that such common law exception applies in Singapore. In *Soon Peck Wah v Woon Che Chye* [1998] 1 SLR 234 at [34], the Court of Appeal observed:

> The Evidence Act does not explicitly state the hearsay principle, although it is implicitly reflected in s 62. Within the scheme of the Evidence Act and the Criminal Procedure Code (Cap 68), there are enumerated a number of legislative exceptions to the rule against hearsay. By virtue of s 2(2) of the Evidence Act, the common law exceptions to the rule have also been incorporated into our law of evidence. Although the English decisions are not binding in our courts, we found that they are very persuasive in this area of law.

80 In *Ross v Ross* [1930] AC 1, Lord Buckmaster stated the law in regard to declarations of intention as follows (at 6–7):

> Declarations as to intention are rightly regarded in determining the question of a change of domicile, but they must be examined by considering the persons to whom, the purposes for which, and the circumstances in which they are made, and they must further be fortified and carried into effect by conduct and action consistent with the declared expression.

Thus, as Dicey observed, in some cases the courts have relied to some extent on declarations of intention in determining the question of domicile but in others they have refused to give effect to the declarations on the ground that they were inconsistent with the conduct of the propositus. It seems clear that a domicile cannot be acquired or retained by mere declaration alone: Dicey at para 6–051. We move on to examine Pinder's declarations.

***Oath of renunciation, allegiance and loyalty***

81 As noted in [16] above, Pinder's oath, which he swore on 7 March 1972 when he obtained Singapore citizenship, included an obligatory declaration that he intended to reside permanently in Singapore. The caveator's assertion that he took up Singapore citizenship to advance his career was unlikely to be true as Pinder had already become chairman and managing director of the Sime Darby Group some seven years earlier, in 1965. It is perhaps also overly cynical to suggest that, in those halcyon days when he was at the height of his career after having lived in Singapore for 13 years, he could not have taken seriously his oath of allegiance (in particular the statutory declaration of intent to make Singapore his permanent home). However, it should be understood that this declaration is to be regarded as one of the totality of facts rather than to be accorded dominant or decisive importance, which was the mistake made by the trial judge in *Wahl v Attorney-General* (1932) 147 LT 382 ("*Wahl*") and by the Commissioners in *Buswell v Inland Revenue Commissioners* [1974] 1 WLR 1631 ("*Buswell*"), both of which cases were cited by Ms Barker ([85] *infra*).

***Pinder's press declarations***

82 Pinder's declarations made in a press interview quoted by The Straits Times and The Business Times on 21 October 1976 (see [6] above) were on the occasion of his release from prison and meant for public consumption. Whilst the statement declaring his Singapore citizenship was factual, the declaration "… and this is our home" could be viewed in either of two ways. On the one hand, he could truly have regarded Singapore as his home. On the other, he might perhaps have been intending to play to the gallery, putting a bold face on his situation or, as the caveator suggested, a show of bravado.

***Announcement upon purchase of 128 Yuk Tong Avenue***

83 Pinder and the caveator's joint announcement in or about September 1993 that they would be taking up residence at 128 Yuk Tong Avenue as their "new permanent home" was made to family, friends and associates. It was unforced and no ulterior motive was apparent in such an announcement. As such, it was unlikely to have been contrived. Significantly, under cross-examination, the caveator twice said "that was our only home" although she did also say that Pinder used the word "home" loosely at times. She further accepted that the announcement was correct "for the time being".

***Pinder's 27 September 1990 letter to his banker at National Westminster Bank plc***

84 As noted in [17] above, this was a private letter to the bank in which Pinder declared:

> As you know, I am a citizen and resident of Singapore, a frequent traveller to Europe and elsewhere and your comment on repayment of the overdraft before returning home came as a surprise …

Unfortunately, the bank's letter of 5 September 1990 was not produced; one can only surmise that the writer of the bank's letter, Mr K L Deadman, was probably mistaken as to where Pinder's home

was and the mistake prompted Pinder's response quoted above. It was not made gratuitously but appears to have been made to correct a misapprehension. If, as the caveator acknowledged, Pinder was tax-conscious and had been careful to avoid becoming a UK tax resident, he might well have considered it necessary to correct any mistaken impression as to his residence status.

***Application for war disability pension***

85 Reference to this may be found at [29] above. In this application, Pinder stated that he had been living permanently abroad since 23 August 1953 and gave his home address as 28 Victoria Park Road. Success in the application did not depend upon his being permanently resident abroad. The pension was a mere £20-odd weekly. Apart from the observation that this declaration was consistent with his intention to avoid being resident in the UK, there is nothing to suggest that the information he gave was untrue. Pinder himself declared that the information he had given in the application form was, to the best of his knowledge and belief, correct and complete, and that he understood that action might be taken against him for knowingly giving false or incomplete information.

86 Ms Barker cited the decisions of the House of Lords and the Court of Appeal respectively *Wahl* and *Buswell* ([81] *supra*). She submitted that in *Wahl*, the House of Lords placed no weight on a statement in a statutory declaration filed by the deceased in support of his application for naturalisation in which he said he intended to reside permanently in the UK. Actually, what the House of Lords held was only that the statutory declaration ought not to have been given "dominant importance" and not that no weight ought to have been placed on it. Lord Atkin said (at 385):

> I am far from saying that an application for naturalisation is not a matter to be carefully considered as part of the evidence in a case of domicile, but it must be regarded as one of the totality of facts, and it cannot assume the dominant importance attached to it in the judgment of the trial judge.

This was also the passage relied upon by Orr LJ who gave the leading judgment of the Court of Appeal in *Buswell*. In that case, the taxpayer's claim to retention of a South African domicile of origin was rejected by the special commissioners who relied on his answer on an Inland Revenue form which he had filed many years earlier in 1952. In that form, to the question: "*Do you propose to remain permanently in the United Kingdom?*" he had replied in the affirmative. Pennycuick VC dismissed the taxpayer's appeal from the special commissioners' determination.

87 On further appeal by the taxpayer, the Court of Appeal held, allowing the appeal, that in attributing a decisive importance to the taxpayer's answer on the Inland Revenue form in 1952, against the background of the case and in particular the fact that at the time of the affirmative answer he had been back in England for less than five months after a 10-year absence, the special commissioners acted upon a view of the facts which could not reasonably be entertained. After quoting the above passage from Lord Atkin's judgment in *Wahl*, Orr LJ continued as follows:

> In my judgment, the concluding words of this passage are applicable with even greater force to the commissioners' determination in the present case since in that case, as in this, a decisive importance was clearly attributed to the statement in question, but in that case, unlike this, the statement was deposed by statutory declaration to be true, which gave it an added solemnity.

Clearly therefore Ms Barker was less than precise when she said that in the two cases cited the House of Lords and the Court of Appeal gave little or no weight to the statements in question.

***Instructions to solicitor in purchase of No 89 Whitehall Court***

88 This was a communication with Pinder's own solicitor in the course of instructions in the purchase. He described the flat as a "pied-a-terre" for his wife's use when she was in England. That, indeed, was how it was used – as a residence away from home for short periods.

89 In her affidavit of evidence-in-chief (at pages 56 and 57), the caveator points to two faxes that Pinder had sent her when she travelled to London alone, and which read "welcome home" and "welcome home to your temperate climate abode". The caveator argues that No 89 Whitehall Court was the "chief residence" and "matrimonial home" but this is not borne out by the evidence. I agree with the executor that the Whitehall Court flat was the home of the Pinders when they were in England but that it was only a second home. It is unremarkable that they had furniture, superior cutlery and part-time cleaning help. The flat had to be furnished even if it was to be a second home.

***Letter of 26 November 1995 to the Westminster City Council***

90 Consistent with the above, Pinder declared 89 Whitehall Court to be his "second home" when he sought a 50% discount for the council tax payable in respect of the property, adding that he was domiciled in Singapore. Whilst for a lay person the meaning of "domicile" might not be clear, it was not unlikely that he understood the meaning of the word, conversant as he undoubtedly was with financial and tax affairs. Ms Barker argues that Pinder had to state that he was domiciled in Singapore because he could not say that he was resident only in Singapore (given that No 89 Whitehall Court was his second home). This is far from convincing. Although I heard no evidence on this (the point having been raised only in Ms Barker's submissions), I believe that it would have sufficed if Pinder had stated that his principal or chief residence was in Singapore.

***Application to open account with Standard Chartered Bank (CI) Ltd, Jersey***

91 In this undated application to Standard Chartered Bank for an account in Jersey in the Channel Islands, Pinder stated his residential address as the Leonie Towers apartment and that he had lived for 45 years in his present country of residence and hoped to remain there permanently and to retire there. Ms Barker seeks to explain this away by arguing that in completing the form Pinder adopted the same approach which, according to the caveator, he had adopted for government agencies in England so as to prevent unfavourable information going to the attention of the tax authorities.

92 Such communication with a bank in Jersey was probably protected by the bank's obligations of confidentiality although I heard no evidence thereon. In any event, it was unlikely to become public knowledge. It seems rather far-fetched to suggest that information from a bank in the Channel Islands was at risk of being passed on to the UK tax authorities. To my mind, it was more likely to be true.

***Fax to children of 30 November 2003 and to Lee Thor Seng of 12 January 2004: see [26] above***

93 Both faxes referred to his "Absence from Singapore" and that to Lee Thor Seng further expressed "considerable relief, having been away for such an extended period!" These, again were private communications and not for dissemination to the public. They therefore likely reflected Pinder's true state of mind.

***Pinder's card of 3 October 1986 to the caveator***

94 The caveator relied on a card written by Pinder to her dated 3 October 1986:

Darling,

> Hope you are enjoying your last week of holiday in the real world before coming back to the depressing prison-like atmosphere of Singapore. Make the most of it.

Pinder's letter continued with a few requests to buy clothes, newspapers and a reminder to buy duty-free cigarettes for the gardeners. There was no other remark relevant to Pinder's or the caveator's attitudes towards Singapore. Indeed, as the caveator was on "holiday" even the negative reference to Singapore's "depressing prison-like atmosphere" did not detract from its being home, or at least a permanent residence which the caveator would be "coming back to". Furthermore, when the caveator was asked in cross-examination why Pinder had resided in Singapore and not in Hong Kong, she had to admit:

> Well, because in Singapore he had connections **and he liked Singapore**. [emphasis added]

Elsewhere under cross-examination, she had also mentioned that Pinder liked Singapore. Significantly, Pinder himself expressed "considerable relief" to be returning to Singapore ([44] *supra*).

95 Therefore I do not find that the words in the card dated 3 October 1986 cast serious doubt on Pinder's choice of Singapore domicile. It has to be borne in mind that the card was written in 1986 and that Pinder continued to live in Singapore for a good 16 years or so thereafter, even though there was nothing to prevent him from leaving. As the executor submitted, Pinder could have been referring to the caveator's own attitude towards Singapore. More pertinent, though, is the observation in *Udny v Udny* ([16] *supra*) by the Lord Chancellor (at 446):

> [The Colonel] was under an impression that his English creditors could not molest him whilst in *Scotland*. He was much mortified afterwards to find that this was not the case, and wrote several letters to his son and others expressive of his disgust at having been hurried away from *Boulogne*, and his dislike to residing in *Scotland. But I cannot bring my mind to doubt that his intention in returning to Scotland was to do that which he accomplished, namely, to marry, in regular form, the Respondent's mother, and for that purpose to be domiciled there*. [emphasis added in italics and underlined]

The Lord Chancellor continued (at 447),

> … I think his possible intention to leave *Scotland* (if molested by creditors) in no way disproves the existence of a resolution to remain, as he did, in that country (if allowed so to do) as his chosen and settled abode. [emphasis in original]

96 It is not necessary to deal with the remaining declarations produced by the executor. Suffice it to say that, taking all his private and public declarations as a whole, it can be seen that Pinder had consistently taken the position that he was permanently resident in Singapore. Of course, in his endeavour to ensure that he did not become resident in the UK, he might on some of those occasions have taken extra pains to state his position more positively. That, however, is not to say they were untrue. The nearly 45 years of residence in Singapore lent further credibility to his private and public declarations as to his permanent residence in Singapore.

97 Mr Lim argues that, considering the care Pinder took to avoid becoming a UK tax resident by limiting the duration of his visits there, it would be extraordinary to conclude that late in life he would choose to retire in England and subject his estate to 40% inheritance tax after having lived in Singapore for some 45 years. But then I also have to consider the declarations of intention to retire in England attributed to Pinder by witnesses for the caveator. Despite deficiencies in regard to the evidence of those witnesses, I find it difficult to believe that Pinder never mentioned to any of them

an intention to retire in England. I would be inclined to believe that he did but that those oral declarations were made late in life. As for inheritance tax, it may be, as Ms Barker suggests, that Pinder expected to put in place arrangements that would avoid inheritance tax in the UK.

98 I alluded earlier to the significance of the timing of Pinder's alleged decision to retire in England. If the intention was formed early on, it could go towards casting doubt on Pinder's acquisition of a Singapore domicile of choice. If, as appears from the evidence, the intention to retire in England was formed late in his life (*ie*, in or after 1997), after Pinder had acquired a Singapore domicile, it would only go towards supporting the contention that Pinder abandoned his domicile of choice late in life.

99 I also find that right up to his last days Pinder still had not actually retired. The faxes that he sent out in the last days of his life put paid to any suggestion otherwise. In any case, Ms Barker has stated quite clearly that it is not the caveator's position that Pinder had already retired at the time of his death or that when he travelled to England, in February 2003, he never intended to return to Singapore.

100 In so far as Pinder's connections in England are concerned, Ms Barker cited two cases, *viz*, *Agulian v Cyganik* [2006] EWCA Civ 129 ("*Agulian*") and *Robert Gaines-Cooper v The Commissioner for HM Revenue and Customs* [2007] EWHC 2617 ("*Robert Gaines-Cooper*"). In *Agulian*, the question was whether Mr Andreas Nathanael ("Andreas") had acquired a domicile in England at the date of his death. He had been resident in England for some 43 years before his death in 2003 although he also owned two flats in Cyprus, which was his domicile of origin. It was common ground between the parties that between 1958 and 1995, he was domiciled in Cyprus notwithstanding his long residence in England. The factual contention was that he had acquired a domicile of choice in England between 1995 and 1999.

101 Mummery LJ (with whom the other members of the Court of Appeal agreed) said at [27]:

> As the deputy judge found that Andreas abandoned his domicile of origin in Cyprus and acquired a domicile of choice in England between 1995 and 1999, it is necessary to examine in detail the facts found about Andreas's English connection, focusing on his life events in that period, but viewed, of course, in the context of his life as a whole.

Ms Barker quoted [25] of Mummery LJ's judgment as follows:

> Although he lived in London for about 43 years and built up a very substantial business here, Andreas continued to live the life of a Greek Cypriot, talking Greek, watching Cypriot television. He had kept very much in touch with Cyprus during his time in London (paragraph 40). Despite his British passport and his residence in London he would have regarded himself very much as Cypriot rather than British (paragraph 38). He kept a Cypriot identity card, which was, and was seen by him as being, significant for the purposes of exercising in Cyprus rights as a citizen of Cyprus. His circle of friends and acquaintances in London were part of the Greek Cypriot community and of the Polish community. He was, the deputy judge held in paragraph 22, "proud and loyal to his birthplace and the people associated with it," had "a strong feeling that family, particularly blood ties were important and that, as head of the family, the decision-making would be vested in him. He had "a strong emotional attachment to the land of his birth, both to the island of Cyprus as a whole and in particular to the area of his birth." (paragraph 27). He retained "a very strong sense of Greek Cypriot identity." (paragraph 38).

She submitted that on the strength of those links with Cyprus, the Court of Appeal found that he had never abandoned his domicile of origin in Cyprus. However, the case should be understood in its own

factual context, in particular, that it was agreed that Andreas had not acquired a domicile of choice in England before 1995.

102 A further point which should be noted is that the deputy judge had found that Andreas had told different people different things as to his subjective intentions regarding where he would live permanently. Nevertheless, he inferred that Andreas did have a change of intention after 1995 to reside in England and Wales permanently or indefinitely. The inference seemed to have been based on the fact that after a string of short-term girlfriends, he formed a successful relationship with a young woman from an East European country and that they lived happily as man and wife. That, to the deputy judge, was when the line was crossed. The Court of Appeal held that the inference was wrong, given the strength of the domicile of origin.

103 In contrast, Pinder's declarations were consistent and unequivocal. Despite the caveator's attempts to cast Pinder as untruthful in making those declarations, overall, the evidence does not support those assertions.

104 *Robert Gaines-Cooper*, likewise, is a case where despite long residence for more than 30 years in the Seychelles, the taxpayer failed to persuade the High Court in England that he had given up his domicile of origin in England for a domicile of choice in the Seychelles.

105 Ms Barker referred to Lewison J's holding in that case that where a person has more than one residence, it is not necessary for one of them to be the chief residence at any one time. In the present case, however, Pinder clearly intended Whitehall Court to be mere a "pied-a-terre" and declared Singapore to be his permanent home.

106 In conclusion, taking the evidence in totality, I do not think the links Pinder had with England outweigh the many declarations he consistently made at various stages of his 45 years' residence in Singapore. I therefore find that Pinder did acquire a domicile of choice in Singapore and regarded Singapore as his permanent home rather than as a temporary place to work and make money. Pinder's intention to abandon his Singapore domicile, if at all, was expressed in terms of his plan to retire in England. Given my finding that Pinder had not retired at the time of his death, it is difficult to see how he could have abandoned his Singapore domicile by then. Nevertheless, for completeness' sake, I will address this point.

**(II) Whether Pinder had reverted to his English domicile of origin**

107 In *Udny v Udny* ([16] *supra*), the House of Lords held that a person's domicile of origin, held in abeyance when he created a domicile of choice, would revive when the domicile of choice was abandoned. Acquiring a domicile of choice did not absolutely extinguish or obliterate a domicile of origin and it was unnecessary to form a special intention to revert to the domicile of origin upon abandoning a domicile of choice. Thus, until another domicile of choice was acquired, the result of abandonment *simpliciter* of the former domicile of choice was an immediate reversion to the domicile of origin.

108 Given that Pinder's domicile of origin was indisputably English, all that the caveator had to prove was an abandonment of Singapore domicile without more. While the caveator did argue in the alternative that even if Pinder had acquired a domicile of choice in Singapore, he had relinquished it in favour of his domicile of origin, her primary case was that he had never been domiciled in Singapore as the alternative argument had little evidence to stand on.

109 The caveator could not rely on Pinder's 11-month stay in England prior to his death because his

correspondence with various persons clearly evinced an intention to return to Singapore.

110 I earlier found that it is likely that, late in life Pinder, formed an intention to retire in England. However, it is not enough that there was an intention to relinquish Singapore domicile. It has also to be proved that Pinder actually gave up Singapore residence (see the authorities in [25] above). When Pinder left Singapore, he did not give up Singapore residence. Even until immediately before his death, he was looking forward to returning to Singapore. He still had not retired.

111 The caveator rightly did not argue that Pinder had made the trip to England in February 2003 with no intention of returning to Singapore or that he had already retired at the time of his death. Accordingly, there is no basis for concluding that Pinder abandoned his Singapore domicile of choice and reverted to English domicile.

**Conclusion**

112 I therefore find that Pinder died domiciled in Singapore, having acquired, and never abandoned, a Singapore domicile of choice. Accordingly, a notation to this effect shall be endorsed on the grant of probate pursuant to s 7 of the Probate and Administration Act.

113 I will hear the parties on costs.

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