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FOIL UPDATE 8th November 2022

Armed Forces Personnel Stationed in the EU: Jurisdiction

Salt v Cosmos Insurance Limited Cyprus (2022) EWCA Civ 1429

This was an appeal by the claimant/appellant who suffered serious injuries in a cycling accident in Cyprus on 24 October 2017. He was an RAF officer who was at the time stationed at the Sovereign Base Area at Akrotiri ("the SBA"). The accident occurred on a road outside the SBA, in the Republic of Cyprus. The claimant sued the insurer of the driver of the car which had emerged from a side road and had, he alleged, caused the accident to occur. That driver was insured by the defendant/respondent ('Cosmos').

The claim was issued on 29 October 2020 which was during the transition period relating to the UK's exit from the European Union. Regulation 92 of the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 applied, interpreted by reference to paragraph 1(1) of Schedule 5 to the European Union (Withdrawal Agreement) Act 2020, which had the effect of preserving EU law as it applied to jurisdiction issues for the transition period.

IN BRIEF

An RAF officer suffering injury in a road traffic incident in Cyprus in 2017, was deemed to be resident there and not in the UK.

The action he had commenced in the High Court was struck-out under CPR 11.

Cosmos successfully sought a declaration under CPR Part 11 that the courts of England and Wales had no jurisdiction to try this claim.

The issue before this court was therefore one of domicile. The Court of Appeal dismissed the appeal.

The meaning of residence in domestic law had been considered in a number of cases. They set out broad principles which must be applied to the infinitely variable facts of each case. Residence was an ordinary word with an ordinary meaning, which denoted the place where a person lived, was settled, had their usual abode, with some degree of permanence.

In cases where a person had been resident in the UK and the issue was whether they were still resident in the UK, it was necessary to consider whether there had been a distinct break in the pattern or order of that person's life. The inquiry to be undertaken was multifactorial or evaluative, depending on the facts and what the person had actually done or not done to alter life's pattern. Intention was relevant but not determinative, and all the circumstances had to be considered to see what light they could throw on the quality of the UK taxpayer's absence from the UK.

The appellate court rejected the suggestion that there was special protection for members of the British armed forces to ensure that they did not lose their rights to sue for personal injury in the UK in the event that they are injured elsewhere in the EU when working with the UK armed forces abroad.

The central issue was whether the claimant remained resident in the UK after he went to the SBA in 2016 and until he returned in 2021. There were factors which pulled both ways. But it was not a game of numbers, rather it was an evaluative exercise looking at the quality of the claimant's time in and connections with England and Wales. The factors which demonstrated that the claimant was solely resident in the SBA during those years outweighed, by some margin, the factors which suggested residence was retained in the UK throughout.

The main factors which suggested sole residence in the SBA were:

- a. The claimant was working full-time in the SBA throughout this period. He volunteered for the posting. He was not compelled to go there.
- b. His contract was for five years, which was a relatively long period. By the time of the incident, he had been living and working at the SBA for 4 years.
- c. The claimant was only physically present in this country for a very short time during that period. He was an infrequent, even occasional, visitor to the UK, spending a tiny proportion of his time here.
- d. When he came home, the claimant did not stay in his own house in Cumbria, which was rented out to tenants throughout this time. It was not a home available for his use or used by him during this time.
- e. While in the SBA, the claimant and his family lived in accommodation provided by the RAF, as a family unit, enjoying the normal incidents of family life: children going to school there, making friends there and having a social life there. Their pattern of life had moved there completely.

The full judgment may be found at: [Stait v Cosmos Insurance Ltd Cyprus \[2022\] EWCA Civ 1429 \(01 November 2022\) \(bailii.org\)](#)

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