Neutral Citation Number: [2025] EWCA Civ 681

Case No: CA-2025-000199

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST
Chief Insolvency and Companies Court Judge Briggs (sitting as a Judge of the High Court)
[2025] EWHC 85 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: Friday 30 May 2025

Before :

LORD JUSTICE NEWEY
LORD JUSTICE SNOWDEN
and
LADY JUSTICE WHIPPLE

- -

Between :

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

- -

Stephen Moverley Smith KC, Owen Curry and Catherine Hartston (instructed by **Pillsbury Winthrop Shaw Pittman LLP**) for the **Appellant**
Geraint Jones KC, Peter Arden KC, Marc Glover and Hugh Rowan (instructed by **Spencer West LLP**) for the **Respondent**

Hearing date : 14 February 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 30 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Snowden :

1. By an Appellant's Notice sealed on 4 February 2025, Mobile Telecommunications Company KSCP (the "Petitioner") sought permission to appeal orders of Chief Insolvency and Companies Court Judge Briggs, sitting as a High Court Judge (the "Judge"), given on 22 and 23 January 2025 (the "Orders").

2. The Orders were made consequent upon the handing down of a reserved judgment on 22 January 2025 (the "Judgment") and dismissed a bankruptcy petition (the "Petition") which had been presented by the Petitioner against HRH Prince Hussam bin Saud bin Abdulaziz al Saud ("Prince Hussam") on 1 June 2022.

3. In his Judgment, the Judge concluded that the Petitioner had not established that Prince Hussam "had a place of residence in England and Wales" at any time in the period from 1 June 2019 to 1 June 2022 so as to satisfy the jurisdictional test for the presentation of a bankruptcy petition to the courts of England and Wales in section 265(2)(b)(i) of the Insolvency Act 1986 (the "1986 Act").

4. Section 265(1) provides that a bankruptcy petition may be presented to the court if the centre of the debtor's main interests (COMI) is in England and Wales, or if the COMI is in an EU member state (other than Denmark), if the debtor has an establishment in England and Wales. A bankruptcy petition can also be presented if the test in section 265(2) is met. That test is that,

> "(a) the debtor is domiciled in England and Wales, or
>
> (b) at any time in the period of three years ending with the day on which the petition is presented, the debtor (i) has been ordinarily resident, or has had a place of residence, in England and Wales, or (ii) has carried on business in England and Wales."

I shall refer to the three-year period between 1 June 2019 and 1 June 2022 that is relevant for the instant case as the "Relevant Period".

5. Following a hearing on 14 February 2025, we announced that permission to appeal would be refused and that we would give our reasons in writing in due course.

Background in outline

6. The Petitioner is a public company incorporated in Kuwait.

7. Prince Hussam is a member of the Saudi royal family. He was a student at the LSE between 1982 and 1984 and a post-graduate and doctoral student at the University of London between 1984 and 1990. During that time he resided with his wife (Princess Sarah Bint Musaad Bin Abdulaziz Al Saud ("Princess Sarah")), and their children at a large flat known as York House, York Place, Kensington, London. York House had been purchased by his mother, HRH Princess Noorah Bint Abdullah Fahad Al-Damir ("Princess Noorah"), in 1976. After the completion of his studies, Prince Hussam and Princess Sarah returned to Saudi Arabia with their family and subsequently relocated their main home to a newly built house in Riyadh.

8. The Petitioner and Prince Hussam were parties to a loan agreement dated 23 July 2010. A dispute between them resulted in the appointment of an arbitral tribunal on 12 November 2012 under the London Court of International Arbitration Rules 1998 (the "Tribunal"). The Tribunal subsequently made a number of awards in favour of the Petitioner against Prince Hussam (the "Awards"). The main Award was made in late 2015 and was for about US$527 million. That was followed by a further Award in 2018 of about US$218 million for default commission on the main sum. The Tribunal also made two costs Awards against Prince Hussam in 2018 totalling about £3.3 million. Leave to enforce all these Awards was given to the Petitioner by Bryan J on 31 January 2019 pursuant to the Arbitration Act 1996.

9. At an early stage in the dispute in 2012, Prince Hussam had commenced proceedings in Saudi Arabia in breach of the arbitration clause in the loan agreement. Those proceedings were stayed in 2013, but were revived by Prince Hussam in 2017 after the main Award against him by the Tribunal. This resulted in the grant of an interim anti-suit injunction against Prince Hussam by the Commercial Court on 1 May 2018, requiring him to withdraw the proceedings in Saudi Arabia. That injunction was made final on 18 May 2018, but Prince Hussam did not comply. On 10 August 2018 Prince Hussam was found to be in contempt of court and sentenced to 12 months' imprisonment, such sentence to be served from the date of his apprehension.

10. On 21 February 2020 the Petitioner presented a bankruptcy petition against Prince Hussam based upon various costs orders made in the Commercial Court proceedings in the total sum of about £640,000 (the "2020 Petition"). Permission was given for the 2020 Petition to be served out of the jurisdiction. An application to set aside that permission was refused in December 2020, following which Prince Hussam paid the petition debt.

11. Notwithstanding that the petition debt had been paid, Prince Hussam pursued an appeal against the refusal to set aside service of the 2020 Petition. That appeal was dismissed by Roth J in a reserved judgment on 31 March 2022: see [2022] EWHC 744 (Ch). In his judgment, Roth J reviewed the evidence adduced by the Petitioner that included evidence relating to the times and basis upon which Prince Hussam had stayed at York House or which indicated that he could have stayed there had he wished to. Prince Hussam relied upon three witness statements made by others but did not himself file any evidence in response. On the basis that the appeal concerned an application to set aside service, Roth J concluded that on the evidence before him, the Petitioner had the better of the argument that Prince Hussam had a place of residence in the jurisdiction.

12. An application by the Petitioner to amend the 2020 Petition to add the sums due in respect of the Awards was refused, and the 2020 Petition was dismissed. The current Petition, based on the Awards in the sums of US$885 million and £3.3 million was then presented on 1 June 2022. Permission to serve the Petition out of the jurisdiction by substituted service on solicitors in London was granted on 19 July 2022.

13. On 2 August 2022, Prince Hussam applied to set aside the order permitting service out of the jurisdiction on the grounds that there was no good arguable case that the English court had jurisdiction under section 265(2)(b)(i) of the 1986 Act. That application was refused by ICCJ Barber in a reserved judgment given on 18 May

2023: see [2023] EWHC 1144 (Ch). Permission to appeal that judgment was refused by Bacon J after a "rolled up" hearing on 16 May 2024: see [2024] EWHC 1724 (Ch).

14. In her judgment, Bacon J noted the provisional basis of the court's assessment of the merits of a case when determining a jurisdictional challenge, and then turned to consider the test under section 265(2)(b)(i). She stated,

> "24. The question of whether a debtor "has had a place of residence" in England and Wales for the purposes of s.265(2)(b)(i) or the identical provision in s.263I(2) has been the subject of extensive consideration in the authorities. [ICCJ Barber] referred at §53–85 of her judgment to *Re Nordenfelt* [1895] QB 151, *Re Brauch* [1978] (Ch) 316, *Skjevesland v Geveran Trading (No 4)* [2003] BCC 391, *Reynolds Porter Chamberlain LLP v Khan* [2016] BPIR 722, *PJSC VTB Bank v Laptev* [2020] EWHC 321 (Ch), my judgment in *Lakatamia Shipping v Su* [2021] EWHC 1866 (Ch), and the Roth J judgment.
>
> 25. There is no challenge to the judge's analysis of the legal principles, and I do not therefore need to repeat that detailed analysis. The parties do, however, unsurprisingly emphasise different aspects of the principles set out in those cases. In the context of issues arising in this case the following points may be noted, but these are by no means exhaustive, and other considerations may be relevant in other cases:
>
> i. The phrase "has had a place of residence" should be given its ordinary and natural meaning, and there is no single or conclusive test. A broad range of factual considerations may be relevant: *Lakatamia v Su,* §33; Roth J §37.
>
> ii. Having a place of residence is a *de facto* situation rather than a matter of legal right. A licensee may therefore have a place of residence: *RPC v Khan* §26.
>
> iii. *De facto* control of the property is in that regard a relevant consideration but not a necessary condition. The premises may be occupied by others, and a moral claim to occupation may be sufficient, particularly in a family context: *RPC v Khan* §26; Roth J §37.
>
> iv. The period of occupation is a relevant factor to consider, but it is possible to have a place of residence without being in occupation during the relevant period: *RPC v Khan* §26; *PJSC VTP Bank v Laptev* §115.
>
> v. It is, however, not sufficient for the debtor to have an entitlement of some sort to occupy a place that is capable of being described as someone's place of residence. Rather the question is whether the premises are a place of residence for the debtor: *Lakatamia v Su* §§25 and 27.

> vi. Residence connotes some degree of permanence, some degree of continuity, or some expectation of continuity: *Lakatamia v Su* §37.
>
> vii. It is relevant to ask whether the place was for the debtor a settled or usual place of abode or home, but that is not an essential condition. A debtor may have a place of residence in the jurisdiction, even though their home is elsewhere: *Lakatamia v Su* §36; Roth J §41.
>
> viii. The nature of someone's presence in and connection to a particular place is also a relevant factor in determining residence. It is therefore relevant to consider whether the debtor's presence is voluntary or not: *Lakatamia v Su* §38."

15. Bacon J then summarised the factual conclusions reached by ICCJ Barber on the written evidence as follows,

> "28. On the basis of the evidence before her the judge set out 11 matters which she considered were relevant in her assessment of whether Prince Hussam had a place of residence at York House. In short summary, these were:
>
> i. The fact that York House was purchased by Princess Noorah as a family home in 1976 when Prince Hussam was 15.
>
> ii. The fact that Prince Hussam and his family lived there for several years during term-time from 1983–1990 when he was a student in London, which gave him a long standing connection to the property.
>
> iii. The fact that Princess Noorah only uses York House for 10–13 weeks each year over the summer months, and for the rest of the year the property is furnished and available for members of the family to use.
>
> iv. The clear evidence of Princess Noorah's commitment to ensuring that her family, including Prince Hussam, have access to family accommodation in London as and when required. That included the fact that when Prince Hussam's second child was born in 1987, York House was modified to convert it from a three- to a four-bedroom apartment, to provide a bedroom for the new child. The judge also referred to a statement by Princess Noorah in earlier related proceedings in 2019 that York House "is a substantial apartment and has room for family members to stay and reside there with me. This is what has happened over the years. This has included [Prince Hussam], his wife and my grandchildren."
>
> v. The judge's conclusion that Prince Hussam has at all material times since completing his studies in 1990 continued

> to enjoy ongoing permission to use York House as his personal place of residence when in London, subject to checking availability and making arrangements to collect the keys … In that regard, the judge considered that the evidence of Prince Hussam and Princess Noorah to the effect that Prince Hussam only had "limited permission" to use the property during his studies and had not subsequently had ongoing permission to use it, was manifestly incredible on the basis of the other evidence before her.
>
> vi. The scarcity of Prince Hussam's use of York House over the years 2010 to date, which in general terms pointed against York House being a place of residence for the Prince. The judge noted, however, that the evidence about the occasions when the Prince did use York House between 2010 and 2016 were consistent with her conclusion as to the ongoing availability of the property as a place of residence when he wanted to use it.
>
> vii. The fact that Prince Hussam did not keep any personal possessions at York House, which the judge considered relevant but not decisive in the context of a property which is fully furnished and made ready for family members prior to their arrival.
>
> viii. The fact that Prince Hussam had not occupied York House at any time during the Relevant Period which the judge found was again undoubtedly a relevant factor, although this had to be seen in the context of the committal order in August 2018 which meant that if Prince Hussam had returned to the jurisdiction thereafter he would have been sent to prison.
>
> ix. The fact that since Prince Hussam's appointment as a governor of a province in Saudi Arabia he travels with a large entourage, as a result of which Prince Hussam and Princess Noorah both say that he cannot stay at York House, not least because the flat would be too small to accommodate them all.
>
> x. The fact that York House is not Prince Hussam's settled or usual place of abode or home, which again was undoubtedly relevant, but only one of many factors to be taken into account.
>
> xi. Finally, the fact that Prince Hussam was registered at York House for council tax purposes when he was a student, and continued to be so until December 2019. This was considered by Roth J to be a highly significant factor, and the judge also considered it to be significant in the light of the further evidence before her."

16. Bacon J essentially held that ICCJ Barber had approached her task of determining who had the better of the argument in the correct way, had carefully weighed the

evidence and had not taken into account irrelevant factors or failed to take into account relevant factors. Bacon J therefore concluded that ICCJ Barber had been entitled to reach the decision that she did, and there was no realistic prospect of her evaluation of the evidence being overturned on appeal.

17. The Petition then came on for hearing before the Judge in early December 2024. At the hearing, Prince Hussam maintained his jurisdictional challenge and also asserted that the Petition debts were barred by limitation. By that time, further evidence had been adduced on the jurisdiction issue and the Judge also had the benefit of cross-examination of a number of witnesses, including in particular Prince Hussam, Princess Noorah and Princess Sarah. Prince Hussam and Princess Noorah were permitted to give evidence remotely from Riyadh: see [2024] EWHC 3459 (Ch).

The Judgment

18. The Judgment dealt only with the jurisdiction issue. After setting out the background and summarising the evidence that he had received, the Judge made findings about the credibility of the witnesses. In particular he found that Prince Hussam's evidence on key issues was corroborated by other witnesses and the Judge assessed his evidence as honestly given and reliable.

19. The Judge then embarked upon a lengthy review of the case law. In the course of that review he made the following observations (citations omitted),

> "144. A "settled or usual place of abode or home" or a place of residence that has "some degree of permanence, some degree of continuity or some expectation of continuity" provides sufficient connection with the jurisdiction, in my view, to found jurisdiction which might lead to the making of a bankruptcy order."
>
> …
>
> 148. The test, "had a place of residence", enacted in the [1986 Act] or the earlier language used in the 1914 Bankruptcy Act, has been considered by the courts at all levels for over a century. Differently constituted courts may have used slightly different terms to describe the legal test, however a consistent pattern emerges to the effect that the quality of occupation must be meaningful to engage jurisdiction:
>
> (i) Section 265 [of the 1986 Act] ought to be considered in the context of producing an interpretation for the court assuming jurisdiction to administer a foreigner's affairs:
>
> (ii) A debtor may have a legal or beneficial interest in a property but not be resident:
>
> (iii) The express use of residence for the purpose of grounding jurisdiction in legislation, whether it be "ordinarily" resident "usual" residence or a place of "residence" is a tool

> used in many statutes in diverse areas of law over many years. It is not a term of art. It requires the court to make findings of fact to the extent that the person had a settled purpose for residing, such as education, business or profession, employment, health, family, or merely love of the place:
>
> (iv) To be resident or to have had a residence requires a petitioner to show there is or has been "a degree of permanence" and "continuity" or "expectation of continuity": and
>
> (v) A debtor's intention helps inform the court in determining the facts of any case. Intention is to be judged objectively.
>
> 149. Curiously, the [1986 Act] does not provide a definition for residence but provides a definition of "dwelling-house" to include "any building or part of a building which is occupied as a dwelling…": see section 385(1). The term "dwelling-house" is used 26 times in the [1986 Act]. Each time substantial attachment to a property is signified. As there is no definition of "had a residence" the courts have used common sense and adopted descriptive language to help explain the quality of evidence required to meet the test: the requirement for a petitioner to prove on the balance of probabilities that the occupation is meaningful in the sense that the court is able to say with some confidence that the debtor has a hold on the jurisdiction sufficient to engage the bankruptcy laws. The characterisation of a residence is easily understood where a debtor occupies for a settled purpose such as education, employment, health, family, or a holiday home. Something more than mere occupation.
>
> 150. Considering the statutory test provided by section 265(2) in the context of sufficient connection is relevant when deciding the weight to give to any given set of facts. It helps to ensure that the court does not exercise its jurisdiction in an exorbitant way: …. It assists in determining whether a debtor has "such a hold on this country as is to make him liable to the English bankruptcy law": …."

20. The Judge also considered the decision in *re Nordenfelt* [1895] 1 QB 151 and appeared to reject a submission by the Petitioner that once a debtor had been found to have a place of residence in the jurisdiction, he could only lose that if he had shown that he had "abandoned" the property.

21. Ultimately, the Judge concluded at [163] that the statutory test required "a close analysis of residence and a careful assessment of the quality of the debtor's residence at any given place".

22. The Judge then returned to the evidence and made a number of factual findings based on the evidence that he had heard. He concluded, at [227], that Prince Hussam "had a residence" [sic] at York House in the period whilst he was studying in London until April 1990. However, the Judge also made an express finding on the evidence that Prince Hussam did not know he had been registered for Council Tax in respect of York House and had no intention to be so registered: see [221].

23. The Judge then concluded that after the end of his studies in 1990, Prince Hussam left London, with his family, to live and work permanently in Saudi Arabia; after that time his relationship with London changed fundamentally; and that after he left, his intention was not to have a place of residence in England and Wales: see [235].

24. The Judge then considered the period between 2000 and 2019. The Judge noted that Prince Hussam was only an infrequent visitor to London over that period, often staying in luxury hotels. The last time Prince Hussam stayed in York House was for four days in March 2016 and his last stay in London was in February/March 2018 when he spent 7 days as a holiday with Princess Sarah and their (adult) children at an apartment in Phillimore Terrace which was one of a number of "New London Properties" that Princess Noorah had purchased.

25. The Judge also noted, at [239], that Prince Hussam's lifestyle had changed significantly when he was appointed Emir of Al Bahah in 2017, following which he lived separately from his family who continued to live in Riyadh. The Judge further explained, at [201], the impact of the committal order that had been made against Prince Hussam in August 2018,

> "201. The lack of interest in staying at York House (or the New London Properties) shown by Prince Hussam since 2016 is explained in part by the Committal Order made in August 2018. The Committal Order does not explain why he did not stay in any of the properties in the period March 2016 to February 2018 (when he took a holiday with Princess Sarah), or in the period February 2018 to August 2018. In any event the making of the Committal Order will have played a part in Prince Hussam determining not to land at Heathrow or stay anywhere in England and Wales after August 2018."

26. So far as Prince Hussam's stays at York House were concerned, the Judge found that Prince Hussam kept no possessions and did not have any keys to York House during this period and that on each occasion when he stayed there he asked for permission from Princess Noorah: see [253]. The Judge also found that there was no evidence to connect Prince Hussam to the New London Properties, other than the single visit that he had paid to Phillimore Terrace for a week's holiday with his wife in early 2018. The Judge accepted Prince Hussam's and Princess Sarah's evidence that the New London Properties were not a "pool of residences" that were available to Prince Hussam, but had been purchased by Princess Noorah for use by Princess Sarah and her grandchildren, and that they were not "open house" so far as Prince Hussam was concerned: see [204]-[206].

27. The Judge then concluded, at [256]-[258],

> "256. In my judgement there is insufficient evidence to support a finding that York House (or 1 Phillimore Terrace) was "his" residence in the three years to 1 June 2022 or formed a parcel of his residences, as claimed.
>
> 257. Although a person may have more than one residence, there is no evidence that York House or the New London Properties provided Prince Hussam with meaningful residence in the sense that it was for a settled purpose. The second principle discerned by Lord Denning in *Fox v Stirk* [[1970] 2 QB 463] is apposite: "temporary presence at an address does not make a man resident there." It has been said that the greater the occupation the more likely the finding of residence; the opposite is also true. As Bacon J observed, residence should not be confused with mere occupation.
>
> 258. As a matter of fact and degree, having regard to Prince Hussam's "pattern of life", his relationship with the jurisdiction of England and Wales, York House and the New London Properties, his intentions in respect of residence and the purposes of his visits, I find there to be insufficient evidence in the period 2000 to May 2019 (and in the prior period to 1990 to 2000) to find that he had a place of residence that continued into the Relevant Period or established a place or residence in the Relevant Period. There is insufficient evidence in these years to find that occupation by Prince Hussam of any property, during his temporary visits to the jurisdiction, is to be characterised as occupation as a dwelling-house. The evidence does not support a finding that he had a hold on this jurisdiction such as to make him liable to the English bankruptcy law."

The application for permission to appeal

28. The Petitioner sought permission to appeal against this decision and the consequent order dismissing the Petition on a number of grounds. They included a number of objections to the Judge's analysis of the meaning of "place of residence". In this regard, the Petitioner challenged, in particular, the Judge's requirement that a debtor should have a "settled purpose" for residing, or that there was any separate requirement of a "sufficient connection" with the jurisdiction. The Petitioner also contended that once the Judge had found that Prince Hussam did have a place of residence at York House until 1990, jurisdiction to present a bankruptcy petition would exist unless he had "abandoned" the property, and the Judge had made no such finding.

29. The Petitioner also contended that, as a matter of law, when assessing whether Prince Hussam had a place of residence in England and Wales, the Judge should not have taken into account Prince Hussam's intention not to have a place of residence in London or the fact that he had to seek permission of Princess Noorah to stay at York House or the New London Properties.

30. Finally, the Petitioner challenged the Judge's findings of fact that the New London Properties were not a pool of residences that were available to Prince Hussam, and that he had been unaware that he had been registered to pay Council Tax on York House until 2019.

Discussion

31. Taking the grounds of appeal in reverse order, there is no realistic prospect of the Petitioner persuading the court to reverse the Judge's findings of fact on the (un)availability of the New London Properties or Prince Hussam's ignorance of the fact that he was registered for Council Tax at York House. In particular, although the Council Tax issue had featured prominently in the decisions on jurisdiction taken by other judges at earlier stages in the 2020 Petition and in this Petition, those judges decided the case on a provisional basis on written evidence only, and did not have the benefit of observing live evidence from Prince Hussam and the members of staff involved at the time. The Judge did have that opportunity and made findings as to the credibility of that evidence. In my view he was entitled to reach his conclusions in this respect on the evidence that he heard, and this court would not interfere with those findings.

32. On the remaining grounds, I accept that the Judge's analysis of the cases and the conclusions that he drew from them were somewhat discursive, and in particular tended not to discriminate sufficiently clearly between the concepts of a person being "resident" or "ordinarily resident" or "having a place of residence", and the meaning given to those expressions in different statutory contexts. The Judge's legal analysis could certainly be the subject of contrary argument on appeal.

33. However, the fundamental difficulty faced by the Petitioner, which I do not consider that it has any realistic prospect of overcoming on appeal, is that given the Judge's clear findings of fact, any interpretation of the statutory test that the Petitioner would be forced to advance in order to change the result in this case would be hopelessly wide.

34. In essence, as Mr. Moverley-Smith KC confirmed in argument, the Petitioner was contending that a debtor could be found to have a place of residence in the jurisdiction during the relevant period prior to the presentation of a bankruptcy petition if there was a place of residence owned by someone else that would likely have been made available for him to live in, on something more than a merely transitory basis, if he had asked. Mr. Moverley-Smith contended that if such a place was available, it would not matter that during the relevant period, the debtor had not actually asked to stay there, or that he had had no intention of doing so.

35. That contention bears more than a passing resemblance to the argument that was firmly rejected by Bacon J in *Lakatamia v Su*. In that case, the debtor himself applied for voluntary bankruptcy under section 263I of the 1986 Act (which, so far as jurisdiction is concerned, is in materially identical terms to section 265). He claimed that the adjudicator could make a bankruptcy order on the basis that during the relevant period he had stayed briefly at a hotel and serviced apartments in London before being arrested and imprisoned for contempt for a significant period; that on his release from prison he had stayed with a friend for a few weeks in Surrey; and that for a few months prior to his application for a bankruptcy order, he had occupied a flat owned by a fellow contemnor who had been his cellmate in prison.

36. At [21] - [22], Bacon J recorded that,

> "21. … [counsel for the debtor's] submission was that the statutory language "has had a place of residence in England and Wales" has to be interpreted as meaning no more than that the debtor had entitlement, which could be a licence or moral entitlement rather than a legal entitlement, to occupy a place that was capable of being described as a place of residence of someone, whether or not the residence was that of the debtor.
>
> 22. On that basis [counsel for the debtor] contended that [the debtor] had places of residence at the InterContinental Hotel, the Cromwell Apartments, the friend's house in Surrey and the current flat in Maida Vale. All of those premises, he said, were places in which somebody was capable of residing, and where [the debtor] had some sort of entitlement to stay."

37. Bacon J firmly rejected that extravagant argument as being contrary to the statutory language and unsupported by any authority. She also explained,

> "28. Thirdly, [the debtor's] construction would diminish the test in section 263I to complete triviality, in a way that would make no sense in the context of the statutory provision. As [opposing counsel] pointed out, the primary jurisdictional test under section 263I is that the centre of the debtor's main interests should be in England and Wales. As a derogation from that test, jurisdiction is established where one of the four conditions in section 263I(2) is satisfied, namely that (1) the debtor is domiciled in England and Wales, (2) the debtor has during the relevant three-year period been ordinarily resident in England and Wales, (3) the debtor has had a place of residence in England and Wales during that period, or (4) the debtor has carried on business in England and Wales during that period.
>
> 29. The conditions of domicile, ordinary residence and carrying on business all connote a degree of substantiality and continuity of the connection of the debtor with the jurisdiction. By contrast, on [counsel for the debtor's] case a debtor could invoke the jurisdiction of the Insolvency Adjudicator simply on the basis that they had permission to occupy the residence of a third party for some period of time during the three years preceding the bankruptcy application, no matter how fleeting and transient that occupation was – and indeed on [counsel for the debtor's] submission irrespective of whether the debtor even did occupy those premises at all. That would be an absurd result that would render effectively nugatory the jurisdictional test in section 263I of the Insolvency Act."

I agree with those observations.

38. The Petitioner's argument in the instant case is in essence the same as the argument that Bacon J rejected. Indeed, the facts of the instant case are even more extreme than those in *Lakatamia v Su*. At least Mr. Su had been present in the jurisdiction during the relevant period. In contrast, in the instant case, on the Judge's findings, Prince Hussam moved his home to Riyadh several decades ago on the basis that he did not intend to return to live here, and that he had no interest in owning property in London. That has been borne out on the facts. Prince Hussam does not own any property in London, and he has had a position in society in Saudi Arabia that has meant that his

visits to London over the years have been intermittent. When Prince Hussam did visit London, it was for relatively short periods, and he stayed in a variety of accommodation.

39. Perhaps most significantly, Prince Hussam was found guilty of contempt and sentenced to serve a period of imprisonment in August 2018. That means that he will be arrested and imprisoned if he were to return. The result has been that Prince Hussam has not visited the UK since that sentence was passed and has every reason not to.

40. In reality, on the Judge's findings of fact, the highest that it could be put is that during the Relevant Period, Prince Hussam had an expectation that if he had asked, he would have been given permission to stay as a guest in a property in London owned by his mother. But he did not make such a request, he did not visit this jurisdiction, and there was and is no prospect that he is likely to do so in the foreseeable future. In my judgment the Judge was right to find that that is not enough to found jurisdiction under section 265.

41. There is also nothing in the Petitioner's argument that because Prince Hussam had been found to have a place of residence in England and Wales until 1990, that would continue to be the legal position unless and until he could show that he had "abandoned" his earlier place of residence. There is no such principle of law. The question posed by the statute is simply whether a person had a place of residence during the relevant period. Whether any inference can be drawn if the person had a place of residence at an earlier time is itself simply a question of fact.

42. I consider that this is the correct explanation of *re Nordenfelt* [1895] 1 QB 151. In that case, the debtor lived in a leasehold house in Kent until November 1891 and then left with his wife and servants to live in Paris. The house and furniture were advertised for let, but when no-one made an offer, in May 1892 some of the furniture was sold at auction, and that which was not sold was packed up. The debtor sold his lease of the house in December 1892. A bankruptcy petition was presented in November 1893. The question was whether the debtor had had a "dwelling-house" in England within a year of presentation of the petition.

43. The registrar dismissed the petition, holding that because the debtor had left the house in circumstances which showed an intention of never coming back, it had ceased to be his dwelling-house for the purposes of the bankruptcy statute. The Court of Appeal upheld that decision.

44. The judgments of the Court of Appeal were very brief. Lord Esher MR said,

> "I will not attempt to give an exhaustive definition, or indeed any definition, of the term "dwelling-house" as used in this section. I only intend to say what I think is not a "dwelling-house." If a man has a house belonging to him, but he has abandoned it as his dwelling-house, that house is not his "dwelling-house" within the meaning of this section. The registrar had to say upon the evidence before him whether the debtor had in fact abandoned Downs House as his dwelling-house for more than a year before the filing of the petition. He came to the conclusion that the

> debtor had done this, and I can see no reason for differing from his conclusion."

45. Lopes and Rigby LJJ agreed. Rigby added,

> "The debtor had, no doubt, had a dwelling-house at Beckenham, and he might very easily after he went away to Paris have adopted the house again as his dwelling-house. But when it appears, as it does, that he offered all his furniture in the house for sale, and had that which was not sold packed up in such a way that it could not, without some trouble and expenditure, be placed in a position to be used, I am satisfied that he had abandoned the house as his dwelling-house before the commencement of the critical year. I am satisfied also that he did nothing during the year to adopt it again as his dwelling-house."

46. As I see it, these judgments simply decide that if a person owns a house, but the evidence shows that he has decided not to live in it any more, it will cease to be his "dwelling-house". The term "abandoned" was not used as a legal term of art, but was simply used as a descriptive term for what had occurred. I do not think that it is any part of the statutory test that a judge should have to make a finding of "abandonment" of a previous place of residence.

47. In any event, I find it difficult to see how such a test could be meaningfully applied in a case such as the present, in which, unlike the debtor in *re Nordenfelt*, Prince Hussam has at no point owned a residential property in England and Wales which he could "abandon". York House has at all times been owned by Princess Noorah, and all that has occurred is that the basis upon which she permitted her son to stay there changed after he ceased to be a student and moved back to live and work in Riyadh with his family.

48. For these reasons I considered that an appeal by the Petitioner would have no realistic prospect of success.

Lady Justice Whipple :

49. I agree.

Lord Justice Newey :

50. I also agree.