

ENGLAND AND WALES / JUDGMENT

# Ferruccio Ferrara v Caroline Frances Ferrara

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Neutral Citation Number: [2026] EWCA Civ 512 IN THE COURT OF APPEAL (CIVIL DIVISION) ON APPEAL FROM THE HIGH COURT OF JUSTICE FAMILY DIVISION MR JUSTICE GARRIDO  
1707-1268-8623-7376 Case No: CA-2025-001942 Royal Courts of Justice Strand, London, WC2A 2LL  
Date: 29 April 2026 Before: LORD JUSTICE MOYLAN LORD JUSTICE ARNOLD and LORD JUSTICE MILES

- ----- Between: FERRUCIO FERRARA

- and - CAROLINE FRANCES FERRARA

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- ----- Appellant/ Respondent Respondent /Applicant Philip Marshall KC (instructed by Vardags Ltd) for the Appellant Andrzej Bojarski KC and Hannah Jones (instructed by Mills & Reeve LLP) for the Respondent Hearing date: 29 January 2026

- ----- Approved Judgment This judgment was handed down remotely at 10.30am on 29 April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. .... Judgment Approved by the court for handing down. Ferrara v Ferrara Lord Justice Moylan: 1. 2. 3. 4. 5. The husband appeals from the order made by Garrido J on 11 July 2025 by which he:

- (a) declared that the wife was domiciled in England and Wales at the date on which she issued her application for a divorce, namely 12 February 2024, thereby establishing this court's jurisdiction to determine the divorce and, more significantly, to determine the associated financial remedy proceedings; and (b) dismissed the husband's application for a stay, the husband "having failed to prove that Italy is clearly the more appropriate jurisdiction". Although the husband's application for a stay was directed, as it had to be, to the wife's divorce application, the real issue between the parties is where the financial consequences of their divorce should be determined. As set out below, there are substantive differences between the issues which would be addressed in Italy and those which would be addressed in England when the respective courts were determining what we call financial remedy proceedings. I would also note that s. 25 of the Matrimonial Causes Act 1973 ("the MCA 1973") requires the court to have regard to "all the circumstances of the case" when deciding how to exercise its powers to make financial orders. This provides a very broad canvas

which includes consideration of a range of factual matters relating to the history of the marriage and to the parties. Also relevant to this case are the provisions of Part III of the Matrimonial and Family Proceedings Act 1984 (“the MFPA 1984”) which provide a route by which a party can apply for financial remedy orders after a foreign divorce. This is subject to leave, the test for which, as explained recently in *Potanin v Potanina* [2024] UKSC 3, [2024] AC 1063, at [89], is analogous to the test applied in other contexts of a claim having a “real prospect of success”. There are seven grounds of appeal. In summary, they are grouped under three headings. Grounds 5, 6 and 7 contend that the judgment is “seriously deficient” because it failed to include (i) “any proper consideration or analysis of the law” and/or of the parties’ respective arguments; (ii) any factual analysis and failed to resolve “any material factual disputes and/or to make any primary findings of fact”; and (iii) “any analysis and/or to make any findings of fact to support” the judge’s conclusions. Grounds 1 and 2 challenge the judge’s decision as to the wife’s domicile, contending that it was flawed and wrong including because it was founded on “the erroneous basis that W must have formed a settled intention to live in Italy permanently” (emphasis in original) and because the judge’s approach to the evidence was flawed, for example, “by disregarding the written and oral evidence, including the undisputed facts”. Grounds 3 and 4 challenge the judge’s decision not to stay the wife’s application contending that it was “plainly wrong” having regard to the circumstances of the case including because the judge was wrong “to place reliance on the matters listed in paragraph 23 (which are not supported by the evidence) and/or to dismiss the matters listed in paragraph 24 of the judgment” (see below) and should have concluded “that Italy was the clearly more appropriate forum”. The wife has filed a Respondent’s Notice in which she seeks to uphold the judge’s determination in respect of her domicile in reliance on a number of additional matters. At the hearing, the husband was represented by Mr Philip Marshall KC and the wife was represented by Mr Andrzej Bojarski KC and Ms Hannah Jones, all of whom appeared below. Judgment Approved by the court for handing down. *Ferrara v Ferrara* 6. For the reasons set out below, I have concluded that the appeal should be dismissed on all grounds.

## Background

7. The judge summarised the background history as follows: “[8] Mrs Ferrara (50) is a model and homemaker. She was born in Australia in 1974 and is an Australian citizen. Mr Ferrara (63) is a financier and founder/shareholder of a private equity fund. He was born in Italy and is an Italian citizen. Despite the breakdown in their relationship, they continue to live under the same roof in Milan with their two children [then aged 10 and 13]. The children were born in London and hold British, Australian and Italian citizenship.
- [9] The parties met in London in 2004. Mr Ferrara had been living here since 1992, the same year that Mrs Ferrara arrived in London with her parents (she had previously lived in London with them as a younger child between 1979 and 1982). They started living together in Chelsea in 2006, the former matrimonial home in Belgravia was purchased the following year and they married in Italy on 5 April 2008. Resuming life in London immediately after

the marriage, it was not until April 2019 that Mr Ferrara returned to live in Milan, followed in the summer of that year by Mrs Ferrara and the children. The Belgravia house was sold in early 2023.” The marriage broke down in 2023. 8. 9. It can be seen that the family has lived in Italy since 2019. The circumstances and nature of their move from London to Milan were not agreed but, since then, the family has lived there (they still all occupy the same home) and the children have attended school there. In summary, therefore, the parties spent 13 years of their life together in London and, to the date of the breakdown of the marriage, four years in Italy. At the date of the hearing before the judge, they had spent a further two years living in Italy. In addition, apart from a period between 1995 and 2000 (when the wife said that she moved between Paris, New York and London), the wife had lived in London between 1992 and 2019, a period of 27 years. As referred to below, the judge found that the wife had been “primarily anchored” in England from 1992. The husband also lived in London between 1992 and 2019. The family lived in a property in Belgravia which had been purchased in the husband’s sole name in 2007 and, as referred to above, was sold in 2023. During the course of the marriage ceremony in Italy, the parties signed a separation of property agreement presented to them by the priest. The effect of this is set out in a summary of the expert evidence on Italian law. First, it is not open to the wife to seek to challenge the agreement and, secondly, there “will be no division of assets” in Italy. The Italian court “will not have jurisdiction to make property adjustment orders/lump sum orders and will only be able to deal with maintenance”. Judgment Approved by the court for handing down. Ferrara v Ferrara 10. In September 2023, as set out in the judgment below, the husband “accepted the wife’s proposal for a negoziazione assistita, a formal process of mediation in Italy to regulate their separation and the consequential financial issues”. This process did not result in any agreement and the parties subsequently commenced proceedings in Italy and England. English and Italian Proceedings 11. 12. 13. 14. 15. 16. 17. The wife’s application for divorce was filed in England on 5 February 2024 and issued on 12 February 2024. It was initially, and clearly unsustainably, founded on the parties being habitually resident in England. The application was later amended to rely on her being domiciled in England. On 31 May 2024, the wife filed her Form A giving notice of her intention to proceed with her application for financial remedy orders. The husband disputed jurisdiction and applied for a stay of the English proceedings. Somehow, between them, the parties filed 8 statements although, to be fair, three of these related to interim matters and the factual matters which had to be addressed included those relevant to domicile of origin, domicile of choice and forum. However, the result was that there was an abundance of written evidence which covered a very broad range of matters. The husband commenced proceedings in Italy on 6 February 2024. Following a change in the law in 2022/23, separation and divorce are now included in the same proceedings although they remain distinct stages of the process. The husband’s application made a number of allegations about the wife in support of his claims in respect of the children and of his prospective challenges to any financial claims the wife might make for maintenance. I do not propose to set these out but I note that the judge described the husband as having made some “unpalatable allegations and claims” in the Italian proceedings, a matter referred to by the judge when considering

the issue of forum. The wife filed a reply in which she did not dispute jurisdiction but asked the court “to declare the international *lis pendens* of the divorce proceedings in favour of the English court” (emphasis in original). The reply also sought, on a temporary and urgent basis, orders dealing with residence and contact, occupation of the family home and maintenance for the wife and the children. Additionally, the wife sought permission to relocate with the children to London. A hearing took place in Milan on 25 June 2024. The parties disputed what happened during the course of that hearing (in particular as to whether they initially reached a provisional agreement on interim residence and contact and maintenance) but the outcome was that, although the court invited the parties “to respect the provisional agreement as it emerged at the hearing”, the court made no substantive orders other than to refuse the wife’s application for a stay. The wife appealed that order to the Supreme Court of Cassation which, in turn, led to the first instance Italian court staying the proceedings on 12 July 2024. Judgment Approved by the court for handing down. Ferrara v Ferrara 18. 19. 20. 21. 22. 23. On 11 July 2024, the wife applied in England for maintenance pending suit and for a legal services payment order. On 19 July 2024, the court gave directions including that the case was allocated to the High Court. An application by the husband to lift the stay of the Italian proceedings was dismissed on 10 September 2024. On 25 January 2025, Garrido J dismissed the husband’s application for an interim stay of the English proceedings and determined the wife’s July 2024 applications. The wife’s application for maintenance pending suit was dismissed but an LSPO was made in the sum of £175,000. The parties obtained expert evidence from Italian lawyers which was summarised in a composite schedule. This dealt with a number of issues one of which was the likely duration of the divorce proceedings which, as at the date of the hearing before the judge, remained uncertain because of a number of potential procedural issues including the outcome of the wife’s appeal as referred to above. It addressed the “Role of blame/conduct” with the wife’s expert saying that this could affect the wife’s “entitlement to and allowance for maintenance” because, if the court found that the wife “had some responsibility for the marital breakdown, she would not be entitled to maintenance payments for herself”. The husband’s expert said that, if the wife was held responsible for the separation, she would not be entitled to maintenance at the separation stage but she would not lose the right to alimony. Both experts were, however, agreed that the separation of property agreement could not be challenged in Italy and that, as a result, the Italian court’s powers would be confined to maintenance and it would have no power to make any property adjustment or lump sum orders. The Italian courts also have no power to make an LSPO. The hearing to determine the issues of jurisdiction and forum took place before the judge on 1-3 April 2025. The judge heard extensive oral evidence from the parties. On 12 May 2025, the Italian Supreme Court of Cassation dismissed the wife’s appeal from the order of 25 June 2024 as being inadmissible. This meant that the Italian proceedings were no longer stayed, leaving the court free to deal with interim issues and to grant a decree of separation. We were told that a decree of divorce can be obtained from June 2026 and that the wife has renewed her interim applications in Italy. Written Evidence 24. 25. It is relevant, having regard to the breadth of the husband’s submissions in support of this appeal, to refer briefly to aspects of,

in particular, the wife's statements for the hearing below. This is because those submissions included that the judge made findings and reached conclusions in respect of the wife's domicile which were not based on the evidence. The husband's case in his statements was, in summary, that the parties had "decided to permanently relocate to Milan" in 2019; there "was a clear intention and mutual understanding that the "English chapter" of our life was over, and our family plan was to settle in Italy". He acknowledged that, "at first [the wife] may have been slightly reluctant to move to Italy", but said that "after lengthy discussions and much Judgment Approved by the court for handing down. Ferrara v Ferrara 26. 27. consideration (that she also shared with her mother, as evidenced from the correspondence she disclosed ...), she freely agreed to and accepted the decision to move to Italy in order to start "a new chapter of her life" (to use her own words)". The decision to move "was carefully considered, discussed and agreed by both of us". The wife had been involved in selling the property in London and choosing their home and the children's schools in Milan. Since they moved there, Italy had been "the centre of our family life and where we spend the majority of our time, including most of our holidays". The wife's statements set out what she described as her "long-standing connection with England, spanning the vast majority of my adult life, which I believe demonstrates my clear and settled intention to make England my permanent home". She said that the "move [to Italy] was made with considerable reluctance and was intended to be temporary, acquiescing to my husband's insistence for tax-related reasons. The intention was to return to London after a few years". She "never agreed to a permanent move to Italy"; had been "hugely reluctant to move to Milan and to sell our family home in" London; and the husband had "acted unilaterally" and against her wishes by selling the property. The wife accepted that "we did not discuss specifics" but "it seemed obvious to me" that the move was temporary. She "never understood the temporary move to Italy to be severing my life in London". The wife relied on emails from February 2019 in which, for example, she told her mother that she was worried "we would get stuck there (Milan)". She recounted the husband responding, when she said she "wasn't sure about moving", that "we are moving and it's too late now"; and when she told him that she was worried she "would get stuck in Italy" that he said that "Italy was not a third world country, that you could still get a divorce and move wherever you wanted to with the children". When asked about this during his cross-examination, the husband said that he did not remember the conversation but he did not deny that it happened saying that he had probably "tried to reassure" his wife. In another email to her mother about the sale of the matrimonial home in London, she recounted the husband telling her, "I think that's for me to decide don't you", when she told him that she "didn't think we should" sell their London home. 28. I deal with aspects of the oral evidence below but it is clear that the effect of the parties' respective written and oral evidence was that neither was contending that they had had specific discussions about how long they might stay in Italy and/or if or when they might return to London. Hearing Below 29. 30. It is also relevant, again having regard to the husband's case on this appeal, to consider the parties' respective written submissions to the judge below. They are relevant, in particular, to the scope of the issues raised by the parties and the approach which it was suggested the judge could take when considering the evidence and

determining those issues. The wife's case in respect of domicile was that she had an English domicile of origin or, alternatively, that she had acquired an English domicile of choice by, at the latest, 2001 and that she had not lost this domicile of choice following the move to Italy. The husband's case was that the wife had an Australian domicile of origin and that Judgment Approved by the court for handing down. *Ferrara v Ferrara* 31. 32. she had never acquired a domicile of choice in England or, if she had, she acquired a new domicile of choice in Italy when the family moved to live there in 2019 and/or she lost her English domicile of choice at that time and her domicile of origin had revived. In her written submissions, on the issue of domicile, the wife referred to a number of authorities including the summary in Arden LJ's (as she then was) judgment in *Barlow Clowes International plc v Henwood* [2008] EWCA Civ 577, [2008] BPIR 778 ("*Barlow Clowes*") and *IRC v Bullock* [1976] 1 WLR 1178. In support of her case that she had acquired a domicile of choice in England, the wife relied on her long connections with England and submitted that her "life from 1992 onwards shows a permanent commitment to living in England". As to whether the wife had lost her English domicile, the submissions relied on what was said in *Barlow Clowes*, at [20], namely that a "domicile of choice is lost when the subject both ceases to reside in the relevant country and gives up the intention permanently or indefinitely to reside there". Although this referred to "permanently or indefinitely", the written submissions used just "permanently". It was submitted that, to lose this domicile, leaving England was "not enough", it "must be a move made with the intention of leaving [England] permanently". The wife relied on her evidence that "she did not want to leave London and was unhappy about the move" and it was submitted that the "move was not taking place because she had an intention of living in Italy permanently. The move took place because H told W she had no choice". Her "understanding was that the move was not permanent but only temporary" and she had not abandoned her "long-standing domicile of choice in England". 33. On the issue of forum, the relevant provisions of the Domicile and Matrimonial Proceedings Act 1973 ("the DMPA 1973") were cited as were a number of authorities including *De Dampierre v De Dampierre* [1988] 1 AC 92 ("*De Dampierre*"). The wife submitted that: "The statute and the case law set out above are clear that the granting of a stay on proceedings is a broad judicial discretion to be exercised after a wide survey of all the facts of the case under consideration. There are two distinct stages to the exercise:

- (1) The party seeking the stay (H in this case) has the burden of showing that there is some other available forum which *prima facie* is clearly more appropriate for the trial of the case.
- (2) If that test is satisfied, the burden shifts to the other party (W in this case) to show that justice requires that the stay is not granted." 34. A number of factors were relied on including the parties' extensive and longstanding connections with London and the differences between the proceedings in Italy and those in England which meant that the courts in Italy were not yet dealing with the divorce while in England the divorce application could proceed without delay. It was submitted that there was a wide range of "significant factors which collectively Judgment Approved by the court for handing down. *Ferrara v Ferrara* pointed very firmly to England being the appropriate forum". These included that

the Italian court would “give full effect to the” separation of property agreement and that, if the divorce (and financial remedy) proceedings were stayed and the proceedings continued in Italy, the wife would still be able to bring a further claim in England pursuant to Part III of the MFPA 1984 which would “clearly [be] an unnecessary duplication of costs and time”. It was “far more appropriate and convenient to simply deal with the divorce and financial matters once and finally in the English court”. 35. In his written submissions for the hearing below, the husband only briefly dealt with the law and suggested that SA v FA [2022] 3 FCR 638 was a “very good ... starting point in relation to the principles applicable to both” domicile and forum. Other authorities, mentioned solely by name, were Barlow Clowes, AN v NO [2024] EWFC 94 and De Dampierre. 36. The husband’s case in respect of domicile was as follows: “(i) domicile of origin: either W (most likely) has a domicile of origin in Australia and/or there is insufficient evidence to enable this court to make a finding that W has a domicile of origin in England and Wales (the burden being on W to prove that she does have such a domicile of origin in England and Wales, which W accepts depends on her ability to prove that W’s grandfather and also W’s father both had a domicile of origin in England and Wales, and that they respectively had not acquired a domicile of choice anywhere else when W’s father was born and W was born); (ii) domicile of choice: either W did not acquire a domicile of choice in England and Wales before the parties moved with the two children to live permanently and/or indefinitely in Milan in 2019, and/or, if she did, W lost that domicile of choice in England and Wales when the parties left London to move to live permanently and/or indefinitely in Milan, where W acquired a new domicile of choice in Milan which she still retains (because she continues to live there); (iii) in this regard, if (as W asserts, and contrary to H’s case) W did acquire a domicile of choice in England and Wales before 2019, which (as H asserts) W lost in 2019 when the parties left London, then if (as W asserts, and contrary to H’s case) W did not acquire a new domicile of choice in Milan, for whatever reason, including, for example, (as W asserts) because W did not form an intention to live permanently and/or indefinitely in Milan (which H denies), then W’s domicile of origin would revive, which, as indicated above, H says was either in Australia and/or which W has failed to prove is a domicile of origin in England and Wales.” (emphasis added) I have noted the use of the expression “permanently and/or indefinitely”, with the words being used at least in part interchangeably, because of the husband’s submission on this appeal, as referred to above, that the judge’s decision was flawed Judgment Approved by the court for handing down. Ferrara v Ferrara because he considered it necessary for the wife to have a settled intention to live in Italy permanently. 37. It was then submitted that: “plainly, all relevant matters must be taken into account, and much will, or could, depend on the court’s assessment of the parties’ evidence and on whatever findings of fact are made and/or this court decides are necessary to decide.” (emphasis added) This is relevant to the submission made in support of the husband’s appeal that the judge disregarded the evidence and failed sufficiently to address the factual disputes between the parties. It expressly recognised the potential significance of the judge’s assessment of the parties’ (oral) evidence and that it was for the judge to decide what findings of fact were necessary. 38. Also relevant is the further submission: “As the pre-reading demonstrates, the huge volume and wide nature and extent

of the factual disputes between the parties is very significant indeed ... and this court might incline to conclude that the parties have set this court an impossible task in terms of the findings of fact which it is suggested are necessary having regard to the issues that have to be decided (see above and also below) and to the limited time allocated for this hearing (during which only 3 hours have been allocated to each counsel for cross-examination across a huge range of issues).” If I might say so, this was clearly a realistic observation which is further reflected in the submission that “this case is not going to be decided by this court weighing up evidential grains of sand and deciding which side of the scale is marginally heavier, and H says that taken as a whole, save for the mere passage of time (which is rarely regarded as a strong indicator), none of the evidence on which W seeks to rely establishes that W had acquired a domicile of choice in England and Wales before the family relocated (H says permanently) to live in Milan, where they have remained living for in excess of 5½ years.” 39. On the issue of whether the wife had retained an English domicile of choice, the husband’s submissions descended into detail, in particular as to the move to Italy (which I do not propose to set out), but it was again suggested that the judge’s task could not “be an exercise in weighing grains of sand”. The essential dispute was as to the wife’s intentions and between her case that the move to Italy was not permanent or indefinite but was temporary and the husband’s case that it was permanent or indefinite. As to this, it was submitted by the husband that “there is much in W’s evidence in support of her case ... which is very subjective and largely self-serving” and that there was “no evidence at all to gainsay H’s evidence that the move to Milan was intended to be permanent (and/or for an indefinite period) and/or to substantiate W’s assertion that it was only ever going to be temporary”. Judgment Approved by the court for handing down. Ferrara v Ferrara 40. 41. In respect of forum, it was submitted by the husband that Italy “is the obviously most convenient court to deal with all matters in dispute between the parties” including because of the family’s connections with Italy and because only the Italian courts had jurisdiction to deal with the occupation of the family home in Milan and with welfare issues concerning the children (including the wife’s relocation application). In addition, interim financial arrangements would be dealt with in Italy following this court’s order of 24 January 2025. In respect of the separation of property agreement, the husband accepted that the wife’s “complaints” in relation to the agreement and “the Italian law evidence in relation to the approach that would be adopted by the Court in Milan are factors to be weighed in the balance when considering H’s application for a stay”. It was also accepted that “plainly this court must have regard” to the “range of potential orders available to the” Italian court and to the English courts’ “residual powers” under the MFPA 1984, subject to the wife being granted leave. 42. During the course of the hearing the judge questioned “whether there is any difference between permanence and indefinite and if there is not, then why are two separate words used?”. Mr Bojarski responded: “It would be odd if they meant significantly different things and I do not think I seek to argue against what Cohen J says in AN v NO in terms of his take on it. What one is looking for as he said in the decision is that one is looking for a fixed intention to reside for the indefinite future. This is in terms of the establishment -- bearing in mind this is in terms of the establishment of a domicile of choice

and is the very point I want to underline in a moment and I will come back to that one has to take note of the fact the test for a family is phrased subtly My main differently to that, but importantly differently. answer to your Lordship's question is that there is not a significant difference of import in relation to the two terms. They are both referred to by both Barlow Clowes and Cohen J as a fixed intention. That is the important thing.” (emphasis added) Mr Bojarski went on to refer to Kelly v Pyres [2018] EWCA Civ 1368, [2019] 1 FLR 62 in which King LJ, at [69], after quoting from Barlow Clowes, observed that the reference in that case to “ending his days in that country” had to be “considered in the context of the requirement for there to be a fixed intention to reside in a country for the indefinite future”. He then said: “Essentially, what Kelly v Pyres appears to be saying is that the living out your last days quote is a tool by which you might be able to find a fixed intention rather than being a requirement. So the fixed intention is the requirement and that is a way of illustrating it rather than being the test itself.” Judgment Below Judgment Approved by the court for handing down. Ferrara v Ferrara 43. At the outset of his judgment, the judge set out the issues which required determination. They were: “[6] In these circumstances, the questions for determination by me remain:

- (i) Has Mrs Ferrara satisfied me that she was domiciled in England when she made her application, either because England is her domicile of origin or domicile of choice, thereby establishing the jurisdiction of this Court? If not, the application comes to an end. (ii) If she has done so, then has Mr Ferrara satisfied me that Italy is clearly the more appropriate forum in which to pursue the divorce and associated financial remedy? If not, I must refuse to stay the application. (iii) If he has done so, then has Mrs Ferrara satisfied me justice requires a stay to be refused.” There is no criticism of this formulation. 44. He then set out the legal approach to the determination of these issues: “[7] In answering each question, the standard of proof is the ordinary civil standard of the balance of probabilities. I do not perceive any conflict between the parties as to the law that I must apply. Regarding the sophisticated concept of domicile, I am invited to adopt the summary of the law in the judgment of Arden LJ (as she then was) in Barlow Clowes International Ltd v Henwood [2008] BPIR 778 @ [8] – [21]. If considering forum, I am invited to adopt the summary of the legal principles to be derived from authority undertaken by HH Judge Hess in SA v FA [2022] EWFC 115 @ [20]. I accept both invitations and apply the law as set out in those judgments without the need to copy and paste it here.” 45. 46. The judge then set out a very brief summary of the history, as quoted above. The judge next recorded his “impressions of the parties as witnesses”. In summary, he found that the wife “was an entirely straightforward witness” and, for the reasons explained in his judgment, concluded that: “she had done her best to assist the court by being a truthful and reliable historian”. In contrast, he found the husband an unreliable witness such that he did not “have sufficient confidence to be able to rely upon his evidence, unless agreed by Mrs Ferrara or corroborated in some other way”. 47. He then summarised the approach he proposed to take to the evidence: “[13] As was repeatedly acknowledged on behalf of Mr Ferrara, a proportionate approach to the evidence does not permit the parties to challenge every piece of evidence nor for the court to weigh

every “evidential grain of sand”. I have had Judgment Approved by the court for handing down. Ferrara v Ferrara regard to all the written and oral evidence, and have examined the broad canvass of the parties’ circumstances, but necessarily focus in my conclusions on that which I consider is determinative of the questions before me.” 48. 49. On the issue of domicile, the judge first rejected the wife’s case that she had an English domicile of origin. This depended on the domicile of origin of her father which was “simply inadequately evidenced”. He then set out his conclusion that, at “some point after 1995 ... and in any event well before 2019”, the wife “acquired a domicile of choice in England, by a combination of her residence here and her intention to remain here permanently and indefinitely” (it can already be seen that the judge was using these words interchangeably). The judge then set out the matters to which he had “paid particular regard”. I set them out in full and note that they include a number of findings: “[16] I accept that:

- (i) England is the country with which she has had the closest connections throughout her adult life and certainly during the majority of the marriage. (ii) As he confirmed in evidence, Mr Ferrara had no intention of moving the family from England until after the outcome of the Brexit referendum was known in 2016. (iii) Mrs Ferrara attained the age of 18 on 8 October 1992 whilst in England where she remained primarily anchored for the next 27 years. Importantly, she decided not to return to Australia with her parents in 1995. (iv) Her modelling career was based in London, her main agency was here and her most persisting ties were here, despite moving internationally for work until 2000.
- (v) Thereafter she studied and worked in London, meeting Mr Ferrara here in 2004 before cohabiting in London before and after the 2008 marriage in Italy. She lived in London uninterrupted for 18 years. (vi) The parties’ children were born here and they commenced their education here. (vii) Her closest friends are in England, she is still registered with a model agency in London and with health professionals here. (viii) In sum, every aspect of Mrs Ferrara’s adult life has demonstrated a permanent commitment to living in England that is enhanced by her obvious reluctance to move to Italy in 2019. Judgment Approved by the court for handing down. Ferrara v Ferrara

[17] In my judgment this is not undermined by:

- (i) Mrs Ferrara applying successfully for an Italian passport in 2017 but not a British one until 2024. British citizenship may have enhanced her claim to domicile of choice here but its absence is an insufficient counterweight to the factors set out above. (ii) Visiting her family in Australia every other year for one month. (iii) The principle that the mere passage of time of ordinary residence in England is not by itself enough to establish a domicile of choice. (iv) Her failure to acquire property in London from her limited resources.” It can be seen that the judge summarised the elements of the history which, in his view, led to the conclusion that the wife had “demonstrated a permanent commitment to living in England”. 50. The judge was “equally satisfied that Mrs Ferrara did not lose [her English domicile of choice] when she moved to Italy in 2019 or at any time since then”. This was “for the following reasons”: “[19] I accept that:

- (i) Once acquired, a domicile of choice is not easily surrendered. Residing somewhere else is not, by itself, sufficient. (ii) She moved to Italy reluctantly, having been presented with a fait accompli by her husband. Her participation in identifying a suitable family home to rent and the children's school does not, to my mind, undermine this. Given that she had little choice, she was willing to try to make the move work, but this is a world away from having a settled intention to live there permanently. (iii) She consistently asked Mr Ferrara not to sell the FMH in London. She was nevertheless obliged by him to participate in the marketing of the property. (iv) "He is not the kind of man who you disagree with" (Mrs Ferrara's evidence), which is entirely consistent with Mr Ferrara's presentation in the witness box. He accepted in evidence that his wife did not want to move.
- (v) Regardless of her husband's wishes, Mrs Ferrara is entitled to determine her own domicile. Judgment Approved by the court for handing down. Ferrara v Ferrara (vi) There is no requirement for a clear plan to return to the domicile of choice for it to be retained. It is sufficient that Mrs Ferrara has an intention to do so from her residence in Italy that has the hallmarks in her mind of being temporary.

[20] In my judgment this is not undermined by

- (i) Mrs Ferrara not returning to visit England between 2019 and the start of these proceedings. (ii) Her possession of an Italian passport." 51. The judge then dealt with the issue of forum. He first set out his conclusion that he had "not been satisfied by Mr Ferrara that Italy is clearly the more appropriate forum of the two competing jurisdictions having come to the following conclusions". These were: "[23] I accept that:
  - (i) Even after the outcome of the appeal, the Italian court is not yet dealing substantively with the parties' divorce, and there are many likely hurdles in procedure and consequent delay before it will be able so to do and come to a final determination. (ii) In contrast, here the application can proceed to conditional order without significant delay and directions can be given to progress the application for a financial order to at least a first appointment next term. (iii) Mr Ferrara has shown himself to be well capable of fully participating in proceedings here, including by giving evidence fluently in English, something that Mrs Ferrara is unable to match in Italy. The documents support her evidence that she was unable to effectively participate in proceedings in Italy in June 2024. Both interpretation of oral evidence and translation of documents will be required in Italy but not here. (iv) Both parties' closest connections have been with England since 1992, representing most of Mr Ferrara's working life. I have not been persuaded that his business has lost its substantial connections with England, which relatively recently had its main trading centre in London and still has an office there.
- (v) Mr Ferrara does not declare any substantial assets in Italy, which appear to be in Luxembourg. There are indications, although not more than that, of assets in or controlled in Jersey, and a likelihood that he has pension assets in England, which would not be subject to Italian orders. (vi) The family home was owned in London until 2023, and there is no

equivalent owned property in Italy. Judgment Approved by the court for handing down. Ferrara v Ferrara (vii) Mrs Ferrara's working experience is anchored in London, and it is where she has the best chance of resuming employment. (viii) The children's primary language is English, they attend an English-speaking school, and it has already been identified by the Italian court that they will require an interpreter if they are to participate in proceedings there. (ix) Proceeding in Italy may well not prevent a future claim by Mrs Ferrara under part III of the MFPA 1984, that would lead to unnecessary duplication and delay.

- (x) There is a mechanism to ensure that Mrs Ferrara can afford equality of arms in representation in proceedings here that is not mirrored in Italy. (xi) It hardly needs saying that all the circumstances of the case will be addressed in proceedings here, including the enforceability of the separation of assets agreement upon which Mr Ferrara seeks to rely. In contrast, Mrs Ferrara would be prevented from challenging the agreement before the Italian court. Of course, this fact alone would not necessarily deny Mr Ferrara a stay, but it forms part of a much larger constellation of factors (above) that have led to him failing to discharge the burden placed on him.

[24] In my judgment, this is not undermined by

- (i) Mr Ferrara's last minute offer to withdraw some of his more unpalatable allegations and claims with the Italian proceedings, which was in any event difficult to pin down with precision and I find is likely to be a tactical manoeuvre on his part late in the day in an attempt to bolster his argument before me. (ii) The current residence of the parties and children in Italy, which is undeniably significant, is simply of insufficient weight to offset the important factors at paragraph 23 above. Whilst the children are habitually resident in Italy, issues regarding parental responsibility and their welfare must be resolved in Italy, but there is an insufficient nexus between the two sets of proceedings to enable Mr Ferrara to prove that Italy is clearly the better forum for that reason. It is not unusual in England for children proceedings to be determined by a different judge with different advocates to the divorce and financial remedy proceedings."

## Submissions

- 52. The husband's criticism of the judgment below is extremely broad in its scope and it could be said that the submissions were somewhat diffuse. I appreciate, of course, Judgment Approved by the court for handing down. Ferrara v Ferrara that one of the husband's main complaints about the judgment below is that it was seriously deficient in its consideration of every aspect of the case. However, it would be neither appropriate nor necessary to deal with all the points raised in the appeal. I have sought to summarise the key arguments but, I stress, this is only a summary and, when determining the appeal, I have had regard to all of the husband's arguments. The husband challenged the judgment in three main respects. First, as articulated by Mr Marshall in his oral submissions, his "overriding umbrella complaint [was] in relation to the inadequacy of the judgment" which, he submitted, was

“seriously deficient” in respect of its consideration of the facts and the law and of the parties’ respective arguments as well as its analysis and reasoning which were said to be insufficient to support the judge’s conclusions. It was submitted that the judgment failed sufficiently to explain “what the judge has found and what he has concluded, as well as the process of reasoning by which he arrived at his findings and then his conclusions”. This challenge was reflected in grounds 5, 6 and 7 which went as far as contending that the judge failed to “resolve any material factual disputes and/or to make any primary findings of fact” (emphasis added). It was also reflected in the grounds challenging the judge’s decisions on domicile and forum. For example, the contention that the judge had disregarded “the written and oral evidence” such as the evidence about the wife’s “attitude towards the decision to relocate to live in Milan in 2019” and “her knowledge of, and participation in, the sale of the family home, almost none of which is referred to by the Judge in his judgment”. Secondly, in grounds 1 and 2, the husband challenged the judge’s decision that the wife had not lost her domicile of choice in England. It was suggested, in support of this challenge, that “there is a greater latitude [in the Court of Appeal’s approach] where the findings in issue on an appeal are not primary facts but inferences from the proved facts”. As explained below, I do not accept this submission. 53. 54. 55.

56. More specifically, it was submitted in ground 1 that the judge’s use of the word “permanently” in paragraph 19(ii) showed that he had applied the wrong legal test and considered that, in order to lose her domicile of choice in England, the wife needed to have formed a settled intention to live in Italy permanently. As a result, it was submitted that he had not considered whether, after 2019, the wife “intended to remain living in Italy permanently or indefinitely” and/or whether she had “retained an intention to remain living in England permanently or indefinitely and/or whether she intended to return to England” (emphasis in original). 57. Ground 2 contended that, in determining that the wife had not lost her domicile of choice in England, the judge “was wrong/erred ... by disregarding the written and oral evidence, including the undisputed facts ... In particular, at paragraphs 19 and 20 of the judgment, by way of example only, the Judge (i) erred in concluding that W consistently asked H not to sell the FMH in London and/or that W was obliged to participate in the marketing of the property; (ii) failed to consider whether or make findings that W and H had discussed returning to live in England after 2019 or at any time in the Judgment Approved by the court for handing down. *Ferrara v Ferrara* future; (iii) wrongly overlooked or ignored as irrelevant that W did not seek to acquire a British passport until 2024 (i.e. in the course of this litigation), whilst she acquired an Italian passport in 2017 and/or had since 2019 only returned to England during the course of the proceedings (for the purpose of attending court hearings) and/or that the two children had only returned to England once since August 2019.” It was also submitted that the judge was wrong to rely on the wife’s “subjective intention to return to live in England at some unspecified point in the future”. The judge should have followed Arden LJ’s observation in *Barlow Clowes*, at [19], that “the court should not rely on ... statements [about intention] unless corroborated by action”. The judge should, therefore, have approached the wife’s own statements “with

caution”.

58. Mr Marshall also advanced submissions in a Supplemental Skeleton based on *Ramana v Kist-Ramana* [2025] EWCA Civ 1022, [2025] 4 WLR 120 (“*Ramana*”), a decision which post-dated the judgment in this case. That decision dealt with the approach the court should take to contingencies when determining whether a person had the required intention for the purposes of retaining or acquiring a domicile. I did not find these submissions of much assistance because this issue (contingencies) did not feature or certainly did not feature significantly in the hearing below. It would have needed to be addressed properly in the evidence and it was only touched on very briefly in the evidence, largely in the wife’s cross-examination of the husband.
59. 60. The third challenge in grounds 3 and 4 was to the judge’s decision as to the appropriate forum. The husband accepted in his Skeleton Argument for this appeal, as he had done below, that the law is “properly and conveniently summarised” in the decision of *SA v FA*. Express reference was made to two aspects of that summary, namely, at [20(i)], that “Fairness and convenience depends of the facts of each case and all the circumstances have to be considered”; and , at [20(ii)], that “The court will consider what is the ‘natural forum’, that is the forum with which the parties have most real and substantial connection” (emphasis added). It was submitted, in respect of the former, that the judge “conspicuously failed to consider all the facts and all the circumstances in this case” (emphasis in original). In respect of the latter, it was submitted that the issue was to be determined at the date of the application and “not solely based on historical associations or connections or consideration of where the parties used to live” (emphasis added). I have emphasised the use of the word “all” and of the word “solely” because the husband was clearly acknowledging the breadth of the factors/circumstances of potential relevance and that “historical associations or connections” were relevant factors. It was not being submitted that historical connections were irrelevant, but that the judge had failed properly to take into account other factors such as convenience and expense.
61. This is relevant, in particular, to one aspect of the appeal which developed during the course of the hearing, namely whether the judge had taken irrelevant matters into account when determining the issue of forum. This was not raised by Mr Marshall until very late into his oral submissions when, in response to questions from the court and in contrast to his written submissions, he suggested that paragraphs 23(vi), (vii) Judgment Approved by the court for handing down. *Ferrara v Ferrara* 62. and (viii) (and possibly part of paragraph 23(iv)) and were largely “historical” and irrelevant. As to the substance of the judge’s decision on forum, ground 4 contended that the judge was wrong to rely on the matters set out in paragraph 23 of the judgment, which were said not to be supported by the evidence, and/or was wrong to dismiss the matters listed in paragraph 24. The husband’s central submission was that the judge’s determination was “plainly wrong” having regard to a number of factors which “inexorably” led to the conclusion that Italy was the more appropriate forum “to determine all matters” (emphasis added). Those factors were: (i) the family had lived in Italy since 2019 and had no home in London; (ii) the wife could not relocate to London with the children without the permission of the Italian court and, accordingly, the family might continue to

live in Italy; (iii) the Italian courts have exclusive jurisdiction to deal with child welfare issues (and the Judge was plainly wrong to suggest there was ‘insufficient nexus’ between the two sets of proceedings); (iv) the other matters in dispute between the parties (e.g. occupation and funding of the family home) could only be decided by the Italian courts; (v) the wide range of interim financial applications pursued by the wife in Italy, including for rent, spousal and child maintenance and school fees; (v) the range of financial remedies available to the Italian court; and (vi) “the availability of financial remedies (if appropriate) in England under Part III of MFPA 1984”. The husband also relied on, what he characterised as, the wife’s “obvious litigation misconduct” in Italy.

63. Mr Bojarski submitted that the husband’s appeal was merely repeating the arguments he had advanced at first instance and which had failed. In response to the challenges to the adequacy of the judgment, he relied on a number of authorities including *Piglowska v Piglowski* [1999] UKHL 27, [1999] 1 WLR 1360; *English v Emery Reimbold & Strick* [2003] EWCA Civ 605, [2002] 1 WLR 2409 (“*English v Emery Reimbold*”); and *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413, [2019] 4 WLR 112 (“*Simetra*”). 64. He submitted that there were relatively few material factual issues between the parties and that the wife’s evidence in her witness statements had “by and large” not been challenged in cross-examination. The judge had sufficiently addressed the “building blocks” as referred to in *Simetra*. The structure and content of the judgment reflected the fact that this was not a case in which there was any dispute about the law and that it followed a relatively brief hearing of 2½ days. The judge had correctly identified the three issues he had to determine in paragraph 6; had applied the correct legal test to those issues; had found sufficient facts; and had sufficiently explained and justified his evaluative decision in respect of each issue. It was, Mr Bojarski submitted, also unfair for the husband to criticise the approach the judge took to the evidence when, in essence, he had adopted the “proportionate approach” (paragraph 13 of the judgment) proposed by the husband. 65. He also submitted that the husband should have raised the alleged deficiencies with the judge following provision of the draft judgment. The judge was not asked to amplify or clarify any alleged deficiency nor to provide any further reasons. Additionally, he was not asked for permission to appeal which would have provided an opportunity for the judge to address the matters now relied upon. Judgment Approved by the court for handing down. *Ferrara v Ferrara* 66. 67. 68. 69. 70. As to the law, Mr Bojarski submitted that it was unnecessary for the judge to deal with it at any greater length because there had been no substantive dispute between the parties as to the proper legal approach to both domicile and forum. This was accurately identified by the judge by reference to *Barlow Clowes and SA v FA*. The key issues the judge had to determine in respect of domicile were whether the wife had acquired an English domicile of choice and whether, if she had, she had lost this following the move to Italy because she had given up her intention to reside here permanently or indefinitely. The key issue in respect of forum was whether the husband had established that Italy was clearly the more appropriate forum. The judge had addressed these issues in the judgment, showing that he clearly had the correct test in mind. In respect of the husband’s challenge to the

judge's decision on domicile, Mr Bojarski emphasised that this issue depended on the judge's determination of the wife's subjective intention. The judge's approach properly reflected that, as set out in *Barlow Clowes* at [68], the "ultimate fact in issue was [the person's] intention" and, at [94], that "as a general proposition the acquisition of any new domicile should in general always be treated as a serious allegation because of its serious consequences". His approach also accorded with observations in the later decision of *Ramana* which confirmed that the judge was right when he said that there was "no requirement for [there to be] a clear plan to return". The judge had addressed a range of factors in paragraphs 16 to 20 which included that wife's English domicile of choice was established "well before 2019"; that "every aspect of [the wife's] adult life ... demonstrated a permanent commitment to living in England"; and that the wife "did not want to move" to Italy. The judge's reference to "permanently" in paragraph 19(ii) had to be read in the context of the whole of paragraph 19. The judge was not using this as part of the test he had to apply. This could be seen, in particular, from paragraph 19(vi), in which the judge set out his key conclusion that the wife had retained the intention of returning to England from what she considered to be a temporary residence in Italy. This was, Mr Bojarski submitted, a clear finding by the judge that the wife retained a "bona fide and real" subjective intention to return to England. Accordingly, she had not lost the intention required to retain her English domicile of choice. In summary, Mr Bojarski submitted that, as with any finding of fact, the judge's assessment of the witnesses was of central importance to his conclusion as to the wife's subjective state of mind and as to whether she had lost her English domicile of choice. Accordingly, unless the judge's finding as to the wife's state of mind could be successfully challenged, this was fatal to the husband's appeal on the issue of domicile. There was, he submitted, no basis on which the judge's finding and determination could be successfully challenged especially having regard to the fact that "cogent and clear evidence" is required to establish a change of domicile: *Ramana*, at [75]. On the issue of forum, Mr Bojarski submitted that the judge had applied the right test and had been entitled to conclude that Italy was not clearly the more appropriate forum. It was a broad evaluative exercise with a large range of potential factors. Contrary to the husband's case, the judge had clearly had the expert Italian evidence in mind (for example, the judge referred to its effect in paragraphs 23(i), (x) and (xi)) and there was nothing to suggest that the judge did not take into account the other Judgment Approved by the court for handing down. *Ferrara v Ferrara* factors relied on by the husband. The fact that the family live in Italy and might continue living in Italy and that only the Italian courts had jurisdiction to determine some matters, in particular welfare proceedings concerning the children, did not mean that Italy was the more appropriate forum. There were other substantive factors, identified by the judge, which weighed against Italy as being the more appropriate forum.

71. Mr Bojarski initially submitted that the judge had been entitled to take into account the factors listed in paragraph 23. However, during the course of his oral submissions and, as with Mr Marshall, in response to questions from the court, he acknowledged that it was difficult to see the relevance of the factors referred to by the judge at paragraph 23(vi) (about

ownership of the family home) and paragraph 23(viii) (about the children's primary language being English). 72. As for the relevance of Part III of the MFPA 1984, Mr Bojarski submitted that, while Part III would be available in the event of a stay being granted, the judge was right to take the view that it would be futile to stay the English proceedings when it was "inevitable" that the wife would have a substantive claim under Part III having regard, in particular, to the effect of the property agreement in Italy. This, he submitted, was the point being addressed by the judge in paragraphs 23(ix) and (xi), when read together, but it was, in any event, a powerful factor which supported the conclusion that Italy was not the more appropriate forum. The Law 73. In *English v Emery Reimbold*, the Court of Appeal addressed challenges to the adequacy of a judge's reasons: "[17] As to the adequacy of reasons, as has been said many times, this depends on the nature of the case: see for example *Flannery's case* [2000] 1 WLR 377, 382. In *Eagil Trust Co Ltd v Pigott-Brown* [1985] 3 All ER 119, 122 Griffiths LJ stated that there was no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case: "When dealing with an application in chambers to strike out for want of prosecution, a judge should give his reasons in sufficient detail to show the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. I cannot stress too strongly that there is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what he says shows the parties and, if need be, the Court of Appeal the basis on which he has acted ... (see *Sachs LJ in Knight v Clifton*

[1971] Ch 700, 721)."" The purpose is so that the parties and, if necessary, the Court of Appeal can, at [19], "understand why the judge reached his decision". There is no "template" and the judgment need not be lengthy provided the judge deals with "those matters which Judgment Approved by the court for handing down. *Ferrara v Ferrara* were critical to his decision"; if "the critical issue was one of fact, it may be enough to say that one witness was preferred to another". 74. I next deal with Mr Marshall's submission that "there is greater latitude where the findings in issue on an appeal are not primary facts but inferences from the proved facts". I do not accept this submission. The Court of Appeal takes the same general approach in respect of primary findings, inferences from those findings and evaluative determinations. For example, in *Re R (Children) (Reunite International Child Abduction Centre intervening)* [2015] UKSC 35, [2016] AC 76, Lord Reed said, at [18], in respect of the multi-factorial evaluation of habitual residence: "Finally, it is relevant to note the limited function of an appellate court in relation to a lower court's finding as to habitual residence. Where the lower court has applied the correct legal principles to the relevant facts, its evaluation is not generally open to challenge unless the conclusion which it reached was not one which was reasonably open to it." And, in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29 Lewison LJ said, at [114]: "Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences

to be drawn from them.” (emphasis added) This passage was expressly approved by the Supreme Court in *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8, at [48], before adding, at [49]: “That does not, however, mean the appeal court is powerless to intervene where the judge has fallen into error in arriving at an evaluative decision such as whether an activity was or was not targeted at a particular territory. It may be possible to establish that the judge was plainly wrong or that there has been a significant error of principle; but the circumstances in which an effective challenge may be mounted to an evaluative decision are not limited to such cases. Many of the important authorities in this area were reviewed by the Court of Appeal in *In re Sprintroom Ltd* [2019] EWCA Civ 932, [2019] BCC 1031, at paras 72–76. There, in a judgment to which all members of the court (McCombe LJ, Leggatt LJ and Rose LJ) contributed, the court concluded, at para 76, in terms with which we agree, that on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out the balancing exercise afresh but must ask whether the decision of the judge was wrong by reason of an identifiable flaw in the judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take into account some Judgment Approved by the court for handing down. *Ferrara v Ferrara* material factor, which undermines the cogency of the conclusion.” 75. 76. 77. The parties referred to a number of cases on the issue of domicile. These included *Udny v Udny* (1869) LR 1 Sc & Div 441 (“*Udny*”) and, as referred to above, *Barlow Clowes, AN v NO and Ramana*. The husband, rightly, does not seek to challenge the judge's determination that the wife had acquired a domicile of choice “well before 2019”. He only challenges the judge's determination that the wife had not lost this domicile of choice by the date on which she made her divorce application in England. On that issue, the husband had the burden of proof. As to the approach the court should take to the evidence, it is right that the scope of the potentially relevant evidence is extremely broad. This is expressed in Rule 13 in *Dicey, Morris and Collins on the Conflict of Laws*, 16th ed 2022 (“*Dicey*”), at [6R- 049]: “Any circumstance which is evidence of a person's residence, or of his or her intention to reside permanently or indefinitely in a country, must be considered in determining whether he or she has acquired a domicile of choice in that country.” However, as *Dicey* then goes on to say, at [6-051], quoting from *Sekhri v Ray* [2014] EWCA Civ 119, [2014] 2 FLR 1168: “That said, “it is not a requirement that the trial judge should slavishly list each and every such factor. He has a responsibility to look at the contours of the case and highlight the prominent elements that, in his view, fall for consideration and which may be determinative of the outcome.”” 78. In this context, it is also relevant to refer to the often-quoted summary of the principles applicable to appeals in *Lewison LJ's* judgment in *Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48, at [2], which include: “(i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong. (ii) The adverb “plainly” does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached. (iii)

An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact Judgment Approved by the court for handing down. *Ferrara v Ferrara* that a judge does not mention a specific piece of evidence does not mean that he overlooked it. (iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

- (v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable. (vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract." (emphasis added) 79. The standard of proof is addressed in Dicey, at [6-019]: "The courts have offered different formulations of the standard of proof required to rebut the presumption [that a person continues to be domiciled in the country in which he or she is domiciled]. It is clear that the standard is that adopted in civil proceedings, proof on a balance of probabilities, not that adopted in criminal proceedings, proof beyond reasonable doubt. Although Sir Jocelyn Simon P. said that "the standard of proof goes beyond a mere balance of probabilities" [*Henderson v Henderson* [1967] P. 77 at p. 80], the prevailing view is that of Scarman J. [*In the Estate of Fuld* decd (No.3) [1968] P 675, at p.686] that "two things are clear—first, that unless the judicial conscience is satisfied by evidence of change, the domicile of origin persists; and secondly, that the acquisition of a domicile of choice is a serious matter not to be lightly inferred from slight indications or casual words." Cogent and clear evidence is needed to show that the balance of probabilities has been tipped, and this is true whether the issue is the acquisition or loss of a domicile of choice [*Barlow Clowes*, at [94]." (emphasis added). This issue was also addressed in *Ramana*, at [37]-[38] and [75], which I quote below. 80. I propose, briefly, to address the question of the difference between permanently and indefinitely because of the manner in which this was considered at the hearing below. As referred to above, Mr Marshall used the expression permanently and/or indefinitely in his written submissions for the hearing below, while Mr Bojarski suggested, in response to questions from the judge, that they might not mean significantly different things. Judgment Approved by the court for handing down. *Ferrara v Ferrara* 81. The position is as set out in Rule 12 in Dicey, at [6R-037]: "Every independent person can acquire a domicile of choice by the combination of residence and intention of permanent or indefinite residence, but not otherwise." (emphasis added) Although I am not persuaded, as explained below, that the judge's use of the word permanently in paragraph 19(ii) was a material error, there is clearly a difference between permanent and indefinite, which is why they are included in this Rule as alternatives. As pointed out by Arnold LJ during the hearing, while the former includes the latter, the latter is not necessarily included within the former. 82. The critical

issue in the present case was whether it was established that the wife had given up or lost the requisite intention which is formulated in Rule 15 in Dicey, at [6R-077], as follows: “(1) A person abandons a domicile of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently or indefinitely, and not otherwise.” This issue was also addressed in *Ramana*, in particular at [45] and [49]-[51]. I quoted Dicey, at [6-078], from *In re Flynn*, decd (No 1) [1968] 1 WLR 103 and from *Qureshi v Qureshi* [1972] Fam 173. It is worth quoting again what was said by Sir Jocelyn Simon P (as he then was) in *Qureshi*, at p.191 C-D: “Thirdly, given the necessary fact of a physical departure from the country of domicile of choice, for its abandonment the animus that must be shown is not necessarily non revertendi; it is sufficient that the residence in the new country is sine animo revertendi; and in this connection there may be a “withering away” of an intention to return to the country of the domicile of choice (see *In re Flynn* [1968] 1 W. L. R. 103, 115 to 117...).” This formulation, without the intention of returning, is a useful guide when the court is determining whether the intention to make a country a person’s permanent or indefinite residence has been lost. 83. I would also emphasise that, as identified by Arden LJ in *Barlow Clowes*, at [68], the “ultimate fact in issue was [the wife’s] intention”. This is, as has often been said, a distinctly subjective exercise. For example, in *In the Estate of Fuld*, decd (No 3)

[1968] P 675 Scarman J (as he then was) noted, at p. 682 F, that the court was dealing with “that most subjective of all fields of legal inquiry - a man’s mind”. 84. Finally, on the issue of domicile, I propose to quote what I said in *Ramana*, in passages relied on by Mr Bojarski: “[74] In conclusion, the nature of the contingency on which an intention is said to be based can, of course, be a relevant factor in the court’s decision. No doubt, also, in some cases this issue will feature more prominently than in others which may justify the court conducting a more detailed investigation of the nature Judgment Approved by the court for handing down. *Ferrara v Ferrara* of the contingency. I would suggest, however, that this should be conducted with a relatively light touch in respect of the likelihood or otherwise of the contingency occurring. Apart from the fact that it is only one factor and that no clear line can be drawn, this reflects the fact that the court is considering the person’s subjective intentions and determining whether it is “bona fide” as it was expressed in *Mark v Mark* [*Mark v Mark*

[2006] 1 AC 98] or a “real intention” as it was expressed in *Bullock*.

[75] I would further suggest that, if the court were to conclude that the intention was bona fide, it would be likely to require cogent evidence for a court to decide that the intention was not “real” because of the nature of the contingency or the likelihood of it occurring. This is because “cogent and clear evidence” is required to establish a change of domicile with the cases showing that, in general terms, if there is a threshold, it is a relatively high threshold before the court is likely to ignore or discount an intention because it is based on a vague or indefinite event. Or, to put it another way, before the court will decide that the intention is not sufficient to prevent the acquisition of a domicile of choice or not sufficient to prevent a

domicile of choice being lost or abandoned.” fff The reference to “cogent and clear evidence” was taken from Dicey at [6-019] (see above). 85. The power to stay matrimonial proceedings (and with them any consequent financial remedy proceedings) is contained in the DMPA 1973, section 5(6) and Schedule 1, paragraph 9, which respectively provide as follows: Section 5(6): “Schedule 1 to this Act shall have effect as to the cases in which matrimonial proceedings in England and Wales ... are to be, or may be, stayed by the court where there are concurrent proceedings elsewhere in respect of the same marriage ...”; and Schedule 1, paragraph 9: “(1) Where before the beginning of the trial or first trial in any matrimonial proceedings ... which are continuing in the court it appears to the court –

- (a) that any proceedings in respect of the marriage in question, or capable of affecting its validity or subsistence, are continuing in another jurisdiction; and
  - (b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for the proceedings in that jurisdiction to be disposed of before Judgment Approved by the court for handing down. Ferrara v Ferrara further steps are taken in proceedings in the court or in those proceedings so far as they consist of a particular kind of matrimonial proceedings, the court may then, if it thinks fit, order that the proceedings be stayed or, as the case may be, that those proceedings shall be stayed so far as they consist of proceedings of that kind.
- (2) In considering the balance of fairness and convenience for the purposes of sub-paragraph (1)(b) above, the court shall have regard to all the factors appearing to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed, or not being stayed...” It can be seen that sub-paragraph 2 expressly provides that the court shall have regard to all the factors appearing to be relevant. 86. 87. It was not disputed that, as set out by the judge, the issue he had to determine was whether Italy was “clearly the more appropriate forum”. The summary of the law in SA v FA, which the parties relied on at the hearing below as being an accurate summary, is as follows: “[20] Guidance on how these statutory provisions should be applied can be found in the judgments in, for example, *De Dampierre v De Dampierre* [1988] AC 92 ..., *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 ...and *Chai v Peng* ... [2015] 2 FLR 412. The following principles emerge from these judgments and which are relevant to the present case:-
- (i) Fairness and convenience depends on the facts of each case and all the circumstances have to be considered. The court should take a broad view of all the facts and circumstances, not just those directly relating to the litigation. (ii) The court will consider what is the 'natural forum', that is the forum with which the parties have most real and substantial connection. These will include not only factors affecting convenience and expense (such as the availability of witnesses), but also other factors such as the law governing the relevant transaction and the places where the parties respectively reside and carry on business (per Lord Goff in *Spiliada* (supra)). (iii) A stay will only be granted where the court is satisfied that there is some other available forum having competent jurisdiction which is the appropriate

forum; that is to say where the case may be tried more suitably for the interests of all parties and the ends of justice. It is for the party seeking the stay to prove the existence of some other available forum which Judgment Approved by the court for handing down. *Ferrara v Ferrara* is clearly or distinctly more appropriate (per Bodey J in *Chai v Peng* (supra)). (iv) If the court decides that there is no other available forum which is clearly more appropriate, then a stay will (almost certainly) be refused (per Bodey J in *Chai v Peng* (supra)).

- (v) If, however, the court concludes that there is some other available forum which is clearly more appropriate, then a stay will ordinarily be granted unless the applicant who resists the stay can show that a stay would deprive him or her of some legitimate personal or juridical advantage, or can show some other special circumstances by virtue of which justice requires that the trial should nevertheless take place here. If the applicant succeeds in showing this then the court must carry out a balancing exercise considering all the broad circumstances of the case, in order to determine the stay application, i.e. to decide where the case should be tried in the interests of the parties and the ends of justice (per Bodey J in *Chai v Peng* (supra)). (vi) A stay should not be refused simply because the applicant will be deprived of some personal or juridical advantage if the court is satisfied that substantial justice will be done in the available appropriate forum (per Bodey J in *Chai v Peng* (supra)). (vii) The mere fact that one party might be likely to achieve a better outcome in one forum than the other cannot be decisive. As Lord Goff said in *Spiliada* (supra): ‘Suppose that two parties had been involved in a road accident in a foreign country, where both were resident, and where damages are awarded on a scale substantially lower than those awarded in this country, I do not think that an English court would, in ordinary circumstances, hesitate to stay the proceedings brought by one of them against the other in this country merely because he would be deprived of a higher award of damages here.’” (emphasis added) 88. As referred to above (paragraphs 61 and 71), there was some debate at the hearing about the scope of the factors which could be relevant to the determination of this issue, in particular historic connections. This was not an issue which had been foreshadowed in the Skeleton Arguments nor, in my view, was it clearly raised in the grounds of appeal. Indeed, as referred to in paragraph 60 above, the husband’s case appeared to be to the opposite effect, namely, I repeat, that the judge had “conspicuously failed to consider all the facts and all the circumstances in this case” (emphasis in original) and that the issue was to be determined at the date of the application and “not solely based on historical associations or connections or consideration of where the parties used to live” (emphasis added). Further, and significantly, Mr Marshall expressly “accepted that the law is properly and Judgment Approved by the court for handing down. *Ferrara v Ferrara* 89. 90. 91. 92. conveniently summarised by His Honour Judge Hess in *SA v FA* [2022] EWFC 115 at [20]”. As a result, we heard no argument on the issue and, accordingly, in my view, it would not be appropriate to address the issue substantively in particular because I do not consider that it impacts on the outcome of this appeal. Accordingly, I just make the following, brief, observations. First, we were not referred to *Peng v Chai* [2015] EWCA Civ 1312, [2017] 1 FLR

318. In her judgment, Macur LJ (with whom Hallett and Burnett LJJ (as they then were) agreed) can be seen to have agreed with counsel, at [33], that the relevant factors were “not limited to the factors directly relating to the litigation” (emphasis added). To quote what she said at more length: “[33] Bodey J made clear that he took 'a broad view of all the facts and circumstances ... not limited to the factors directly relating to the litigation'. Mr Scott QC does not dispute this to be the correct test but argues that 'he erred in applying the law to the facts and misdirected himself by posing the wrong question about the parties' respective connections with England and Malaysia. These errors led him to a conclusion which was plainly wrong, namely that neither England nor Malaysia was a more appropriate forum'. In addition he says, Bodey J failed to take certain factors into account and accorded inappropriate weight to other factors. What he does not contend is that Bodey J made findings that were against the weight of the evidence although he does indicate disagreement as to the decisions made.” (emphasis added) I would also note that this reflects what Wilson J (as he then was) said in *S v S (Divorce: Staying Proceedings)* [1997] 2 FLR 100, at p.111, namely that he “should survey the general connections of the parties (and thus at least indirectly of the dispute) with the rival jurisdictions” and, indeed, reflects the breadth of the factors potentially relevant in financial remedy proceedings under s. 25 of the MCA 1973, as referred to above. Second, the breadth of the potentially relevant factors on the issue of forum can also be seen from the summary contained in Rayden & Jackson on Relationship Breakdown, Finances and Children 19th ed (2026) (“Rayden”). This, first, summarises the exercise on which the court is engaged as follows: “[9.692] Any review of the matters to which the court will have regard when assessing the balance of fairness (including convenience) cannot be prescriptive. This flows from the breadth of the matters to which the court must have regard, and the fact specific nature of the exercise. By way of illustration only, the courts appear, typically, to focus upon factors which might conveniently divided into:
- (i) those which connect the family/marriage to a jurisdiction; and Judgment Approved by the court for handing down. *Ferrara v Ferrara* (ii) those of specific relevance to the dispute between them, including the law and practice of the competing jurisdictions. These classes overlap.” 93. It then lists, at [9.693], factors which have been taken into account under (i) under the heading: “Factors connecting the family to one or more jurisdiction”. By reference to a number of cases a long list of factors are identified under sub-headings. I set out the sub-headings and a few examples of the specific factors listed under them: “(i) the civil and cultural connections of the parties and any children” which include “— a party's, 'ancestry, birth ... education, [and] culture; — the nationality of either party and the children; — the domicile of either party;” “(ii) connections arising from the parties' relationship” which include “— the history of the parties' relationship generally; ... — the existence and terms of any prenuptial agreement;” (iii) “physical connections” which include: “— the jurisdiction(s) in which the parties have lived during the marriage, and for how long ...; ... — the location of the former matrimonial home(s);” (iv) “— financial connections”. Some of these derived from *De Dampierre*. For example, in the speech of Lord Templeman, at p.102 F/G, he

contrasted the wife's connections with England, which he considered to be "tenuous", with her connections with France which included the fact, at p.102 G, that she was French by "ancestry, birth, nationality, education, culture and marriage laws". Lord Goff clearly considered, as it was described at p.105 D/E and p.109 G/H, that "the 'Frenchness' both of the marriage and of the spouses" were highly relevant factors (emphasis added). Indeed, it is clear from *De Dampierre* that the House of Lords undertook a very broad analysis of the parties' and the marriage's current and historical connections with the relevant jurisdictions. 94. Factors under (ii) are addressed, at [6.694], under the heading "Factors of specific relevance to the dispute between the parties". These include: "(iii) the remedies available under the substantive law of the competing state" including "the substantive orders which it is open (or not open) to the court of the other jurisdiction to make in financial remedy (and also children) proceedings". Judgment Approved by the court for handing down. *Ferrara v Ferrara* 95. In my view, therefore, the parties were right to accept as accurate the summary of the law as set out in *SA v FA*. Further, I consider that Mr Marshall was right when he acknowledged the potential relevance of historic matters, as referred to in paragraph 60 above. There is a very wide range of potentially relevant factors which includes matters relating to the history of the marriage and to the nature of the parties' connections with each of the relevant jurisdictions. This is because, as part of its evaluation, the court is considering the connections that the parties and the marriage have to those jurisdictions. As referred to above, this reflects the court's obligation in s.25 of the MCA 1973 to have regard to "all the circumstances of the case".

## Determination

96. 97. 98. 99. I should first mention that, in addition to the matters referred to above, Mr Marshall also relied on, what he described as, the "prolonged delay in issuing the judgment". The draft judgment was provided to the parties on 4 July 2025 and handed down on 11 July 2025. The hearing had concluded on 3 April 2025. This lapse of time was not such as to undermine the judgment nor such as to give legitimate cause for complaint. It was, essentially, within three months of the hearing. I next consider Mr Marshall's submission that the judge failed adequately to set out or analyse the law. I do not accept this submission. As referred to above, the parties were agreed as to the legal approach which the judge should adopt. There was no dispute that the relevant legal principles were set out, respectively, in *Barlow Clowes* and *SA v FA*. The judge was referred to other authorities but he was entitled to state simply that he intended to "apply the law as set out in those judgments without the need to copy and paste them" because the parties agreed that these cases contained a sufficient summary of the relevant legal principles. I would also repeat that it was Mr Marshall who relied on *SA v FA* before the judge and that he expressly accepted in his Skeleton Argument for this appeal that the law on the issue of forum "is properly and conveniently summarised" in *SA v FA*. It was also, importantly, agreed that the judge accurately identified the substantive issues he was required to determine in paragraph 6. Further, and contrary to Mr Marshall's submissions, the legal test which the judge applied

when determining whether the wife had lost her English domicile of choice can be seen from the judgment and was not flawed. In particular, I do not consider that the judge's use of the word "permanently" in paragraph 19(ii) supports the conclusion that he applied the wrong approach. In my view, Mr Marshall is seeking to place excessive weight on the judge's use of this word in that paragraph. This is for a number of reasons. I would first note that, as referred to above, the parties themselves blurred the lines between the words permanently and indefinitely, including with Mr Bojarski suggesting that there was no significant difference. Having regard to the way in which the words permanently and indefinitely were used and addressed at the hearing below, I consider that the judge was not using permanently to the exclusion of indefinitely. He was effectively treating them as synonymous. 100. Secondly, the judge's primary focus in that paragraph was on his conclusion that the wife "moved to Italy reluctantly", that "she had little choice" and that she "was willing to try and make the move work". The judge then used the contrasting position Judgment Approved by the court for handing down. *Ferrara v Ferrara* 101. 102. 103. that "this [was] a world away from having a settled intention to live there permanently". The judge was just using this as a contrast with his findings as to the circumstances of the move ("she was willing to try to make the move work"). He was not incorporating it as part of his legal analysis, in particular, on the issue of whether the wife had lost her English domicile of choice. Thirdly, the legal approach the judge adopted can be seen from other parts of paragraph 19. The judge was aware, as he said in paragraph 19(i), that ceasing to reside in England was not sufficient. This necessarily implies that he was aware that, in addition, the wife must have lost the requisite intention. He addressed that issue in paragraph 19(vi). I agree that this is a compressed conclusion and requires some unpacking but, in my view, it is clear that the judge was addressing whether the wife had given up the intention of permanently or indefinitely residing in England, as it was expressed in *Barlow Clowes*, at [20]. Likewise, the judge's reference to there being "no requirement for a clear plan to return to the domicile of choice" was an accurate reflection of the law on this issue, as addressed in *Ramana*. As referred to above, one way of approaching this issue is to consider, as set out in *Qureshi*, whether the wife did not have the intention to return. This is what the judge did in paragraph 19(vi). In summary, in my view it is clear that the judge was aware of the right legal approach. He found that the wife had "an intention to [return to England] from her residence in Italy" and that "in her mind" that residence was "temporary". These findings directly addressed the issues which Mr Marshall submitted the judge had failed to address, namely, to quote from ground 1, whether, after 2019, the wife "intended to remain living in Italy permanently or indefinitely" and/or whether she had "retained an intention to remain living in England permanently or indefinitely and/or whether she intended to return to England" (emphasis in original). Paragraph 19(vi) effectively comprised a finding by the judge both that the wife did not intend to reside indefinitely in Italy and that she intended to return to England. I would add, in respect of another point raised by Mr Marshall, that the judge did not need separately to ask whether the wife had formed an intention to reside indefinitely in Italy and to determine whether she had acquired a domicile of choice in Italy. The judge was entitled to phrase the relevant issue as being whether the wife had lost her

English domicile of choice and to consider this by reference to her intention in respect of England. Clearly, she would have lost her English domicile if she had acquired a domicile of choice in Italy but this was not a necessary part of the analysis. In any event, it is implicit in the judge's conclusion that the wife did not intend to reside in Italy indefinitely.

104. Also, whilst dealing with this issue and in response to other submissions made by Mr Marshall, that it is clear from paragraphs 6(i), 18 and 19 of the judgment that the judge was aware that he had to consider the position as at the date of her application (i.e. not limited to the period up to 2019) and, specifically, as to the nature of the wife's intentions after 2019.
105. In respect of the issue of forum, Mr Marshall's central submission, which I deal with below, was that the judge's decision was plainly wrong rather than that he applied the wrong test. It is clear that the judge's decision was based on his assessment that Italy was not clearly the more appropriate forum. That was accepted to be the right legal Judgment Approved by the court for handing down. Ferrara v Ferrara approach, as referred to above. I do not, therefore, consider that there is any merit in this aspect of the husband's challenge to the judge's decision.
106. The broader challenge is to the sufficiency of the judgment in other respects. There is no doubt that the judgment is very concise. There is also no doubt that it would have been better if it had dealt in more detail with the parties' respective factual cases and their respective contentions on the substantive issues as identified by the judge. Its conciseness in the circumstances of this case made it vulnerable to being challenged. I should add that I do not accept Mr Bojarski's submission that the husband should have requested the judge to provide further reasoning or to have addressed additional specific issues given the breadth of the challenges to the judgment. I do, however, accept that the judge should have been asked for permission to appeal.
107. As summarised above, Mr Marshall made a broad range of challenges including in respect of the judge's approach to the evidence and his factual, or lack of factual, findings. Were they sufficient or, as Mr Marshall submitted, did the judge disregard the evidence and/or fail to make any findings and/or has he omitted to determine material issues of fact?
108. 109. In order to address, in particular, this aspect of the husband's appeal, I have read the transcript of all the parties' oral evidence, parts of which we were taken to during the course of the hearing. It would not, however, be unfair to say that much of that evidence addressed matters which were, at best, of limited relevance to the issues which the judge had to decide. I start by observing that a critical element of the judgment below comprised the judge's assessment of the witnesses. This was a critical element because I would agree with the submission Mr Marshall made to the judge below that, at least in respect of the issue of domicile, much depended on the judge's assessment of the parties' evidence. As set out above, the judge found that the wife was a "truthful and reliable historian" while he decided that he could not rely on the husband's evidence "unless agreed by [the wife] or corroborated in some other way". This provided the foundation, and a solid foundation, for his assessment of the evidence.

110. Next, I do not accept the submission that the judge can be seen to have disregarded the evidence. This was not a case in which detailed consideration of the evidence was required in the judgment nor, as Mr Marshall submitted, did the judge need to determine what were said to be “the numerous sub-issues” in relation to domicile and forum. As Mr Bojarski submitted, there were relatively few significant factual issues between the parties. I would also agree with his observation that, “by and large”, the wife’s evidence in her witness statements was not challenged in cross-examination or, if it was, not effectively challenged because, as referred to above, the judge accepted her evidence. It was sufficient for the judge, as set out in *Sekhri v Ray*, “to look at the contours of the case and highlight the prominent elements”. The judgment contains extensive references to the evidence or the effect of the evidence and the judge was plainly aware of the history. Applying *Volpi*, at [(2) (iii)], there is no “compelling reason” to conclude that the judge has not taken “the whole of the evidence into his consideration”. 111. In addition, when asked by Arnold LJ during the course of the hearing to identify what factual matters the judge had failed to deal with, Mr Marshall referred to only Judgment Approved by the court for handing down. *Ferrara v Ferrara* one other matter which he submitted the judge should have expressly considered in his judgment, namely that the children had only returned to England once in 6 years. This was not a significant omission. Otherwise, Mr Marshall effectively repeated the matters set out in the grounds (as referred to above) which were that the judge failed to grapple with the evidence behind the wife’s contention that in her mind the move was temporary. I deal with these below. Further, contrary to Mr Marshall’s submission, the judge did make a number, and a number of significant, findings. I deal with some of the specific challenges to those findings below, but I do not accept Mr Marshall’s sweeping submission that the judge failed to make “any primary findings of fact”. The substantive question which I have to address is whether the judge has adequately explained and justified his decision on the issues of domicile and forum or whether his decision in either respect can be shown to be flawed or wrong. I consider each issue in turn. Is the judge’s determination that the wife had not lost her English domicile of choice as at the date of her divorce application flawed or wrong? I have dealt above with the submission that the judge applied the wrong test. I next deal with the specific matters raised under ground 2(i), (ii) and (iii). Although they are said to be “by way of example”, it can be taken that they were relied on as being the most significant. 112. 113. 114. 115.
116. Dealing with each in turn. As to (i), Mr Marshall submitted that the judge was wrong to find that the wife consistently asked the husband not to sell their home in London and/or that she was obliged to participate in the marketing of the property. Indeed, he went as far as to submit that “there was no evidence that W had sought to delay the sale (and positive contemporaneous evidence to the contrary)”. 117. I have referred to some elements of the wife’s evidence above (paragraph 27). For example, an email to her mother about the sale of the matrimonial home in London, in which she recounted that the husband had said, “I think that’s for me to decide don’t you”, when she told him that she “didn’t think we should” sell the property. In addition, during the course of her cross-examination by Mr Marshall,

the wife, among other evidence to similar effect, said: “I repeatedly told Mr F that I did not want to sell the London property, but it was in his sole name and he in the end did whatever he wanted to with that property”. A bit later she said: “I kept saying I don’t want to sell it, I want to keep it for myself and for the boys, because we wanted to return. But he carried on regardless, insisting that we put it on the market”.

118. As to her involvement in the sale of the property, when asked in cross-examination about the contemporaneous correspondence and the fact that she participated in the sale, she replied that the husband “asked me to deal with the sale of it, but that doesn’t mean I agreed to sell it, and I kept repeatedly saying I didn’t want to sell it”; adding that “he is not the kind of man you could argue with”. She said that she “was obliged” by the husband to participate in it. She later added that this was “because he believed it was something that a housewife should do”. Judgment Approved by the court for handing down. *Ferrara v Ferrara* 119. There is other relevant oral evidence but I do not propose to include it in this judgment. The summary above is sufficient to demonstrate that the judge’s conclusions were not only not wrong but consistent with the wife’s evidence. In summary, the judge was plainly entitled to find that the wife “consistently asked [the husband] not to sell the FMH in London” and that she “was obliged to participate in the marketing of the property”.
120. As to (ii) the judge did not need to make findings as to whether the husband and wife “had discussed returning to live in England”. As summarised above (paragraph 28), the effect of the parties’ respective written and oral evidence was that neither was contending that they had had specific discussions about how long they might stay in Italy and/or if or when they might return to London.
121. During the course of his oral submissions, Mr Marshall suggested that the wife’s evidence in her statements had been to the effect that the parties had discussed and agreed before the move to Italy that it would only be temporary while the husband’s evidence had been that the parties had agreed it was permanent. As indicated by Miles LJ during the hearing, this was to put it too high and was not the effect of, certainly, the wife’s written evidence. The paragraphs relied on by Mr Marshall in the wife’s statement of 11 July 2024 did not support his submission. Further, in that statement (paragraph 42) and in her later statement of 12 March 2025, the wife referred to there being an “understanding” of the nature of the move, which led to Mr Marshall alternatively suggesting that an agreement should be inferred. This was not a persuasive submission. I would also note that in the latter statement the wife accepted that the parties “did not discuss specifics”. This was also reflected in the oral evidence when neither party gave evidence as to (and the wife was not asked about) any express discussions and/or agreement as to the duration of their intended residence in Italy or as to returning to London. In those circumstances, the judge did not need to consider, or to make findings as to, the existence of any such discussions because neither party suggested that there had been any.

122. As to (iii), the judge did not overlook or ignore as irrelevant the fact that the wife had not sought to acquire a British passport until 2024. He referred to this in paragraph 17(i) and the weight he ascribed to this factor was a matter for him. 123. 124. 125. The husband's written submissions also suggested that the judge's finding that the wife "moved to Italy reluctantly, having been presented with a *fait accompli* by her husband" was "confusing" and "irrelevant". I do not understand how this could be said to be confusing. It was clearly a finding which was open to the judge on the evidence. Equally, it was clearly relevant to the issue of whether the wife had lost or had retained her English domicile of choice and, therefore, a matter on which the judge was entitled to rely when determining that issue. The key issue which the judge had to decide was whether the wife had lost the intention required to retain her English domicile of choice. In my view, the judge's analysis on the issue of domicile as set out in paragraphs 15 to 20 was sufficient to explain and justify his conclusion that the wife had not lost her domicile of choice in England. One of Mr Marshall's complaints is that the judge did not properly consider the husband's evidential case and arguments. I agree, as referred to above, that the judge's analysis is brief. However, it is not incumbent on a Judgment Approved by the court for handing down. *Ferrara v Ferrara* 126. 127. 128. 129. 130. judge to deal with all the points raised by a party provided his judgment explains why that party won or, as in this case, lost. In my view, the judge has done this. The critical issue, for the purposes of this appeal, was the nature of the wife's intentions in the period from 2019 up to the date of her divorce application. I first record that Mr Marshall accepted that "cogent and clear evidence [was] needed to show that the balance of probabilities had been tipped" in respect of whether the wife had lost her domicile of choice in England. He also accepted that the burden of proving this was on the husband. Secondly, I would repeat that, as identified by Arden LJ in *Barlow Clowes*, at [68], the "ultimate fact in issue was [the wife's] intention" and that this is a distinctly subjective assessment. Accordingly, contrary to Mr Marshall's submission, the judge was entitled to rely on his assessment of the wife's subjective intention. The judge's core findings on this issue are set out in paragraph 19(vi), namely that the wife "has an intention" to return to England "from her residence in Italy that has all the hallmarks in her mind of being temporary". As referred to above, the judge was right when he said that there "is no requirement for a clear plan to return to the domicile of choice for it to be retained". He was also right to say that it "is sufficient that Mrs Ferrara has an intention" to return. They were also, contrary to Mr Marshall's submissions, findings that were open the judge on the evidence. For example, in her written evidence the wife said that the move "was intended to be temporary"; that they were only in Italy for the husband "and his taxes"; and that the husband had told her in 2019 (as recorded in an email the wife sent to her mother in February 2019) that, if the marriage broke down, "you could still get a divorce and move wherever you wanted with the children". She gave a great deal of evidence to the effect that she did not want to leave London and had been "horried" when the husband first "broached the idea of moving to" Milan. When asked by Mr Marshall about an email she had sent her mother in February 2019 in which she had said that she was concerned she "would be trapped" in Italy, the wife replied she "was worried that they might get stuck there and not be able to move back to London with the

children”. I would also add that the judge’s findings as set out in paragraph 16 are relevant to the question of whether the wife lost her domicile of choice. For example, the judge’s conclusion that “every aspect of [the wife’s] adult life has demonstrated a permanent commitment to living in England that is enhanced by her obvious reluctance to move to Italy in 2019”. I also agree with Mr Bojarski’s submission that much of the wife’s evidence in her witness statements on the issues now raised by Mr Marshall was not challenged during the course of her cross-examination. As Mr Bojarski suggested, the high point of the cross-examination on the issue of the wife’s intentions was when, at the very end, Mr Marshall suggested to the wife that she “did not intend to remain living here [England] indefinitely”. The wife’s response, among other things, was that “I consider London as my home”. Further, as Mr Bojarski submitted, the husband gave no direct evidence to contradict the wife’s evidence as to her intentions. He said that “I don’t know what she was thinking to stay forever or only for five years or for the rest of her life”; and in response to the question of whether he was saying “she intended permanently to live in Italy”, he said that he could not “speculate on what were my wife’s intentions” and that he had “no idea”. Judgment Approved by the court for handing down. *Ferrara v Ferrara* 131. Paragraph 19(vi) constitutes a finding by the judge that the wife considered her residence in Italy to be temporary and that she retained an intention to return to England. It would have been better, as referred to above, if the judgment had included a more extensive analysis of the evidence explaining the judge’s findings. However, having myself undertaken an analysis of the evidence, both written and oral, it is clear to me that the judge’s findings on this issue, both in paragraph 19 and paragraph 16 (especially 16(viii)) were open to him on the evidence, in particular having regard to his assessment of the credibility of the parties as witnesses. They are also sufficient, when combined with the other matters set out in the judgment, to explain and justify the judge’s evaluative conclusion that the wife had not lost her English domicile of choice. There was, in short, ample evidence which supported the judge’s conclusion that the wife had not lost the intention required to retain her English domicile of choice or, putting it another way, this was very far from being “rationally unsupportable”. 132. I would, finally, add on this issue, that it was not argued below that the basis of the wife’s intention to return to England was too vague or was based on too uncertain a contingency. Mr Marshall sought to raise this during the course of the appeal but it is too late for him to do so because they are matters which would have had to be addressed during the course of the hearing below and would have affected the evidence which the parties gave. 133. The next issue I address is whether the judge’s findings and his analysis on the issue of forum are flawed and whether his ultimate determination was wrong.

134. As referred to above, ground 4 included the very broad contention that “all the matters listed in paragraph 23” were unsupported by the evidence. This was not supported by Mr Marshall’s oral submissions which were confined to some criticisms of some of the judge’s findings in this paragraph. I was not persuaded by any of these challenges. There is nothing to suggest that the judge was not entitled to find that the husband’s business had not “lost its substantial connections with England” (paragraph 23(iv)). Mr Marshall also submitted that

the judge was wrong when he referred in paragraph 23(x) to there being a mechanism in England to ensure that the wife “can afford equality of arms” which is not available in Italy. The judge was referring to the ability to apply for an LSPO and was right, according to the summary of the expert evidence, when he said this is “not mirrored in Italy”. The fact that lawyers in Italy might work on credit or that, as submitted by Mr Marshall, this is “fairly common” does not undermine the judge’s finding or demonstrate that it was not open to him. 135. 136. I next deal with the issue of whether any of the matters referred to by the judge were irrelevant. As referred to above, this issue only arose during the course of the hearing and, as an issue of legal principle, was not the subject of any written or oral

### **submissions.**

In my view, as indicated in paragraph 95 above, the parties were right to accept as accurate the summary of the law as set out in SA v FA including, at [20(1)], that the “court should take a broad view of all the facts and circumstances, not just those directly related to the litigation”. This summary is supported by De Dampierre, Peng v Chai and Rayden as quoted above. Judgment Approved by the court for handing down. Ferrara v Ferrara

137. Accordingly, I do not accept that the matters referred to by the judge in paragraphs 23(iv), (vi) or (vii) are properly to be characterised as irrelevant. The judge was entitled to take them into account as connecting factors and it was for him to decide what weight to give to them. I can, however, see, as acknowledged by Mr Bojarski, that it is difficult to see how much weight if any could have been given to the fact that the children’s primary language is English and that they will require an interpreter if they are to participate in proceedings in Italy (paragraph 23(viii)).
138. However, as indicated in paragraph 89 above, even if these factors were properly characterised as irrelevant, the balance of the factors on which the judge relied plainly entitled him to conclude that Italy was not the more appropriate forum. Expressed alternatively, their inclusion is not sufficient to undermine the judge’s overall analysis. They comprise a relatively small element in the judge’s analysis and their inclusion does not undermine his ultimate conclusion. 139. The main thrust of Mr Marshall’s challenge (reflected in the grounds of appeal and Skeleton Argument) was that the factors present in this case were such that the judge was wrong to decide that Italy was not the more appropriate forum. He pointed, in particular, to the family’s connections with Italy and to the matters which will have to be litigated in Italy such that the parties will be litigating in two countries if the proceedings here are not stayed as well as the other factors referred to above. There is nothing to suggest that the judge did not have these factors in mind both because he expressly referred to aspects of them and because they were an obvious part of the circumstances of the case. They are also, in my view, not such as to mean that the judge’s determination was wrong in the sense of not being reasonably open to him. I do not, for example, accept Mr Marshall’s criticism of the judge’s observation that the “nexus” between, at least financial proceedings here and children proceedings in Italy, was not such as to

support the conclusion that Italy was clearly the better forum. The financial proceedings have a closer “nexus” but, as the judge’s order indicated, the court’s case management powers can be used to seek to ensure that the proceedings are managed so as to limit any potential duplication. In addition, however, as referred to below, there are distinct and significant differences between the scope of the respective financial proceedings. 140. I do not, therefore, consider that Mr Marshall has been able to demonstrate that the judge’s decision was flawed or wrong. Further, however, in my view, the factors identified by the judge in paragraphs 23(ix) and (xi), which Mr Marshall rightly accepted the judge “plainly” had to have regard, powerfully support the conclusion that Italy is not the more appropriate forum. The judge there referred to Part III of the MFPA 1984 and to the difference in the scope of the financial proceedings in Italy and their scope in England.

141. A core feature of Mr Marshall’s case was, as referred to above, that Italy was the more appropriate forum to determine all matters. When it was suggested to him by Miles LJ during the hearing that significant issues would not be addressed in Italy (such as the enforceability of the separation of property agreement and the division of capital assets) Mr Marshall responded that this did not indicate that Italy was not the more appropriate forum. That this can be a significant factor can be seen, for example, from *ER v BF (Forum Conveniens)* [2019] 1 FLR 726 in which Baker J (as he then was) said: Judgment Approved by the court for handing down. *Ferrara v Ferrara* “[55] Fourthly, it is to my mind unquestionably an advantage that the English Family Court will be able to resolve all financial issues between the parties in one set of proceedings. If the matrimonial finance claim were to proceed in New Zealand, there is a significant likelihood that there would be residual issues which would have to be litigated at additional cost in this country, either under the Trusts of Land and Appointment of Trustees Act 1996 or Part III of the Matrimonial and Family Proceedings Act 1984.” Accordingly, and contrary to Mr Marshall’s submission, not all issues between the parties would be addressed in the proceedings in Italy. In my view, this is a powerful factor in support of the judge’s conclusion. 142. I consider the same applies to Part III of the MFPA 1984 which, again, Mr Marshall rightly accepted was a relevant factor. Mr Bojarski suggested that the judge can be seen to have decided that it was inevitable that the wife would be able to make a claim under Part III. He submitted that, although the judge observed simply that proceedings in Italy “may not prevent a future claim” by the wife under that Act, when paragraphs 23(ix) and (xi) are read together, the judge was clearly saying that the only forum available for these issues to be addressed is England such that a Part III claim was inevitable. It is not entirely clear to me that this is what he did decide. Mr Marshall also resisted this description during the hearing and submitted that the judge was not entitled to say Part III was inevitable so “just get on with it”.
143. However, it is clear to me that, if the judge had gone on expressly to consider whether the wife would be able to bring a claim under the MFPA 1984, he would have decided that this was inevitable. Having regard to the relevant factors set out in Part III of the MFPA 1984, Mr Bojarski was right to say that it would be inevitable. Accordingly, even if this is not what the

judge decided and even if, contrary to my conclusion as set out above, the judge's analysis was flawed and we had to remake the decision, this would be an extremely powerful factor in support of the conclusion that Italy was not the more appropriate forum.

144. Accordingly, I am not persuaded by Mr Marshall's submissions that the judge's determination that Italy was not the more appropriate forum was flawed or wrong.

## Conclusion

145. In conclusion, for the reasons set out above, I have concluded that the husband's appeal from the judge's determination in respect of domicile and of forum should be dismissed. Lord Justice Arnold: 146. I agree that this appeal should be dismissed. On domicile, I agree with Moylan LJ's reasoning. On forum, I agree with Moylan LJ's conclusion and much of his reasoning, but not all of it. In my view, some of the factors which the judge took into Judgment Approved by the court for handing down. Ferrara v Ferrara account at [23] were irrelevant. Despite that, I agree with Moylan LJ that the judge was entitled to reach the conclusion he did.
147. As Moylan LJ has explained, the issue of principle as to whether the parties' historical, as opposed to current, connections with the forum are relevant was barely argued at the hearing. Nor were all the relevant authorities cited. It follows that the views expressed by this Court can only be provisional. Given the significance of the issue, however, it cannot be ignored. My present view is set out below.
148. Although the judge was exercising the discretion conferred by section 5(6) and Schedule 1 paragraph 9 of the Divorce and Matrimonial Proceedings Act 1973 (set out by Moylan LJ in paragraph 85 above), the House of Lords held in *De Dampierre v De Dampierre* [1988] AC 92 that those provisions should be applied in the same manner as the common law principle of *forum non conveniens* developed by the House of Lords in the sequence of cases culminating in *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460: see Lord Templeman at 102C and Lord Goff of Chieveley at 108E-109E. 149. In *Spiliada* Lord Goff said at 476C, 477G-478B and 478C-E: "(a) ... (d) The basic principle is that a stay will only be granted on the ground of *forum non conveniens* where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice. Since the question is whether there exists some other forum which is clearly more appropriate for the trial of the action, the court will look first to see what factors there are which point in the direction of another forum. These are the factors which Lord Diplock described, in *MacShannon's case* [1978] A. C. 795, 812, as indicating that justice can be done in the other forum at 'substantially less inconvenience or expense.' Having regard to the anxiety expressed in your Lordships' House in the *Société du Gaz* case, 1926 S. C. (H. L.) 13 concerning the use of the word 'convenience' in this context, I respectfully consider that it may be more desirable, now that the English and Scottish principles are regarded as being the same, to adopt the expression used by my noble and

learned friend, Lord Keith of Kinkel, in *The Abidin Daver* [1984] A. C. 398, 415, when he referred to the ‘natural forum’ as being ‘that with which the action had the most real and substantial connection.’ So it is for connecting factors in this sense that the court must first look; and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction (as to which see *Crédit Chimique v. James Scott* Judgment Approved by the court for handing down. *Ferrara v Ferrara ... (f) Engineering Group Ltd.*, 1982 S. L. T. 131), and the places where the parties respectively reside or carry on business. If however the court concludes at that stage that there is some other available forum which *prima facie* is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted. In this inquiry, the court will consider all the circumstances of the case, including circumstances which go beyond those taken into account when considering connecting factors with other jurisdictions. One such factor can be the fact, if established objectively by cogent evidence, that the plaintiff will not obtain justice in the foreign jurisdiction: see *The Abidin Daver* [1984] A. C. 398, 411, per Lord Diplock, a passage which now makes plain that, on this inquiry, the burden of proof shifts to the plaintiff. ...” 150. This approach requires the court to consider first whether the other forum is clearly more appropriate for the trial of the action than the English court, and secondly whether a stay should nevertheless be refused, in particular because the claimant would not obtain justice in the other forum.

151. As the voluminous subsequent case law shows, the connecting factors which courts consider for the purpose of answering the first question concern such matters as (i) the governing law, (ii) the location of witnesses and the language they speak, (iii) the location and language of documents and (iv) the places where the parties reside or carry on business. In some cases it may also be relevant to consider (v) the place where the events which gave rise to the claim took place and/or (vi) the location of the parties’ assets. 152. The reason why these connecting factors are considered is that they are all relevant to the ability of one forum or the other efficiently to determine a dispute which could be tried in either forum. The governing law is relevant because it is easier for a court to apply its own law than the law of another country. The location of witnesses is relevant because, if they are located in the forum, they do not need to travel to give evidence (although this is less significant now that witnesses can give evidence by videolink). The language of witnesses is relevant because, if they do not speak the language of the forum, interpretation will be needed. The location of documents is relevant because, if they are located in the forum, they will be easier to produce (although this is less significant now that copies of documents can be electronically transmitted around the globe). The language of documents is relevant because, if they are not in the language of the forum, they will need to be translated (although machine translation is increasingly an answer to this). The presence of the parties in the forum is relevant because it makes it easier for them to meet with their lawyers in person and to appear in court in person. The place where the events took place is relevant in some cases because the court in which that place is located is more likely to be familiar with the

location and can more readily visit it if needed. The location of the Judgment Approved by the court for handing down. *Ferrara v Ferrara* 153. 154. 155. 156. parties' assets is relevant in some cases because it affects the ability of the forum to deal with those assets. It is worth emphasising that this is not a question of jurisdiction. The forum non conveniens enquiry pre-supposes that the English court has jurisdiction and that the alternative forum is an available forum in the sense that it also has jurisdiction to decide the dispute. If the alternative forum proposed by the defendant would not have jurisdiction in respect of the dispute, that is the end of the matter: see *Unwired Planet International Ltd v Huawei Technologies (UK) Co Ltd* [2020] UKSC 37, [2020] Bus LR 2422 at [96]-[98]. There is, however, an overlap with the question of jurisdiction. If one forum would have jurisdiction to deal with all the issues between the parties, but the other forum would only have jurisdiction to deal with some of them (even if it is a majority of the issues), that is a factor which favours determination by the first forum. It will be noted that, at the end of the paragraph (d), Lord Goff referred to "the places where the parties respectively reside or carry on business". He used the present tense, and it is clear that he did so deliberately for the reasons I have just explained. It is difficult to see the relevance of a historic connection of a party to one forum or the other if that connection no longer exists at the time of forum non conveniens enquiry. The facts of the present case provide a clear example of this. Prior to 2019 the parties lived in London. Since then, they have lived in Milan. The fact that they now reside in Milan is a factor favouring the Italian court as a forum for the reasons explained above. The fact that they used to live in London is irrelevant.

157. *Moylan LJ* considers that *De Dampierre* is authority for the proposition that historic connections with one forum or another are relevant to the forum non conveniens enquiry. I respectfully disagree. 158. In that case the parties were French nationals who married in Paris in 1977. In 1979 they moved to London, where the husband was involved in marketing the cognac, and took up residence in a house purchased by the husband. The husband came from a family which owned an estate producing cognac. The child of the marriage was born in London in 1982. In 1984 the wife opened a business in New York where the husband had family and business interests. In 1985 the wife took the child to New York, and refused the husband's request to return to London. Thereupon the husband commenced divorce proceedings in France and subsequently the wife filed a petition for divorce in the High Court. The husband applied for a stay of the wife's petition. Sir John Arnold P refused to stay the petition on the ground that, in the French proceedings, she might receive less favourable financial provision if it were found that she was solely to blame for the breakdown of the marriage. The Court of Appeal dismissed the husband's appeal, but the House of Lords allowed his further appeal and granted the stay. By the time of the hearing in the House of Lords the husband had sold the London house and returned to France. 159. It is important to note that the issue between the parties was as to the relevance of the fact that the wife might be financially worse off under French law than under English law. The wife relied upon the ancillary relief that she would be able to obtain in English proceedings as being a legitimate personal or juridical advantage which she Judgment Approved by the court for handing

down. *Ferrara v Ferrara* should not be deprived of by a stay. There appears to have been no serious dispute that, if that factor was ignored, France was the natural forum for the dispute. The President and the Court of Appeal accepted the wife's argument. The House of Lords held that it was impossible to conclude that justice would not be done if the wife was compelled to pursue her remedy for financial provision in France, and therefore granted the stay. 160. The key passage in the speech of Lord Templeman for present purposes is at 102F-103A: "In my opinion it is not unfair to this wife in the present circumstances to deprive her of the advantages of seeking from an English court maintenance which she might not obtain from a French court. The wife's connections with England were tenuous and she voluntarily severed all connection with England before instituting her English divorce proceedings. The wife is French; she was married in France, she can litigate in France as easily as in England and she can obtain from the French court all the redress to which she is entitled under French law. The wife cannot sever her direct French connections derived from ancestry, birth, nationality, education, culture and marriage laws, or her indirect French connections through her husband and child. On the one hand it is logical and not unfair to the wife to treat her as a French wife entitled to the rights conferred by French law on divorced wives. On the other hand it would be unfair to the husband to treat the wife as if she were an English wife entitled to the rights conferred by English law on divorced wives when, in truth, the wife is a French wife, resides at present in the United States and has no connection with England. If it is not unfair to confine the wife to her rights under French law with regard to maintenance, then a stay of the English proceedings must be ordered." 161. This passage is concerned with the question of whether it would be unjust to deprive the wife of the potential advantage to her of bringing her claim for financial provision in England. It is not concerned with what the natural forum for resolution of the dispute would be apart from that factor. This is not to deny that some of the factors mentioned by Lord Templeman would be relevant to that enquiry, in particular the points that the wife was French, was married in France and could litigate as easily in France as in England and that she was resident in the USA. 162. The key passage of Lord Goff's speech is at 109E-H: "Here it is beyond dispute that there are very strong factors connecting the case with France, whereas now there are practically none connecting the case with England. Neither party suggests that New York is the appropriate forum. It follows that *prima facie* the courts of France clearly provide the appropriate jurisdiction for the resolution of the dispute, so that Judgment Approved by the court for handing down. *Ferrara v Ferrara* a stay should be granted unless justice requires otherwise. In considering the question, the President ... recognised the undoubted 'Frenchness' of the marriage and the spouses, but considered that the wife's absence from what he described as the 'harsh' French regime and her presence in the more 'benevolent' regime which prevails here, plainly afforded a juridical advantage to her and that ... this must outweigh the 'Frenchness' of the marriage of the spouses and point to the conclusion that England was the more appropriate jurisdiction for the dissolution of the marriage." Lord Goff went on to hold that the President had erred in this respect. 163. 164. 165. In referring to the "Frenchness" of the marriage and the spouses, Lord Goff was clearly referring to the facts that the parties were French citizens who spoke French and

were married in France under French law. Furthermore, the husband resided in France, whereas the wife resided in the USA. It is therefore unsurprising that he concluded that France was the natural forum for the resolution of the dispute. It can be seen from the passages quoted above that both Lord Templeman and Lord Goff discounted the wife's historic connections with England, and in particular the fact that she had previously resided in London. The judge was only referred to His Honour Judge Hess' summary of the applicable principles in *SA v FA* [2022] EWFC 115, [2022] 3 FCR 638 at [20] (quoted by Moylan LJ in paragraph 87 above). The only authorities cited by Judge Hess were *Spiliada*, *De Dampierre* and the judgment of Bodey J in *Chai v Peng* [2014] EWHC 3519 (Fam), [2015] 2 FLR 412. 166. The first principle stated by HHJ Hess was: "Fairness and convenience depends on the facts of each case and all the circumstances have to be considered. The court should take into all the facts and circumstances, not just those relating to the litigation."

167. HHJ Hess cited no authority for this principle, and in my judgment it is not a correct statement of the law. The issue is not one of fairness and convenience in some general sense, it is whether the alternative forum is clearly more appropriate and whether a stay should nevertheless be refused. In answering the first question the focus must be on the factors which connect the determination of the dispute to one forum or the other. In answering the second question it is permissible to consider the circumstances of the case more broadly, but the test is whether it would be unjust to grant the stay. 168. The second principle stated by HHJ Hess was: "The court will consider what is the 'natural forum', that is the forum with which the parties have [the] most real and substantial connection. ... [emphasis added]" Judgment Approved by the court for handing down. *Ferrara v Ferrara*
169. HHJ Hess cited *Spiliada* as authority for this principle, but it is a misquotation. As can be seen from paragraph (d) (quoted in paragraph 149 above), Lord Goff cited with approval Lord Keith of Kinkel's statement in *The Abidin Daver* [1984] AC 398 at 415 that the "natural forum" was "that with which the action had the most real and substantial connection" [emphasis added].
170. Although HHJ Hess attributed principles (iii)-(vi) to Bodey J in *Chai v Peng*, Bodey J derived them from *Spiliada*, *De Dampierre* and *SPH v SA* (a decision of the Hong Kong Court of Final Appeal). The third principle is derived from paragraph (a) in *Spiliada*. The quotation bears repeating, this time with emphases added: "... a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice." 171. 172. 173. Principles (v) and (vi) do not accurately reflect what Lord Goff said in paragraph (f), but that is less important for present purposes. In paragraph 90 above Moylan LJ cites what Macur LJ said in *Chai v Peng* [2015] EWCA Civ 1312, [2017] 1 FLR 318 at [33]. This was on appeal from the judgment of Bodey J. It can be seen from what Macur LJ said that counsel for the appellant in that case did not dispute the correctness of Bodey J's

statement of the law. This is therefore not authority binding on this Court, which remains bound by *Spiliada* and *De Dampierre*. Furthermore, Macur LJ's statement does not address the relevance of historic, as opposed to current, connections. Still less binding on this Court is the statement of Wilson J in *S v S (Divorce: Staying Proceedings)* [1997] 2 FLR 100 at 111 that the court "should survey the general connections of the parties (and thus at least indirectly of the dispute) with the rival jurisdictions [emphasis added]" cited by Moylan LJ in paragraph 91 above. Furthermore, this statement makes the same mistake subsequently made by HHJ Hess.

174. Moylan LJ also refers in paragraphs 92-94 to Rayden & Jackson on Relationship Breakdown, Finances and Children (19th ed). This commentary is obviously entitled to respect, but I do not consider that the passages cited accurately state the law for the reasons explained above.
175. By contrast, the law is accurately stated in Chapter 19 (the chapter on matrimonial causes) of Dicey, Morris and Collins, *The Conflict of Laws* (16th ed) at 19-055 (footnotes omitted): "The power [under section 5(6) and Schedule 1 paragraph 9 of the 1973 Act] should be exercised in accordance with the principles developed in other cases of *lis alibi pendens* where there was a plea of *forum non conveniens*, i.e. they should apply the principles set out in *Spiliada Maritime Corp v Cansulex Ltd*. The court may consider both factors pointing to Judgment Approved by the court for handing down. *Ferrara v Ferrara* the strength of the connection between the case and a particular forum, including the place of residence of the parties and the location of their assets, and other factors such as the extent to which one set of proceedings can deal comprehensively with all the issues between the parties. On the latter point, the possibility of financial provision being made in England after a foreign decree, under Pt III of the Matrimonial and Family Proceedings Act 1984, needs to be taken into account. The mere fact that the petitioner in the English proceedings has a legitimate personal or juridical advantage in proceeding in England, e.g. an expectation of a higher level of maintenance, cannot be decisive. If the foreign court appears to be the natural forum, differences between the law applicable in the foreign country and English law will be relevant only if they are such as to prevent justice being done between the parties."
176. Accordingly, I disagree with the view expressed by Moylan LJ in paragraphs 95 and 136 above that the parties were right to accept the accuracy of the summary of the law in *SA v FA*. 177. I now turn to consider the relevance of some of the factors relied upon by the judge at [23]. First, factor (iv): "Both parties' closest connections have been with England since 1992, representing most of Mr Ferrara's working life. I have not been persuaded that his business has lost its substantial connections with England, which relatively recently had its main trading centre in London and still has an office there." 178. For the reasons explained above, I do not consider that the parties' historic connections with England are relevant. The fact that the husband's business still has an office in London would be relevant if that would facilitate the husband's participation in proceedings here, but the judge did not find that that would be the case. 179. Secondly, factor (vi): "The family home was owned in London until 2023, and there is no equivalent owned property in Italy." This is irrelevant for the reasons

explained above. 180. Thirdly, factor (vii): “Mrs Ferrara’s working experience is anchored in London, and it is where she has the best chance of resuming employment.” Again, this is irrelevant. As noted above, the wife has resided in Milan since 2019. 181. Fourthly, factor (viii): Judgment Approved by the court for handing down. Ferrara v Ferrara “The children’s primary language is English, they attend an English-speaking school, and it has already been identified by the Italian court that they will require an interpreter if they are to participate in proceedings there.”

182. As explained above, ability to speak the language of the forum is certainly a relevant factor. The problem here is that the judge does not explain why the children would be participants in the wife’s claim for financial provision. On the face of it, they would not.
183. Although the judge’s reasoning was in my view flawed in that he took into account a number of irrelevant factors, I nevertheless consider that he was entitled to reach the conclusion that it had not been shown that Italy was clearly the more appropriate forum. As Moylan LJ explains in paragraphs 140-143 above, factors (ix) and (xi) relied upon by the judge strongly supported the conclusion that England was the appropriate forum for the dispute. Removing the irrelevant factors from the scales would not materially alter the balance. Lord Justice Miles: 184. I agree that the appeal should be dismissed. As to domicile, like Arnold LJ, I fully agree with the reasoning of Moylan LJ. As to forum, I would dispose of the appeal on the basis of the conclusion in [138] above, i.e., that the inclusion of the factors set out in sub-  
paras 23 (iv), (vi), (vii), and (viii) of the judgment (even if erroneous) did not ultimately undermine the judge’s conclusion. Moylan LJ and Arnold LJ have expressed different provisional views on an interesting question of law, namely, the relevance of historical connections and events for the purposes of section 5(6) and Schedule 1 paragraph 9 of the 1973 Act. I prefer not to express a view on that legal issue: (a) it is unnecessary to do so, (b) I do not think that the point of law was adequately raised by the grounds of appeal (it only emerged in oral submissions), and
- (c) we heard very minimal submissions about it. I think the point should be resolved in a case where the court has had the benefit of fully-researched and considered arguments.

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