

INHERITANCE TAX – whether the Deceased, a US citizen, acquired a domicile of choice in England – no

THE SPECIAL COMMISSIONERS

THE EXECUTORS OF ROBERT MOORE DECEASED Appellant

- and -

THE COMMISSIONERS OF INLAND REVENUE Respondent

Special Commissioner: DR JOHN F AVERY JONES CBE

Sitting in public in London on 1 October 2002

Owen Rhys instructed by Smith Braithwaite for the Appellant

Peter Twiddy, Assistant Director, Capital Taxes Office, for the Respondents

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DECISION

1. This is an appeal by the UK Executors of Robert Moore (the Deceased) who died on 17 March 1997 against a Notice of Determination dated 5 May 1999 that the Deceased died domiciled in England and Wales. The Deceased left two wills, one dealing with US assets and the other in English form dealing with all other assets. The US Executors support the Notice of Determination while the UK Executors contend that the Deceased died domiciled outside England. My understanding is that the issue of domicile is more concerned with the division of the burden of the tax between the beneficiaries of each will than about the total US Federal estate tax which is charged on the basis of citizenship (New York State estate tax is now agreed not to be payable) and the UK inheritance tax, which will be on world-wide assets if the Deceased died domiciled in England but on UK assets only if he died not domiciled in England. The Appellant was represented by Mr Owen Rhys, and the Commissioners of Inland Revenue by Mr Peter Twiddy.
2. There was an agreed Statement of facts as follows (the parts in square brackets are my additions):
 1. Robert Moore ("the Deceased") was born on 28 June 1923, in Kansas City, in the State of Missouri, United States of America.
 2. His domicile of origin was that of Missouri.
 3. By 1942 he was living in New York City, and studying interior design at Carnegie Tech [Mr Rhys told me that he had since discovered that this was in Pittsburgh and so the Deceased may have come to New York after studying there]. It is not known when, prior to 1942, he first came to New York.
 4. The Deceased was an interior and exterior designer by profession and worked in a number of countries and for different clients.

5. On an unknown date the Deceased purchased an apartment in New York City, at 36 Sutton Place South, which he sold in September 1983.
6. At or around the date of the sale, he began to rent an apartment at 240 East 27th Street, New York. It is believed that this lease was given up some time in the early 1990s when he ceased to maintain any form of residence in New York.
7. Together with his friend and lifetime partner, Bill Van Sleet, on an unknown date he purchased a property in Connecticut, which he disposed of subsequently on an unknown date.
8. During the 1980s the Deceased and Mr Van Sleet spent time both in England and the United States.
9. In the late 1980s the Deceased and Mr Van Sleet purchased a holiday home in Ireland. This was sold some time in the early 1990s when Mr Van Sleet became ill with cancer.
10. On 5 March 1991 the Deceased was granted consent to enter the UK for the limited purposes of his employment as an artist. The letter of consent was addressed to him in Amsterdam.
11. In about 1991 the Deceased and Mr Van Sleet sold the Bolton Gardens flat and acquired a flat at 107 Beaufort Street, SW3.
12. In August 1992 the Deceased accompanied Mr Van Sleet to New York where he underwent treatment for his cancer.
13. The flat at 107 Beaufort Street was sold in early 1995 and they then acquired a flat at 66 Beaufort Mansions, Beaufort Street, SW3.
14. The Deceased's leave to remain in the United Kingdom expired on 5 March 1995. From that date onwards, he continued to live in London. There was never any attempt made by the immigration authorities to have him deported.
15. On 22 October 1995 Mr Van Sleet died, and the Deceased scattered his ashes in Ireland. The Deceased did not return to New York after the death of Mr Van Sleet but renewed his US passport in May 1996.
16. The Deceased was a US Citizen and travelled on a US passport.
17. The Deceased made US tax returns and no UK tax returns although following his death, payment was made to the Inland Revenue in respect of UK income tax and capital gains tax based upon his residency in the UK. It was not necessary to address the position of the Deceased's domicile for this purpose. [My understanding is that the Revenue settled the Deceased's income tax on the basis of his UK income and gains only, since the credit for US tax made it unnecessary to pursue the taxability of his non-UK investment income (for which domicile would have been relevant)].
18. On 20 March 1996 he made a Will disposing of his US estate; he identified only two beneficiaries in his US Will, namely Barbara Levine, the only sister of Mr Van Sleet (whose estate he had inherited in 1995) and her daughter Amy Lawlor Levine and left nothing to US charities, but directed that payment of all funeral expenses and the expenses of his last illness be paid by his Executors. None of the assets left to Mrs Levine were charged with any tax, debts or other liabilities of the Deceased. This Will was executed in London.
19. On 2 October 1996 he made a Will disposing of the whole of his estate worldwide (apart from those assets in the United States) to a wide range of beneficiaries and English charities. He also charged his UK estate with sole liability all his just debts, funeral and testamentary expenses. This Will was executed in London.

20. The Deceased died on 17 March 1997 in London where his funeral took place.

1. I also had witness statements on behalf of the Appellant from Warren Davis (one of the UK executors), Claire Oberman, David Miller and Peter William Smith, all of whom gave evidence, and also from Anthony Powell. On behalf of the Revenue I had witness statements from Martin Newman (one of the US executors) and David Levy, both of whom gave evidence, and also from Kermit Love and Barbara Epstein. There was also documentary evidence consisting of the Deceased's English and New York wills and particulars of his UK immigration status.
2. The Deceased was clearly a talented and cultured person. He was described as an interior and exterior designer, an artist who was represented by a gallery in Notting Hill Gate, an author, a writer of skits for a late night television show, a translator of plays from French, and an excellent cook. He had learnt Chinese while in the US army. He worked principally in New York. Although there is no evidence about his earlier houses in England he told the immigration officer in March 1995 that he had been resident in the UK on and off since 1976.
3. There was no disagreement about the law. The Deceased had a domicile of origin in Missouri but had probably (it is unnecessary to decide) acquired a domicile of choice in New York. The issue is whether he acquired a domicile of choice in England. This requires that he had a fixed and determined purpose to make England his permanent home. The intention does not have to be immutable but an intention to make a home in a new country merely for a limited time or for some temporary or special purpose is insufficient. As Buckley LJ said in *IRC v Bullock* [1976] 1 WLR 1176, 1185 "In my judgment, the true test is whether he intends to make his home in the new country until the end of his days unless and until something happens to make him change his mind." The burden of proof is on the Revenue to show on the balance of probabilities that the Deceased acquired a domicile of choice in England.
4. Looking at the Deceased's position from the mid 1980s, the first sign of a move away from New York was in January 1986 when the Deceased (who was then aged 62) told Mr Newman, who was both his attorney and his client for interior design work on Mr Newman's apartment, and who is also one of his US executors, that he was giving up working in New York to spend more time in London. The Deceased recommended to Mr Newman that he engage another designer to complete the work. Mr Newman's written statement said that the Deceased was settling up his affairs in New York at this time but in evidence he agreed that this was not right as the Deceased continued to have an apartment in New York for another five years. Also in the late 1980s the Deceased and Mr van Sleet purchased a small cottage as a holiday home in Ireland. Miss Oberman visited them there and she described it as a place where the Deceased expressed a lot of his passion for artistic creation.
5. More significant changes in the Deceased's lifestyle occurred in the early 1990s. Mr van Sleet developed cancer at this time. The Deceased gave up his apartment at 240 East 27th Street, New York. The Irish property was also sold. Mr Davis said that the reason was that they found Ireland too remote for medical treatment, and Miss Oberman also connected the two events. In March 1991 (then aged 67) the Deceased was given leave to enter the UK for his employment as an artist. His answer recorded by the immigration officer in March 1991 was that "I am planning to use UK as a base and to travel to the continent regularly." Miss Oberman confirmed that the Deceased travelled extensively; it was difficult to arrange to meet. The leave to enter was extended in June 1992 (when he was aged

almost 69) until March 1995. After March 1995 he was technically an illegal immigrant but the Home Office did nothing about it. In August 1992 Mr van Sleet went to New York for cancer treatment and the Deceased went with him. Mr Miller records that the Deceased had become seriously ill in March 1994 spending several weeks in intensive care in St Thomas's Hospital and that he had a heart operation later that year. In early 1995 they moved to a ground-floor flat at 66 Beaufort Mansions as the Deceased's health made climbing stairs difficult. Mr Miller records that Mr van Sleet wanted to go to New York in May or June 1995 to renew his driver's licence but was prevented from travelling by ill health. Mr van Sleet died in October 1995 and his ashes were scattered in Ireland. The Deceased continued to live in London. Miss Oberman thought that he wanted to go to America for medical treatment but died before he could do so.

6. In March 1996 when making a new will the Deceased telephoned his New York lawyer, Mr Newman, who drafted a will dealing with world-wide assets in favour of Mrs Levine, Mr van Sleet's sister. The will was sent to the Deceased in London to have executed at the US embassy. The will was changed by the Deceased in manuscript to deal only with US assets which Mr Newman did not see until after his death. The Deceased renewed his US passport in May 1996. In October 1996 he made an English will dealing with his estate outside the US, leaving it principally to non-US beneficiaries. He died in London on 17 March 1997 and his ashes were scattered in Ireland.
7. Mr Rhys for the UK Executors contended that there was insufficient evidence of the Deceased's intention to make England his permanent home for the acquisition of a domicile of choice. In particular when renewing his leave to enter in 1992 until 1995 he must have understood that he was able to stay in England only for work. He did nothing to show an intention to reside in England permanently. Mr Twiddy contended that the Deceased had gravitated to London away from New York, becoming less nomadic and finally settling in England from the early 1990s.
8. The facts suggest that stopping work in New York in early 1986 was not part of a move to England. More probably, the Deceased who was then in his early 60s wanted to retire from the pressures of work in New York to give himself more time for travel. He did not then give up living in New York as he continued to have an apartment there for another five years or so. A more major change occurred in the early 1990s when his centre of life had moved to England away from both New York and Ireland. His only property was now in London. But his answer to the Immigration Officer did not suggest that he wanted to make England his permanent home. Mr van Sleet's going to New York for cancer treatment accompanied by the Deceased suggests that they had not given up their New York connections. The Deceased remained a US citizen and taxpayer. And if the Deceased really intended to make England his permanent home why did he apply for leave to enter on a short-term basis for employment? Mr Twiddy suggested that the reason might have been that he wanted to keep a low profile for UK tax, which is certainly possible as we know that he did not pay tax in the UK. Alternatively it might be that he did not have long-term intentions for England. By early 1995 both of them were quite ill. The Deceased needed to move to the ground floor flat at Beaufort Mansions on health grounds. Mr van Sleet wanted to travel to New York in May or June but ill health prevented him and he died in October 1995. Being an illegal immigrant from March 1995 would not prevent the Deceased from acquiring or continuing a domicile of choice in England (see Dicey paragraph 6-060) but it is clearly relevant to determining his intention.

9. Looking at all the evidence I am left with the impression of a cultured person who was obviously fully at home in Europe, perhaps more so than in New York, who used England as a base for travel to Europe, as he told the Immigration Officer. Miss Oberman regarded him as an American; he wrote about America. Mr Miller also regarded him as an American; he said that the Deceased did not wear British clothes or eat British food. Miss Oberman's description of him as having a nomadic lifestyle seems entirely apt. After winding down his work in New York he spent more time in England and Ireland using England as a base for travel to Europe. It seems to me that his living solely in London was determined more by ill health than by a desire to make England his permanent home. His nomadic existence just happened to end up in London rather than being the result of his forming the intention to stay there, as is illustrated by his short-term immigration status. He never really gave up his New York connections. His investments, comprising 29 per cent of his net assets on death and 44 per cent of his assets apart from his apartment and the contents, were managed from New York. His New York lawyer, Mr Newman, drafted a will that Mr Newman thought was intended to deal with the Deceased's world-wide assets. There seems to be no clear evidence that he really had the necessary intention to acquire a domicile in England and quite a lot of evidence that he kept up his connections with New York.
10. In my view the evidence of his intention is not strong enough to show that the Deceased had acquired a domicile of choice in England and Wales. Accordingly I find that he did not die domiciled in England and Wales and I allow the appeal.

J F AVERY JONES

SPECIAL COMMISSIONER

SC 3044/00

Authorities referred to in skeletons and not referred to in the decision:

Winans v A-G [1904] AC 287

Drevon v Drevon (1864) LJ Ch 129

Re Clore (No.2) [1984] STC 609

In re Flynn decd [1968] 1 WLR 103

In the Estate of Fuld decd (No.3) [1968] P 675