Neutral Citation Number: [2026] EWHC 242 (Comm)

Case No.: LM-2024-000279

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL COURT (KBD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 11 February 2026

Before:

HIS HONOUR JUDGE BAUMGARTNER
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between:

(1) QING LI
(2) ZHONGYONG JIANG
(3) CHAO LI
(4) ~~JIHONG CHEN~~ XIAOQING LU
(5) SHANGHAI BAOJIEHUI VENTURE CAPITAL PARTNERSHIP (LIMITED PARTNERSHIP)
(an incorporated partnership registered in the People's Republic of China)

Claimants

- and -

(1) FAN DEMETRIS YUAN
(2) YUAN NICOLE GAO

Defendants

- -
- -

Hugh Miall (instructed by **PCB Byrne LLP**) for the **Claimants**
Shantanu Majumdar KC with **Zachary Kell** (instructed by **Ackroyd Legal (London) LLP**) for the **Defendants**

Hearing dates: 25-28 November 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 11 February 2026 by circulation to the parties or their representatives by email and by release to the National Archives.

HIS HONOUR JUDGE BAUMGARTNER:

INTRODUCTION

1. These are proceedings brought by five judgment creditors (the **"Claimants"**) to enforce as common law judgment debts final judgments obtained by each of them against the Defendants in the courts of the People's Republic of China (the **"PRC Courts"**), following the Defendants' failure to meet their repayment obligations under certain loan, investment, or guarantee agreements between each Claimant and the Defendants (together, the **"Judgments"**).

2. The Claimants' claims were commenced in the city of Nanjing in the People's Republic of China (the **"PRC"**) on dates falling on and between 1 November 2016 and 12 January 2017. The Judgments were issued on dates between May and December 2017 for specific sums, together with interest and court fees. The Claimants' claims in these proceedings are expressed in Renminbi (or, to use the ISO 4217 currency code shorthand, "RMB") as the currency in which the sums were awarded to the Claimants by the PRC Courts in the Judgments.

3. There is no dispute as to the validity or content of the Judgments. There is also no dispute that the relevant agreements were entered into between the parties. It is also common ground that the Defendants have not paid the judgment debts, which remain outstanding.

4. The claims in these proceedings are straightforward: the Claimants seek the enforcement, at common law, of judgment debts based on the Judgments for certain sums given validly by the PRC Courts. The Defendants, Fan Demetris Yuan and his wife Yuan Nicole Gao, raise four issues in their Defence, three of which have now been abandoned, leaving only the following issue for determination: whether the PRC Courts had jurisdiction under principles of English private international law to issue the Judgments.

5. There are two separate limbs to this issue. The first is whether certain PRC Courts had jurisdiction by virtue of Defendants' agreement in relation to the claims brought by Qing Li and Zhongyong Jiang, the First and Second Claimants. The second, which applies to all Claimants, is whether the PRC Courts in which the Judgments were obtained had territorial jurisdiction by reason of the Defendants' residence in Nanjing.

BACKGROUND

Claims

6. Each Claimant is a judgment creditor of the Defendants, the Judgments having been given by the PRC Courts based on breaches of written contracts or (in relation to Jihong Chen, the Fourth Claimant) an acknowledgment of debt. It is common ground between the parties that the proceedings underlying each Judgment were validly served upon the Defendants and the Defendants did not respond to the proceedings.

7. As at the date of the issue of the Claim Form, both Defendants were resident in this jurisdiction. The Defendants moved here in April 2018, and to their current address in November 2020.

8. Accordingly, the Claimants commenced these proceedings to bring a debt claim at common law to enforce each of the Judgments.

9. The sums claimed by the Claimants are significant. As at the date of the Particulars of Claim, the Claimants claim that the debt due in respect of each of the Judgments (with the Pounds Sterling equivalent shown in brackets) is as follows:

   (1) for the First Claimant's Judgment: RMB 12,256,589.04 (GBP 1,419,840.04);

   (2) for the Second Claimant's Judgment: RMB 62,597,391.78 (GBP 7,251,469.65);

   (3) for the Third Claimant's Judgment: RMB 121,643,729.39 (GBP 14,091,574.55);

   (4) for the Fourth Claimant's Judgment: RMB 44,266,791.58 (GBP 5,127,997.94); and

   (5) for the Fifth Claimant's Judgment: RMB 4,817,746.18 (GBP 558,102.17).

10. The total claim in these proceedings is RMB 245,582,247.97 (GBP 28,448,984.35).

11. Each of the Claimants claims further interest on the sums from the date of the Claim Form to judgment at 2% above the Bank of England's base rate, pursuant to s35A of the Senior Courts Act 1981 or at such rate as the Court thinks fit.

Claimants

Qing Li

12. The First Claimant Qing Li's action was for repayment of a debt of RMB 4,000,000 plus interest due under a written loan agreement with Mr Yuan, and a connected guarantee given by Ms Gao, each dated 8 May 2016. The "place of contract" in those agreements is given as "Baixia District, Nanjing City, Jiangsu Province". No residential or other address is given for any party.

13. The agreements contain jurisdiction clauses in favour of the People's Court of Baixia District (the **"Baixia District Court"**), in the following terms:

> "Disputes arising in the course of the performance of this Contract between [Mr Qing Li] and [Mr Yuan (for the loan agreement)/Ms Gao (for the guarantee)] be resolved by mutual consultation. If the negotiation fails, a lawsuit will be filed with [the Baixia District Court]."

14. There was, in addition, a contractual obligation upon the Defendants to notify Mr Qing Li of any change of address:

> "If [Mr Yuan (for the loan agreement)/Ms Gao (for the guarantee)] changes its residential address, correspondence address, contact telephone number and other matters, it shall notify [Mr Qing Li] in writing within 24 hours after the relevant matters are changed."

15. Repayment was due on 8 October 2016, but the Defendants failed to pay.

16. Mr Qing Li commenced his claim in the People's Court of Qinhuai District (the **"Qinhuai District Court"**) on 7 November 2016. Service was effected by public notice in Jiangsu Legal News on 9 December 2016. Judgment was given on 3 May 2017 for principal, interest, default interest (an additional amount imposed by PRC statute in the event of late payment), and costs.

Zhongyong Jiang

17. The Second Claimant Zhongyong Jiang's action was based on the rescission and repayment of RMB 28,000,000 advanced under a share purchase agreement dated 4 March 2016. The Defendants' "domicile" address in the agreement is given as Room 205, Building 37, No.66 Muxuyuan Avenue, Nanjing.

18. That agreement also contains a jurisdiction clause in favour of a competent People's Court, in the following terms:

> "Any dispute arising out of or in connection with the performance of this Agreement must be resolved by the Parties through amicable consultation or, if such consultation fails, by a competent people's court."

19. Section 9.1 of the agreement provides:

> "Unless otherwise agreed herein, all notices given hereunder between the Parties must be delivered to the following addresses as applicable by hand, registered mail, express courier, or email:
>
> …
>
> [Mr Yuan and Ms Gao]:
>
> Address: Room 602, Unit 1, Block 2, Yunshan Garden, Tianhong Villas, No.1 Huanling Road
>
> Zip code: 210000
>
> Contact person: YUAN Fan
>
> …"

20. There was a further contractual obligation on each party to the agreement to notify the other parties of any change of address:

> "Any Party shall give the other Parties written notice as set out in Section 9.1 of any change to its specified correspondence address or contact information. Any notice delivered to its original address by another Party before the latter receives such notice of change will be deemed given, and the Party changing its correspondence address or contact information shall be liable for any damage or liability thus caused."

21. Following default under the agreement, Mr Jiang commenced his claim in the Qinhuai District Court on 1 November 2016. Service was effected by public notice in the People's

Court Daily on 12 February 2017. Judgment was given for principal, interest, default interest, and costs on 24 May 2017.

Chao Li

22. The Third Claimant Chao Li's action was for the repayment of a loan made to Mr Yuan, and an equity investment made in relation to Mr Yuan's company Nanjing Han'en Digital Internet Culture Co. Ltd, pursuant to an agreement dated 5 June 2015. No residential or other address is given for any party.

23. Mr Chao Li commenced his claim on 16 November 2016 in the Qinhuai District Court. Service was effected by public notice in Jiangsu Legal News on 11 January 2017. Judgment was given on 24 July 2017 for principal, interest, default interest, and costs.

Jihong Chen

24. The Fourth Claimant Jihong Chen's action was for repayment of loans made to Mr Yuan between April 2015 and October 2016, and which Mr Yuan acknowledged in writing in October 2016. No residential or other address is given for either party.

25. Mr Chen had commenced his claim by at least 24 November 2016 in the People's Court of Qixia District, Nanjing; this is evident from the court's "Notice of Case Acceptance" document dated 24 November 2016. Service was effected by public notice in the People's Court Daily on 5 March 2017. Judgment was given on 18 August 2017, again for the principal debt due, together with interest, default interest, and costs.

26. Mr Chen passed away on 7 July 2025. His legal successor under PRC law is his widow, Xiaoqing Lu. On 28 November 2025, I made an order that Ms Lu be substituted for Mr Chen as the Fourth Claimant in these proceedings, pursuant to CPR rr.19.6(2)(b) and 19.6(3)(c).

Shanghai Baojiehui Venture Capital Partnership (Limited Partnership)

27. The Fifth Claimant Shanghai Baojiehui Venture Capital Partnership (Limited Partnership) (**"SBVCP"**)'s action arose out of a written agreement dated 20 November 2014 between Nanjing Hanen Animation & Game Co. Ltd, SBVCP, and the Defendants. "Domicile" addresses for the Defendants in the agreement are given as follows: for Mr Yuan, Room 301, Building 7, No.4 Dashiqiao, Xuanwu District, Nanjing; for Ms Gao, Room 205, Building 37, No.66 Muxuyuan Avenue, Baixia District, Nanjing.

28. The agreement provides:

> "The Parties shall first try to resolve any dispute arising out of or in relation to this Agreement or the Master Agreement through negotiation and may, if such negotiation fails, bring an action before a people's court located where the agreement is signed."

29. SBVCP's claim was commenced on 12 January 2017 in the People's Court of Gulou District, Nanjing (**"Gulou District Court"**); this is evident from the Civil Ruling of the Gulou District Court dated 2 March 2017 transferring the case to Qinhuai District Court for trial, which refers to the case being docketed by the court on "January 12, 2017". There is no direct evidence as to when proceedings were served, although it is common

ground that the Defendants were served with the proceedings as a matter of PRC law. It is a reasonable inference that the proceedings were lawfully served before judgment was given, although in the end nothing turns on the date of service. Judgment was given on 13 December 2017 for the principal debt due, interest, default interest, and costs. Judgment was served by publication in Jiangsu Legal News on 26 June 2018.

Defendants

30. The Defendants claim they obtained permanent residence for the Republic of Cyprus in 2014, and took up formal residence in the summer of 2016. In November 2016 they applied for Cyprus National Registration and they were issued with Cypriot passports in July 2017.

31. The Defendants contend that they were not resident or physically present in the PRC when the claims were issued, such that the PRC Courts did not have jurisdiction over them. They deny that either of them received notice of or were otherwise aware of any of the claims before the PRC Courts. They deny that either of them was subject to or submitted to the jurisdiction of the PRC Courts in respect of any of the proceedings which resulted in the Judgments.

32. Whilst there is a dispute as to whether and when the Defendants were resident in the PRC at the time the claims commenced, it is common ground that residents of the PRC are required to register and update their place of residence on the "Hukou Register", and that, if they leave the jurisdiction, they are required to cancel that registration.

33. Until sometime in about October 2016, the Defendants' registered address in the Hukou Register appears to have been Room 205, Building 37, 66 Muxuyuan Avenue, Nanjing, although as I have set out above there are other Nanjing addresses which are referred to in the contractual documentation. The Defendants say that in October 2016, at a time when they accept they were in the PRC and just days before the initial claims were commenced, they amended their registered address in the Hukou Register to Room 102, Unit 1, 101 Huanling Road, Nanjing, an address which they say was an unoccupied and unfinished apartment.

34. At the time of the commencement of the proceedings, the Claimants say they did not know and could not discover the Defendants' physical location. The Defendants did not notify the Claimants of their change of address, notwithstanding (in the case of Mr Qing Li and Mr Jiang) a contractual obligation to do so. Attempts to contact the Defendants in person and by telephone all drew a blank. The PRC Courts, which conduct service directly, sought to serve the Defendants by delivery to their registered addresses in the Hukou Register. It appears that neither actual delivery could be effected nor the Defendants located, and so the PRC Courts served the proceedings by public notice. It is common ground that the Defendants did not appear at the trials of the Claimants' claims in the PRC Courts.

ISSUE

35. As I mentioned, the issue for determination by this Court is whether the PRC Courts had jurisdiction under principles of English private international law to issue the Judgments.

36. The criteria which must be satisfied in a claim for the enforcement of the Judgments at common law are well-established. First, a foreign judgment must be the final and conclusive judgment of the court which pronounced it; second, it must have been given by a court which English law regards as competent to do so. Third, to be enforceable as a debt, it must be a judgment for a fixed sum of money: see Dicey, Morris & Collins on the Conflict of Laws (16th edition, Sweet & Maxwell), at 14R-024.

37. There is no dispute that the first and last of these requirements is satisfied in relation to each of the claims:

    (1) Each of the Judgments is final and conclusive, in the sense that in the court in which they were pronounced, the Judgment conclusively established the existence of the debt (*i.e.*, the Judgment is not provisional, or may not be abrogated or varied by the same court): see Dicey, at 14-027. The Defendants do not suggest otherwise, nor is there any suggestion on the face of the Judgments that they are provisional or subject to any variation. There have been no appeals of the Judgments.

    (2) Each of the Judgments is for a certain debt which is either definite and ascertained (insofar as the interest due thereon has already been expressed) or is capable of ascertainment by a mere arithmetical calculation (which is sufficient for these purposes). Upon judgment being given on the Claimants' claims, the subject matter of each Judgment will be a debt in a definite and ascertained sum.

38. It is also well-established, and not disputed, that whilst judgments of foreign courts may be impeached on certain grounds, English Courts will not re-examine the merits of the decision (whether as to fact or law): see, *e.g.*, Dicey, at 14R-115; *OJSC Bank of Moscow v Chernyakov* [2016] EWHC 2583 (Comm), per Cranston J at [5].

39. The second criterion is that the foreign court must be regarded by English law as being competent to give the relevant judgment. There are four circumstances in which the English Court will conclude that the foreign court had jurisdiction to give a judgment *in personam* capable of enforcement: see Dicey, at 14R-058, referred to as "rule 47" or the "Dicey rule":

    (1) Where the person against whom the judgment was given was, at the time the proceedings were instituted, present in the foreign country. For a natural person this requires physical presence in the territory, and for a legal person it requires a fixed place of business in the territory.

    (2) Where the person against whom the judgment was given was claimant, or counterclaimed, in the proceedings in the foreign court.

    (3) Where the person against whom the judgment was given, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings.

    (4) Where the person against whom the judgment was given, had before the commencement of the proceedings agreed, in respect of the subject matter of the

proceedings, to submit to the jurisdiction of that court or of the courts of that country.[1]

40. The Defendants dispute ground (1) their presence (or residence) in the PRC, and ground (4) their prior agreement to submit to the jurisdiction of the foreign court. I turn first to consider the second of these grounds, jurisdiction by prior agreement, which is relevant to Mr Qing Li and Mr Jiang's Judgments.

Jurisdiction by agreement

Law

41. A foreign court will be deemed to have jurisdiction over parties where they have agreed to that jurisdiction: see *Adams v Cape Industries Plc* [1990] Ch 433. That includes where a relevant contract contains a jurisdiction clause. However, a binding contractual agreement is not necessary; what matters is whether a defendant has consented in advance to the jurisdiction of the foreign court: see *Vizcaya Partners Ltd v Picard* [2016] 3 All ER 181, at [56], where Lord Collins (delivering the opinion of the Judicial Committee of the Privy Council) said this:

> "First, the question is whether the judgment debtor agreed to submit to the jurisdiction of the foreign court. Second, the agreement does not have to be contractual in nature. The real question is whether the judgment debtor consented in advance to the jurisdiction of the foreign court. This point was made by Goff LJ in *SA Consortium General Textiles v Sun and Sand Agencies Ltd* [1978] QB 279, 303, who said that the expression 'agreed … to submit to the jurisdiction' in the Foreign Judgments (Reciprocal Enforcement) Act 1933, section 4(2)(a)(iii), meant 'expressed willingness or consented to or acknowledged that he would accept the jurisdiction of the foreign court. It does not require that the judgment debtor must have bound himself contractually or in formal terms so to do'. Third, it is commonplace that a contractual agreement or a consent may be implied or inferred. Fourth, there is no reason in principle why the position should be any different in the case of a contractual agreement or consent to the jurisdiction of a foreign court: cf Briggs, Civil Jurisdiction and Judgments, 6th ed, para 7.59. … Fifth, on analysis in context the authorities which deny the possibility of an implied agreement (especially *Sirdar Gurdyal Singh v Rajah of Faridkote*) really meant that there had to be an actual agreement (or consent). Thus where a person became a shareholder in a foreign company, 'to all intents and purposes, it is as if there had been an actual and absolute agreement' by the shareholder to the provisions for suit and service in its constitution: *Copin v Adamson* at 18-19."

42. So, whether there is an agreement within a (written) contractual context may turn on a question of construction, in relation to which any question of foreign law which impacts on the interpretation of the contract will be relevant.

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[1] Although the PRC is a signatory to the Hague Convention on Choice of Court Agreements 2005, it has not ratified the Convention and so the proviso to the Fourth Case in Rule 58 of Dicey (at 14R-198) does not apply.

43. In that regard, Lord Collins went on to say (at [60]):

> "Terms implied as a matter of fact depend on construction of the contract in the light of the circumstances. Where the applicable law of the contract is foreign law, questions of interpretation are governed by the applicable law. … In such a case the role of the expert is not to give evidence as to what the contract means. The role is 'to prove the rules of construction of the foreign law, and it is then for the court to interpret the contract in accordance with those rules': *King v Brandywine Reinsurance Co* [2005] EWCA Civ 235, [2005] 1 Lloyd's Rep 655, para 68; Dicey, paras 9-019 and 32-144 ('the expert proves the foreign rules of construction, and the court, in the light of these rules, determines the meaning of the contract')."

Discussion and analysis

44. Here, Mr Qing Li and Mr Jiang's contracts with the Defendants contained similar jurisdiction clauses. These provide:

> "If Party B [Mr Yuan/Ms Gao] defaults, Party A [Mr Qing Li] shall have the right to choose such lawful measures or methods as Party A deems appropriate to realize the claim.
>
> Disputes arising in the course of the performance of this agreement between Party A and Party B shall be resolved by mutual consultation. If the negotiation fails, a lawsuit will be filed with the People's Court of Nanjing Baixia District"

(Mr Qing Li's claim),

and

> "Any dispute arising out of or in connection with the performance of this Agreement must be resolved by the Parties through amicable consultation or, if such consultation fails, by a competent people's court"

(Mr Jiang's claim).

45. Both contracts are governed by the law of the PRC. The Court received evidence from two experts in PRC law on the rules of construction under that law: Xiaoguang Xu, a partner at V&T Law Firm in Shenzhen and a licensed lawyer of the PRC, instructed for the Claimants; and Wenliang Zhang, a senior legal counsel at Inno Law Firm in Beijing and a qualified Chinese lawyer, instructed for the Defendants.

Qing Li

46. As far as Mr Qing Li's claim is concerned, the Defendants submit his contracts with them refer to the Baixia District Court rather than the Qinhuai District Court, where judgment was obtained. However, Mr Qing Li's position is that the Baixia District Court merged into the Qinhuai District Court prior to the contracts being entered into between Mr Qing Li and the Defendants. Hugh Miall, who appears for the Claimants, submitted the parties cannot have been referring to a district which no longer existed, and, rather than the

Baixia District Court, the parties must have intended to refer to the People's Court local to them *i.e.*, the Qinhuai District Court, as the court having connection with the dispute.

47. In this regard, Mr Xu referred to the Contract Law of the PRC, effective 1 October 1999 to 31 December 2020 (the **"Contract Law"**) and, more particularly, to Article 125 of the Contract Law, which provides:

> "Where the parties have a dispute over the interpretation of a contractual clause, the true meaning of the clause shall be determined in light of the wording used in the contract, the relevant provisions of the contract, the purpose of the contract, trade usages, and the principle of good faith."

Mr Xu then referred to Article 34 of the Contract Law, which provides:

> "The parties to a contractual dispute or other property dispute may agree in writing to be subject to the jurisdiction of the people's court at the place having connection with the dispute, such as where the defendant is domiciled, where the contract is performed, where the contract is signed, where the plaintiff is domiciled or where the subject matter is located, provided that such agreement does not violate the provisions of this Law on jurisdiction by forum level and on exclusive jurisdiction."

48. From this it is clear to me that, as a matter of PRC law, the parties to a contract can validly agree to the jurisdiction of a court of a particular place. The parties' contracts made such a selection in the Baixia District Court; the first page of each contract refers to "Baixia District, Nanjing City, Jiangsu Province" as the place of contract, which could well mean and could reasonably be interpreted as the parties' intention as to the place where the contract was to be performed or where it was signed. It is, as I understand it, common ground that Baixia is the place where the contracts were signed and where the contract was to be performed.

49. In Mr Xu's opinion, that is consistent with the parties' contractual agreement and the provisions of PRC law. Mr Zhang, however, took a nuanced view. He said the contracts designated a court – the Baixia District Court – non-existent at the time of signing the contracts as the competent court, which violates the requirement that jurisdiction agreements must be clear, specific, and enforceable under PRC law and practice. For that reason, Mr Zhang said the clause has no binding effect. Shantanu Majumdar KC, who appears with Zachary Kell for the Defendants, submitted that, if the jurisdiction clause could not be construed as Mr Miall submits, then it could not follow that the Defendants had agreed to submit to the jurisdiction of the Qinhuai District Court.

50. I accept Mr Miall's submission that, in conferring jurisdiction on the Baixia District Court, the parties cannot have been referring to a District which no longer existed, and that they must have done so in error: they must have intended to refer to the People's Court local to the place of contract, *i.e.*, the Baixia District Court, which was merged into the Qinhuai District Court prior to the contracts being entered into, such that the parties must have intended the Qinhuai District Court to have jurisdiction. That is consistent with the parties' provision of Baixia as the place of contract and the place where the contract was signed. There is nothing otherwise to suggest that the parties did not mean the Qinhuai District Court, and the Defendants did not put such a case. In any event, such a submission would be unattractive. Mr Zhang agreed with Mr Miall in cross-

examination that it was clear the parties had simply made an error, and that their intention as to choice of court was the People's Court of the place where they signed the contract. That answer aligned with Mr Zhang's initial view set out in his report dated 9 September 2025:

> "5.3 … each of the Defendants agreed that proceedings in respect of the obligations thereunder could be commenced in [the Baixia District Court] (the place where those contracts were signed). Such choice of the people's court at the place where contracts were signed was well grounded under [Chinese procedural laws] and related judicial interpretations",

although construction is not a matter for the experts but one for this Court. It seems to me that the provisions of Article 34 of the Contract Law requiring a clear, specific, and enforceable jurisdiction clause are satisfied with the parties' provision of "the Baixia District Court": in my judgment, this identified with sufficient precision the court to which the parties had agreed to submit their disputes and in accordance with their intention that their choice of court was the People's Court of the place where they signed the contract. That court can only have been the Qinhuai District Court after its merger with the Baixia District Court.

Zhongyong Jiang

51. As far as Mr Jiang's claim is concerned, the Defendants aver that, because the Qinhuai District Court is not named in the jurisdiction clause in their contract with him, there was in fact no agreement to submit disputes to the jurisdiction of that court. That in my view is an erroneous averment.

52. Mr Xu and Mr Zhang's evidence was that Article 34 of the Contract Law identifies the People's Court of the district in which a defendant has their domicile, or where the contract was to be performed, as a competent court. Mr Zhang agreed that Article 125 applies where there is ambiguity or disagreement as to the meaning of a clause. He accepted that, by entering into the relevant jurisdiction agreement, the Defendants had agreed to the jurisdiction of "a competent People's Court", of which there could be more than one. Mr Xu's uncontested evidence was that, where there is more than one defendant which would attract the jurisdiction of more than one court, each of those courts has jurisdiction.

53. In my judgment, the Qinhuai District Court was such a court, because it was the place of domicile of Mr Yuan's company Nanjing Han'en Digital Internet Culture Co. Ltd, the fourth defendant in the claim brought by Mr Jiang against the Defendants in that court. Thus the correct approach is one of simple construction: the Defendants agreed to the jurisdiction of a competent court; that must mean a competent court as identified by local law. Ultimately, the question is whether the Defendants consented to the jurisdiction of the Qinhuai District Court. Plainly they did, because they agreed to the jurisdiction of a court competent under PRC law, which was the Qinhuai District Court.

Conclusion

54. For those reasons, the relevant PRC Courts had jurisdiction to enter the Judgments in relation to Mr Qing Li and Mr Jiang's claims; as the relevant PRC Courts had the

requisite *in personam* jurisdiction required to enter Mr Qing Li and Mr Jiang's Judgments, those Judgments are enforceable as debt claims in England.

Jurisdiction by residence or presence

Law

Residence or presence

55. At common law, where a defendant is "resident" in a foreign country at the time of suit, the foreign court has jurisdiction over them: see, *e.g.*, *Emanual v Symon* [1908] 1 KB 302. Dicta in two authorities – *Employers Liability Assurance Corp Ltd v Sedgwick Collins & Co Ltd* [1927] AC 95 (per Lord Parmoor, at 114-115) and *Dunlop Pneumatic Tyre Co Ltd v Actien-gesellschaft für Motor und Motorfahrzeugbau vorm Cudell & Co* [1902] 1 KB 342 (per Lord Collins MR, at 346) – suggest the date of service of process rather than the date of issue of proceedings is to be treated as the time of suit for these purposes, but the point is not settled in English law. What is clear is that the relevant time is not when the cause of action arose (see *Sirdar Gurdyal Singh v Rajah of Faridkote* [1894] AC 670), and *Emanuel v Symon* is binding authority on this Court that the time of the suit is the date of issue of proceedings (per Buckley LJ, at 309).

56. Later authorities consider that mere presence in the foreign jurisdiction at the time of suit suffices. In *Adams v Cape Industries Plc* [1990] Ch 433, Slade LJ (giving the judgment of the Court of Appeal) said (at 514-515):

> "Nearly 120 years ago in *Schibsby v Westenholz*, LR 6 QB 155, the 'residence' of an individual in a foreign country at time of commencement of suit was recognised by the Court of Queen's Bench as conferring jurisdiction on the court of that country to give a judgment *in personam* against him. In that case the court declined to enforce a judgment of a French tribunal obtained in default of appearance against defendants who at the time when the suit was brought in France were neither subjects of nor resident in France. On these facts the court decided, at p 163, 'there existed nothing in the present case imposing on the defendants any duty to obey the judgment of a French tribunal.' However, it regarded certain points as clear on principle, at p 161:
>
> > 'If the defendants had been at the time of the judgment subjects of the country whose judgment is sought to be enforced against them, we think that its laws would have bound them. Again, if the defendants had been at the time when the suit was commenced resident in the country, so as to have the benefit of its laws protecting them, or, as it is sometimes expressed, owing temporary allegiance to that country, we think that its laws would have bound them.'
>
> In *Rousillon v Rousillon* (1880) 14 Ch D 351, Fry J, after referring to *Schibsby v Westenholz* and in enumerating the cases where the courts of this country regard the judgment of a foreign court as imposing on the defendant the duty to obey it, at p 371, similarly referred to one such case

as being 'where he was resident in the foreign country when the action began.'

In *Emanuel v Symon* [1908] 1 KB 302, this court had to consider whether the fact of possessing property situate in Western Australia or the fact of entering into a contract of partnership in that country was sufficient to give a Western Australian court jurisdiction (in the private international law sense) over a British subject not resident in Western Australia at the start of the action, who had neither appeared to the process nor expressly agreed to submit to the jurisdiction of that court. This question was answered in the negative. Buckley LJ said, at p 309:

> 'In actions *in personam* there are five cases in which the courts of this country will enforce a foreign judgment: (1) Where the defendant is a subject of the foreign country in which the judgment has been obtained; (2) where he was resident in the foreign country when the action began; (3) where the defendant in the character of plaintiff has selected the forum in which he is afterwards sued; (4) where he has voluntarily appeared; and (5) where he has contracted to submit himself to the forum in which the judgment was obtained. The question in the present case is whether there is yet another and a sixth case.'

After referring to the principles established by, *inter alia*, *Godard v Gray*, LR 6 QB 139 , and *Schibsby v Westenholz*, LR 6 QB 155, Buckley LJ observed, at p.310:

> 'In other words, the courts of this country enforce foreign judgments because those judgments impose a duty or obligation which is recognised in this country and leads to judgment here also.'

In agreement with the rest of the court, he considered that the factors relied on by the plaintiff mentioned above did not suffice to impose a duty on the defendant to obey the Western Australian judgment which should be recognised in this country.

…

Residence will much more often than not import physical presence. On the facts of the four cases last mentioned, any distinction between residence and presence would have been irrelevant. However, the brief statements of principle contained in the judgments left at least three questions unanswered. First, does the temporary presence of a defendant in a foreign country render the court of that country competent (in the private international law sense) to assume jurisdiction over him? Secondly, what is the relevant time for the purpose of ascertaining such competence? Thirdly, what is to be regarded as the 'country' in the case of a political country, such as the United States of America comprising different states which have different rules of law and legal procedure?"

57. The Court of Appeal went on to determine that, in the absence of any form of submission to a foreign court, the jurisdiction of that court depends on the physical presence of the defendant in the country concerned at the time of suit, but left open the question whether residence without presence will suffice.

58. The position for case two set out by Buckley LJ in *Emanuel v Symon* was replicated in in s.4(2)(a)(iv) of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (the **"1933 Act"**),[2] which provides (emphasis added):

> "**4 Cases in which registered judgments must, or may, be set aside.**
>
> …
>
> (2) For the purposes of this section the courts of the country of the original court shall, subject to the provisions of subsection (3) of this section, be deemed to have had jurisdiction—
>
> (a) in the case of a judgment given in an action in personam—
>
> (iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court …"

59. The Foreign Judgments (Reciprocal Enforcement) Committee, chaired by Lord Justice Greer, in its report to the Lord Chancellor dated 12 December 1932 on what domestic legislation was necessary or desirable for the enforcement of foreign judgments, said (at p.6) of the reforms introduced by what became the 1933 Act (emphasis added):

> "So far as the position in England is concerned, the change suggested by the Committee is one of procedure rather than of substance, and involves no radical alterations of the present position. Though the existing procedure by action on a foreign judgment will, under our recommendations, be replaced by a system under which foreign judgments will be registered and, when registered, enforced as if they were the judgments of an English court, the defendant in this country will be able to resist registration on substantially the same grounds as those on which he can now maintain that a foreign judgment should not support an action. This system already applies under Part II of the Administration of Justice Act, 1920, to the judgments of a large number of His Majesty's dominions, and our recommendations provide for the extension to the judgments of selected foreign countries, in return for reciprocal treatment for United Kingdom judgments, of a procedure substantially similar to that now applicable under the Act of 1920 to the judgments of Dominion and Colonial courts."

[2] The PRC is not a country to which the 1933 Act applies.

60. The intention of the reforms was set out by the Committee at p.15 of its report, where, in speaking of the need for domestic legislation to rectify the position, the Committee said this:

> "It was, however, desirable that such legislation, in laying down the conditions under which, in return for reciprocal treatment, the judgments of foreign countries should be enforced, should not depart from the substantive principles of the common law applicable to foreign judgments in general."

At p.17, the report continues:

> "In the arrangements to be made, in return for reciprocal treatment, for the recognition and enforcement in the United Kingdom of the Judgments of foreign countries, the existing principles of the common law should be followed in matters of substance …"

61. At p.62, in relation to clause 4 of the draft Bill proposed by the Committee (what became s.4 of the 1933 Act), the Committee said:

> "This clause deals with the setting aside of the registration of a foreign judgment. In sub-section (1)(a) of the clause there are enumerated the circumstances in which the Court must, upon the application of the judgment Debtor, set aside the registration. These circumstances correspond in the main with the grounds upon which an action upon a foreign judgment can at present be successfully resisted at Common Law. … In sub-section 1(b) of the clause there is set out an additional ground upon which the Court may at its discretion set aside the registration of the judgment, namely, if the judgment is in respect of a subject matter which has already formed the subject of a final and conclusive judgment by another court having jurisdiction in the matter.
>
> It will be observed that one of the cases in which the registration of the judgment must be set aside is where the Courts of the country in which the judgment was given had no jurisdiction and in sub-section (2) of Clause 4 are set out the circumstances in which the Courts of the country in which judgment was given shall be deemed to have jurisdiction. In paragraph (a) of the sub-section the rules for determining this jurisdiction, in the case of actions *in personam*, are set out at length and are substantially in accordance with the existing Common Law Rules … . It was, however, found desirable and necessary, in order to secure international agreements which would be likely to operate satisfactorily in practice, to make one or two very slight departures from the Common Law Rules."

None of those variations concerned the common law rule as to jurisdiction by residence.

62. Of what became s.4(2)(a)(iv) of the 1933 Act, the Committee said this at p.63:

> "Sub-paragraph iv reproduces the existing rule that the Court has jurisdiction where the defendant was resident within the jurisdiction, or, in the case of a body corporate, had its principal place of business there."

Thus the Committee's report followed the Court of Appeal's decision in *Emanuel v Symon*. It reflects what the authors of Dicey say, at 14-064:

> "There is divergence of authority on the question whether presence, as distinct from residence, is a sufficient basis of jurisdiction in relation to natural persons. The older cases acknowledge that the residence of a defendant in the country at the time when proceedings are commenced gives that court jurisdiction over the defendant at common law. … The position is the same under … the 1933 Act, … ."

63. In argument before me, Mr Majumdar KC referred to the judgment of Roskill LJ (as he then was, giving the judgment of the Court of Appeal) in *Henry v Geoprosco International Ltd* [1976] QB 726, at 751, where the Court, in referring to s.4(2)(a)(i) of the 1933 Act and the decision of Widgery J (as he then was) in *Societe Cooperative Sidmetal v Titan International Ltd* [1966] 1 QB 828, 847, said that the wrong approach is to assume that this statute had made substantial alterations in the common law approach to the enforcement in this country of foreign judgments: whatever the relevant common law was before the 1933 Act must be ascertained from the relevant decided cases and not from the 1933 Act itself. As the Court of Appeal said, at 751:

> "One cannot ascertain what the common law is by arguing backwards from the provisions of the statute."

That is precisely why it is necessary for this Court to look to the judgment in *Emanuel v Symon*, which, as I have taken some length to address, sets out the common law position adopted in s.4(2)(a)(iv) of the 1933 Act.

64. While the authors of Dicey frame the rule in terms of presence rather than residence in light of *Adams v Cape Industries Plc*, they note (at 14-065) the issue remains open in the Supreme Court. Nonetheless, Mr Miall submits the answer to the question whether residence without presence suffices must be that it does. Firstly, Mr Miall says otherwise it would go against established authority and the common law position replicated in statute. Secondly, he says it would be absurd if a person resident in the territory of a foreign court could avoid its jurisdiction by temporary absence on the date proceedings were commenced, or, indeed, seeking to flee their jurisdiction of residence at the last moment before claims are commenced, leaving creditors unable to find them and therefore unable to obtain judgments enforceable overseas. That position accords with the views of Sir Christopher Slade (who sat on the panel which decided *Adams v Cape Industries Plc*) expressed in the Court of Appeal's judgment in *State Bank of India v Murjani Marketing Group Limited* (unreported, 27 March 1991), where he agreed with the judgment of Taylor LJ (as he then was). At 12, the learned judge said this:

> "I wish to add a few observations on the 'presence or residence' issue, because I was a party to the decision of this court in *Adams v Cape Industries Plc* [1990] Ch 433 and am conscious that that decision left unanswered at least one important issue of law which may be highly relevant in the present case, because it is common ground that Mr Murjani was not present in New York at the time when the New York proceedings were issued or when they were served.

In the *Adams* case this court, after reviewing the authorities, extracted three principles (at pp 517H-518C):

> 'First, in determining the jurisdiction of the foreign court in such cases, our court is directing its mind to the competence or otherwise of the foreign court 'to summon the defendant before it and to decide such matters as it has decided:' see *Pemberton v Hughes* [1899] 1 Ch 781, 790, per Lindley MR. Secondly, in the absence of any form of submission to the foreign court, such competence depends on the physical presence of the defendant in the country concerned at the time of suit. (We leave open the question whether residence without presence will suffice.) From the last sentence of the dictum of Lord Parmoor cited above, and from a dictum of Collins MR in *Dunlop Pneumatic Tyre Co Ltd v Actien-gesellschaft fur Motor und Motorfahrzeugbau vorm Cudell & Co* [1902] 1 KB 342, 346, it would appear that the date of service of process rather than the date of issue of proceedings is to be treated as 'the time of suit' for these purposes. But nothing turns on this point in the present case and we express no final view on it. Thirdly, we accept the submission of Sir Godfray Le Quesne (not accepted by Mr Morison) that the temporary presence of a defendant in the foreign country will suffice provided at least that it is voluntary (*i.e.* not induced by compulsion, fraud or duress).'

A little later (at p 519A) we said:

> 'while the use of the particular phrase "temporary allegiance" may be a misleading one in this context, we would, on the basis of the authorities referred to above, regard the source of the territorial jurisdiction of the court of a foreign country to summon a defendant to appear before it as being his obligation for the time being to abide by its laws and accept the jurisdiction of its courts while present in its territory.'

Speaking only for myself, in the *Cape* case I left open the question whether residence without presence at the time of suit would suffice to found the jurisdiction of the foreign court, not only because it was unnecessary for the decision but also because, despite the benefit of comprehensive argument, I found it a very difficult one. The difficulty arose partly because 'residence' is a somewhat flexible word, which may bear rather different meanings in different contexts, and also because, in many of the earlier cases cited to us, the court had apparently envisaged the word 'residence' as including physical presence, without directing its mind to the situation where there was no physical presence. (As was pointed out in the judgment of the court at p 515F, residence will much more often than not import physical presence).

I, for my part, strongly incline to the view that, in broad terms, if a person for the time being has his principal home in a foreign country, albeit

> without being a subject of that country, his mere temporary absence would not deprive the local court of jurisdiction under English conflict of law rules. I am disposed to think that, notwithstanding his temporary absence, he would remain under an obligation to accept the jurisdiction of the foreign court – in other words, he would be deemed to have continued presence there."

I see the force in Sir Christopher's reasoning, and in Mr Miall's submission: it would be absurd if a person "resident" in a foreign country could avoid the jurisdiction of a court of that country by temporary absence on the date proceedings were commenced, particularly where the person remains a citizen of that country and thus continues to enjoy the protection given by the law of that country.

65. Sir Christopher's reasoning in *Adams v Cape Industries Plc* and in *State Bank of India v Murjani Marketing Group Limited* gained the approval of Cooke J in *Motorola Credit Corp v Uzan* [2004] EWHC 3169 (Comm), where Cooke J said:

> "25. Two strands of reasoning appear in the authorities. The first is the notion that a person who takes advantage of the protection given by the law of a particular State is equally subject to its jurisdiction, whether he takes advantage of it by virtue of presence or residence. The second concept is that of amenability to be summoned by the court in the context of service of proceedings which, as a matter of history in this jurisdiction, previously required personal service. Thus it is that in *Adams v Cape*, Slade LJ left open the question as to whether residence without presence would suffice for the purpose of recognising a foreign court's jurisdiction.
>
> 26. So far as the former concept is concerned, a person with residence in a given jurisdiction relies on, and obtains, the protection of the courts of that jurisdiction and thus owes what is often referred to as 'territorial allegiance'. In my judgment, he does so more strongly than a visitor, who can be served personally with proceedings. The case for jurisdiction over a resident, as opposed to a person who is temporarily present in a particular jurisdiction, is therefore, more weighty.
>
> 27. So far as service is concerned, it is to be noted that since CPR 6.13 and 6.15, service of claim forms in this country is now normally effected by the courts by sending it to the last known address of the defendant, being, in the case of an individual defendant, his last known residence. It seems that part of the reasoning for the reservation of Slade LJ with regard to residence sufficing for recognition of a foreign judgment, as a matter of English private international law, therefore, may have disappeared."

66. I respectfully agree with Cooke J's observations. As his Lordship went on to say, at [29]:

> "It seems to me that if presence is an adequate basis for recognition of a foreign court's jurisdiction, it is an *a fortiori* case if there is residence, certainly if the defendant's main residence is within that jurisdiction and

the defendant is merely absent on a temporary basis from that jurisdiction at the time proceedings are instituted or served."

67. In *Rubin v Eurofinance SA* [2013] 1 AC 236 the Supreme Court had to determine whether and in what circumstances an order of a United States court in avoidance proceedings in insolvency would be recognised and enforced in England. At common law and under the 1933 Act, a foreign court had jurisdiction to give a judgment *in personam* capable of enforcement if the person against whom it was given was present in that country when the proceedings were instituted, claimed or counterclaimed in the proceedings, submitted to the jurisdiction of the court by voluntarily appearing in the proceedings, or had agreed to submit to the jurisdiction of the court. The defendant had not been present or resident in the US. At [8]-[10], Lord Collins JSC (with whom Lords Walker and Sumption JJSC agreed) said:

> "8. The first edition of *Dicey* in 1896 stated (rule 80) that the foreign court would have jurisdiction if 'the defendant was resident [or present?]' in the foreign country 'so as to have the benefit, and be under the protection, of the laws thereof'. By the 6th edition in 1949 the formula was repeated by Professor Wortley (rule 68) but without the doubt about presence as a basis of jurisdiction. In the 8th edition in 1967 Dr (later Professor) Clive Parry removed the phrase (then rule 189) about the benefit and protection of the foreign country's laws. The rule, subsequently edited by Dr Morris and then by Professor Kahn-Freund, remained in that form until the decision in *Adams v Cape Industries plc* [1990] Ch 433 (CA), which established that presence in the foreign jurisdiction, as opposed to residence, was a sufficient basis for the recognition of foreign judgments. Then, edited by myself and later by Professor Briggs, the rule took substantially its present form in the 12th edition in 1993.
>
> 9. The theoretical basis for the enforcement of foreign judgments at common law is that they are enforced on the basis of a principle that where a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained: *Williams v Jones* (1845) 13 M & W 628, 633, per Parke B; *Godard v Gray* (1870) LR 6 QB 139, 147, per Blackburn J; *Adams v Cape Industries plc* [1990] Ch 433, 513 and *Owens Bank Ltd v Bracco* [1992] 2 AC 443, 484, per Lord Bridge of Harwich. As Blackburn J said in *Godard v Gray*, this was based on the mode of pleading an action on a foreign judgment in debt, and not merely as evidence of the obligation to pay the underlying liability: LR 6 QB 139, 150. But this is a purely theoretical and historical basis for the enforcement of foreign judgments at common law. It does not apply to enforcement under statute, and makes no practical difference to the analysis, nor, in my judgment, to the issues on these appeals.
>
> 10. Consequently, if the judgments in issue on the appeals are regarded as judgments *in personam* within the *Dicey* rule, then they will only be enforced in England at common law if the judgment debtors were present (or, if the 1933 Act applies, resident) in the foreign country

> when the proceedings were commenced, or if they submitted to its jurisdiction."

What Lord Collins appears to have said is that the Dicey rule was amended to reflect the Court of Appeal's decision in *Adams v Cape Industries plc*, but, as I set out above at [56], that decision did not change the position as to residence save to confirm that presence was sufficient.

68. To the contrary, Mr Majumdar KC relied upon a passage by Lord Collins in *Vizcaya Partners Ltd v Picard* [2016] 3 All ER 181, a decision of the Judicial Committee of the Privy Council, where, referring to *Rubin v Eurofinance SA*, Lord Collins said (at [2]):

> "the UK Supreme Court held, in summary, that at common law a foreign judgment *in personam* would be enforced in England only if the judgment debtor had been present in the foreign country when the proceedings had been commenced, or if it had submitted to its jurisdiction; … ."

69. Mr Majumdar further relied upon a passage in Professor Briggs' work Civil Jurisdiction and Judgments (7th edition, Informa Law, Routledge), where Professor Briggs says, at [34.05] (Mr Majumdar's emphasis):

> "From time to time it was suggested that the common law required the defendant to be resident, rather than present, within the territorial jurisdiction of the foreign court. At first sight, residence may be thought to indicate a stronger and more durable connection with a particular place than does presence, which may be fleeting or transitory or even involuntary, … and it may therefore be deduced that residence is a more satisfactory basis for recognising a foreign judgment. However, in *Adams v Cape Industries Plc*, … the Court of Appeal held that the presence of the defendant was sufficient, while leaving open the question whether residence without presence would also suffice.[20] The court suggested, though had no need to decide, that the relevant time was that of the service of process, this on the presumed footing that it represents the effective start of legal proceedings.[21] The Supreme Court in *Rubin v Eurofinance SA*[22] restated the law in terms of presence, noting without objection that any reference to 'residence' had been dropped from the statement of the law in Dicey;[23] and in *Vizcaya Partners Ltd v Picard*[24] the Privy Council simply referred to presence as the alternative to submission. The law is now settled: presence, not residence, is the test.
>
> In any event, the arguments in favour of presence are overwhelming. In terms of principle, the doctrine of comity, according to which the rules of private international law respect and give effect to exercises of sovereign authority over things within the territorial jurisdiction of the sovereign, easily accepts that if a person is present within the territory of a foreign sovereign, exercises of that authority over him should be respected and, within limits, given effect afterwards: what is true for things is true also for persons. Territoriality is the very foundation of the common law rules of private international law. … And as a matter of practicality, although most people know where they are present, or were present, on any given day, … it may be far more difficult to decide where someone is or is not

resident on the same day. Take the foreign student who is in Oxford during term, and back home in the vacation, or even on holiday during the vacation: where is she resident[27] on Monday of the sixth week of term? In Oxford? Possibly. At home, overseas, where her things and family are? Possibly also. But in neither case can it be said to be certain. What of the person who is subject to immigration control but who has indefinite leave to remain: is she still resident in England if she goes overseas for a month? For three months? For a year? On a two-year secondment? With no return flight booked? Until covid restrictions are lifted?

The purpose of the rule, so far as the common law is concerned, is to allow the reasonably well-informed defendant to be able to decide, usually under pressure of time, whether he should appear before and defend the proceedings brought against him before a foreign court. From that perspective, a legal lest which asks or requires him to ask, whether he might later be considered to have been resident in that country on the day the proceedings were instituted would be unfit for the purpose for which it was needed. No more should be heard of it. It may be well intentioned, but it is badly misconceived.

…

[20] At 518. In *State Bank of India v Murjani Marketing Group Ltd* (unreported, 27 March 1991), the Court of Appeal stated, obiter, that residence without physical presence at the material time would still suffice to make the court jurisdictionally competent. Sir Christopher Slade suggested that such a defendant 'would be deemed to have continued presence' in the place; Taylor LJ noted that there was still scope for argument; and Fox LJ agreed with both. This falls far short of being a decision. Of course, if the defendant elects to enter an appearance and submit to the jurisdiction the point becomes academic.

[21] At 518.

[22] [2012] UKSC 46, [2013] 1 AC 236.

[23] Dicey, Morris & Collins, *The Conflict of Laws*, 15th edn (Sweet & Maxwell, London, 2012), Rule 43, First Case.

[24] [2016] UKPC 5 [2016] 1 All ER (Comm) 891.

…

[27] If one reformulates the question to ask whether she is 'a resident' in Oxford on that same date, the answer may incline more to the negative. It is all best avoided."

70. In any event, Mr Majumdar submits that there is no English case which supports the recognition of domicile (*cf.* residence or presence) in the common law sense as a ground for enforcement or recognition of a foreign judgment, although I doubt that as a complete statement of principle. As the authors of Dicey say, *dicta* in *Turnbull v Walker* (1892) 67 LT 767, 769; *Emanuel v Symon*, 308, 314; *Jaffer v Williams* (1908) 25 TLR 12, 13; and *Gavin Gibson & Co v Gibson* [1913] 3 KB 379, 385, suggest (though, they qualify, "rather faintly") the recognition of domicile in the common law sense as a basis of

jurisdiction. But, even so, it is not to the point: here the Claimants rely on residence, not domicile.

71. I do not find the academic commentary on residence referred to me to be of assistance in determining the point before me. The common law position was clearly stated in the Court of Appeal by Buckley LJ in *Emanuel v Symon* and rehearsed by Slade LJ in *Adams v Cape Industries Plc*: residence in the foreign country when the action began (*i.e.*, when proceedings were issued) is sufficient to ground jurisdiction. In *State Bank of India v Murjani Marketing Group Limited*, Sir Christoper spoke of a person's "principal home", but nowadays it is accepted that someone can reside in more than one place at once.

72. I need then to go on to consider whether the Defendants were "resident" in Nanjing at the time proceedings were served for each claim. To do so, I need first to consider what residence means.

Residence

73. The meaning of "residence" has been considered by various authorities in different contexts, including jurisdiction, often as a precursor to considering domicile. A useful analysis and summary of the position is found in *Bestolov v Povarenkin* [2017] EWHC 1968 (Comm), a decision of Simon Bryan QC (as he then was), where it was held in the context of determining whether a Russian resident and tax-domiciled defendant was also resident and domiciled in England (at [44], with the judge's original emphasis below):

> "(1) It is possible for a defendant to reside in more than one jurisdiction at the same time.
>
> (2) It is possible for England to be a jurisdiction in which a defendant resides even if it is not his *principal* place of residence (*i.e.* even if he spends most of the year in another jurisdiction).
>
> (3) A person will be resident in England if England is for him a *settled or usual place of abode*. A settled or usual place of abode connotes *some degree of permanence or continuity*.
>
> (4) Residence is not to be judged according to a '*numbers game*' and it is appropriate to address the *quality* and *nature* of a defendant's visits to the jurisdiction.
>
> (5) Whether a defendant's use of a property characterises it as his or her 'residence', that is to say the defendant can fairly be described as residing there, is a *question of fact and degree*.
>
> (6) In deciding whether a defendant is resident here, regard should be had to any *settled pattern of the defendant's life* in terms of his presence in England and the reasons for the same.
>
> (7) If a defendant visits a property in England on a regular basis for not inconsiderable periods of time, where his wife and children live, in order to see his wife and children (including where the centre of the defendant's relationship with his children is England), such property has the potential to be regarded as *the family home* or *his home when in England*, which

> itself is evidence which may go towards supporting the conclusion that England is for him a settled or usual place of abode, and that he is resident in England, albeit that ultimately it is a question of fact and degree whether he is resident here or not, having regard to all the facts of the case including any discernible *settled pattern of the defendant's life* or as it has also been put *according to the way in which a man's life is usually ordered*."

74. Thus, it is apparent that residence is an ordinary English word and should be interpreted in accordance with its ordinary and natural meaning, *i.e.* a place which is the person's settled or usual place of abode. To my mind, that connotes some degree of permanence. Further, whether a defendant is resident somewhere is a question of fact and degree, having regard to the quality and nature of their presence in the jurisdiction, including any settled pattern of their life and the reasons for it.

75. Mr Kell, who argued this point before me on the Defendants' behalf, criticised Mr Miall's reliance on *Bestolov v Povarenkin* to illustrate the meaning of residence on the basis it was a case on *forum non conveniens*, interpreting the concepts of residence and domicile used in the Civil Jurisdiction and Judgments Order 2001. He and Mr Majumdar KC did not advance a test for residence in their skeleton argument, largely because their argument for the Defendants on this point discouraged residence as a gateway for jurisdiction and advanced presence instead. I reject that criticism. What Mr Bryan QC did in *Bestolov v Povarenkin* was to draw together from a number of different authorities a modern examination of the meaning of the word residence, not fettered by approaches taken in the old case law that Mr Kell took me through. The word has its ordinary meaning with connotations of a settled life and connection and of all the principles which I quote above. I respectfully adopt Mr Bryan QC's approach, and apply it in my analysis of the Defendants' position.

Discussion and analysis

76. The Defendants claim they obtained permanent residence for Cyprus in 2014, took up formal residence in the summer of 2016, applied for Cyprus National Registration in November 2016, and were issued with Cypriot passports in July 2017. They say that they were not resident or physically present in the PRC when the claims were issued such that the PRC Courts did not have jurisdiction over them.

77. As to presence, it is common ground that the Defendants were not present in the PRC when the claims commenced or at the dates of service of those proceedings.

78. Whether the Defendants were resident at the relevant time of the commencement or service of each claim is to be assessed in light of all the evidence. Mr Miall submits the Defendants had been physically present and living continuously in the PRC until just eight days before Mr Qing Li's claim was issued on 7 November 2016. Mr Jiang, Mr Chao Li, and Mr Chen's claims were all issued in November 2016. SBVCP's claim was issued on 12 January 2017.

79. As for residence, there is no dispute that, at least until the summer of 2016, the Defendants were resident in the PRC. The burden in proving residence in the PRC thereafter is on the Claimants. In my judgment, the evidence of the Defendants' residence in and connection to Nanjing and the PRC prior to and throughout 2016 and into early 2017 is strong, and more likely than not. In particular:

(1) The experts Mr Xu and Mr Zhang agreed that PRC law requires PRC citizens to register their "habitual residence" with the local authorities on the Hukou Register, which is their domicile under PRC law. Residents who move from their place of registration (including outside the PRC) are required to apply to the local registration authority to cancel that registration. Those who move to settle abroad are required to cancel their household registration and return their identity cards. In practice, however, there are cases where individuals who move to live or work outside their household registration address (including outside the PRC) do not take the initiative to apply for a change or cancellation of their original household registration, or for other reasons retain their original household registration.

(2) Mr Xu explained that, for PRC citizens who have left the country, Article 15 of the *Interpretation (I) of the Supreme People's Court on Several Issues Concerning Application of the Law of the People's Republic of China on Choice of Law for Foreign-Related Civil Relationships* (effective from 7 January 2013 to the present) provides that the habitual residence of a natural person means the place where the person has continuously lived for a period of not less than one year as the centre of their life.

(3) Mr Zhang said that PRC law provides that a PRC citizen automatically loses PRC nationality upon acquiring foreign nationality and must cancel household registration; and a person who takes up permanent residence abroad (outside PRC) is also required to cancel their household registration. This is an administrative law obligation. In practice, however, it frequently occurs that individuals retain their Chinese household registration even after settling abroad (outside mainland China) or acquiring foreign nationality.

(4) Mr Zhang went on to say that changes in domicile, habitual residence, and household registration address do not depend on whether administrative obligations to update or cancel their registration have been fulfilled, nor on whether the relevant facts occurred within or outside mainland China. When a person establishes a habitual residence or settlement outside the PRC, such facts can serve as the basis for foreign-related litigation and international service. Settling down abroad is the main reason for cancelling household registration. According to the *Notice by the Overseas Chinese Affairs Office of the State Council of Issuing the Provisions on Defining the Identities of Overseas Chinese, Chinese of Foreign Nationalities, Returned Overseas Chinese and Relatives of Overseas Chinese*, "settlement" means that a PRC citizen has obtained long-term or permanent residence in the host country and has resided there (except for medical treatment, labour dispatch, official duty and other similar circumstances) continuously for two years, spending at least 18 months there within that period.

(5) The Defendants' habitual residence as recorded in the Hukou Register as of October 2016 is Room 102, Unit 1, Building 24, 101 Huanling Road, Qixia District, Nanjing (**"Room 102"**). Neither of them applied for that to be changed. Each of the Defendants had a valid resident identity card at the time the proceedings were commenced (as recorded in the various Judgments).

(6) The Defendants' evidence is that they both amended their registered addresses in the Hukou Register in October 2016 to the above address. Prior to that, it appears that their (or Ms Gao's) registered address in the Hukou Register was Room 205,

Building 37, No 66 Muxuyuan Street, Qinhuai District, Nanjing (**"Room 205"**). Mr Yuan has also used Room 301, Building 7, No 4 Dashiqiao, Xuanwu District, Nanjing (**"Room 301"**).

(7) The Defendants agreed with Mr Qing Li (in May 2016) to inform him within 24 hours if they changed their residential address, correspondence address or contact telephone number. They did not do so.

(8) In their contract with Mr Jiang, the Defendants set out both an address of domicile (Room 205) and an address for delivery of notices: one which has not yet featured, Room 602, Unit 1, Block 2, Yunshan Garden, Tianhong Villas, No.1 Huanling Road (**"Room 602"**). They also agreed to give written notice of any change to correspondence addresses or contact information. They did not do so.

(9) The Defendants' evidence is that they were in the PRC in October 2016. Mr Yuan entered a written IOU/confirmation of debt with Mr Chen on 8 October 2016, and entered contracts with Mr Jiang as late as 17 October 2016. Mr Yuan then did not indicate that he resided abroad.

80. Against that, the Defendants say that they left the PRC permanently in August 2016, returning for a short time in October 2016. They also say that they obtained Permanent Residence in Cyprus in 2013 or 2014. Mr Yuan says he applied for Cyprus National Registration in November 2016, and was issued with a Cypriot passport in July 2017.

81. I cannot accept the Defendants left the PRC permanently in August 2016. There is a notable lack of cogent documentary evidence to support their evidence. By way of example:

(1) The Defendants' Cypriot passports were issued in September 2017, with their Cypriot identity cards being issued in October 2017. While it appears that the Defendants obtained a Cypriot immigration permit in 2014, that does not answer the question of where they were resident in late 2016.

(2) No Cypriot residence or citizenship applications or other relevant documents, including correspondence with relevant authorities, were produced by the Defendants.

(3) Whilst Ms Gao disclosed a "Statement of Account" for a Eurobank Cyprus account for the period from 1 January 2017 to 30 June 2017 (and seemingly following an ebanking account application in December 2016), I am not persuaded this supports the Defendants' position for the following reasons:

(a) the address given on the statement is a PO Box address, rather than a residential address;

(b) the sources of funds in the account appear to be incoming transfers from an active PRC account and/or internal foreign currency transfers, but no other accounts have been disclosed; and

(c) day-to-day spending does not start until 25 January 2017 at the earliest, and arguably not until the very end of January 2017.

(4) Mr Yuan did not provide any disclosure relating to any bank accounts in his name (whether in Cyprus, the PRC, or otherwise) beyond September 2016. At that point, he was still using a PRC bank account.

(5) The Defendants did not provide any documents identifying their alleged living arrangements, including whether they rented or acquired property, from when and on what terms.

(6) The Defendants point to receipts for their son's schooling in Paphos, where at the age of three he was enrolled in kindergarten in November 2016 and continued in December 2016 throughout term to January 2018. That, whether of itself or coupled with other evidence relied upon by the Defendants, does not support the Defendants' residence in Cyprus.

(7) Whilst there are some utility invoices, it is notable that they are all in Ms Gao's name, but they do not of themselves demonstrate the Defendants' residence or presence in Cyprus.

82. Other documents provided by the Defendants are not for periods with which the Court is concerned, *i.e.*, up to the issue of SBVCP's proceedings on 12 January 2017.

83. The Defendants' presence in Cyprus also appears to be much more sporadic than they have suggested. Their evidence is that they moved to Cyprus permanently from Summer/August 2016. However, that position is not supported by the border control entries in their passports, which indicate that, aside from a three-day visit in July 2016, the Defendants did not enter Cyprus at all until 23 October 2016, and appear to have been in the PRC for the vast majority of July to October 2016.

84. Moreover, during this time I do not accept that the Defendants were simply "tying up loose ends" in the PRC. The Defendants conducted business in the same manner as they had before: Mr Yuan entered the debt acknowledgment with Mr Chen on 8 October 2016, and borrowed RMB 1,000,000 from him on 10 October 2016. Each Defendant signed agreements with Mr Jiang on 12 and 17 October 2016. They attended social events. What they did not do was seek to discharge their numerous liabilities or inform anyone where they might be located in the future, although more than one witness (Mr Jiang) reports that Mr Yuan said he was in Hong Kong on business, and would be returning to the PRC within a short period. That was 24 October 2016, although the Defendants had arrived in Cyprus on 23 October 2016. In early 2017, Mr Lu heard that the PRC's Public Security Bureau had discovered Mr Yuan was overseas, possibly in Germany.

85. While there is some evidence of the Defendants' brief presence in Cyprus in mid-2016, and while it may even be that they were taking preparatory steps with the aim of moving to Cyprus in due course, the evidence of their actual presence in Cyprus and the quality of that presence is very limited. In assessing the evidence after hearing from the witnesses at trial, I consider it unlikely that the Defendants were no longer resident in the PRC or were resident in Cyprus at the commencement of the claims. There is no evidence of a settled or usual place of abode in Cyprus, or of any established or settled pattern of life there as at the relevant dates. I do not accept the Defendants were resident in Cyprus or elsewhere outside the PRC before October 2016.

86. The position after October 2016 is less clear, but it seems to me more likely than not that the Defendants did not intend to abandon Nanjing as a place of residence and maintained their "habitual residence" there under PRC law and as a matter of English law. While Mr Yuan had obtained Permanent Residence for Cyprus in 2014, he did not fully relocate to Cyprus until at least the end of October 2016. Although the Defendants' Cypriot identity cards show that (at some point) they obtained Cypriot nationality, these cards were not issued until 10 October 2017.

87. But, in any event, despite the requirement in PRC law to cancel the registration of their "habitual residence" in the Hukou Register and to return their identity cards where they intend to leave the PRC for good, the Defendants did not. Mr Yuan's evidence was that he did this in order to retain his PRC citizenship and the benefits that gave him. He made it clear that he also wanted to be able to return to live in the PRC, and he said he wanted to return to the PRC at the time he first moved to Cyprus. Ms Gao also raised the prospect of living in the property at Room 102, the address to which they changed their habitual residence in October 2016, after it had been refurbished in 2017. They had, in any event, retained their property at Room 205, in addition to their PRC citizenship, identity cards, and passports as of the end of January 2017. They also retained and used bank accounts in the PRC, which were used to fund inflows of money into the Eurobank account in Cyprus.

88. Ms Gao's bank account only shows day-to-day spending from the start of February 2017. Mr Yuan said they used the Eurobank card from October 2016 to pay for such things, and both he and Ms Gao said they had large quantities of cash and used that. Aside from those assertions, there is no documentary evidence to support those claims.

89. Finally, the first evidence of the Defendants obtaining Cypriot nationality is the issue of their Cypriot identity cards in October 2017, which describe their nationality as "Cypriot". As I noted above, according to Mr Zhang a PRC citizen automatically loses PRC nationality upon acquiring foreign nationality, and so the Defendants lost their PRC nationality from October 2017, at the earliest. While the loss of PRC citizenship lessened the case for the PRC Courts' jurisdiction over the Defendants as residents, on the evidence before me that did not happen until 10 October 2017, long after the proceedings in the PRC were issued and, in my judgment, while the Defendants still were resident in Nanjing.

90. In the premises, I consider it more likely than not that the Claimants have shown the Defendants maintained residence in Nanjing at the time they commenced their proceedings against the Defendants, at least up until and including 12 January 2017.

DISPOSITION

91. For the reasons I have set out above, I find:

    (1) the PRC Courts had jurisdiction to enter the Judgments in relation to Mr Qing Li and Mr Jiang's claims; the relevant PRC Courts had the requisite *in personam* jurisdiction required to enter those Judgments by the parties' agreement to those jurisdictions; and

    (2) in any event, the PRC Courts had jurisdiction to enter the Judgments in relation to each Claimant's claim; the relevant PRC Courts had the requisite *in personam*

jurisdiction required to enter those Judgments by the Defendants being resident in Nanjing when the Claimants' proceedings commenced.

It follows that the Judgments are enforceable in England against the Defendants as judgment debts at common law. The Claimants therefore succeed in their claims, and there must be judgment for the Claimants.

92. I order accordingly. I invite the parties to agree any consequential orders to follow or, failing that, to fix a date for a consequentials hearing.