Neutral Citation Number: [2014] EWFC 35

Case No: AL11D00099
and 179 other petitions

THE FAMILY COURT
(In Open Court)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 September 2014

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

- -

In the matter of 180 Irregular Divorces

Between :

AGATA RAPISARDA	**Petitioner**
- and -	
IVAN COLLADON	**Respondent**

- -
- -

Mr Simon P G Murray and Mr Thomas Collins (instructed by the Treasury Solicitor) for the Queen's Proctor
Ms Tina Villarosa (instructed under the Direct Public Access scheme) for the parties in AL11D00099 (Rapisarda v Colladon)

Hearing dates: 9-10 April 2014
Further submissions lodged 4 June 2014

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

This judgment was delivered in open court

Sir James Munby, President of the Family Division :

1. I have been hearing applications by the Queen's Proctor to dismiss a large number of divorce petitions and also, in many of the cases, to set aside decrees of divorce (some nisi, some absolute) obtained in consequence of what can only be described as a conspiracy to pervert the course of justice on an almost industrial scale.

2. Altogether I have in front of me 180 petitions for divorce, issued on a variety of dates between August 2010 and February 2012 inclusive with the exception of one, *La Marca v Prestieri* BY12D00274, presented to the Barnsley County Court on 20 July 2012 and issued on 27 July 2012. They were presented to and issued in a huge number of different county courts – 137 in all – ranging, alphabetically from Aldershot to York and geographically across the length and breadth of England and Wales, from Truro in south-west England to Canterbury in south-east England, Haverfordwest in south-west Wales, Llangefni in north-west Wales, Carlisle in north-west England and Newcastle in north-east England. Most of these county courts handled only one of these petitions, some had two petitions and two (Reigate and Peterborough) had three.

3. In the circumstances, and bearing in mind in particular that this judgment will be read by many unfamiliar with our court system, I think it important to give a judgment more detailed in some respects than might otherwise be appropriate.

4. By way of preliminary, I should explain that within the United Kingdom there are three separate legal systems. Scotland and Northern Ireland each has its own legal system. I am sitting as a judge of the courts of England and Wales (what for convenience I shall refer to as "the English court") applying the law of England and Wales (what for convenience I shall refer to as "English law").

5. This judgment is divided into a number of sections. First, I deal with the law and practice applicable to divorce proceedings in the English court. Secondly, I deal with the law and practice applicable to the applications before me. Thirdly, I deal in some detail with the facts of the cases I am being invited to consider. Next, I set out the history of the current litigation, before setting out and explaining my conclusions. Finally, I deal with one case, *Rapisarda v Colladon* AL11D00099, which for reasons that will become apparent in due course requires to be considered separately.

<u>English law: divorce proceedings in the English court</u>

6. An application for divorce is made in the English court by an originating process called a petition. The person applying for divorce is called the petitioner; the other spouse is called the respondent. An order for divorce is called a decree. The first decree is called a decree nisi: it is a provisional order which does not itself terminate the marriage. The second decree is called a decree absolute: it is a final order which brings the marriage to an end.

7. The first thing I must consider is the jurisdiction of the English court in matters of divorce. For reasons which will become apparent in due course, it is important to distinguish two different senses in which the word jurisdiction is used. The first, what I will call "jurisdiction to entertain the petition", goes to the logically prior question of whether the English court has any jurisdiction at all to receive, hear and consider the

petition. The other, what I will call "jurisdiction to grant a decree", goes to the question of whether the English court, assuming that it has jurisdiction to entertain the petition, has jurisdiction to grant a decree of divorce. I will consider these in turn.

8. Jurisdiction to entertain the petition is conferred by section 5(2) of the Domicile and Matrimonial Proceedings Act 1973:

> "The court shall have jurisdiction to entertain proceedings for divorce … if (and only if) –
>
> (a) the court has jurisdiction under the Council Regulation; or
>
> (b) no court of a Contracting State has jurisdiction under the Council Regulation and either of the parties to the marriage is domiciled in England and Wales on the date when the proceedings are begun."

The Council Regulation is defined in section 5(1A) as meaning:

> "Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility."

9. So far as is material for present purposes, Article 3 of the Council Regulation provides as follows:

> "1 In matters relating to divorce … jurisdiction shall lie with the courts of the Member State
>
> (a) in whose territory:
>
> – the spouses are habitually resident, or
>
> – the spouses were last habitually resident, insofar as one of them still resides there, or
>
> – the respondent is habitually resident, or
>
> – in the event of a joint application, either of the spouses is habitually resident, or
>
> – the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
>
> – the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her "domicile" there;

> (b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the "domicile" of both spouses.
>
> 2 For the purpose of this Regulation, "domicile" shall have the same meaning as it has under the legal systems of the United Kingdom and Ireland."

In each of the cases before me jurisdiction was sought to be founded in accordance with, in most of the cases, the fifth or, in a small minority of the cases, the third limb of Article 3.1(a). So, in every case it was being asserted that either the applicant (the petitioner) or the respondent was habitually resident in England and Wales.

10. I should add that at all material times the relevant rules of court provided that a petition could be presented to "any divorce county court" (see rule 2.6(1)(a) of the Family Proceedings Rules 1991 and, with effect from 6 April 2011, rule 7.5(1) of the Family Procedure Rules 2010), that is, to any county court so designated by the Lord Chancellor pursuant to section 33(1) of the Matrimonial and Family Proceedings Act 1984. A very large number of county courts were so designated. Section 33(2) provided that the jurisdiction of a divorce county court "shall be exercisable throughout England and Wales." The effect of these provisions – and this is what enabled the fraudulent conspiracy I am considering to go on for so long without being detected – was that a petition could be filed in any divorce county court irrespective of the address of either the petitioner or the respondent. As is apparent from what I have already said, the architects of the fraud made the maximum use of this facility, spreading the 180 petitions very thinly across a large number of county courts throughout the length and breadth of England and Wales.

11. Jurisdiction to grant a decree, assuming that the English court has jurisdiction to entertain the petition, depends upon section 1 of the Matrimonial Causes Act 1973, which so far as material for present purposes provides as follow:

> "(1) … a petition for divorce may be presented to the court by either party to a marriage on the ground that the marriage has broken down irretrievably.
>
> (2) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say –
>
> (a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;
>
> (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
>
> (c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;

> (d) that the parties of the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition … and the respondent consents to a decree being granted;
>
> (e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition … "

The petitions in the cases with which I am concerned were based on section 1(2)(d).

12. The procedure on a divorce petition depends upon whether or not the petition is defended (opposed). Petitions which are not defended are dealt with in accordance with what is called the "special procedure": see rules 2.24(3) and 2.36 of the 1991 Rules and, with effect from 6 April 2011, rules 7.19 and 7.20 of the 2010 Rules. Two aspects of the special procedure need mention. Rule 2.24(3) of the 1991 Rules required the petitioner to file an affidavit – a sworn statement – setting out certain prescribed information. The corresponding provision is now rule 7.19(4) of the 2010 Rules, which requires the petitioner to file a statement, verified by a statement of truth, setting out certain prescribed information. The other relevant provision is rule 2.36(1)(b) of the 1991 Rules, now rule 7.20(2)(b) of the 2010 Rules, entitling the court to seek further information from the petitioner. The old rule provided that the court could "give the petitioner an opportunity of filing further evidence". The new rule is rather more direct, the court being empowered to "direct … that any party to the proceedings provide such further information … as the court may specify".

<u>English law: the proceedings before me</u>

13. The Queen's Proctor intervenes in these cases in accordance with section 8 of the Matrimonial Causes Act 1973:

> "(1) In the case of a petition for divorce –
>
> (a) the court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Queen's Proctor, who shall under the directions of the Attorney-General instruct counsel to argue before the court any question in relation to the matter which the court considers it necessary or expedient to have fully argued;
>
> (b) any person may at any time during the progress of the proceedings or before the decree nisi is made absolute give information to the Queen's Proctor on any matter material to the due decision of the case, and the Queen's Proctor may thereupon take such steps as the Attorney-General considers necessary or expedient.
>
> (2) Where the Queen's Proctor intervenes or shows cause against a decree nisi in any proceedings for divorce, the court may make such order as may be just as to the payment by other parties to the proceedings of the costs incurred by him in so

> doing or as to the payment by him of any costs incurred by any of those parties by reason of his so doing."

14. It is clear that the Queen's Proctor may intervene even *after* a void decree absolute: see the decision of Sir John Arnold P in *Ali Ebrahim v Ali Ebrahim (Queen's Proctor intervening)* [1983] 1 WLR 1336. The whole basis of the Queen's Proctor's case is that in every one of the cases before me in which a decree absolute has been made the order is void. Whether that is so is, of course, one of the issues I have to determine.

15. In cases such as this, the Queen's Proctor enters a formal document called a plea. The normal practice of the Queen's Proctor is not to adduce evidence in support of the plea, and it is long established that there is no need for him to do so where there is no answer to the plea. That was foreshadowed in *Sheldon v Sheldon (The Queen's Proctor intervening)* (1865) 4 Sw&Tr 75, 164 ER 1444. It was so held by Bargrave Deane J in *Crowden v Crowden (The King's Proctor showing cause)* (1906) 23 TLR 143, followed by Baker J in *Clutterbuck v Clutterbuck and Reynolds (Queen's Proctor showing cause)* [1961] 105 Sol Jo 1012. But that of course assumes that the Queen's Proctor has been able to serve the plea on the parties. In most of the cases before me that has been possible; in some cases it has not proved possible to serve the parties in such a way as to bring the plea to their attention (see further below). The Queen's Proctor has therefore, and appropriately in the circumstances, adduced evidence in support of his plea. I wish to make clear, however, that the course adopted in this case is not to be taken as casting any doubt on the practice established by *Crowden* and *Clutterbuck*, a practice whose propriety and continuing utility I unhesitatingly endorse.

16. The Queen's Proctor's case is essentially that in each of these cases the proceedings were fraudulent from beginning to end and, in particular, that each of the decrees, whether a decree nisi or a decree absolute, was procured by fraud. If that is established as a matter of fact, and that of course is one of the issues I have to determine, then it is clear as a matter of law that the decree is void. Moreover, a decree absolute which would otherwise be void will still be void notwithstanding that one of the parties has subsequently remarried and had a child: *Wiseman v Wiseman* [1953] P 79.

17. I have said that the Queen's Proctor's case is based on an allegation of fraud and that, if fraud is established, any decree, whether nisi or absolute, will be void. What is meant by fraud in this context? What has to be established if a decree is to be held void?

18. For this purpose I need to examine in some detail two decisions of Sir Stephen Brown P, the first, *Callaghan v Hanson-Fox (Andrew)* [1992] Fam 1, sub nom *Callaghan v Hanson-Fox and Another* [1991] 2 FLR 519, the second, *Moynihan v Moynihan (No 2)* [1997] 1 FLR 59. I shall take them in turn.

19. In *Callaghan v Hanson-Fox*, the husband sought to set aside a decree absolute obtained on the petition of his now deceased wife on the ground of fraud. The alleged fraud was that the petitioner had falsely sworn in her affidavit verifying the petition that the marriage had broken down irretrievably and that the parties had been living

apart for at least two years. In fact (so he now alleged) the marriage had not broken down and the parties were and remained living together until the petitioner's death.

20. Sir Stephen Brown P summarised matters as follows (page 7):

> "In the case of the divorce proceedings presently under consideration, there was no want of jurisdiction or procedural irregularity of any kind. The proceedings were in all respects properly constituted. The alleged "defect" now sought to be relied on by the plaintiff relates entirely to the nature and quality of the evidence before the court".

21. Sir Stephen had the assistance of Mr James Holman QC, as he then was, as amicus curiae. He said (page 8):

> "Mr Holman as amicus curiae has taken the court to all the reported cases in which a decree absolute has been held to be void. They are all cases where a decree has been held to be void because of a fundamental procedural irregularity … Mr Holman pointed out that in the cases where a decree has been held to be voidable they also turned upon procedural irregularity. He accordingly submits that there is no known case where a decree absolute has been set aside after it has been granted in circumstances of complete jurisdictional and procedural regularity. Furthermore there is no reported case of a decree absolute having been set aside in circumstances of complete procedural regularity even where an allegation of fraud has been made."

22. Having examined a number of authorities, including the decision of the Court of Appeal in *Bater v Bater* [1906] P 209, Sir Stephen continued (page 10):

> "As was pointed out in *Bater v Bater* [1906] P 209 a decree absolute affects status and is equivalent to a judgment "in rem." It is in the public interest that a decree absolute should be unimpeachable where no question arises as to the jurisdiction of the court pronouncing it or as to the procedural regularity which led to its being made.
>
> In this case the plaintiff was a full, consenting party to the divorce proceedings. There was no want of jurisdiction in the court which pronounced the decree and no procedural irregularity. Both the plaintiff himself by his action in consenting to the decree, and the world at large recognised the decree during all the subsequent years which passed until the death of the wife …
>
> I have no doubt that this decree was validly made absolute and that this should stand against all the world … it is not open to him in this court to seek to challenge the validity and binding effect of the decree absolute."

23. On the assumed facts on which Sir Stephen decided the case, the fraud relied on was perjury. Going back to the distinction I drew in paragraph 7 above between "jurisdiction to entertain the petition" and "jurisdiction to grant a decree", the perjury in *Callaghan v Hanson-Fox* went only to the latter, for it concerned the facts required to satisfy the requirements of section 1 of the Matrimonial Causes Act 1973. From this I can, I think, properly draw two conclusions as to what it was that Sir Stephen decided in *Callaghan v Hanson-Fox*: first, that perjury without more does not suffice to make a decree absolute void on the ground of fraud; and, second, that perjury which goes only to "jurisdiction to grant a decree" and *not* to "jurisdiction to entertain the petition", likewise does not without more suffice to make a decree absolute void on the ground of fraud.

24. I turn to the other case, Sir Stephen's decision in *Moynihan v Moynihan (No 2)* [1997] 1 FLR 59. It was, like this, an application by the Queen's Proctor for the setting aside of a decree absolute of divorce obtained, so it was said, by fraud on the part of the petitioner, the by then deceased Lord Moynihan. The fraud as found by Sir Stephen had various strands: The particulars set out in the petition were false in a number of material respects; the affidavit in support of the petition, in which the petitioner swore that everything stated in his petition was true, was perjured; the statement of the proposed arrangements for the child of the family, filed with the petition, was wholly misleading; the petitioner subsequently falsely told the court that the child had died when he knew full well that he was still alive; the acknowledgement of service purportedly signed by the respondent wife (and in which she purportedly admitted the adultery alleged in the petition) was false.

25. Specifically, the petitioner falsely asserted an English domicile when he was in fact domiciled in the Philippines. His case on this point was supported by perjured evidence, what Sir Stephen called "deliberate lies":

> "In order to deceive the court into accepting jurisdiction in his divorce suit, he told quite deliberate lies. He persisted in and added to the lies when the registrar at Tunbridge Wells County Court required confirmation and further elucidation of the domicile position. Those lies enabled the court to accept jurisdiction and to proceed to deal with the divorce suit."

Sir Stephen continued:

> "However, this was not his only deceit of the court. I am satisfied on the balance of probability that neither the respondent wife nor the co-respondent was served with the petition. Lord Moynihan arranged for false acknowledgements of service to be returned to the court, and yet a further deception related to the child of the family".

His conclusion was damning:

> "I find that there was a clear, deliberate and sustained deception of the court by Lord Moynihan … Lord Moynihan unfortunately was a man accomplished in fraud and indeed in forgery."

26. Sir Stephen quoted the well-known words of Denning LJ in *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702, 712:

> "No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever … "

He expressed his conclusion as follows:

> "A decree absolute is generally considered to be good against all the world. It is an order 'in rem'. However, if it has been obtained by fraud, there is a fundamental defect. In this case, I have no doubt that Lord Moynihan's divorce petition was deliberately framed in a way which was calculated to deceive the court. All the subsequent representations and submissions which were made to the court were vitiated by fraud. He wished to obtain a divorce. He wished to do so even if his wife objected to it, as I believe she did or would have objected, if only on financial grounds. He quite deliberately set out to deceive the court. His affidavit verifying the petition was false, and in swearing it he committed perjury. He perverted the course of justice and succeeded in obtaining a decree. It is a gross case. The inevitable consequences to all are serious. I have no doubt that I should set aside and declare null and void the decree absolute and the decree nisi and dismiss the petition."

27. It is apparent from the report, that Sir Stephen had been referred to his earlier judgment in *Callaghan v Hanson-Fox*, but he made no reference to it in his judgment in *Moynihan*.

28. There is in my judgment no inconsistency between Sir Stephen's two judgments. As one would expect they are entirely compatible. In *Moynihan* there was systematic perjury throughout the proceedings, indeed perjury infecting almost every matter of significance. But – and this, in my judgment, is the important point, and in the final analysis the basis of Sir Stephen's decision – there was perjury and fraud on the court in relation to the question of the court's jurisdiction to entertain the petition. That is the crucial distinction between the two cases. When Sir Stephen in the passage from his judgment I have set out in paragraph 25 above spoke of the petitioner having "deceive[d] the court into accepting jurisdiction in his divorce suit", he was plainly referring to jurisdiction in the sense of jurisdiction to entertain the petition. Moreover, and in this respect again the two cases are clearly distinguishable, there was in *Moynihan* what Sir Stephen in *Callaghan v Hanson-Fox* had described as procedural irregularity, indeed, procedural irregularity on a massive scale, not least in relation to the gross fraud and deception practised by the petitioner not merely on the court but also on the respondent.

29. So far as material for present purposes I can summarise my conclusions on the law as follows:

    i) perjury without more does not suffice to make a decree absolute void on the ground of fraud;

    ii) perjury which goes only to jurisdiction to grant a decree and *not* to jurisdiction to entertain the petition, likewise does not without more suffice to make a decree absolute void on the ground of fraud;

    iii) a decree, whether nisi or absolute, will be void on the ground of fraud if the court has been materially deceived, by perjury, forgery or otherwise, into accepting that it has jurisdiction to entertain the petition;

    iv) a decree, whether nisi or absolute, may, depending on the circumstances, be void on the ground of fraud if there has been serious procedural irregularity, for example, if the petitioner has concealed the proceedings from the respondent.

    As will become apparent, it is the third of these propositions which is determinative in this case.

The facts

30. The essential facts are shortly stated.

31. I have before me 180 cases in each of which an apparently Italian petitioner presented a petition for divorce to the English court. Examination of the court files in these 180 cases shows that in every instance it was asserted that the English court had jurisdiction to entertain the petition in accordance with the Council Regulation on the basis, in most of the cases, that the petitioner was habitually resident and had been resident in England and Wales so as to satisfy the requirements of the fifth limb of Article 3.1(a) or, in a small minority of the cases, that the respondent was habitually resident in England and Wales so as to satisfy the requirements of the third limb of Article 3.1(a).

32. In 179 of the cases (I shall deal separately with the other case, *La Marca v Prestieri* BY12D00274, where an address in Epsom was given as the petitioner's residence) the address given for the petitioner or the respondent, as the case may be, was identical: Flat 201, 5 High Street, Maidenhead, SL6 1JN. I shall refer to this as "Flat 201". The address given for the other party – and these were different addresses – was in each case in Italy, except in one case[1] where an address in Germany was given for the respondent. In the majority of the 179 cases in which Flat 201 was given as the address it was said to be the petitioner's address; in a small minority of cases – in 37 of the cases I think – Flat 201 was said to be the respondent's address.

33. Except in one case, which I shall deal with separately, *Rapisarda v Colladon* AL11D00099, issued in the Altrincham County Court on 16 February 2011, there is

[1] *Regusa v Massa* WN12D00185 (the petitioner's address was given as Flat 201).

no reason to believe that either the petitioner or the respondent, as the case may be, whose address was stated to be Flat 201 had ever resided in England or Wales.

34. Be that as it may, it is certain that none of them can ever have resided at Flat 201. On 28 August 2012, police officers of the Thames Valley Police executed a search warrant in relation to Flat 201. The evidence of one of the officers who executed the search warrant, Detective Sergeant Steven Witts of Thames Valley Police, whose witness statement is dated 4 March 2014, confirms that Flat 201 was not a residential property or, indeed, a property capable of occupation. It was in fact a mail box, mail box 201, one of a number of mail boxes located in commercial premises. As the investigating officer in charge of the police investigation, Detective Sergeant Jonathan Groenen, mordantly commented in his witness statement dated 29 October 2013, "It is not possible for 179 applicants or respondents to reside at this address." Indeed, given the dimensions of the mail box it is clear that not even a single individual, however small, could possibly reside in it.

35. In short, it is clear beyond any sensible argument that in each of these 179 cases the assertion that the English court had jurisdiction to entertain the petition was founded on a lie, the lie that either the petitioner or, in some cases the respondent, resided at Flat 201. To put it plainly, the English court was deceived; the English court was induced by fraud to accept that it had jurisdiction to entertain the petition.

The facts: an illustrative case

36. I can illustrate the way in which these frauds were perpetrated by taking one case as an example: *Gargiulo v Armani* AF11D00099. This was a petition dated 4 February 2011 issued in the Aldershot & Farnham County Court on 15 February 2011. The petition, which was in the standard form, alleged (paragraph 3) that:

> "The court has jurisdiction under Article 3(1) of the Council Regulation on the following ground(s): The Petitioner is habitually resident in England and Wales and has resided there for at least a year immediately prior to the presentation of this petition."

It went on to allege (paragraph 4) that "The petitioner … resides at Flat 201, 5 High Street, Maidenhead, SL6 1JN." Flat 201 was also given as "The Petitioner's address for service." The respondent was alleged to reside at an address in Italy. It was alleged (paragraph 11) that the marriage had broken down irretrievably, and that they had lived apart since (paragraph 13) separating on 23 November 2008.

37. The court file contains what purports to be an acknowledgment of service completed and signed by the respondent. I have no means of knowing whether this document is genuine or a forgery. In answer to question 1C, "Do you agree with the statement of the petitioner as to the grounds of jurisdiction set out in the petition?", the form says "Yes". The respondent having purportedly indicated that she did not intend to defend the case and that she consented to a decree being granted, the petition proceeded in accordance with the special procedure.

38. On 27 April 2011 the petitioner purportedly swore the affidavit in Form M7 required by rule 2.24(3) of the 1991 Rules. The answer to question 2, "Do you wish to alter or

add to any statement in the petition?", is "No". The answer to question 3, "Subject to these alterations or additions (if any), is everything stated in your petition true?", is "Yes". In answer to question 4, the date of separation is said to have been 23 November 2008. In response to question 7, requiring the petitioner to state the various addresses at which he had lived since the date given in the answer to question 4, and the periods of residence at each address, the answer given is "From 23/11/08 to present Flat 201, 5 High Street, Maidenhead, SL6 1JN". The petitioner purportedly swore that "The answers to Questions 1 to 11 above are true."

39. Following this, and in accordance with the special procedure, the decree nisi was pronounced on 15 June 2011 followed by the decree absolute on 3 August 2011.

40. I have no means of knowing whether the signature on this purported affidavit is, in fact, the petitioner's, nor whether when he signed the document, if he did, it had already been completed or whether he signed it in blank (see further below). Two things about the document are, however, quite clear. First, the answers to questions 3 and 7 were false and, assuming that the document was in fact completed and signed by the petitioner, must have been false to his certain knowledge, in other words perjured. Second, and quite apart from the question of perjury, the document was in fact a forgery, in the sense that it not merely told lies, it told a lie about itself. I must explain.

41. The affidavit purported to have been sworn by the petitioner on 27 April 2011 before a solicitor. Opposite the words "Sworn at" there appear, seemingly affixed by a rubber stamp, what purport to be the name and the postal and DX addresses of a firm of solicitors in Reading. The name and addresses are those of a firm of solicitors that does indeed exist. I should add that similar affidavits appear in the court files of most of the other cases before me.

42. There are, I suppose, a number of possibilities: that the affidavit was in fact sworn as it purports to have been (unlikely, given that this affidavit resembles many others in the cases I am concerned with and that it is fanciful to imagine that large numbers of Italians, who there is no reason to believe lived in this country, should have made the journey to Reading); that someone in the solicitors' office was colluding in the conspiracy; that the solicitors were the innocent victims of impersonation; or that the solicitors were entirely innocent, had nothing whatever to do with the affidavit and are themselves yet another victim of this fraudulent conspiracy. I am entirely satisfied that this last alternative is in fact the truth. Interestingly, and revealingly, Reading County Court was *not* one of the many county courts used by the architects of this fraud.

43. In the course of their investigations, police officers from Thames Valley Police visited the solicitors' offices in Reading on two occasions, Detective Sergeant Witts in August 2012 and Detective Sergeant Groenen in March 2014. The police received every possible assistance from the firm's employees, including from the senior managing partner. Detective Sergeant Groenen in a further witness statement dated 3 April 2014 is very clear. He is, he says,

> "satisfied" that the various persons named in these affidavits "were not employees of [the firm] and had no association with

> the real firm. In my view, the firm's name has been used falsely by those responsible for drafting the affidavits, without the knowledge or permission of anyone at the firm."

44. In one of the cases, *Rapisarda v Colladon* AL11D00099, there is direct evidence of how the relevant affidavit came into existence. This is one of the cases in which it was said that it was the respondent who resided at Flat 201. The petitioner, Agata Rapisarda, was said to reside in Italy. For reasons which will become apparent in due course, I will need to go into this particular case in more detail. For the moment I need refer only to the petitioner's affidavit, again in Form M7 and filed in accordance with rule 2.24(3), purportedly sworn on 19 April 2011 before the same person who, eight days later, purportedly witnessed the petitioner's signature in *Gargiulo v Armani* AF11D00099. I have evidence from the petitioner, which I have no hesitation in accepting. She made a witness statement dated 25 October 2013 and gave oral evidence before me on 9 April 2014. Until she came to London in April 2014 to give evidence, she had never been in this country. She has never been to Reading. She accepts that it is her signature on the affidavit but says that she was in Italy, in Verona, when she signed it. The solicitor's details were not there when she signed the document. She thought that most probably the other parts had also not been completed. Whatever the reality in relation to that last point, it is quite clear from her evidence, which I accept, that this purported affidavit was never sworn by the petitioner as it purports to have been sworn.

45. In fact and in law, the purported affidavit in *Rapisarda v Colladon* AL11D00099 was no such thing; it was a forgery, deployed by the fraudsters to deceive the court. If it was an affidavit, then, like the purported affidavit in *Gargiulo v Armani* AF11D00099, it reeked of perjury. Either way the court was being deceived, the administration of justice was being perverted.

The facts: the background

46. Most of the parties in these 180 cases have not responded in any way to the current proceedings. In eight cases,[2] however, there has been a response. In only one of these cases, *Rapisarda v Colladon* AL11D00099, has there been any attempt to resist the Queen's Proctor's application (see further below). In that case the petitioner and the respondent have each filed witness statements. Each gave oral evidence before me. The petitioner also supplied, in English translation, various emails she had exchanged with the Italian individual who appears to have been the moving spirit in all this. I shall refer to this as "the *Rapisarda* file". In *Diaferio v Rodrigues* TS10D00587, the respondent has supplied a most illuminating statement and also the Italian originals of the emails he had exchanged with the same Italian operator, which the Queen's Proctor has helpfully had translated. I shall refer to this as "the *Rodrigues* file."

47. Both *Rapisarda v Colladon* AL11D00099 and *Diaferio v Rodrigues* TS10D00587 involved fraudulent use of the Flat 201 address, in *Rapisarda v Colladon* as the alleged address of the respondent, in *Diaferio v Rodrigues* as the alleged address of

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[2] *Benini v Ardengo* SB10D00428 (decree absolute); *Gilio v Pulcino* PD11D00643 (no decree); *Ferretti v Paparella* CH11D00718 (decree nisi); *Diaferio v Rodrigues* TS10D00587 (decree absolute); *Meola v Danesi* EX11D00570 (decree nisi); *Necchi v Vanzillotta* ME11D00841 (no decree); *Rapisarda v Colladon* AL11D00099 (decree absolute); *Gibalerio v Rosa* MA11D01400 (no decree).

the petitioner. Since, as I have mentioned, the *Rapisarda* file comes from the petitioner, while the *Rodrigues* file comes from the respondent, the information from these two files, albeit in quite different cases, usefully illustrates what was happening, as it were, on each side.

48. In the other cases, the information is to be found in letters written to the court. But the information supplied by the parties in these eight cases, all, it may be noted, consistent across the cases, is illuminating. Although, in the final analysis, nothing decisive turns on it, I should summarise the picture which emerges from this material, supplemented, where indicated, by information obtained by Thames Valley Police.

49. The moving spirit of the operation in Italy was someone calling herself Dr Frederica Russo (email div@fredericarusso.com; fax 06-233237081 or 06-233237080). I have no idea whether that is her real name. The emails in both the *Rapisarda* file and the *Rodrigues* file pass from and to her. Some of the parties mention having spoken to her on the telephone (+39 347 8535829, 00448445853857, 3408903115), but no-one records ever having met her. The total cost of the service she was providing seems to have varied: €4,050 in *Meola v Danesi* EX11D00570, €3,750 in *Rapisarda v Colladon* AL11D00099, and €4,700 in *Diaferio v Rodrigues* TS10D00587. Payment was made by instalments to an account in the name of Anita Colucci. Some of the parties believe this to be another name for Dr Russo.

50. There is mention of the involvement of an entity called Nolton Company Service and of a company, Russo Legal Service Limited (of which Dr Russo "portrays herself as the director") registered at Companies House under number 08519986, both located at Office 5, 105 London Street, Reading RG1 4QD, which I shall refer to as "Office 5". This is in fact another mailbox. One of the parties says, "Mrs Russo cooperates in these divorce proceedings with Mr Francesco Galatà, via Carduzzi, 1 Sarzana (SP), Italy, with his office in via Camponesto 3 Sarzana (SP) Italy." Another refers to "Russo and her partner Francesco Galata."

51. The investigations by Thames Valley Police revealed that the Flat 201 mailbox was owned by a company which also owned the Office 5 mailbox. Both were rented by Mr Galata. The police investigation also established that Nolton Consultants Limited, a company registered at Companies House under number 3244763, appeared to have some involvement with the Flat 201 mailbox, though it was not clear to the police how Nolton was connected with Mr Galata. On 29 October 2012, Detective Sergeant Witts spoke to Mr Galata on the telephone. Mr Galata, who said he was in Italy, stated that he charges £120 per hour "to assist lawyers in Italy with facilitating divorces across the whole of Europe." The officer added, "He became vague when regarding how his post box in Maidenhead was linked to the divorce petitioners".

52. In some cases letters sent by the court to the mailbox at Flat 201 in 2013 addressed to one of the parties were returned under cover of a letter from Nolton Consultants Company Services, giving an address at 65 Via XX Settembre, 19038 Sarzana (SP), Italy (telephone +39320 233 3476). So far as material for present purposes these letters said:

> "We are the registered owners of the address "Flat 201, 5 High Street, Maidenhead SL6 1JN"; any mail sent there is forwarded

> to Italy fortnightly where our office staff then processes and forwards all the items received to the due addressee,
>
> Our business includes receiving, processing and forwarding parcels and correspondence on behalf of our clients.
>
> … We are hereby returning your letter for the following reason:
>
> The addressee is no longer our client"

53. Illuminating insights into how Dr Russo operated are to be found in both the *Rapisarda* file and the *Rodrigues* file.

54. The *Rapisarda* file contains an email from the petitioner to Dr Russo dated 23 February 2011 saying (I quote the translation) "I received what I enclose, what should I do?" Cross-referring to the court file this would seem to be a reference to the notice of issue of the petition dated 16 February 2011 sent to the petitioner by Altrincham County Court and notifying her that a copy of the petition had been posted to the respondent on 16 February 2011. On 28 February 2011 Dr Russo sent the petitioner an email, seemingly referring to the acknowledgment of service to be signed by the respondent, seeking her assistance in obtaining his signature, and saying "only to be signed, not to be completed". (The court file shows that the completed acknowledgment of service was received on 14 March 2011.) I heard evidence about this from the respondent (see further below). He accepted that it is his signature on the acknowledgement of service but said that the form was otherwise blank when he signed it. I shall return below to consider this in more detail. For the moment two obvious questions arise: Why was Dr Russo seeking the assistance of the petitioner, resident in Italy, in obtaining the signature of the respondent, then supposedly living in England at an address known to Dr Russo? And what is the significance of the instruction to "sign" but not "complete" and, indeed, of the fact that the respondent signed a blank form? In relation to the latter point, an email from the petitioner to Dr Russo dated 7 April 2011 says "I received the document which is attached. Please let me know what to do." Examination of the court file would suggest that this refers to the court's notice dated 24 March 2011 of its receipt of the respondent's acknowledgement of service, enclosing with it a form of request for directions for trial (special procedure) and a form of the appropriate affidavit to be sworn by the petitioner. Dr Russo's response to the petitioner the same day was "Do not reply because … to avoid errors we fill forms".

55. I interpolate that similar instructions are referred to in information supplied by parties in other cases: "just to sign the documents already filled in … that would be sent to us … without adding anything besides the signatures"; "JUST sign where indicated, because all that was necessary to indicate in those documentations would be added later by the Doctor and/or her staff"; "She told us that we wouldn't have had to do anything, just sign the papers where she indicated in a facsimile."

56. Turning to the *Rodrigues* file, it includes one particularly interesting exchange. Dr Russo's modus operandi was to send her clients a document setting out the steps in

the process and a questionnaire seeking relevant information.[3] The information was then embodied in a document referred to as "La base del divorzio" sent to the parties by email for their approval. In this case it was emailed to the respondent from div@fredericarusso.com on 7 September 2010, with a covering message from Dr Russo. It gave the petitioner's address as "England", said that the parties had lived together at an address in Italy until 6 October 2008, and that (I quote the translation) "from 7-10-2008 [the petitioner] has had an address in England." On 8 September 2010 the respondent emailed Dr Russo, saying "You (I don't know who) have confused dates and addresses … The … corrections are given below." He set out the petitioner's address as being in Ravenna in Italy and said that the parties had lived together at that address from the date of the marriage, 28 September 2008, until 30 August 2010. Dr Frederica Russo replied by email the same day:

> "If we wish to obtain the divorce judgment as "by consent as the spouses no longer live together" I must write as follows (devo scrivere in questo modo) … from 7-10-2008 [the petitioner] has had an address in England."[4]

57. The respondent's comment on this, in a statement dated 5 December 2013, really says it all:

> "I knew this divorce process was not honest from the day I was sent a draft from the mediator hired by my ex-wife" – it is clear from the context he is here referring to Dr Russo – … "My concern was not bogus residency, as I did think she would actually move to England to start the process, but I worried about the fact that we had not been living apart for two years immediately before applying, as stated on the draft and apparently required by law."

58. I add one final detail. The petitioner in another case who was alleged to have resided at Flat 201, says "Doctor Russo has not … indicated that it was necessary to be RESIDENT in England or in Wales … The Doctor has never given any hint of the need of going personally to England".

The history of the current litigation

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[3] Described thus: "Questionario per i coniugi: Non e' un documento e non verra' esibito in tribunale. La sua funzione e' semplicimente quella di fornirci le informazioni per poter preparare la "base" del divorzio da proporre ai coniugi."

[4] To put this in context, the petition in *Diaferio v Rodrigues* TS10D00587, originally received by the court on 19 October 2010 and returned for correction of what for present purposes was an immaterial error, was issued on 16 November 2011, based on two years' separation. The parties were said to have married on 28 September 2008 and separated on 7 October 2008. The petitioner's address was given as Flat 201. The affidavit in Form M7 purportedly sworn by the petitioner on 15 February 2001 (it was bogus like the others) alleged that she had lived at Flat 201 since 7 October 2008. It also stated that the reason for the parties' separation was that "We came to the conclusion that we had grown apart". There are, taking the affidavit at face value, two curiosities about this: first, that the parties had "grown apart" within nine days of the marriage and, second, that the petitioner had allegedly taken up residence in this country the day she separated from her husband in Italy. Neither is impossible; each is somewhat unlikely. The decree nisi followed on 23 March 2011 and the decree absolute on 20 September 2011.

59. The problem was first identified in late February 2012 by an eagle-eyed member of the court staff at Burnley County Court, Julie Farrah, who spotted that in two files, both involving Italian parties, the address was the same and that it was in Maidenhead (which is in the south of England, whereas Burnley is in the north-west). She brought it to the attention of District Judge Conway, who contacted a colleague in the Slough County Court (located near to Maidenhead). He arranged for a member of the court staff there to visit Flat 201, which revealed that there was no residential accommodation there. When this was reported back to District Judge Conway on 1 March 2012 she immediately notified both her local Designated Family Judge and the Queen's Proctor. Later the same day her concerns were escalated to the relevant Family Division Liaison Judge and by him to the office of the President of the Family Division, at that time Sir Nicholas Wall. On 22 March 2012 the President's office circulated a message asking courts to stay all such cases, without reference to the parties, pending investigations by the Queen's Proctor and the police.

60. Rightly, the view was taken that nothing more should be done that might jeopardise the ongoing investigation being carried out by Thames Valley Police, so matters hung fire. On 1 October 2012 the Thames Valley Police wrote to Sir Nicholas Wall P, saying that the investigating team was now satisfied that their enquiries had reached a stage where intervention by the Queen's Proctor would not adversely affect their investigation, even if this involved notice to any of the parties involved. Correspondence then ensued between the Queen's Proctor and Holman J, Acting President of the Family Division in the absence of Sir Nicholas Wall P. On 21 November 2012, Holman J, as Acting President, notified all courts that the matter was now being investigated by the office of the Attorney General, and that until he (the Attorney General) had decided what action he might wish to take "no further action of any kind should be taken in any of these cases."

61. Subsequently, in January 2013, the Queen's Proctor notified the President's office – I had by then been appointed President of the Family Division – that on the instructions of the Attorney General he was taking steps to have all the cases transferred to the High Court. Thereafter, in April 2013, the Queen's Proctor issued applications in the relevant county courts seeking the transfer of all the cases to the Family Division in London.

62. All 180 cases were listed before me in the High Court for directions on 21 June 2013 and again on 19 July 2013. The Queen's Proctor was represented by Mr Simon P G Murray and Mr Thomas Collins. Mr Murray pointed out that the cases could be divided into three classes: Class 1, where no decree had yet been made, Class 2, where there had been a decree nisi but no decree absolute, and Class 3, where there had been a decree absolute. There are 71 cases in Class 1, including *La Marca v Prestieri* BY12D00274, 18 cases in Class 2 and 91 cases in Class 3. In relation to the cases in Class 1, he invited me to make an order pursuant to rule 7.20(2)(b) of the 2010 Rules, directing the petitioners in those cases to provide further information about the alleged residency at Flat 201 (or, in the case of *La Marca v Prestieri* BY12D00274, the alleged residency at the address in Epsom) and to provide documentary evidence in support.

63. That direction was contained in the order I subsequently made on 19 July 2013. More generally, my order contained directions for the Queen's Proctor to file his plea, for

service of the plea, with an appropriate covering letter (the documents to be translated into Italian), on all the parties in each case, and otherwise for the future conduct of the matter. The order made clear in relation to the Class 1 cases that if there was no reply, or if the reply was inadequate, the application for divorce might be dismissed.

64. The Queen's Proctor's plea is dated 19 July 2013. I think I should set it out almost in full (I omit only paragraph 6, which pleads the matters of law and procedure to which I have already referred in paragraphs 13-15 above):

> "THE QUEEN'S PROCTOR intervening in these suits,
>
> (i) requires the Petitioner and/or Respondent in each case to show cause why any decrees of divorce pronounced herein on various dates should not be set aside and the petitions dismissed;
>
> (ii) requires the Petitioner and/or Respondent to show cause why and how the decrees could be properly made upon proper consideration of the material facts
>
> AND SAYS:
>
> 1 It is a requirement of the Law of England and Wales that a person seeking a divorce in the English and Welsh courts had been habitually resident in England or Wales for a period of at least one year immediately before issuing a petition of divorce, or, that the respondent to the proposed petition was habitually resident within the jurisdiction. This is so by reason of section 5 of the Domicile and Matrimonial Proceedings Act 1973, as amended, and EC Council Regulation No 2201/2003. If in divorce proceedings these residence conditions are not met, the English and Welsh courts have no jurisdiction to consider divorce applications by parties who are both resident abroad.
>
> 2 It has come to the attention of The Queen's Proctor, who represents the crown in courts of divorce, that 180 petitions for divorce, identified in Schedule A hereto, involving Italian residents, have been advanced on a false basis.
>
> 3 This is because in 179 of those cases one of the parties claimed in court documents to be resident at Flat 201, 5 High Street, Maidenhead, Berkshire. Enquiries carried out by the authorities have established that that address given was not a residential address at all but a PO Box service provider's facility called "Mailbox". It would therefore be impossible for 179 people (or any) to reside at that address.
>
> 4 Notwithstanding this fact in each case either the applicant (known as "the petitioner") or the respondent's residential address was stated as the Maidenhead, or in the one

> case Epsom, address, with an affidavit (a sworn statement) in support, and thus it was said that the court had jurisdiction to entertain the divorce proceedings as either the applicant was habitually resident in England and Wales and has resided there for at least a year immediately prior to the presentation of the petition/application, or the respondent was habitually resident in England and Wales. The other spouse is said to be resident, domiciled and a National of Italy and in each case gives an address in Italy for service.
>
> 5 On the facts currently available it appears that residence requirements were not met in any of the said 180 petitions. If this is so, the Queens Proctor submits that the court had no jurisdiction to entertain the proceedings and, that being so, all of the certificates, and decrees made in those proceedings should be set aside and each of the petitions dismissed.
>
> 6 …
>
> THE QUEEN'S PROCTOR THEREFORE PRAYS:
>
> (1) That the Petitioners and/or Respondents to the petitions herein show cause why any decrees made should not be set aside and the petitions not dismissed, failing which such decrees should be set aside and the petitions dismissed;
>
> (2) That the court makes other such orders as are appropriate in the circumstances;
>
> (3) That such of the Petitioners and/or Respondents, and/or third parties, as the court may think fit, be ordered to pay the costs of the Queen's Proctor of, and incidental to, this intervention".

65. On 22 July 2013, and with my concurrence, Sir Paul Jenkins, Her Majesty's Procurator General and Treasury Solicitor and *ex officio* The Queen's Proctor, wrote to His Excellency The Ambassador of Italy, bringing to his attention the circumstances and the fact that he was inviting the High Court to set aside the proceedings in 180 cases involving Italian nationals, and seeking his assistance on various questions of Italian law and legal practice. His Excellency responded on 17 September 2013, as one would have expected in a very helpful and constructive manner. I am grateful for his assistance.

66. The matter came back in front of me on 30 October 2013 for further directions. For present purposes it suffices to note three things:

    i) All the parties in all 180 cases had been served in accordance with my previous order. Unsurprisingly, most of the letters sent to Flat 201 had been returned undelivered. A relatively small number of letters sent to Italy had also been returned undelivered, including 9 in the Class 1 cases. In the other 62 of

the Class 1 cases (one of these being *La Marca v Prestieri* BY12D00274) the letters had not been returned and service was effective.

ii) Except in relation to the eight cases referred to in paragraph 46 above, no response of any kind had been received from any of the parties in any of the 180 cases. In only two of these cases (in each of which there had been a decree absolute) was there any indication of any intention to oppose the relief being sought by the Queen's Proctor. In *Rapisarda v Colladon* AL11D00099, Ms Tina Villarosa appeared, instructed by both the petitioner and the respondent, to oppose. In *Benini v Ardengo* SB10D00428, an email had been received from the petitioner, inquiring of the Queen's Proctor whether she could prevent the decree absolute being annulled. Very properly, the Treasury Solicitor replied that he could not advise her but said that it was open to her to write to the court explaining why the divorce should not be annulled and to attend or be represented at the hearing on 30 October 2013.

iii) No substantive response to the request for information had been received from anyone in any of the Class 1 cases. Three of the eight responses received were in Class 1 cases,[5] but none provided the required information.

67. As before, on 30 October 2013 the Queen's Proctor was represented by Mr Murray and Mr Collins. Ms Villarosa, as I have said, appeared for the parties in *Rapisarda v Colladon* AL11D00099. Mr Rodrigues, the respondent in *Diaferio v Rodrigues* TS10D00587, appeared in person. He explained his position with dignity and clarity and, in effect, left me to determine matters as I thought fit. Ms Benini, the petitioner in *Benini v Ardengo* SB10D00428, was neither present nor represented. Nor had (or has) anything further been heard from her.

68. Following that hearing I made an order in three parts. The order is dated and was sealed on 18 February 2014. First, I ordered that the petitions in 58 of the Class 1 cases[6] be dismissed, "there having been non-compliance with the request for further information served pursuant to Family Procedure Rule 7.20(2)(b) made in accordance with … the order of the Court dated 19 July 2013." I made a similar order in *La Marca v Prestieri* BY12D00274, the case where the address in Epsom had been used (see further below). Secondly, I gave further directions for the hearing of the remaining cases, 12 Class 1 cases, 18 Class 2 cases and 91 Class 3 cases. Thirdly, I gave additional specific directions in *Rapisarda v Colladon* AL11D00099, including a direction for the filing of an answer to the Queen's Proctor's plea by 28 February 2014 and a direction permitting the parties to give evidence by video link if so advised (in the event, although the respondent gave evidence by video link the petitioner attended court to give evidence).

69. Following the hearing on 30 October 2013, Mr Rodrigues, the respondent in *Diaferio v Rodrigues* TS10D00587, filed the statement dated 5 December 2013 and provided the *Rodrigues* file, to both of which I have already referred.

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5 *Gilio v Pulcino* PD11D00643; *Necchi v Vanzillotta* ME11D00841; *Gibalerio v Rosa* MA11D01400.

6 That is, not in the 9 cases Class 1 cases where the letter had been returned undelivered, nor in the 3 Class 1 cases where there had been a response, albeit inadequate.

70. The parties in *Rapisarda v Colladon* AL11D00099, subsequently filed their answer, described as their reply, dated 28 February 2014. The rejoinder of the Queen's Proctor was dated 14 March 2014.

71. The final hearing took place before me on 9 and 10 April 2014. By then, the position was that, following further attempts to serve all the parties, the documents had been returned again, so service had failed, in 9 of the Class 1 cases,[7] 1 Class 2 case,[8] and 27 Class 3 cases.[9]

72. As before, the Queen's Proctor was represented by Mr Murray and Mr Collins and the parties in *Rapisarda v Colladon* AL11D00099 by Ms Villarosa. At the outset of the hearing, which as with the previous hearings was in open court, Mr Murray raised the question of whether the Judicial Proceedings (Regulation of Reports) Act 1926 applied to the proceedings. I dealt with that in my earlier judgment, *In the matter of 180 Irregular Divorces, Rapisarda v Colladon* [2014] EWFC 1406, handed down on 8 May 2014.

73. I read a substantial volume of written material, heard oral evidence from both parties in *Rapisarda v Colladon* AL11D00099 and heard submissions from counsel. At the end of the hearing I reserved judgment.

74. The applications were issued and the hearing on 9-10 April 2014 took place in the Family Division of the High Court. In accordance with articles 2 and 3(1) of The Crime and Courts Act 2013 (Family Court: Transitional and Saving Provision) Order 2014, SI 2014 No. 956, the proceedings have continued on and after 22 April 2014 in the Family Court as if they had been issued in that court. It is accordingly in the Family Court that I now sit to give judgment.

Discussion

75. I start with the 71 Class 1 cases. In relation to the 70 cases where the Flat 201 address had been used, there was plainly, to put matters no higher, real reason to believe that no one had ever resided there. It was accordingly entirely appropriate, as Mr Murray had submitted, for me to make an order in accordance with rule 7.20(2)(b) of the 2010 Rules, as I did on 19 July 2013, requiring further information and making clear that failure to comply might lead to the petition being dismissed. In 58 of these cases the letter serving the order had not been returned and service was effective. In none of these cases had any of the required information been supplied. In the circumstances it

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[7] *Rossomanno v Gielli* CA11D00402; *Palumbo v Palma* NE11D01741; *Casadei v Florido* RL11D00556; *Rinaldi v Accordino* SN11D00775; *Mercurio v Gara* SO11D01256; *Rigante v Colagrossi* SS10D01649; *Pawlusiewicz v Tessitore* SY10D00421; *Agostini v D'Aiutolo* TR12D00085; *Petrogalli v Rimicci* ZP11D00769.

[8] *Pasqua v Moscato* HX11D00505.

[9] *Menozzi v Aimi* DH11D00217; *Meneghetti v Ballarin* SM10D00571; *Filippova v D'Alterio* ZJ11D00149; *D'Addio v Russo* SF10D00646; *Menna (D'Agostino) v D'Agostino* BE11D00147; *Tesfamicael v Bahru* BP11D00135; *Viviano v Simonetta* BU11D00347; *Defilippis v Donadio* BX11D00393; *Improda v Angeloni* CD11D00302; *Toma v Bertola* CM11D00985; *Vilmercati v De Rossi* HB11D00484; *Mirabella v Pampino* HD11D00589; *Gonetti v Totaro* HF11D00550; *Porta v Barone* HV11D00196; *Fazioli v Schiavoni* MB10D01733; *Compagnini v Costanzo* OX10D00898; *Paggiolu v Delvecchio* PR11D00527; *Bernardini v Ricci* RH10D00295; *Musso v Giansante* SC10D00594; *Pisoni v Pintus* SK10D00903; *Galipo v Pirrone* SO10D01031; *Labarile v De Salvo* SW10D00541; *Bassi v Toma* SZ10D00508; *Galantini v Grasso* TF10D00459; *Lopez v Turco* TQ10D00799; *Calamusa v Pericolini* UB10D02123; *Bonanno v Lonetti* YE11D00044.

was therefore appropriate to dismiss the petitions in all of these 58 cases without further ado, as I did by the order dated 18 February 2014.

76. In the 9 Class 1 cases where the letters had been returned undelivered and in the 3 Class 1 cases where there had been a response, albeit inadequate, it was not appropriate for me to proceed to summary dismissal. Those 12 cases were therefore dealt with at the final hearing along with the Class 2 and Class 3 cases (see below).

77. The remaining Class 1 case, *La Marca v Prestieri* BY12D00274, involved use of an address in Epsom, Flat 229, Reaver House, 12 East Street, Epsom, Surrey, KT17 1HX, said in the petition to be the petitioner's address. I shall refer to this as "Flat 229." A witness statement filed by the Queen's Proctor in support of his application dated 12 June 2013 for the transfer of this case from Barnsley County Court to the High Court, set out reasons for believing that Flat 229, like Flat 201, was not a residential property but a mail box, together with various other reasons for believing that the same people were behind this case as the other cases. Accordingly, for precisely the same reasons as in the other 70 Class 1 cases, it was appropriate for me to make an order in accordance with rule 7.20(2)(b) of the 2010 Rules, as I did on 19 July 2013. The letter serving the order was not returned and service was effective. None of the required information had been supplied. In the circumstances it was therefore appropriate to dismiss the petition in *La Marca v Prestieri* BY12D00274 for the same reasons as in the other 58 cases.

78. In most of the Class 2 and Class 3 cases, service of the Queen's Proctor's plea had been effected. In those cases, and absent any response from the parties, the Queen's Proctor, as I have explained in paragraph 15 above, would have been entitled to proceed without adducing any evidence in support of his plea. But the fact is that in some of these cases service has not been possible. So it was necessary in these cases for the Queen's Proctor to prove his case by adducing evidence. That being so, I need not consider the effect of the plea any further. In the circumstances, and except for the 59 Class 1 cases where I have already dismissed the petitions for non-compliance with the order I had made under rule 7.20(2)(b) of the 2010 Rules, it is simpler if all these cases – the remaining 12 Class 1 cases, the 18 Class 2 cases and the 91 Class 3 cases, including *Rapisarda v Colladon* AL11D00099 which I deal with separately below – are determined by reference to the evidence.

79. What does the evidence establish? I have set it all out, and need not repeat the details. The materials before me, when read in conjunction with the relevant court files, establish, and I find as a fact, that:

    i) In each of these cases the assertion that the English court had jurisdiction to entertain the petition was founded on a lie, the lie that either the petitioner or, in some cases the respondent, resided at Flat 201. The English court was deceived; it was induced by fraud to accept that it had jurisdiction to entertain the petition.

    ii) In the Class 2 and Class 3 cases the application to proceed in accordance with the special procedure was supported by the filing of what purported to be an affidavit but was, in fact and in law, a forgery, deployed by the fraudsters to deceive the court. (The parties are here impaled on the horns of a dilemma: if it

was an affidavit, then it reeked of perjury; if it was not in truth an affidavit it was a forgery. Either way the court was being deceived, the administration of justice was being perverted, whether by perjury or by forgery.)

80. It is quite clear that in each of these cases the English court was being deceived. Importantly, that deception went not just to what I have called the court's jurisdiction to grant a decree; more fundamentally it went also to the court's jurisdiction to entertain the petition.

81. There is no need for me to go any further. On the authority of *Callaghan v Hanson-Fox (Andrew)* [1992] Fam 1, sub nom *Callaghan v Hanson-Fox and Another* [1991] 2 FLR 519, and *Moynihan v Moynihan (No 2)* [1997] 1 FLR 59, these findings alone suffice to establish fraud rendering both the decree nisi and the decree absolute void.

82. It follows that the Queen's Proctor has established his case. In each of these cases where there has been either a decree nisi or a decree absolute, the decree(s) must be set aside as being void for fraud. In each case the underlying petition must be dismissed. This is not a matter of judicial discretion; it is the consequence which follows inexorably as a matter of law from the facts as I have found them. And for reasons I have already explained in paragraph 16 above, it makes no difference if one or other or both of the parties have, as in *Rapisarda v Colladon* AL11D00099, re-married or even had a child.

83. I add a word about *Diaferio v Rodrigues* TS10D00587. I have summarised the facts (see paragraph 56 and footnote 4 above). There is nothing to distinguish this case from all the other cases in which fraudulent use was made of the Flat 201 address. The decree nisi and decree absolute in this case was procured by the use of a purported affidavit which, like the others, was in fact and in law a forgery. For the reasons set out in paragraphs 80-82 above, the same consequence must follow in *Diaferio v Rodrigues* TS10D00587 as in the other cases.

Rapisarda v Colladon AL11D00099

84. I have already touched on much of the detail of this in passing. To recapitulate: The petition was issued on 16 February 2011. The petitioner's address was said to be in Italy. Jurisdiction was asserted on the basis that the respondent "is habitually resident in England and Wales." He was said to reside at Flat 201. The petitioner accepts that she signed the petition but could not remember if it was already completed when she signed it.

85. On 14 March 2011 the court received the acknowledgment of service, purportedly completed by the respondent. The answer to question 1B(a), "In which country are you … habitually resident?", was "England". The answer to question 1C, "Do you agree with the statement of the petitioner as to the grounds of jurisdiction set out in the petition?", was "Yes". The answer to question 2, "On which date and at what address did you receive the petition?", was "On the [illegible] day of March 2011 at Flat 201 …" His address for service was stated to be Flat 201. The respondent's evidence to me, as already noted, was that the signature on the acknowledgment of service was his but that he signed it in blank.

86. The respondent having purportedly indicated that he did not intend to defend the case and that he consented to a decree being granted, the petition proceeded in accordance with the special procedure.

87. On 19 April 2011 the petitioner purportedly swore the affidavit in Form M7 required by rule 2.24(3) of the 1991 Rules before the same solicitor as purportedly witnessed the affidavit in *Gargiulo v Armani* AF11D00099 eight days later. As in that case, opposite the words "Sworn at" there appear, seemingly affixed by a rubber stamp, what purport to be the name and the postal and DX addresses of a firm of solicitors in Reading. In response to question 2, "Do you wish to alter or add to any statement in the petition?", the answer is "No". In response to question 3, "Subject to these alterations or additions (if any), is everything stated in your petition true?", the answer is "Yes". In response to question 4, the date of separation is said to have been 5 January 2009. In response to question 7, requiring the petitioner to state the various addresses at which the respondent had lived since the date given in the answer to question 4, and the periods of residence at each address, the answer given is "From 05/01/2009 to present Flat 201, 5 High Street, Maidenhead, SL6 1JN". The petitioner purportedly swore that "The answers to Questions 1 to 11 above are true." As already recorded, the petitioner signed the form in Verona, not in Reading, and her signature was not witnessed as it purports to have been. The solicitor's details were not there when she signed the document. Most probably the other parts had also not been filled in when she signed it.

88. Following this, and in accordance with the special procedure, the decree nisi was pronounced on 14 July 2011 followed by the decree absolute on 6 September 2011.

89. The reply of the parties dated 28 February 2014 proceeds on the basis that, although he never lived at Flat 201, the respondent was in fact habitually resident in England, within the meaning of the third limb of Article 3.1(a) of the Council Regulation, when the petition was issued on 16 February 2011. Paragraph 4 of the reply pleaded that "In respect of the wrong address on the petition and the acknowledgment of service inserted by Nolton Agency, the court has the discretion to correct the mistake." In support of this proposition, reference was made to my decision in *Leake v Goldsmith* [2009] EWHC 988 (Fam), [2009] 2 FLR 684. In paragraph 6 it was pleaded that "The decree is valid and should not be set aside. The petition should not be dismissed." A declaration to that effect was sought.

90. The rejoinder of the Queen's Proctor dated 14 March 2014 pleads as follows in paragraphs 2-4:

> "2 The Queen's Proctor avers that the Answer aforesaid is inadequate and files this rejoinder in order to put the Parties on notice of that inadequacy. The Plea of the Queen's Proctor is not advanced solely upon a jurisdictional basis. It is additionally averred by the Queen's Proctor that the decrees were granted as a result of a serious deception of the court and accordingly the relief sought in his Plea should be granted on that basis, in any event.

> 3 The Queen's Proctor in particular relies upon the decision of the then President in the matter of *Moynihan v Moynihan* [1997] 1 FLR 59 at 67, following the decision of Denning LJ (as he then was) in *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702, 712.
>
> 4 The decrees in the instant petition were obtained by deception of the court and consequently cannot be permitted to stand. Accordingly, even if, by happenstance (which is not admitted) the Respondent was, in fact, habitually resident within the jurisdiction of England and Wales within the meaning of section 5 of the Domicile and Matrimonial Proceedings Act 1973, as amended, the instant divorce proceedings were still tainted by a deception of the court and consequently the relief sought by the Queen's Proctor should be granted."

91. The case put forward on behalf of the parties in *Rapisarda v Colladon* AL11D00099 is set out in their witness statements, the petitioner's dated 25 October 2013 and the respondent's dated 29 October 2013, as elaborated by their oral evidence to me on 9 April 2014, supplemented by Ms Villarosa's skeleton argument dated 8 April 2014.

92. In short, what is said is that the respondent, an engineer employed by an Italian construction company, was working in 2010 and 2011, as he had been for many years previously, on sites in various countries in Africa and elsewhere. Prior to separating from the petitioner he had tended to spend little time in Italy, the greater part of the year being spent working abroad, although it appears that the matrimonial home in Verona was his 'base' and where he kept his 'things'. In 2009 he met a woman who lived in this country, in Beckenham on the outskirts of London. From March 2010 until August 2011 he shared a flat with a friend not far away from Beckenham in Bromley so as to be close to his girlfriend. A letter from the friend dated 20 October 2013 which the respondent produced says:

> "[He] and I had a verbal gentleman's agreement that he would pay me a cash contribution towards living and household expenses in lieu of rent and utilities. Paid on a monthly basis for the period he was residing … [He] would stay with me in between his various working assignments abroad."

The respondent's case is that throughout the period from March 2010 to August 2011 he always returned to this county when he was not working abroad and considered the Bromley address to be his main residence. He thought that during this period he spent something between 10% and 15% of his time in this country. He paid no tax in this country. I was left largely in the dark as to what had happened to his 'things' after he had separated from the petitioner and where he kept them thereafter.

93. Basing herself upon the test of habitual residence in divorce cases enunciated in *Marinos v Marinos* [2007] EWHC 2047 (Fam), [2007] 2 FLR 1018, *V v V (Divorce)* [2011] EWHC 1190 (Fam), [2011] 2 FLR 778, and *Tan v Choy* [2014] EWCA Civ

251, Ms Villarosa submitted that the respondent was therefore habitually resident in his country in February 2011 when the petition was issued.

94. I have to say that I am sceptical as to whether, even on his own evidence, the respondent can establish that he was ever habitually resident in this country. But even assuming that he can, I am persuaded by Mr Murray that it cannot avail either the respondent or the petitioner. The fact remains that in this case, as in all the others, the English court was deceived into believing that, in this case, the respondent lived at Flat 201, and the decree nisi and decree absolute were procured by the use of a purported affidavit which, like the others, was in fact and in law a forgery. As Mr Murray succinctly puts it, the fact is that the false address was presented to the court. On that ground, as Mr Murray submits, the Queen's Proctor is entitled to the same relief in *Rapisarda v Colladon* AL11D00099 as in the other cases.

95. Quite apart from that, there are other difficulties in Ms Villarosa's way. The use of the wrong address was not, as Ms Villarosa would have it, a "mistake"; it was deliberate. Moreover, even if I could in some way cure this defect in the petition it is far from clear that this could, without more ado, retrospectively cure the process culminating in the decree nisi and the decree absolute. And in any event, *Leake v Goldsmith* [2009] EWHC 988 (Fam), [2009] 2 FLR 684, a very different case, does not assist Ms Villarosa, nor do two other cases to which reference was made, *S v S (Rescission of Decree Nisi: Pension Sharing Provision)* [2002] IDS Pensions Law Reports 219 and *Kearly v Kearly* [2009] EWC 1876 (Fam), [2010] 1 FLR 619.

96. Ms Villarosa submits that the petitioner and the respondent were innocent parties, who did not collude or in any way take part in whatever fraud may have been committed by Dr Russo or Nolton. I am prepared to assume in their favour that they were taken advantage of by others who were intent on making money dishonestly at their expense. But their plea of innocence will not wash. On the petitioner's own account, she must have realised that there was something distinctly odd about the affidavit she was being asked to sign. So far as the respondent is concerned his (admitted) signature to the acknowledgment of service faces him with a dilemma from which he cannot escape. If, as he says, he signed the form in blank, then he must take the consequences. If, on the other hand, it had been completed when he signed it, how can he explain the fact that his address is shown *immediately below his signature* as Flat 201 and not, as he had notified Dr Russo by email on 1 February 2011, his true address in Bromley?

97. Accordingly, in this case as in the others, the decree nisi and the decree absolute must be set aside as being void for fraud, and the petition must be dismissed.

Afterword

98. Mr Murray and Mr Collins have in conjunction with the Queen's Proctor helpfully considered whether there are any changes to the procedure of the English court in divorce cases which might prevent or at least reduce the possibility of a similar fraud being perpetrated again. I am grateful to all of them. They have embodied certain suggestions in a written note dated 2 June 2014, which I propose to put before the Family Procedure Rules Committee for its consideration.

99. The fraud in these cases was, I have no doubt, facilitated by rules which, as explained in paragraphs 2 and 10 above, enabled the architects of the fraud to spread the issue of 180 petitions very thinly across no fewer than 137 different county courts. For reasons unconnected with what this case has uncovered, that facility is shortly to be very drastically curtailed. As I explained in my recent *View from the President's Chambers: The process of reform: an update* [2014] September Fam Law 1259, 1262, Her Majesty's Courts and Tribunals Service is, with my active support, proceeding to centralise the handing of divorce petitions, concentrating this work in a limited number of locations where petitions will be issued and all special procedure divorces will be processed. I anticipate that by this time next year there will be fewer than twenty, possibly as few as a dozen, places at which a divorce petition can be issued.

100. This alone, however, will probably not be enough to prevent such frauds. There is no need for me to set out each of Mr Murray's helpful suggestions, but there are two which I can usefully mention. One is that both the petition for divorce and, in special procedure cases, the notice of application for decree nisi should require the completion of a statement of truth in a specified form next to a prominently displayed warning of the penalties for untruth. The other is that part of the process in the court office for issuing a divorce petition should include a search of the court's FamilyMan system to identify whether the address(es) given in the petition have been used in other cases. Each of these suggestions, it seems to me, merits careful consideration, though until such time as the court has up-to-date IT systems (which could no doubt be programmed to identify automatically any relevant addresses) I recognise that implementation of a standard search procedure will no doubt have resource implications.