Neutral Citation Number: [2021] EWHC 1953 (Ch)

Case No: PT-2021-000365

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

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

Date: 15/07/2021

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

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Between :

ENKHTSETSEG PESCATORE	**Claimant/ Applicant**
- and -	
(1) MARIA VALENTINO **(2) ALFONSO PESCATORE** **(3) GIUSEPPE SANDULLO**	**Defendants/ Respondents**

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Marc Glover (instructed by **Portner Law Ltd**) for the **Applicant**
Daniel Lewis (instructed by **Giambrone & Partners LLP**) for the **Respondents**

Hearing dates: 7 July 2021

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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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Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII on the date shown at 10:30 am.

HHJ Paul Matthews :

Introduction

1. This is my judgment on an application made by notice dated 22 April 2021, on behalf of the Claimant in this action, for an interim anti-suit injunction directed to the First and Second Defendants, who are currently claimants in proceedings in Italy against the present applicant, concerning the inheritance of the late Vincenzo Pescatore. The matter was argued before me remotely via MS Teams on 7 July 2021, when Marc Glover of counsel appeared for the applicant and Daniel Lewis of counsel appeared for the respondents.

2. The applicant (the Claimant) was the deceased's second wife, and is now his widow. The respondents (the First and Second Defendants) are the children of the deceased by his first marriage. The application is made in the context of a claim begun by claim form under CPR Part 8, dated the same day. This seeks various relief against the Defendants concerning the administration of the deceased's estate, including a declaration as to the deceased's domicile at death, a permanent anti-suit injunction, and also an order removing the Third Defendant, the deceased's nephew, as executor of the deceased's will. (He is not however concerned in the present application.)

3. The matter first came before the court on 26 April 2021, before Miles J, seeking an interim injunction because there was to be a hearing in the Italian proceedings the next day, which it was apparently feared might make a substantive determination in the matter. The applicant had however not given proper notice to the respondents, and therefore effectively the application was on a without notice basis. Although there were emails before the court written by Italian lawyers on behalf of the respondents, the judge refused to grant an injunction on a without notice basis, and said that the application should be made on proper notice.

4. The matter came back before Zacaroli J on 6 May 2021. On that occasion the First and Second Defendants were represented by a solicitor advocate. The judge adjourned the application to be heard at a later date, on the basis that the time allowed on that day would not be sufficient for it to be properly dealt with. He also gave directions for evidence. (I should make clear that those directions did not include any for expert evidence.) The matter was then listed to be heard before me on 7 July 2021, when as I say I heard counsel on both sides.

Evidence

5. The evidence before me on this application is set out in (i) a witness statement by the Claimant dated 22 April 2021, (ii) a witness statement from the Defendants' Italian lawyer Avvocato Gabriele Giambrone dated 6 May 2021, (iii) a witness statement from the First Defendant dated 20 May 2021, and (iv) a further witness statement from the Claimant dated 4 June 2021. The court was not asked to order, and did not order, any cross-examination on these witness statements.

6. As to the impact of this written evidence, I remind myself that, in *Coyne v DRC Distribution Ltd* [2008] EWCA Civ 488, Rimer LJ (with whom Ward and Jacob LJJ agreed) said:

> "58. … it is well-settled practice that if a court finds itself faced with conflicting statements on affidavit evidence, it is usually in no position to resolve them, and to make findings as to the disputed facts, without first having the benefit of the cross-examination of the witnesses. Nor will it ordinarily attempt to do so. The basic principle is that, until there has been such cross-examination, it is ordinarily not possible for the court to disbelieve the word of the witness in his affidavit and it will not do so. This is not an inflexible principle: it may in certain circumstances be open to the court to reject an untested piece of such evidence on the basis that it is manifestly incredible, either because it is inherently so or because it is shown to be so by other facts that are admitted or by reliable documents. … Mr Ashworth said that these principles apply equally to the case in which the evidence is given by witness statement rather than by affidavit, and I agree."

Background

7. Before I go further, I will set out some family history, as well as the current structure of the immediate family. I take this from the written witness evidence. The deceased was born in 1940, one of nine children, in Mercogliano, a small town in the province of Avellino, in southern Italy, to the east of Naples. One of his sisters, Concettina Sandullo (who is now dead), had a son, the Third Defendant, who is therefore the deceased's nephew. Another sister, Maria Sartori, is still alive and has two children, Andrea and Giuliana. Andrea Sartori is married to Adele. Maria, Andrea and Adele all live in England, and all three have made witness statements in support of the Claimant's position in this claim. However, those witness statements are not relevant to this application, and I need not refer to them further in this judgment.

8. The deceased himself came to England to live in about 1960, and first married a lady called Gloria Ann. In fact, he lived and worked his whole life in England, and died and was buried here. Together he and his first wife had two children, the First and Second Defendants, born respectively in 1965 and 1964. The First Defendant has four children, Sabrina, Georgina, Natasha and Ricardo. The deceased's first wife died in 2001, and was buried in England. The deceased went into business in England, and founded a company here with a business associate. This company was ultimately sold in 1999. In addition to being born an Italian citizen, the deceased became a British citizen, and held a British passport and driving licence. He made tax returns, and paid taxes, in the United Kingdom. He made at least three wills in the English form.

9. Nevertheless, the deceased retained some connections with the land of his birth. He had a one-ninth undivided share in what I infer to have been the family home in Mercogliano. I assume that this arose out of inheritance from his parents. He owned some other pieces of land there. He visited Italy from time to time, and stayed in the family home. He also voted in Italian elections, both at local and national level.

10. In 2008 the deceased married the Claimant, who had been born in 1972 in Mongolia. She has a daughter from a previous marriage, Michelle. The Claimant's evidence is that they met in 2004, and thereafter entered into a relationship. She says that the

deceased proposed marriage to her in 2006, and in 2008 she returned to Mongolia with the deceased with the intention of marrying him there, as indeed happened. This account of how they met and married is disputed by the Defendants, but I do not think anything turns on it for present purposes.

11. During the marriage of the deceased and the Claimant, the deceased's health became a matter of concern. The Claimant says that he began to fall ill in 2009. The Defendants however date his illness from 2015. It is clear on the evidence that the Defendants did not have a very close relationship with the deceased during the time that he was married to the Claimant at least, and I think therefore the Claimant is more likely to be right about this. But, again, the date does not matter for present purposes.

12. The deceased had a number of significant medical problems. In particular, he had a tumour in the right eye, necessitating its removal, high blood pressure, chronic obstructive pulmonary disease and chronic heart failure. He was also seriously overweight. The deceased was admitted to hospital on a number of occasions, and finally died in St Mary's Hospital, Paddington, on 20 March 2018, at the age of 78 years. The death certificate gave the cause of death as (I(a)) Type 2 respiratory failure, as a result of (I(b)) congestive cardiac failure, with (II) acute on chronic renal failure, obesity and chronic obstructive pulmonary disease being also present and contributing.

13. During the marriage, the Claimant and the deceased lived together at a residential property known as 18 Bolton Gardens London NW10 5RD. The land registry entries in evidence show that the property was first registered in 1958. At some point the deceased acquired it, and remained the sole owner until 2016, when he transferred it into the joint names of the Claimant and himself. That created a joint tenancy of the fee simple estate in the property, and so, on the death of the deceased, the whole property vested in the Claimant by right of survivorship, without passing through the deceased's estate. There is no evidence to show that the beneficial joint tenancy which must be assumed to have existed was ever severed by the deceased.

14. In April 2019 the register was updated to show the Claimant as the sole owner of the property. This transmission accordingly took place outside any will or the application of intestacy rules, and as a direct result of the *inter vivos* transaction entered into by the deceased with the Claimant in 2016. There is some material before me suggesting that other (movable) assets of the deceased in England were also held jointly with the Claimant. If so (and of course I am not deciding that now), these too will have passed to the Claimant by virtue of survivorship and not by way of succession.

The deceased's wills

15. The deceased had made at least three wills in the English form, all of them in England with the assistance of English solicitors. The first was made on 28 June 2010. It appointed the Claimant and the Third Defendant as executors and trustees, it gave a pecuniary legacy of £200,000 to the Second Defendant, and it left the residue of the estate to the Claimant if she survived him. There was also a substitutionary gift of the residue, in case the gift to the Claimant should fail, in favour of the First and Second Defendants equally. So, under the first will nothing was left to the First Defendant unless the Claimant did not survive the deceased.

16. The second will was made on 30 March 2016. This gave pecuniary legacies of £10,000 each to the deceased's four grandchildren and to the Claimant's own daughter Michelle. It also gave pecuniary legacies of £125,000 each to the First and Second Defendants. Finally, the residue was given to the Claimant as before, together with a similar substitutionary gift to the First and Second Defendants if the Claimant should not survive the deceased.

17. The final will was made on 30 January 2017. This was identical to the will made in March 2016, except that the legacies to the First and Second Defendants were no longer of £125,000 each, but instead of £50,000 each. It should be noted in passing that in none of the three wills was any specific reference made to property situated in Italy.

18. As is well known, under the English system of succession on death, all the assets of the deceased at his death vest immediately in the executor appointed by the deceased in his or her will (if one was made), or in the Public Trustee pending the appointment of an administrator (if none was). Under English law, those assets do *not* vest directly in the beneficiaries of the estate (whether under the will or on intestacy). The executor or administrator (generically called 'personal representative') carries out the necessary administration of the estate, collecting in assets from the hands of third parties, paying taxes, debts and legacies, and finally transferring the balance of the estate to those entitled. Hence the position of the personal representative is key.

19. Where there is no appointed executor, the court will appoint an administrator, and grant to him or her 'letters of administration'. But where (as in the present case) there is an appointed executor, he or she must 'prove the will', and obtain a grant of 'probate', by application to the court. This grant is made either in solemn form, after a trial (where the process is contentious, and therefore opposed), or in common form (where the process is non-contentious, and unopposed).

20. Although the powers of an executor take effect immediately on the death, in practice an executor can do very little before obtaining the grant of probate, because third parties are not protected if they deal with a person who turns out not to be the executor (for example because the will is later held void, or revoked by another will). So, generally speaking, third parties wait to see the grant of probate. The non-contentious procedures are governed by the Non-Contentious Probate Rules 1987 (as amended).

21. After the death of the deceased, the terms of the third and final will became known to the Defendants, who were unhappy with them. The First Defendant entered a caveat at the district probate registry, in order to block any grant of probate of that will: see the 1987 Rules, rule 44(1). The First Defendant says in her evidence that this was on 25 April 2018, although a letter in the bundle before me from the court service in Cardiff indicates that it was in fact on 29 October 2018. There was some discussion between the parties, and then on 16 January 2019 the Claimant entered a warning in the probate registry: see the 1987 Rules, rule 44(5). On 19 February 2019 the caveat was removed by consent of the First Defendant: see the 1987 Rules, rule 44(11).

22. It is not clear from the papers before me when the Claimant applied for probate, but tax forms dated March 2019 indicates that preparations were being made for an application for probate at that time. On 15 July 2019 probate was granted to the

Claimant alone, with power reserved to the Third Defendant: see the 1987 Rules, rules 20, 27. The grant recites that the deceased died domiciled in England and Wales. At least from the time of the grant of probate, the administration of the estate of the deceased is under the supervision and control of the English court, pursuant to the provisions of the Administration of Estates Act 1925 (as amended), and in particular section 25.

The Italian proceedings

23. Notwithstanding the application for a grant in England, it is clear that the First and Second Defendants had taken Italian legal advice, and were preparing proceedings in Italy concerning the inheritance of the deceased. It appears from a letter from the Claimant's solicitors to the Defendants' solicitors dated 18 April 2019 that on 15 April 2019 they had received a draft of the proposed Italian claim. It also appears from that letter that the Claimant had not previously been aware of any assets owned by the deceased in Italy. The letter went on to say:

> "For the avoidance of doubt, our client has no interest in any Italian assets, readily concedes that Italian Law should apply in relation to those assets and, indeed, is prepared to waive any right or claim she might have thereto."

24. It further appears from documents in the bundle that the Italian claim was finalised by the end of May and registered with the court in Avellino on 20 June 2019. These proceedings claimed that (1) the Avellino court had jurisdiction over the succession, (2) Italian law applied to (the whole of) the deceased's succession, (3) the Claimant was disqualified from inheriting from the deceased because of "unworthiness" (*indegnità*), and (4) the compulsory inheritance rights (*quota di legittima*) of the Defendants had been infringed, and the deceased's patrimony should be reinstated so that each of the Defendants could receive her or his full legitimate share. These proceedings were served on the Claimant in December 2019.

25. The relief sought by the present First and Second Defendants from the Italian court, as claimants in the Italian proceedings, apart from a declaration as to the jurisdiction of the Italian court, is set out in the court summons as follows (in the English translation provided):

> "On the merits, to ascertain and declare, for the reasons given referred to in paragraph 2, the indignity of [the present Claimant], pursuant to article 463 no 1 of the civil code; consequently to declare the exclusion from the succession of [the deceased] of [the present Claimant], with retroactive effect, ordering the same to return what she has already been received, and this pursuant to article 464 of the civil code, with the redistribution of the relative share of inheritance to the children of [the deceased], [the present First and Second Defendants]. In alternative, for the reasons referred to in point 3, to ascertain and declare in favor of [the present First and Second Defendants], the status of legitimate heirs, pursuant to article 565 c.c.; to ascertain and declare that the testamentary dispositions given by [the deceased], with the Will dated 01.30.2017, affect the reserved quota due to [the present First and Second Defendants], and consequently, order the reduction of the testamentary dispositions of the deceased… To this end, to admit technical assessment, aimed to determine the reserved quota and the available portion of the assets

> relied on by the deceased and the determination of the reserved quota concretely due to [the present First and Second Defendants]."

26. The papers before me do not contain any detailed evidence of the estate of the deceased. However, the Italian claim itself sets out some details of what was said to be owned by the deceased at death, which accordingly represents the First and Second Defendant's view of the assets in issue. In the English translation provided in the bundle, this reads as follows:

> "(1) a real estate property (a house) located at 18 Bolton Gardens in London, worth about £1.2 million;
>
> (2) financial investments worth between £600,000 and £800,000;
>
> (3) an undivided ownership share of land located in the municipality of Mercogliano (AV), Cadastral sheet 9, parcel 289, sub 1;
>
> (4) a share equal to 1/9 of the property located, in the municipality of Mercogliano (AV), Via San Salvatore n 16, Foglio 9, part. 289-290, sub 2;
>
> (5) the exclusive ownership of the fund located in Mercogliano, Foglio 13, part. 137.
>
> All for a total value exceeding €2,500,000."

27. It is common ground that the reference in item (5) to a "fund" is a mistranslation of the Italian word "*fondo*", which in this context means land. I also add that the reference in item (4) to "property" should more properly be to "immovable property", since the Italian word used is *immobile*. At all events, the total value of the first two assets, located in England, appears to be about £2 million, so somewhat more than €2 million, perhaps €2.3 million (depending on the rate of exchange). This means that the value of the remaining three assets, located in Italy, appears to be a matter of perhaps €200,000 or perhaps a little more (it refers to a "value exceeding €2,500,000"). On this material, it would seem likely therefore that the Italian assets comprise about 10% or so of the value of the assets owned by the deceased at the time of his death.

28. The Claimant instructed Italian lawyers, and lodged a defence arguing that the Italian court had no jurisdiction in the matter. The first hearing took place in Avellino on 21 January 2020, when the Claimant's lawyer again objected that the court had no jurisdiction. The judge decided that the court would be better able to rule on the jurisdiction issue after considering written submissions, and gave directions for these to be filed. A second hearing was fixed for 16 June 2020. In accordance with the directions, written submissions (or briefs) were filed in February, May and June on each side.

29. By an order of 9 June 2020, the hearing on 16 June 2020 was postponed to 30 June 2020. On that date, the parties were ordered to attempt compulsory mediation, in accordance with Italian procedural rules. The next court hearing was fixed for 27 April 2021. In the meantime, mediation hearings took place on 16 September 2020 and 14 October 2020. These were conducted by the Italian lawyers, although the Claimant and the First and Second Defendants may also have been present. The

mediation attempts were unsuccessful. In February and March 2021 the Claimant's then Italian lawyers ceased to act for her.

30. On 1 February 2021, the Avellino court ordered that the hearing on 27 April 2021 should take place only on paper, since it was not necessary for the lawyers or the parties to appear in person. On that day, the judge read all the filed submissions, decided that the case was more or less ready for decision "*in parte"*, that is, as to part, and then made an order which in Italian reads as follows: "RINVIA per la precisazione delle conclusioni all'udienza del giorno **14.6.2022, ore 09:30**". The English translation supplied in the bundle says that this means "schedules the closing hearing for the 14th June 2022, at 9:30 am."

31. With great respect to the translator (who of course may not be a lawyer), this does not seem to me to be right. The main issue that had by then been addressed in the written submissions was the question of jurisdiction. The judge did not say in the recital to his order that the entire case was finished or about to be finished. Indeed he could not, because he had not heard any of the witnesses whose names had by then been given to the court by the parties' lawyers.

32. As it happens, I speak Italian reasonably fluently, sufficiently at least to be able to give lectures on English law to Italian lawyers. I have also acted in the past as a (part-time) judge of the *Corte di trust e relazioni fiduciarie* of the Republic of San Marino, where of course the official language is Italian, and I have taken part in hearings in that language. I am not aware of any authority on the point, but I should say that I do not regard it as giving expert evidence to myself to say here what I as an Italian speaker understand the words used, in their context, to mean.

33. For the purposes of my own understanding, I break down this Italian phrase into three distinct parts. The first is the present tense third person verb "RINVIA", which has as its implied object (carried forward from the previous section) the words "la causa". In the context I understand this to mean "refers (or remits) the case". The third part of the phrase is "all'udienza del giorno **14.6.2022, ore 09:30.**" I understand this to mean "to the hearing on 14 June 2022 at 9:30 AM".

34. What exactly is being referred or remitted to that hearing is contained in the *second* part of the phrase. This is "per la precisazione delle conclusioni". In my understanding of this phrase, and of its place in the entire sentence, the word *conclusioni* does not in any way qualify the singular noun *udienza* (hearing). *Conclusioni* is not an adjective, but a plural noun. The *udienza* of 14 June 2022 is simply the next one listed. What "per la precisazione delle conclusioni" means in this context is simply "in order to clarify the [written] submissions". Here *conclusioni* is like the French *conclusions*, that is, arguments made to secure a particular result (or conclusion). So, according to the order itself, the next hearing will be about jurisdiction, and will not bring the case to an end (unless the court decides it has no jurisdiction).

35. My own view is confirmed by an email contained in the bundle, and dated 27 April 2021 (the same day as the court hearing and order), from the Claimant's Italian lawyer to her English lawyers. It appears to report on that hearing. In part, it says this (and in English):

> "The Judge said that there are enough elements to take a decision on one point of the litigation (reasonably on the jurisdiction) and, therefore, adjourned the hearing to 14 June 2022 at 9.30, for the parties to provide their conclusions.
>
> Please note that, according to art. 190 of Italian Procedure Code, after the hearing the parties will have a term of 90 days to file their final defensive statements and another term of further 20 days for replies to the counterparty statements.
>
> In brief, still no decision at all. The decision will be taken after the next hearing and after the filing of the defensive statement, and this is consistent with the principle of the Italian Law according to which the Jurisdiction shall be decided by the way of Judgement and not by the way of an order."

36. I know that Avvocato Giambrone in his witness statement says that

> "33. What I can say with absolute certainty is that the Italian Court has not currently declined its jurisdiction so the case is still pending before the Italian Court and has been listed for a final hearing."

But I do not read Avvocato Giambrone as saying there that the entire litigation is approaching its end. I understand him to mean that the court will have one more hearing on *jurisdiction* and will then make a decision on *that* issue. All the other issues remain still to be considered, and to be dealt with hereafter, assuming that the court considers that it has jurisdiction.

37. At the same time, I also note that, in a letter dated 28 April 2021 from the Defendant's English solicitors, Giambrone and Partners LLP to the Claimant's solicitors, Portner Law Ltd, the former said:

> "Having said that, please note that the Italian judge yesterday has listed the next hearing on June 2022; this clearly means that the Italian proceedings are ongoing and the judge has decided to accept jurisdiction in Italy."

I am afraid that I simply do not understand that. Just because a judge has listed the next hearing does not mean that he must have decided the question of jurisdiction in favour of the present First and Second Defendants. On the contrary, and as I have found, his order makes clear the next will be the final hearing *in relation to the jurisdiction issue,* which will then be decided.

38. I also note what Avvocato Giambrone says in an email to the Claimant's solicitors of 23 April 2021, timed at 1733:

> "There are proceedings pending in Italy, to which your client is a party to and in connection with the same issues which you intend to litigate in England. Your client made an application in Italy and argued that the Italian Court did not have jurisdiction to deal with the dispute, which she lost. The Italian Court has jurisdiction as the deceased was an Italian citizen, the estate also comprised many assets in Italy and the children are Italian. With respect, the 'lack of jurisdiction' argument has been raised (and lost) so your client can not have a second bite at the cherry."

With great respect, I do not understand how Avvocato Giambrone can say that the jurisdiction argument has been lost when it has not yet been decided. Perhaps I am missing or misunderstanding something. Perhaps he is addressing a different point. But I record here that at the hearing I was not shown any order of the Italian court ruling on the jurisdiction question, and neither was it submitted to me that the jurisdiction question had already been resolved.

39. In any event, that email from Avvocato Giambrone appears to have prompted a telephone enquiry from the claimant's solicitors to their own Italian lawyers. (As is not uncommon in these cases, the Claimant's English solicitors appear to have retained specialist, and English-speaking, lawyers – here the well known firm of Tonucci & Partners in Rome – who have in turn instructed a local lawyer in Avellino, who will have primary rights of audience in the local court.) An email was sent by Tonucci to the claimant's solicitors, timed at 1849 on the same day. It included the following:

> "Following to our last call, we just spoke with Mr. Pietro Pennisi (the local Lawyer) who confirmed us that the Judge did not already assumed any decision with regard to the jurisdiction."

40. On 5 May 2021, the Claimant's English solicitor Amrit Johal made a witness statement exhibiting correspondence, and explaining that in the claimant's understanding the jurisdiction question had not yet been resolved by the Italian court. Finally, this is confirmed by the First and Second Defendants' own skeleton argument for this application (at [15](3)). On the material before me, I am quite satisfied that the Italian judge has not yet decided the jurisdiction question.

41. The next point is this. The grant of probate in July 2019 was an order of the English court, albeit made administratively, rather than judicially. Although the commencement of the Italian proceedings appears to have taken place shortly before the grant of probate, it is clear that the application to the District Probate Registry of the High Court of Justice for the grant must have been made sometime earlier, and probably (though not certainly) before the launch date of the Italian proceedings. Moreover, by entering a caveat in the District Probate Registry against the granting of probate in this case, in October 2018, the First Defendant was already engaging the English legal system in relation to the administration of the deceased's estate. The Claimant built on this by entering a warning in January 2019.

42. So, whilst it can be said that the Italian court was seised of this matter before these *current* proceedings were issued in April 2021, it appears from the material before me that the English legal system was in fact the first system of the two to be involved with the administration of the estate. It is also the case that the Italian proceedings were not served upon the Claimant until December 2019, well after the grant of probate, and that from June 2020 until April 2021 there was a stay for compulsory mediation. So, the amount of time that the Italian proceedings have actually been actively before the Italian court in the period before the present English proceedings were issued is only about seven months.

Italian Law

43. Before I turn to deal with the application for an injunction, I should say this. There was no direction for expert evidence of Italian law or procedure, and therefore no such admissible evidence before me. Some of what Avvocato Giambrone says in his witness statement might be seen as bordering on expert evidence of Italian law. But even if there had been a direction for such evidence, he as the respondents' lawyer would obviously not have the necessary independence to give it.

44. Nevertheless, I am sure that I can take judicial notice of the fact that the substantive law of property and inheritance in civil law countries, such as Italy, is very different from that which applies in common law countries, such as England: see *eg Lambton v Lambton* [2013] EWHC 3566 (Ch), [40], per Sir Terence Etherton, C. For example, it is well known that, on death in civil law countries, there is direct succession to the deceased's property by his or her heirs, and no period of administration in the common law sense is interposed between them. It is also known that the concept of 'estate' used in common law systems does not correspond to the concept of 'patrimony' (*patrimonio* in Italian) used in the civil law ones. Further, there are compulsory inheritance shares for certain close relatives of the deceased. All this is, in the technical sense, notorious.

45. As it happens, it is also very well known to me, because as a professor at King's College London I formerly taught postgraduate law courses on international and comparative property law and international and comparative inheritance law, which were attended by students and indeed sometimes academic lawyers from many different countries. I have also attended many international conferences and given lectures in foreign universities where these matters have been discussed, and have spent time working in foreign (particularly Italian) lawyers' offices.

46. Finally I was also a member of the panel of European experts which advised the European Commission on the proposals and drafts which led to Regulation (EC) No 650/2012 of 4 July 2012, on wills and successions, and I took part in many meetings in Brussels for that purpose. This was enacted as part of the corpus of European Union law at a time when the United Kingdom was a member state, although in fact the United Kingdom exercised its right to opt out of its applicability to the United Kingdom. (I am not sure whether that means that it is, or perhaps was, part of 'my' law or not. For present purposes, since the matter has not been argued, I shall assume not. Accordingly, I do not need to consider the effects of the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020, which contain provisions for EU law to continue to have effect as part of UK domestic law, unless UK legislation provides to the contrary.)

47. As a result of these experiences, I am acutely aware of the need to avoid accidentally giving 'expert' evidence to myself. But what my understanding of the many differences in civil law and common law property and inheritance systems tells me above everything else is the importance of *not* trying to find analogies, let alone equivalents, in one's own system for what happens in another, and accordingly the greater value of issues of property and inheritance law being decided by judges in the relevant systems, rather than in foreign ones.

English law

48. I now turn to matters of English law. Before me, the parties were agreed as to the relevant law to be applied in considering whether to grant an anti-suit injunction. First of all, they were agreed that both the EU Judgments Regulation and the Brussels Convention were irrelevant. This is not only because the United Kingdom has now left the European Union without any replacement being made for these provisions (for example, joining the Lugano Convention), but because by their own express terms these provisions never applied to disputes about wills and successions anyway: see Article 1. Consequently, the EU rules on anti-suit injunctions (as discussed, for example, in the decision of the Court of Justice of the European Union in *Turner v Grovit*, C-159/02, 27 April 2004, [2005] 1 AC 101, do not apply. Instead, it is the English common law rules that I must apply. In this respect, I was referred to a number of authorities. I hope I will be excused for not referring to all of them.

49. Out of respect for the Italian legal system, and for the *Tribunale di Avellino*, in particular, I make clear first of all that the jurisdiction of common law courts to grant anti-suit injunctions is *not* directed at the foreign court which happens to be involved. The English courts are well aware of the demands of international judicial comity and co-operation. Instead, an anti-suit injunction is an order *in personam*, directed at respondents who are (i) personally amenable to the jurisdiction of the common law court (either because they are physically there, or have agreed to submit to that jurisdiction) and (ii) *either* in breach of their agreement *or* otherwise wrongly have commenced or continued legal proceedings in the foreign court when the natural forum is the common law court.

50. It is not a question of the *amour propre* of the common law court, but a case of the *particular litigants* within the jurisdiction of the English court acting unconscionably in taking proceedings elsewhere. As it is put in a commentary in *Civil Procedure* (the "White Book"), [15-94]:

> "Anti-suit injunctions … involve not a decision upon the jurisdiction of the foreign court but an assessment of the conduct of the relevant party in invoking that jurisdiction."

51. In *Royal Bank of Canada v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA* [2004] 1 Lloyd's Rep 471, CA, two banks, one Canadian and one Dutch, were involved in litigation in London following the collapse of the American energy conglomerate Enron. The contract between the two banks contained a non-exclusive jurisdiction clause in favour of the English court. The Dutch bank (also known as Rabobank) however brought proceedings against RBC in New York, where both banks also did business. RBC sought an anti-suit injunction in London to restrain Rabobank. Both at first instance and on appeal, the application failed. But, in the Court of Appeal, the statement of the relevant principles governing anti-suit injunctions by the judge at first instance was expressly approved.

52. It is as follows (omitting references to the various authorities):

> "29(i) Under English law a person has no right to be sued in a particular forum, domestic or foreign, unless there is some specific factor that gives him that right, but a person may show such a right if he can invoke a contractual provision conferring it on him or if he can point to clearly unconscionable

> conduct (or the threat of unconscionable conduct) on the part of the party sought to be restrained …
>
> (ii) There will be such unconscionable conduct if the pursuit of foreign proceedings is vexatious or oppressive or interferes with the due process of this Court …
>
> (iii) The fact that there are such concurrent proceedings does not in itself mean that the conduct of either action is vexatious or oppressive or an abuse of court, nor does that in itself justify the grant of an injunction …
>
> (iv) However, the court recognises the undesirable consequences that may result if concurrent actions in respect of the same subject matter proceed in two different countries: that 'there may be conflicting judgments of the two courts concerned' or that there 'may be an ugly rush to get one action decided ahead of the other in order to create a situation of res judicata or issue estoppel in the latter' …
>
> (v) The Court may conclude that a party is acting vexatiously or oppressively in pursuing foreign proceedings and that he should be ordered not to pursue them if (a) the English court is the natural forum for the trial of the dispute; and (b) justice does not require that the action should be allowed to proceed in the foreign court, and more specifically, that there is no advantage to the party sought to be restrained in pursuing the foreign proceedings of which he would be deprived and of which it would be unjust to deprive him …
>
> (vi) In exercising its jurisdiction to grant an injunction, 'regard must be had to comity and so the jurisdiction is one which must be exercised with caution' … Generally speaking in deciding whether or not to order that a party be restrained in the pursuit of foreign proceedings the court will be reluctant to take upon itself the decision whether a foreign forum is an inappropriate one … "

This summary of the applicable law was approved again by the Court of Appeal in *Seismic Shipping Inc v Total E & P UK plc* [2005] 1 Lloyd's Rep 359, [44], [45].

53. A yet more recent statement of the general principles applicable to the grant of anti-suit injunctions is contained in the decision of the Court of Appeal in *Deutsche Bank AG v Highland Crusader Offshore Partners LP* [2010] 1 WLR 1023. In that case, a German-based bank with a London office and its associated US subsidiary sold securities to the US-based defendants, who operated a hedge fund. The contract provided for English governing law and for the non-exclusive jurisdiction of the English courts. Disputes arose between the parties and the claimant served default notices. The defendants brought proceedings against the claimants in Texas for fraudulent or negligent misrepresentation.

54. The claimant brought proceedings in the High Court to recover amounts said to be due under the default notices, and also sought an anti-suit injunction. The injunction was granted by the judge at first instance, but overturned on appeal. The Court of Appeal decided that, given that the dispute had little to do with England and that the jurisdiction clause was *non*-exclusive, there could be no general presumption that the

proceedings brought in a noncontractual forum were vexatious or oppressive, so as to justify an injunction.

55. Toulson LJ, as he then was (with whom Carnwath and Goldring LJJ agreed), set out the general principles of anti-suit injunction is as follows:

> "50. Leaving aside the provisions of the Brussels I Regulation and previous conventions, which are not relevant in this case, I would summarise the relevant key principles as follows. (1) Under English law the court may restrain a defendant over whom it has personal jurisdiction from instituting or continuing proceedings in a foreign court when it is necessary in the interests of justice to do. (2) It is too narrow to say that such an injunction may be granted only on grounds of vexation or oppression, but, where a matter is justiciable in an English and a foreign court, the party seeking an anti-suit injunction must generally show that proceeding before the foreign court is or would be vexatious or oppressive. (3) The courts have refrained from attempting a comprehensive definition of vexation or oppression, but in order to establish that proceeding in a foreign court is or would be vexatious or oppressive on grounds of forum non conveniens, it is generally necessary to show that (a) England is clearly the more appropriate forum ('the natural forum'), and (b) justice requires that the claimant in the foreign court should be restrained from proceeding there. (4) If the English court considers England to be the natural forum and can see no legitimate personal or juridical advantage in the claimant in the foreign proceedings being allowed to pursue them, it does not automatically follow that an anti-suit injunction should be granted. For that would be to overlook the important restraining influence of considerations of comity. (5) An anti-suit injunction always requires caution because by definition it involves interference with the process or potential process of a foreign court. An injunction to enforce an exclusive jurisdiction clause governed by English law is not regarded as a breach of comity, because it merely requires a party to honour his contract. In other cases, the principle of comity requires the court to recognise that, in deciding questions of weight to be attached to different factors, different judges operating under different legal systems with different legal policies may legitimately arrive at different answers, without occasioning a breach of customary international law or manifest injustice, and that in such circumstances it is not for an English court to arrogate to itself the decision how a foreign court should determine the matter. The stronger the connection of the foreign court with the parties and the subject matter of the dispute, the stronger the argument against intervention. (6) The prosecution of parallel proceedings in different jurisdictions is undesirable but not necessarily vexatious or oppressive. (7) A non-exclusive jurisdiction agreement precludes either party from later arguing that the forum identified is not an appropriate forum on grounds foreseeable at the time of the agreement, for the parties must be taken to have been aware of such matters at the time of the agreement. For that reason an application to stay on forum non conveniens grounds an action brought in England pursuant to an English non-exclusive jurisdiction clause will ordinarily fail unless the factors relied upon were unforeseeable at the time of the agreement. It does not follow that an alternative forum is necessarily inappropriate or inferior. (I will come to the question whether there is a presumption that parallel

> proceedings in an alternative jurisdiction are vexatious or oppressive). (8) The decision whether or not to grant an anti-suit injunction involves an exercise of discretion and the principles governing it contain an element of flexibility."

56. These principles, although developed in the field of commercial law, have been applied also in the field of civil litigation about wills and successions, for example in *Al-Bassam v Al-Bassam* [2004] WTLR 757, CA. But I will mention two more recent and particular examples which I was taken to in detail.

57. In *Morris v Davies* [2011] EWHC 1272 (Ch), a British citizen who had lived in France and Belgium since 2002 died in 2008 in Paris. One of the named executors of his English will brought proceedings in England in February 2010 for a grant of probate of that will in solemn form. In May 2010 the Defendants acknowledged service of the English proceedings and served a defence and counterclaim. They contended that the deceased died domiciled in Belgium and that the succession to all his property except English immovable property was governed by Belgian law. They also argued that the last will was void anyway.

58. In September 2010 the court ordered that there be a trial of the preliminary issue of the question of the deceased's domicile at the date of his death. The trial was originally to take place in a trial window commencing February 2011, but later slipped to a window commencing at the end of June 2011. It appeared that approximately £50,000 had been spent by the claimant in preparation for that hearing. At the end of March 2011 the defendants issued proceedings in Belgium for a declaration that the will was void and for an award of the deceased's estate to the defendants pursuant to Belgian law, alternatively for the second defendant to be entitled to her legitimate share under Belgian law. In April 2011 the claimant applied for an anti-suit injunction against the defendants, and also against another close relative of the deceased, Edwin, to restrain them from continuing these Belgian proceedings and from commencing any similar proceedings in France.

59. As in the present case, it was agreed between the parties that the Judgments Regulation and the Brussels Convention did not apply. The deputy judge, Sarah Asplin QC (as she then was), was referred to a number of authorities, including *Deutsche Bank AG v Highland Crusader Offshore Partners LP*. She reviewed the evidence before the court, showing connections with France, Belgium and England. She said this:

> "32. … The existence of two parallel sets of proceedings is a weighty factor when determining whether to exercise the discretion to grant an injunction but is not in itself enough to justify such an order. It is necessary also to consider whether the ends of justice require an injunction to be granted and that two conditions are satisfied namely that the English court is the natural forum for the resolution of the dispute and that the conduct of the defendants is vexatious, oppressive or unconscionable.
>
> 33. In my judgment, despite the fact that the deceased had been living in France and Belgium since 2001, the natural forum for the dispute is England. He retained a British passport, a British driving licence, spoke no Flemish or Dutch, his funeral was held here, he retained a property here and approximately 75% in value of his assets are within the jurisdiction.

Furthermore, in this regard, I also take account of the approach adopted by Langley J in the *CNA* case [[2005] EWHC 456 (Comm)]. Although the conduct of the present defendants was not as extreme as it was in that case, their submission to the jurisdiction in relation to all of the issues which they now raise in the Belgian proceedings, having allowed considerable amounts to be expended in costs in pursuing the preliminary issue, is an important factor in determining that an appropriate forum, being the English court, is the natural forum.

34. The next question to address is whether the present defendants and Edwin behaved unconscionably and are acting vexatiously and oppressively in pursuing the Belgian action? As Mr Jones [for the defendants] pointed out, when determining this question it is necessary to decide whether justice requires the action to be allowed to proceed in the foreign court and more specifically whether the present defendants and Edwin would be deprived of any legitimate advantage which would be afforded by the Belgian proceedings, and whether to deprive them of such advantages would be unjust.

35. In this regard, I must take account of the fact that I have no expert evidence before me as to the alleged legitimate advantages to the present defendants and Edwin in continuing the proceedings in Belgium. As a result I am unable to give as much weight to this matter as I might otherwise have done stop however, from the description contained in Mr Davies' witness statement and given to me by Mr Jones, it appears that it is possible that there may be remedies available which are not available elsewhere.

36. It is also clear that the wide-ranging nature of the Belgian proceedings present, seem to me to be designed at the very least to enable the present defendants or at least the second defendant to reduce to her own possession and for her own benefit some of the deceased's assets in advance of the hearing of the preliminary issue in England, if not in addition to seek to render that hearing otiose. This was one of the examples given in the *SNIA v Lee Kui Jak* case [[1987] AC 871] of the categories of case in which an injunction may be granted if the proceedings are considered vexatious. Given that the present defendants had submitted to the hearing of that issue and allowed costs to be incurred, in my judgment such conduct is vexatious and oppressive.

37. In any event, in my judgment, the position here is not dissimilar to that considered in *Bassam v Bassam* [[2004] EWCA Civ 857]. Proceeding with the Belgian action at this stage, would not obviate the need for a trial as to domicile and the validity of the last will in the English proceedings. The determination of the issues in the Belgian proceedings will be relevant if at all, after those matters have been decided. Furthermore, the potential advantages to the present defendants to be derived from the Belgian proceedings which Mr Jones sought to describe should be unaffected if the present defendants are restrained from proceeding with the Belgian action over until after the preliminary issue has been determined or further order. If the injunctive relief is limited in that way, it cannot be said that the present defendants and Edwin have been shut out of any legitimate advantage which the Belgian proceedings might afford them. They have merely been prevented from seeking to derail

> and nullify the hearing of the preliminary issue to which they submitted and in relation to which substantial costs have been incurred.
>
> 38. At that stage, it will be possible to determine the extent to which Belgian law will be relevant to succession to the deceased's estate and whether it will be possible to determine whether it would be more appropriate to have whatever matters of Belgian law remain relevant decided by a Belgian court or determined as a matter of fact in English proceedings. In all the circumstances, in my judgment, such a limited order protects the jurisdiction and does not deprive the present defendants of a legitimate advantage.
>
> 39. Therefore, in my judgment in order to preserve the jurisdiction, it is necessary to grant the anti-suit injunction in relation to the Belgian proceedings and any proceedings in France until the preliminary issue has been finally determined, or until further order."

60. So, in this case the appreciation of the judge, having considered all the circumstances, was that the prosecution and continuance of the Belgian proceedings was vexatious and oppressive, and that an injunction should be granted to restrain the defendants from continuing those proceedings.

61. The second example I will refer to is the decision of Morgan J in *Tadros v Barratt* [2014] EWHC 2860 (Ch). In this case the deceased was born in Sudan in 1946, married a Belgian citizen of Russian origin who was then a Dutch national (and died in 2010), and herself died in 2012, a Dutch national resident in London. She left a number of wills, one of which was referred to as "the English will" and another as "the Dutch will". The English proceedings in which this decision was made were initially confined to issues arising in relation to the English will, but were later amended to include issues arising in relation to the Dutch will. The second defendant was the sole beneficiary under the English will, but was also the executrix (though not a beneficiary) of the Dutch will.

62. About a year after the English proceedings were started, the second defendant and the ninth defendant, a charitable foundation under Dutch law (which was the sole beneficiary of the deceased's estate under the Dutch will) began proceedings in the Netherlands, against the claimants in the English proceedings, seeking a determination of the issues that arose *in relation to the Dutch will*. The claimants in the English proceedings sought an anti-suit injunction against both the second defendant and the foundation restraining them from continuing the Dutch proceedings.

63. The judge was referred to many of the same cases as the deputy judge in *Morris v Davies*. These included the decision in the *Deutsche Bank* case, paragraph 50 of which was set out verbatim. The judge was also referred to the decision in *Morris v Davies*. After considering the authorities, he said this:

> "70. The authorities refer to the question whether the English court has personal jurisdiction over the person sought to be restrained. …
>
> 71. I next consider the question of the natural forum for the dispute (or disputes). If the dispute were confined to the English will alone, then I

consider that England would be the natural forum. If the dispute were confined to the Dutch will, then I consider that the Netherlands would be the natural forum; the deceased was a Dutch national and made a Dutch will, which was said to be governed by Dutch law, which deals (at least) with the Dutch assets, where the sole beneficiary has legal personality under Dutch law and where the dispute as to the validity of the will is largely or entirely governed by Dutch law.

72. … If I confine myself to the dispute which directly affects the Foundation, i.e. the dispute about the Dutch will, I consider that the natural forum for that dispute is the Netherlands. Although that conclusion might, without more, justify the refusal of an anti-suit injunction against the Foundation, I will nonetheless go on to consider the other matters which can be relevant on an application for such an injunction.

73. I will next consider whether the second defendant's and/or the Foundation's continuation of the Dutch proceedings is vexatious or oppressive. … [T]he second defendant accepts, in her personal capacity, that she should not continue the Dutch proceedings. I therefore need to consider whether it is vexatious and oppressive for the second defendant, as executrix of the Dutch will, to continue the Dutch proceedings. The second defendant's Amended Defence and Counterclaim in the English proceedings is brought by the second defendant in her capacity as executrix of the Dutch will and in her personal capacity. In the first capacity, for example, she asks the court to pronounce for the Dutch will and she seeks a grant of letters of administration with will annexed. Seemingly in her personal capacity, she seeks a declaration that the Dutch will does not revoke the English will and/or rectification of the Dutch will. There is a strong case for saying that the second defendant's continuation of the Dutch proceedings, in her capacity as executrix of the Dutch will, would also be vexatious and oppressive.

74. I next consider the position of the Foundation. If the Netherlands is the natural forum for the dispute about the Dutch will and the Foundation is directly affected by that dispute, but not directly affected by the dispute about the English will, then it is difficult to say that it is vexatious and oppressive for the Foundation to litigate its dispute in the natural forum of the Netherlands. … It is, of course, procedurally most unfortunate that there should be concurrent proceedings in two jurisdictions about the Dutch will but, as the authorities demonstrate, the unfortunate procedural consequences caused by concurrent proceedings does not necessarily mean that a party is being vexatious and oppressive or that its conduct is unconscionable or an abuse of the process of the English proceedings.

75. I also need to consider whether there are legitimate juridical advantages for the Foundation in continuing its proceedings in the Netherlands. I have set out earlier the advantages which it puts forward, namely:

> (1) the certificate of inheritance procedure in the Netherlands;
>
> (2) that the English courts will recognise the decision of the Dutch court but the same may not happen in reverse;

(3) that the executrix will be able to fund her stance in the litigation out of the estate whereas in the English proceedings the Foundation would not be able to fund its case out of the estate;

(4) that it is preferable for a Dutch court, rather than an English court, to determine and apply the relevant Dutch law; and

(5) that there will be a lower risk as to adverse orders for costs in the Netherlands.

76. My assessment of these suggested advantages is as follows (adopting the above numbering):

(1) I would give the suggested advantage of the certification procedure limited (if any) weight as the evidence of the Dutch lawyers shows that the certification procedure will not bind the court and the court's decision on the evidence will prevail; further, the certificate was not given by the notary who assisted in the execution of the Dutch will so that it does not amount to evidence which is directly relevant to the issues as to the Dutch will;

(2) I consider it is likely that in practice the Dutch court will recognise the decision of the English court;

(3) The Foundation's submission refers to the position of the executrix in the Netherlands and the position of the Foundation in England whereas the correct comparison would have been the positions of the Foundation (or, conceivably, between the positions of the executrix) in both jurisdictions; the question of when, under English law and practice, an executor or a beneficiary is entitled to recover its costs out of the estate which is the subject of a dispute was not discussed in the course of the argument; it does not seem to me to be appropriate for me to discuss that matter without having received submissions on it; I am not persuaded by the submission which was actually made on this point as it is not comparing like with like;

(4) I accept that many of the issues as to the Dutch will involve the application of Dutch law and this is a positive factor in favour of proceedings in the Netherlands; conversely, I do not think that this will be a case where the English court would find the application of Dutch law to be particularly difficult for it;

(5) I accept this point could be an advantage to the Foundation if it loses the proceedings; conversely, if the point is valid, then the Foundation will lose the benefit of the potentially more favourable English rules as to costs if the Foundation were to win the proceedings; it is probably right to consider the difference between the rules as to costs as being a neutral point.

77. My overall assessment of the suggested juridical advantages is that they should only be given limited weight in favour of the Foundation.

> 78. Standing back at this point, I consider that the claimants have not made out a case for an anti-suit injunction against the Foundation. Such an injunction would prevent the Foundation litigating the dispute about the Dutch will in the natural forum of the Netherlands. The Foundation's proceedings in the Netherlands should not be regarded by the English court as vexatious or oppressive of the claimants, or otherwise unconscionable or unjust or abusive, even if the juridical advantages of those proceedings to the Foundation are somewhat limited. Further, the English court should be reluctant, on grounds of comity, to grant such an injunction against the Foundation."

64. The judge then considered a further point about the identity of the competent parties in the Dutch proceedings, which in the event made no difference to the result, and which I need not consider here, and proceeded to refuse the injunction. It is clear that the injunction was refused because on the facts in the appreciation of the judge it was not vexatious or oppressive for the foundation to litigate its dispute in the natural forum of the Netherlands.

65. I was also specifically referred on behalf of the First and Second Defendants to a dictum of Millett LJ in *The Angelic Grace* [1995] 1 Lloyd's Rep 87, CA. That too was the case of an anti-suit injunction, though in a shipping context, where proceedings had been brought in a foreign court in apparent breach of an arbitration clause. The injunction had been granted at first instance, and the appeal against that decision was dismissed. The leading judgment in the Court of Appeal was given by Leggatt LJ, with whom Neill and Millett LJJ agreed. But Millett LJ added some concurring remarks of his own. These included the following dictum (at page 96, col 2):

> "In my judgment, where an injunction is sought to restrain a party from proceeding in a foreign court in breach of an arbitration agreement governed by English law, the English court need feel no diffidence in granting the injunction, provided that it is sought promptly and before the foreign proceedings are too far advanced."

66. On the basis of these authorities, and the others to which I was referred, I direct myself, in general terms, that this court *may* restrain a defendant over whom it has personal jurisdiction from instituting or continuing proceedings in a foreign court when it is necessary in the interests of justice so to do. Moreover, where a matter is justiciable in an English and a foreign court, the party seeking an anti-suit injunction must generally show that proceeding before the foreign court is or would be vexatious or oppressive.

67. If England is not the natural forum, or there is a legitimate personal or juridical advantage for the claimant in the foreign proceedings being allowed to pursue them, then it will not normally be vexatious or oppressive to continue those proceedings. On the other hand, merely because England *is* the natural forum and there is no such legitimate personal juridical advantage for the claimant in the foreign proceedings, it will not automatically follow that an anti-suit injunction should be granted. This is a matter for judicial discretion on the facts of the case.

68. The present application is not one for a final injunction, after a trial of the relevant facts. That has yet to happen. Instead, it is an application for an interim injunction over until trial or further order. Applications for interim injunctions are usually dealt

with in accordance with the *American Cyanamid* principles (from *American Cyanamid Co v Ethicon Ltd* [1975] AC 396). These would require me first to ask whether there was a serious issue to be tried. If yes, I would then have to ask whether damages would be a sufficient remedy for a party found at trial to have been wrongly injuncted or wrongly refused an injunction (as the case may be). If they would not be a sufficient remedy, I would have to consider where the balance of convenience lies, considering all the circumstances of the case. In fact, it was not argued that I should apply these principles to the case before me, and none of the cases to which I was taken referred to them. However, as will be seen, I do not think that this matters.

The present case

Personal jurisdiction and natural forum

69. First of all, in the present case there is no question but that the First and Second Defendants are personally subject to the jurisdiction of this court. There was no suggestion that they are not. Even if they also hold Italian citizenship, they were born in England and are British citizens resident in England. Next, I should record that my task in applying the authorities to the facts of this case has been made easier by a concession made on behalf of the First and Second Defendants. This is that, for the purposes only of this application, it is accepted that there is a real prospect that the Claimant will establish that England would be the natural forum, and that therefore the focus of my attention should be on the second question, namely whether (as it is put in the *Deutsche Bank* case)

> "justice requires that the claimant in the foreign court should be restrained from proceeding there".

70. I should however say that I think that this concession was rightly made. On the unchallenged evidence, this is the case of a naturalised British citizen who lived and worked in this country for most of his life and who died and was buried here. He married and had children in England. He paid his taxes in England. Although he may well have had a domicile of origin in Italy, it seems likely (but of course without deciding), on the material that I have seen so far, that he acquired a domicile of choice in England. The bulk of his assets were and are in England. Their devolution on his death will either be a matter of English substantive law (as undoubtedly is the case in relation to his English immovable property) or will be resolved by the application of the English conflict of laws (in relation to his movable property).

71. English legal proceedings are well used to dealing with such matters. The only areas where Italian law will be relevant are in relation to the immovable property which it is claimed he owned in Italy (but which in any event appears to form only a small part by value of his assets at death) and, if he is held to have retained a domicile of origin in Italy at his death, in relation to his movables wherever situated. On the face of it, the English court is the natural forum for dealing with the questions relating to the assets owned by the deceased at the time of his death, both those that fall within his estate, and those (such as jointly owned assets) which fall outside it.

Personal and juridical advantages

72. I turn then to the question of whether the First and Second Defendants would be deprived of a legitimate personal or juridical advantage if an injunction were granted against them. As to the former, it was not suggested to me that there were any personal advantages which might be obtained by the First and Second Defendants litigating in Italy rather than in England, and of which they would be deprived if they were required to litigate in England. For example, they do not live in Italy. Nor was it suggested that their first language was Italian and that they were unable to express themselves in English adequately or indeed at all. Indeed, the evidence is that they were born and brought up in England and have lived here ever since. As for language skills, the only evidence on the point came from the Claimant, who suggested that either the First and Second Defendants did not speak Italian at all, or spoke it very little. This was not challenged.

73. As to juridical advantages, I remind myself again that I have not heard any expert evidence on Italian law. Nevertheless, and as was discussed at the hearing itself, it is clear from the terms of the Italian summons themselves that there appear to be claims under Italian law which are not available to the First and Second Defendants under English law. These include a claim that the present Claimant is by reason of her alleged conduct towards the deceased "unworthy" to inherit on his succession (reference being made to articles 463 and following of the Italian Civil Code), and a claim that the present First and Second Defendants are, merely by reason of being children of the deceased, entitled to a compulsory share of his succession under Italian law which has been violated by the terms of the deceased's will, requiring a reintegration into the deceased's patrimony of assets disposed of (reference being made to articles 554 and following of the Italian Civil Code). Counsel for the First and Second Defendants said as much in his skeleton argument (at [17](9)), and I accept that these claims can be and are being made.

74. Nevertheless, my assessment is that these Italian law claims are not juridical advantages of any weight here in England. First of all, subject to relevant international conventions or treaties, a foreign judgment is enforced in England only under certain conditions. These are set out in the well-known textbook, *Dicey, Morris and Collins on the Conflict of Laws*, 15th ed 2012. As to judgments *in rem*, the Italian court's judgment will only be recognised or enforced in England where the asset concerned was situated in Italy at the time of the proceedings: Rule 47, 14R-108. As to judgments in *personam*, there are two possibilities.

75. First, at common law the Italian court's judgment will only be recognised or enforced in England where the Italian court had jurisdiction against the defendant *according to English (not Italian) notions*, the judgment is for a definite sum of money and it is final and conclusive: Rule 42, 14R-020. In the circumstances of this case, the Italian court will (so far as I can see at present) have jurisdiction over the present Claimant according to English notions only if she submitted to the Italian jurisdiction: see Rule 43, 14R-054, Third Case. Obviously, I cannot and do not decide that question now, but, on the materials before me, she appears to have objected to that jurisdiction from the outset.

76. Secondly, an Italian judgment can be registered (and enforced as an English judgment) under the Foreign Judgments (Reciprocal Enforcement) Act 1933, where it is a *money judgment* and is final and conclusive, but again only where the Italian court had jurisdiction in the sense provided for under that Act. Once more, the only possible

head of jurisdiction in this case is that the Claimant voluntarily submitted to the Italian jurisdiction, which again does not seem likely: Rule 54. 14R-183, 14-190.

77. I remind myself that the relief sought in the Italian proceedings appears to be (i) to declare the 'unworthiness' of the Claimant to inherit from the deceased and thus to exclude her from the succession; (ii) ordering the Claimant to return what she has already received; (iii) redistribution of the compulsory shares to the First and Second Defendants, and alternatively (iv) to declare their status as legitimate heirs under Italian law; (v) to declare that the deceased's testamentary dispositions infringe the rights of those legitimate heirs, and (vi) to order the reduction of the testamentary dispositions to that which the deceased was competent to dispose of. As to this, items (ii) and (iii) *might* possibly result in an order that the Claimant pay a certain sum of money to the First and Second Defendants, but this is by no means certain. And, on the face of it the remainder of the six heads of relief sought would not give rise to a money judgment and so could not be given effect to in any event.

78. Accordingly, any Italian judgment seeking to change the way in which the succession of the deceased operates faces considerable obstacles before it can even pass through the gateway into England. But there is more, and in my judgment this is even more significant. To the extent that any Italian judgment seeks to interfere with the devolution of immovable property situated in England, it will not be recognised or enforced by the English courts. The devolution of immovable property situated in England is a matter for English law and English courts alone. Accordingly, any disputes arising over that devolution will require litigation *in England* if the parties cannot agree.

79. To the extent that such a judgment seeks to interfere with the devolution of the *movable* property situated in England, if the English court holds that the deceased died domiciled (in the English sense) in England, so that English law governs that devolution, it will similarly not be recognised or enforced. So, the Italian proceedings will not "obviate the need for" litigation in England in relation to English immovables in any event, and may not do so in relation to movables.

80. If the English court were to hold that the deceased died domiciled (in the English sense) in Italy, then the devolution of the movable property in England *would* be governed by Italian law (including Italian private international law), and any Italian judgment dealing with this may well be recognised as expressing that law. But even without such a judgment the English court would receive expert evidence of what Italian law was and seek loyally to apply it. So (in the absence of evidence of any other kind of advantage, such as in relation to costs) the only advantage of the Italian judgment would be in case there was any doubt or dispute as to what the relevant Italian law was.

81. However, even if Italian law *did* apply to the movable property, it could only affect such property held by the deceased *at his death*. Property disposed of by the deceased *before* his death does not as a matter of English law form part of the succession of the deceased, and a claim to such property cannot be characterised under English conflict of laws rules as a succession claim. So, the judgment of a foreign court holding that assets disposed of by a deceased before his death nevertheless form part of his succession and must be reintegrated into his patrimony will not to that extent be recognised or enforced by the English courts.

82. Similar considerations apply in relation to the Italian claim of unworthiness. I do not pause to consider whether there may be public policy considerations arising in seeking to apply such a concept from Italian law to English law. This is because I have heard no arguments on this question. So, for present purposes I will simply assume (without of course deciding) that there would be no public policy objection to the enforcement of an Italian judgment which held that a person who would otherwise inherit should be disqualified from doing so by conduct held to amount to "unworthiness" under Italian law. If the English court were to hold that the deceased died domiciled in Italy, the court would receive expert evidence of Italian law and apply it. If by then there were an Italian judgment dealing with this issue, then no doubt the English court would recognise this as expressing the relevant Italian law. Once again, the only advantage of the Italian judgment would be where there was doubt or dispute as to what that law was.

83. However, it might perhaps be said that the juridical advantage was that, because Italian private international law operates a unitary system of choice of law in relation to succession matters, the present First and Second Defendants would benefit from the application of Italian law to the whole succession. This was a matter suggested by me and confirmed by counsel on instructions from his Italian lawyers during the hearing.

84. But in my judgment this is an illusory advantage. For the reasons I have given, English law would not enforce a judgment of the Italian court so far as it sought to apply municipal Italian law to English immovable property, or indeed to English movable property (unless it was first decided that the deceased was domiciled in Italy at the time of his death in the *English* conflict of laws sense). It is obviously preferable that those questions be decided by the English court. And the assets to which those matters apply constitute the vast bulk of the assets owned by the deceased at the date of his death.

85. I note also that in *Dicey Morris and Collins on the Conflict of Laws*, 15th edition, Vol 1, paragraph 12-085, the editors say:

> "The respondent may point to substantive or procedural advantages, available to him in the foreign court, which will be lost if the injunction is granted. But if these advantages are available to him only in a forum which is not the natural forum, they will be given little weight, and may even be themselves seen as evidence of oppression."

For that proposition the editors cite various authorities, including the decision of the Court of Appeal in *Smith Kline & French Laboratories v Bloch* [1983] 1 WLR 730, CA. I respectfully agree.

Other matters

86. A number of other matters were urged before me as factors to take into account in deciding whether an injunction to be granted. One of these was an allegation of institutional bias of the Italian system in relation to foreigners, based on the undoubted fact of the Claimant's Mongolian heritage. It may be that the Claimant perceives the Italian system to be so biased, and perhaps even more so in small provincial communities such as Avellino in southern Italy than in big cosmopolitan

centres such as Milan or Rome, where there are more significant numbers of non-Italians.

87. However, I can only make decisions on the basis of the material placed before me. I must record that there is no sufficient evidence that I have seen to justify my concluding that the Claimant would suffer institutional bias, whether from racist or other motives, at the hands of the court of Avellino. The court of Avellino is staffed by professional, trained judges, and the attitudes of the local people (whatever they may be) are irrelevant.

88. A second matter that was suggested was that the restrictions on travel and meetings imposed by reason of the Covid-19 pandemic made it vexatious or oppressive to continue the Italian proceedings. On the material before me, I do not accept this. It is plain that the Claimant has been able to instruct Italian lawyers to act on her behalf in the Italian proceedings. It is also clear that she has been able to participate in the mediation by video conference link. I accept that if she does not speak Italian this may not have been especially useful to her, but I note that, on her case at least, the First and Second Defendants (who also live in England) are in exactly the same position. Since the Claimant argues that the Italian proceedings are far from over yet, it seems to be likely that, with the increasing success of vaccination programmes as well as the use of technology, any potential imbalances in procedure will be resolved well before these proceedings are concluded.

89. On the other hand, I agree with the Claimant that, since the deceased died in England, a British citizen who had chosen from an early age to live and work his whole life in England, with most of his assets and economic interests there, for his own children (also British and living in England) to resort to the courts of Italy for the purpose of dealing with the succession to the deceased's assets is *prima facie* oppressive to the claimant as his widow. It is forum-shopping. The deceased and his wife (neither originally born in England) chose to live their lives here, and thereby to abide by English rules and cultural attitudes. These include how the assets of a person who has died should be dealt with, and how close relatives should be treated.

90. The allegations of conduct said to amount to 'unworthiness' on the part of the Claimant to inherit from the deceased all relate to matters in England, and all the relevant witnesses are based in England. Similarly with the witnesses relevant to the formal and substantive validity of the will. Moreover, it is not as if the deceased's children turned their backs on England and chose to live or work in Italy according to Italian law and customs. They have continued to live and work in England, as part of the English community. There was no real answer to this, and no evidence before me to explain why they were only now seeking to apply Italian law to the succession. I am left to conclude that this is simply because it is a (metaphorical) stick to beat their stepmother with.

91. This factor of oppression is exacerbated, in my judgment, by the potentially drawn-out nature of Italian legal proceedings. In the letter dated 28 April 2021 from the First and Second Defendants' English solicitors, Giambrone and Partners LLP to the Claimant's solicitors, Portner Law Limited, to which I have already referred, the First and Second Defendants' solicitors also said:

> "In any case, please note that according to Italian law, in order for a decision to become full and final, it must not be appealable. In Italy there are three instances: 1) Tribunal; 2) Court of Appeal; and 3) Court of Cassation (the highest court). It means that also if the Italian proceedings should be dismissed, it is likely that our Client will continue to pursue the Italian proceedings until the highest court."

So the solicitors are saying that, even if the decision goes against their clients, they will appeal, and that the original decision will not be enforceable against them until all avenues of appeal have been exhausted. I am afraid that, to me, that looks rather like a threat to draw the proceedings out as long as possible, and is therefore both vexatious and oppressive.

92. I have also noted that, even if the Italian proceedings continue to judgment, English proceedings will still be needed. They will be needed to decide the ownership of the English situs assets, because the Italian judgment will not recognised or enforced in relation to them. Any Italian judgment will be enforced only if the relevant conditions are satisfied, in particular that it is for a money sum *and* it has been decided, in a manner binding on the Claimant, that the Italian court had jurisdiction over the Claimant *according to English rules*. So the Italian proceedings will not do away with the need for English proceedings.

93. Conversely, and given the terms of the letter from the Claimant's solicitors to the Defendants' solicitors dated 18 April 2019, to which I referred above, in which the claimant appears to waive any claim to any interest in the Italian-sited assets, there appears to be no need for the Italian proceedings. All relevant matters can be decided in England. In any event, the Italian assets being immovables, the English court would have no jurisdiction in relation to them, and the English proceedings cannot make any order directly affecting them.

94. For the First and second Defendants, a number of points were urged. One was that it is a feature of the present case, by comparison with the *Morris* and *Tadros* cases, that the foreign proceedings which are now sought to be injuncted were commenced *before* the present English proceedings. This was (quite properly) stressed in argument on behalf of the First and Second Defendants. But, as I have already said, the English court may restrain a defendant over whom it has personal jurisdiction from instituting *or continuing* proceedings in a foreign court when it is necessary in the interests of justice to do so. More particularly, it may (but not must) do so where a matter is justiciable in an English and a foreign court, if the party seeking an anti-suit injunction shows that proceedings before the foreign court are or would be vexatious or oppressive.

95. The legal basis of the grant of the injunction is that it is just and convenient to do so, within section 37(1) of the Senior Courts Act 1981. The wrong that is being restrained by an anti-suit injunction may or may not be committed at the moment of instituting foreign proceedings. It may also be committed by *continuing* them in the face of more appropriate English proceedings. If foreign proceedings have been commenced, but the natural forum for the litigation in question is in England, then I see no reason in principle why, in the absence of other appropriate factors, such as culpable delay, if a party to the foreign proceedings commences proceedings for that purpose in England, and moreover can show that it is in the interests of justice to restrain the foreign

proceedings, for example because the foreign proceedings are vexatious or oppressive and would interfere with the English proceedings, the court should not grant an anti-suit injunction.

96. In any event, however, this is not a case where the foreign proceedings were an original idea on the part of the present First and Second Defendants, and launched long before and independently of what was happening in England. Looking at the timeline in this case, it appears to me that the foreign proceedings were a reaction to the application, or proposed application, by the Claimant for a grant of probate to the will of the deceased. The only evidence from the First and Second Defendants on this point is contained in the witness statement of the First Defendant, where she says:

> "19. In light of the fact and event that took place prior to my father's death and considering the quick unfolding of the relationship between my father and [the Claimant], we instructed Mess.rs Giambrone Studio Legale Internazionale in Italy to advice and represent in issuing proceedings in Italy to protect our position".

97. There is no statement that I have been able to find as to exactly when the Italian lawyers were in fact first instructed. The first references to correspondence from Giambrone (but in fact from the English law firm of that name) that I have found in the bundle are in October 2018, some seven months after the deceased's death. However, that correspondence is concerned with allegations about the validity of the Claimant's marriage to the deceased, her position as executrix of his will, the validity of that will, and the caveat which the First Defendant lodged. It is not about potential proceedings in Italy. Moreover, by entering a caveat to the grant of probate under the applicable English procedural rules, the First Defendant herself engaged with the English administration process even before the Italian proceedings were launched. Once the First Defendant was warned off, and the caveat removed, the Claimant set about gathering the material and making the application for probate. As I have said, the English court made the grant on 15 July 2019, and from that point on the administration of the estate was under the control of the English court.

98. In the meantime, the First and Second Defendants resorted to Italian law and the Italian legal system. Even once the Italian proceedings were launched, at the end of June 2019, there were considerable delays in advancing them. This was, first, because they were not served by the First and Second Defendants upon the Claimant for about six months, and then because there were about 10 months when proceedings in Italy were suspended for compulsory mediation. There is also the fact that, since about March 2020 the whole world has been affected by the Covid-19 epidemic. This has undoubtedly slowed down all legal (and other official) processes. On the whole, therefore, I am not inclined to treat the fact that the Italian proceedings came first as of any real weight. Nor am I inclined to consider that the Claimant has been guilty of any culpable delay in making this application for an injunction to the English court. She had applied to the English court and obtained a grant of probate, and was dealing with administration matters. She makes clear in her evidence (which I accept) (1) that she was not advised by any of her previous solicitors that she could apply for an anti-suit injunction, and (2) that, had she been so advised, she would have done so.

99. A further point made against her is that the Claimant participated in the Italian proceedings. As to this, it is notable that her first step after being served was to object

to the jurisdiction, at the end of 2019 or beginning of 2020. I remind myself that this is an objection that has still not been decided by the Italian court, over eighteen months later. According to the papers I have seen, nothing else has been decided by the court in the meantime. It may well be that the Claimant could have simply filed a preliminary objection to Italian jurisdiction, but she nevertheless challenged everything, including jurisdiction. However, at least for the purposes of this application, I do not think that the distinction matters. In these circumstances, I do not think that her participation so far in the Italian proceedings is any bar to the grant of an injunction in England if the conditions for that injunction are otherwise satisfied.

100. I accept, of course, that in many cases anti-suit injunctions are granted because the respondent to the application has commenced proceedings in another jurisdiction in breach of an exclusive jurisdiction clause or an arbitration clause. That is not this case. But the power to grant an anti-suit injunction is not restricted to such cases, as the Court of Appeal authorities say, and the *Morris* and *Tadros* cases show. So there is nothing as such in this point. The question is simply whether the Claimant can show grounds for the injunction. As the Court of Appeal said in the *RBC v Rabobank* case, there will be such grounds if the applicant

> "can point to clearly unconscionable conduct (or the threat of unconscionable conduct) on the part of the party sought to be restrained …"

101. The Defendants also rely on the fact that they say they have spent some €85,000 on legal costs in the Italian proceedings. Since, on the material before me, the only matters so far dealt with have been the preparation of the summons itself and supporting documents, the mediation, *Italian* disclosure of documents (and, although Giambrone & Partners LLP will be well aware of what the two separate systems require, there is no evidence to show that this was in any way comparable to *English* disclosure) and written submissions on jurisdiction, this figure seems rather high to me. But in any event I have no doubt that a considerable part of this sum was spent on the original process, where one is concerned with gathering and organising the facts of the particular case, and the mediation, which is labour-intensive, rather than the question of jurisdiction, which is a matter of law and is more or less generic. So this consideration, although of some weight, is not of great weight in the balance.

102. I think that I should also add this. There is no reason to doubt that, although the relationship between the Claimant and the First and Second Defendants has broken down since the death of the deceased, they did have a relationship during the last part of his life. I am sure that the First and Second Defendants loved their father and wanted the best for him. I am equally sure that the same is true of his grandchildren. The evidence of the Claimant in and about the time of the deceased's last illness, in paragraphs 66-67 of her first witness statement, supports this view.

103. Having read the witness statement of the First Defendant, dated 20 May 2021, I cannot help thinking that this was not prepared by a native English speaker. The abbreviation "Mess.rs" ([17] and [19]), and the phrases "his native house" ([18.4]), "have renounce to" ([23]), "for the past months" ([27]), amongst others, are characteristic of mother-tongue Italian speakers, which (as I understand it) the First Defendant is not. It also contains a number of spelling mistakes (including her own family name) which the First Defendant would never have made. I accept that she

signed it, but I like to think that, had she written it herself, it would not have been quite so aggressive and antagonistic towards the Claimant.

Conclusion

104. Taking into account all of these matters, I am in no doubt that the justice of this case requires that I grant an anti-suit injunction to restrain the First and Second Defendants from prosecuting their Italian proceedings until trial or further order of the English court. In the light of the (largely unchallenged) evidence I do not consider that it matters whether the *American Cyanamid* or some stricter test applies. Given that the natural form for the dispute is England, and the limited effect that any Italian judgment in these proceedings could have in England, to continue them in Italy is vexatious. For the reasons I have already given, it is also oppressive. The First and Second Defendants will not be deprived of any personal advantage, or any juridical advantage of any weight. I have not found any culpable delay on the part of the Claimant. The Italian proceedings are not far advanced. Indeed, even the preliminary question of the Italian court's own jurisdiction will not be resolved until at least after June 2022.

105. In my judgment the English court, as the natural forum of the dispute between the parties over the succession of the deceased, should deal with matters first, in particular deciding the question of applicable law according to English conflict of laws principles, which will involve deciding the question of the domicile (in the English sense) of the deceased at the date of his death. It should be possible for the English court to reach a decision within about a year from now, if suitable directions are given promptly. To the extent that that decision then requires further questions to be decided by Italian law, the English court can then consider whether it is preferable to proceed to hear expert evidence of foreign law, to ask the Italian court directly for its opinion (under the European Convention on Information on Foreign Law 1987, TS No 117, Cmnd 4229, ratified by the UK in 1969 and by Italy in 1972), or to leave it to the Italian court to determine them.

106. I cannot leave this matter without expressing my gratitude to both counsel for their cogent and succinct submissions, especially since (as I understand it) both were instructed at short notice. I am particularly grateful to Mr Lewis, whose able submissions took no bad points, and were entirely appropriate in the circumstances, including a relevant (and justified) concession which considerably shortened the hearing. I should be grateful to receive an agreed minute of order to give effect to this judgment.