No.

In the

Supreme Court of the United States

JENEAN ELIZABETH WINSTON,
ROBERT E. HENDERSON,
Temporary Administrators of the Estate of
Dylan Mark Walsh,
Petitioners,

v.

MARK ANTHONY WALSH,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

This case arises from a mother's search for accountability following the death of her three-year-old son, Dylan. Plaintiff-Petitioner Jenean Winston sued Defendant-Respondent Mark Walsh for his drunken disregard for their son, which led to Dylan's death. Two days after Dylan's death, Walsh fled to the United Kingdom and began liquidating his Georgia assets. Ms. Winston sued Mr. Walsh in Georgia State Court for Dylan's death. Mr. Walsh participated in that action, even though serving him proved difficult. Ms. Winston then voluntarily dismissed the state action and re-filed in federal court. Mr. Walsh then began moving from city to city within the United Kingdom, evading service. Eventually, after years of research and the hiring of a private investigator, Ms. Winston located Mr. Walsh by using an address that Mr. Walsh submitted to the U.S. Customs Department as his own address in England. Ms. Winston served Mr. Walsh pursuant to the Hague Convention at the Mockbeggar address. Mr. Walsh challenged the sufficiency of service. The District Court granted Mr. Walsh's motion to dismiss and the Eleventh Circuit affirmed. Ms. Winston now appeals by filing a petition for certiorari asking the Supreme Court to address the following questions:

1) Did the Court of Appeals err by affirming the District Court setting aside the United Kingdom's Central Authority Certificate of Compliance without undertaking a "lack of notice" or a "prejudice" inquiry?

2) Did the Court of Appeals err by affirming the District Court setting aside the United Kingdom's Central Authority Certificate of Compliance even though Petitioners had complied with local rules and Appellees had actual notice?

3) Did the Court of Appeals err by affirming the District Court's decision to give determinative authority to Appellee's affidavit, claiming that the address was not the proper residence, despite the facts that: (1) the Appellee listed that address on U.S. Customs documents as his address for purposes of importing vehicles, (2) the Appellee's wife used that address as her residence when registering a company, (3) the Appellee's sister owned the residence at that address, which had multiple bedrooms and out of which she operated a Bed and Breakfast; (4) Appellee identified his "sister's address" as an address he used for business in response to Interrogatories; and (5) Appellee identified his sister's address as one where he and Petitioners "stayed"?

PARTIES TO THE PROCEEDING

Petitioners certify that the following is a complete list of those who have an interest in the outcome of this particular case on appeal:

1. Betts & Associates (Law Firm for Plaintiffs/Petitioners)
2. Betts, David D. (Counsel for Plaintiff/Petitioners)
3. Herndon, Robert E. (Plaintiff/Petitioners)
4. Johnston, Keith Alan (Counsel for Defendant/Appellee)
5. NDH LLC (Law Firm for Plaintiff/Petitioners)
6. Pope, David A. (Counsel for Defendant/Appellee)
7. Self, Tilman E. III (United States District Judge)
8. Spivey, Pope, Green & Greer LLC (Law Firm for Defendant/Appellee)
9. Walsh, Mark Anthony (Defendant/Appellee)
10. Williams, Mario Bernarnd (Counsel for Plaintiff/Petitioners)
11. Winston, Jenean Elizabeth (Plaintiff/Petitioners)

CORPORATE DISCLOSURE STATEMENT

To the best of the Petitioners' knowledge, no publicly traded company or corporation has an interest in the outcome of this case or appeal.

RELATED PROCEEDINGS

Winston, et al. v. Walsh; No. 20-11614, United States Court of Appeals for the Eleventh Circuit. Judgment Entered October 30, 2020.

Winston, et al. v. Walsh; No. 5:19-cv-00070-TES, United States District Court for the Middle District of Georgia. Judgment Entered March 25, 2020.

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This Court should reverse the Eleventh Circuit's affirmance of the District Court's dismissal of Petitioners' claims for lack of personal jurisdiction for failure of service of process. *Winston v. Walsh*, Per Curiam Opinion, Case No. 20-11614 at 7 (11th Cir. Oct. 1, 2020). Contrary to the lower court's analysis, Ms. Winston properly served Mr. Walsh under the Hague Convention and thus the District Court could exercise personal jurisdiction over him. *See* Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters art. 5, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6,638. Ms. Winston respectfully ask the Court to reverse the Eleventh Circuit's decision and remand for a correct analysis of the Hague Convention as well as the laws of England and Wales.

OPINIONS BELOW

The District Court for the Middle District of Georgia dismissed Ms. Winston's claims in *Winston v. Walsh*, CIVIL ACTION No. 5:19-cv-00070-TES, at *1 (M.D. Ga. Mar. 27, 2020). The Eleventh Circuit Court of Appeals affirmed the dismissal. *Winston v. Walsh*, No. 20-11614, at *1 (11th Cir. Oct. 1, 2020).

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on October 1, 2020. Neither party sought a rehearing. This Court's jurisdiction is proper pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS, TREATIES AND STATUTES

- The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 UST 361, TIAS No. 6638 (1969)
- Fed. R. Civ. P. 4
- Rule 6.9 of the Civil Procedures Rules of England and Wales
- Rule 6.15 of the Civil Procedures Rules of England and Wales

STATEMENT OF THE CASE

I. Procedural History

Ms. Winston initially sued Mr. Walsh in the Superior Court of Bibb County, Georgia, on August 1, 2017. Ms. Winston eventually voluntarily dismissed that action (the "State Action") and re-filed it in the Middle District of Georgia. Ms. Winston filed this action in the Middle District of Georgia on March 4, 2019 and filed the operative, Amended Complaint, on July 15, 2019. [Doc. 1]; [Doc. 19].

Mr. Walsh filed a motion to dismiss under Rule 12(b)(5) on April 15, 2019 and then filed a second motion to dismiss, again challenging the service of process. [Doc. 5]; [Doc. 21-1]. Ms. Winston's counsel, Andrew Tate, filed an affidavit and supporting documents on October 9, 2019, describing the steps he took to effect service of process. [Doc. 30]. On November 7, 2019, Mr. Walsh filed a motion for summary judgment. [Doc. 33].

On March 27, 2020, the District Court held that Petitioners failed to serve Mr. Walsh because the service failed to comply with the local rules, which are the Civil Procedure Rules of England and Wales. [Appx at 1a]. As a result of that ruling, the District Court dismissed Petitioners' claims. [*Id.*] On April 27, 2020, Petitioners filed a notice of appeal. [Doc. 42]. On June 22, 2020, Petitioners filed their Initial Brief with Appendices 1 through 4. On September 9, 2020, Appellees filed their Reply Brief. On October 1, 2020, the Eleventh Circuit Court of Appeals issued its *per curiam* opinion upholding the District Court's

dismissal. *Winston*, No. 20-11614, at *1 (reprinted at Appx 24a.)

II. Statement of Facts

This case arises from a mother's search for accountability following the death of her three-year-old son, Dylan, while he was supposed to be in his father's care. Ms. Winston, the plaintiff-petitioner, sued Mr. Walsh, the respondent, both on her behalf and on behalf of her son's estate (collectively, the "Petitioners") for Mr. Walsh's drunken disregard for his son's safety, which led to Dylan's death.

In June 2015, Ms. Winston and Mr. Walsh divorced but agreed to joint custody of three-year-old Dylan. [Doc. 19, Compl. at ¶¶ 13–15]. Two months later, on August 1, 2015, Mr. Walsh took Dylan to the Fish 'N Pig, a restaurant by a lake and several docks in Macon, Georgia. [*Id.* at ¶ 17]. That night, Mr. Walsh and his fiancée consumed over $125 worth of alcohol, consisting of nine beers, one glass of wine, two bottles of pinot grigio, and a daiquiri. [Doc. 19, Compl. at ¶¶ 98-99]. Around 10:30 pm, a severely intoxicated and entirely impaired Mr. Walsh picked up his son and walked out to the restaurant's pier to a boat. [*Id.* at ¶¶ 20–21, 32–34]. Eleven minutes later, Mr. Walsh came back into the restaurant without his three-year-old son. [*Id.* at ¶¶ 93-95]. On the morning of August 2, 2015, Dylan's body was found floating in the water, near the boat his father had taken him to see. [*Id.* at ¶ 54].

When police interviewed Mr. Walsh on the night of the child's disappearance, he was too intoxicated to provide information. [*Id.* at ¶ 40].

Thereafter, Mr. Walsh refused to give testimony to Bibb County Sheriff's Office and fled the country on August 4, 2015, to his native United Kingdom. [*Id.* at ¶ 58]. Mr. Walsh did not provide another means of contacting him or an address.

Over the next three years, Petitioners' attorneys worked diligently to find and serve Walsh. [Doc. 30-1, Decl. of A. Tate]. On August 11, 2017, the Bibb County Sheriff's Office attempted service at a property Mr. Walsh owned on Cherry Street. [Exhibit 3, Bibb County Sheriff Entry of Service, Doc. 30-4]. The Jones County Sheriff's Office attempted service six times at Mr. Walsh's Lakeridge Lane address between August 17 and 24, and a message was left on Mr. Walsh's phone. [Doc. 30-5]. The Sheriff Deputy stated that service was incomplete because "Mark Anthony Mr. Walsh [was] apparently avoiding service." *Id.*

In September 2017, Petitioners' attorney hired a private investigator, who spent two months searching databases and Mr. Walsh's other Georgia property in order to locate him. [Doc. 30-1 ¶¶ 14-16]. In November 2017, Petitioners filed a motion for service by publication with the Supreme Court of Georgia, which was granted on January 11, 2018. [*Id.* ¶¶ 24-27]. Thereafter, Petitioners' counsel undertook extensive efforts over a two-year period to locate company registers and shipping data that might reveal the Appellee's address in the United Kingdom. *See* [*Id.*]. As shown below, Mr. Walsh and the new Mrs. Walsh used the Mockbeggar in official government records as their residential address.

On October 3, 2016, *Mr. Walsh listed the Mockbeggar Address on a bill of lading with* U.S.

Customs. [Doc. 30-13]. The shipment had Land Rovers—13 units—which were delivered to Mr. Walsh as "*consignee*," which means he was the importer of record. [*Id.*] The listed delivery address was the Mockbeggar Address. [*Id.*] Therefore, in 2016, Mr. Walsh listed the Mockbeggar Address as *his* address for the importing of 13 cars. [*Id.*]

On November 14, 2016, Mr. Walsh again imported cars into the United Kingdom (seven this time). [Doc. 30-13]. He again listed himself as the importer and Mockbeggar as the delivery address. [*Id.*]

On April 25, 2017, nearly two years after the parties' son's death, newly remarried Melissa Walsh (Walsh's third wife) registered a company, called "Hide the Bag," with Companies House, the United Kingdom's registrar of companies. [Doc. 26-2]. She listed as her primary place of residence the Mockbeggar Address. *Id*. This, therefore, was Mrs. Walsh's address.

In May and July 2017, Mr. Walsh again imported vehicles (three of them in May and one in July) into the United Kingdom. [Doc. 30-13]. He listed himself as the consignee and the Mockbeggar Address as the delivery address. [*Id.*] Mr. Walsh repeated these steps (importing vehicles, listing himself as the consignee, and giving the Mockbeggar Address as the delivery address) in November 2018 (six times, one vehicle each time) and in April 2019 (two vehicles).

Based on the information above, a British solicitor, on behalf of Petitioners, mailed a Request for Service Abroad, and Mr. Walsh was served at Terra Nova, New Road, Mockbeggar, Ringwood, Great Britain, BH23 3N on March 5, 2019. [Doc. 20-1, ¶¶ 58,

64] (the "Mockbeggar Address," defined above). Yet, despite the mounting evidence, Mr. Walsh submitted a *self-serving* unsupported affidavit which then became the only piece of evidence the District Court and the Eleventh Circuit relied on to determine whether or not Mr. Walsh "resided" at the Mockbeggar Address.

On April 12, 2019 (three days after receiving cars at the Mockbeggar Address), Mr. Walsh provided an affidavit stating he had never resided at the Mockbeggar Address. [Doc. 21-2, ¶ 8]. However, in addition to contradicting the statements he made to US Customs (as described above) this representation is also belied by Mr. Walsh's own Interrogatory Responses, dated three months later in July 2019, where he identified his sister's address—which is the Mockbeggar Address—as being one of his own:

> Please state your full name (including all previous legal names, nicknames, and aliases), your date of birth, Social Security number, Medicare Health Insurance Claim Number ("HICN"), all addresses where you have resided (including the dates—month, day, and year—that you resided there), and all addresses that you have listed on legal or business documents since June 1, 2015.
>
> RESPONSE: Defendant […] makes no admission as to his residence by providing the below addresses. From November 2014 until October 2015,

> Defendant lived at 113 Grace Trace, Lizella, GA 31052. Then Defendant moved to 106 Lakeridge Lane, Macon, GA 31211, where he lived from October 2015 until the end of January 2017 when he left for the United Kingdom. Thereafter, at the beginning of February of 2017 he lived at the Print Room, 1 Rupert St, Leicester, LE1 5XH, until September 2017. Afterward, Defendant lived at 5 Hindsleys place, Forest Hill, SE23 2NF, from September 2017 to July 2018, and from July 2018 until when service was attempted at Defendant's sister's house in March 2019 Defendant lived at 17 Spirit Quay, Wapping E1W 2UT. In regards to addresses listed on legal or business documents Defendant is unaware of specific addresses used on documentation, but would assume that any or all of the above have been used as well as the addresses of his mother and sister, which are already known to Plaintiff**.**

[Doc. 26-4 at 2-3 (Underlining Emphases Added)]. Mr. Walsh's sister's address is the Mockbeggar Address. [Doc. 30-12]. Therefore, Mr. Walsh swore, under oath, the Mockbeggar Address was one that ***he*** listed on legal or business documents since 2019.

Based on the above, not only did Petitioners have a reasonable belief that the Mockbeggar Address was either Mr. Walsh's usual or last known address,

but Mr. Walsh himself represented that address as his.

III. Standard of Review

"Decisions on 'questions of law' are 'reviewable *de novo*,' decisions on 'questions of fact' are 'reviewable for clear error,' and decisions on 'matters of discretion' are 'reviewable for 'abuse of discretion.'" *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 562 (2014) (citing *Pierce* v. *Underwood*, 487 U.S. 552, 558, 108 S. Ct. 2541, 101 L. Ed. 2d 490 (1988)). The issue before the Court is one of personal jurisdiction and is therefore a legal one subject to de novo review.

Federal Rule of Civil Procedure 4(f) governs service abroad. The rule allows for service of process "by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents." Fed. R. Civ. P. 4(f)(1). Use of the Hague Convention procedures to effect service of process is mandatory because both the United States and the United Kingdom have ratified the Hague Convention. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698 (1988); 4B Alan Wright et al., Fed. Prac. & Proc. Civ. § 1133 (4th ed. Apr. 2016 Update). The Hague Convention provides several alternate methods of service, but among them is service through the central authority of member states. See *id*. Arts. 5, 6, 8, 9 & 10.

Article 5 of the Hague Convention requires each state to establish a central authority to receive

requests for service of documents from other countries. *Volkswagenwerk*, 486 U.S. at 698. Once a central authority receives a request in the proper form, it must serve the documents by a method prescribed by the internal law of the receiving state or by a method designated by the requester and compatible with that law. *Id*. at 699. The central authority must then provide a certificate of service that conforms to a specified model. *Id*.

Several circuits have held that return of a completed certificate of service by the central authority is prima facie evidence that the authority's service on a defendant in that country was made in compliance with the Hague Convention and with the law of that foreign nation. *Northrup King Co. v. Compania Productora Semillas Algodoneras Selectas*, S.A., 51 F.3d 1383 (8th Cir. 1995); *S.E.C. v. Internet Sols. for Bus. Inc.*, 509 F.3d 1161, 1166 (9th Cir. 2007). The rationale for the deference to certificates of authority is that had the service been inadequate in any material respect under English law, the central authority would have complied with its duty to "promptly inform the applicant and specify its objections to the request." *Fleming v. Yamaha Motor Corp.*, 774 F. Supp. 992, 995 (W.D. Va. 1991) (citing Hague Convention art. 2). *See U.S. Ex Rel Bunk v. Birkart Globistics Co.,* No. 1:02cv1168 (AJT/TRJ), No. 1:07cv1198 (AJT/TRJ), at *3 (E.D. Va. Feb. 4, 2010) ("Under Article 4 of the Hague Convention, if the "Central Authority considers that the request does not comply with the [Hague Convention] it promptly inform the applicant and specify its objections to the request.'"). Courts generally "decline to look behind the certificate of service to adjudicate

the issues of the receiving country's procedural law." *Northrup King*, 51 F.3d at 1390. The presumption of proper service can only be overcome by strong and convincing countervailing evidence. *Id*. In fact, the party challenging the sufficiency of service has the burden to show "prejudice" or "lack of notice." *Bevilacqua v. U.S. Bank, N.A.*, 194 So. 3d 461, 465 (Fla. Dist. Ct. App. 2016) ("'[T]o rebut the prima facie case established by the completed certificate of service ***requires a defendant*** to show lack of actual notice of the proceedings or that the defendant was prejudiced in some way as a result of the alleged deficiency.'") (emphasis added).

ARGUMENT AND CITATIONS OF AUTHORITY

The District Court granted Mr. Walsh's motion to dismiss for lack of personal jurisdiction primarily based on two bases: (1) Mr. Walsh's affidavit that he never resided at the residence where service occurred; and (2) Mr. Walsh's argument that Petitioners' service attempt in this case is invalid because the Terra Nova address is not Mr. Walsh's "residence" for purposes of English and Wales Rule 6.3(1)(c). The Eleventh Circuit affirmed the dismissal. Because English caselaw supports finding that Petitioners took reasonable steps to ensure of Rule 6.9 was followed, Petitioners' service of Appellee *was* valid. Thus, there was compliance with the Hague Convention and substantial compliance with Rule 4(f). Further, the District Court and the Eleventh Circuit erred by not determining whether Mr. Walsh lacked notice or was prejudiced by any alleged deficiency.

I. Standard of Law: The interplay between F.R.C.P. 4, the Hague Convention, and the laws of England and Wales.

If a plaintiff fails to serve in accordance with Rule 4, then the defendant may move to dismiss under Rule 12(b)(5). Fed. R. Civ. P. 12(b)(5)). In such a motion, when a defendant moves to dismiss under Rule 12(b)(5), the plaintiff bears the burden of proving adequate service. *Burda Media, Inc. v. Viertel*, 417 F.3d 292, 298 (2d Cir. 2005) (citing *Mende v. Milestone Tech., Inc.,* 269 F.Supp.2d 246, 251 (S.D.N.Y. 2003)); *see also Dickerson v. Napolitano*, 604 F.3d 732, 752 (2d Cir. 2010) ("[W]hen a defendant moves to dismiss under Rule 12(b)(5), the plaintiff bears the burden of proving adequate service.") (quoting *Burda Media*, 417 F.3d at 298 (internal quotation marks omitted)). If the complaint and supporting evidence conflict with the defendant's affidavits, the court must construe all reasonable inferences in favor of the plaintiff. *Id.*; *Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir. 1990) ("where the plaintiff's complaint and the defendant's affidavits conflict, the District Court must construe all reasonable inferences in favor of the plaintiff.") (citing *Morris v. SSE, Inc.,* 843 F.2d 489, 492 (11th Cir. 1988)).

Federal Rule of Civil Procedure 4(f) governs service upon individuals in a foreign country, such as Walsh. The rule allows for service of process "by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the

Hague Convention....” Fed. R. Civ. P. 4(f)(1). Use of the Hague Convention procedures to effect service of process is mandatory because both the United States and the United Kingdom have ratified it. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698 (1988); 4B Alan Wright et al., Fed. Prac. & Proc. Civ. § 1133 (4th ed. Apr. 2016 Update). The Hague Convention provides for several alternate methods of service, but among them is service through the central authority of member states. *See id.* arts. 5, 6, 8, 9 & 10.

Article 5 of the Hague Convention requires each state to establish a central authority to receive requests for service of documents from other countries. *Volkswagenwerk*, 486 U.S. at 698. Once a central authority receives a request in the proper form, it must serve the documents by a method prescribed by the internal law of the receiving state or by a method designated by the requester and compatible with that law. *Id.* at 699. The central authority must then provide a certificate of service that conforms to a specified model. *Id.*

Several circuits have held that return of a completed certificate of service by the central authority is prima facie evidence that the authority's service on a defendant in that country was made in compliance with the Hague Convention and with the law of that foreign nation. *Northrup King*, 51 F.3d 1383; *S.E.C. v. Internet Sols. for Bus. Inc.*, 509 F.3d 1161, 1166 (9th Cir. 2007). The rationale for this is that had the service been inadequate in any material respect under English law, the central authority would have complied with its duty to “promptly inform the applicant and specify its objections to the

request." *Fleming*, 774 F. Supp. at 995 (citing Hague Convention art. 2). Courts generally "decline to look behind the certificate of service to adjudicate the issues of the receiving country's procedural law." *Northrup King*, 51 F.3d at 1390. The presumption of proper service can only be overcome by strong and convincing countervailing evidence. *Id*.

Here, in consideration of several technical points under the Civil Procedure Rules of England and Wales in regard to Rule 6.9 and 6.15, Petitioners properly served Mr. Walsh under English law. Under Rule 6.9(2), an individual may be properly served at an individual's *usual or last known residence*. CPR 6.9(2). This language is important: not "legal," "permanent," or "official"'; residence need only be "usual" or "last known." To determine if a residence is an individual's usual or last known residence, a court must consider key facts. A key fact here is that Mr. Walsh was still using the Mockbeggar Address to receive cars, as an importer, when he denied living there to the District Court. [Doc. 30-13]. Indeed, Mr. Walsh used the Mockbeggar Address as his own to import over thirty vehicles between 2016 and 2019. Further, Mr. Walsh referenced the Mockbeggar Address in response to an Interrogatory asking him to identify addresses *he* had used on business and legal records. Circumstantial evidence also supports the finding that the Mockbeggar Address was Mr. Walsh's given that his third wife was on record as living at the Mockbeggar Address, which means that Mr. Walsh was served at his marital home; undoubtedly, his marital home is a "usual" place of residence.

II. The Certificate of Authority is *prima facie* evidence of compliance with the law and Mr. Walsh did not show either "lack of notice" or "prejudice."

Federal courts have consistently held that the Hague Convention "should be read together with Rule 4, which 'stresses actual notice, rather than strict formalism.'" *Burda Media,* 417 F.3d at 301. Thus, where the plaintiff made a good faith attempt to comply with the Hague Convention, and where the defendant received sufficient notice of the action such that no injustice would result, it is within the Court's discretion to deem service of process properly perfected. *Id.* (internal citation omitted). The Eleventh Circuit entirely ignored this tenet of law. Rather, the Eleventh Circuit looked "behind" the Certificate of Compliance, only accepted Mr. Walsh's affidavit, placed the burden on Petitioners to establish the validity of the certificate of authority, ignored all contradictory evidence, did not conduct a "prejudice" or "notice" analysis, and applied a strict compliance standard.

Specifically, the Eleventh Circuit, in affirming the District Court decision, agreed that courts "will not 'look behind' the certificate unless the defendant shows lack of notice or prejudice.'" [Appx at 29a, Per Curiam Op., *Winston v. Walsh*, Case No. 20-11614 at 7 (11th Cir. Oct. 1, 2020) (quoting *Northrup King*, 51 F.3d at 1389)]. However, neither the Eleventh Circuit nor the District Court engaged in a lack of notice or prejudice analysis and Mr. Walsh showed neither.

Without this, the dismissal was in error and should be reversed.

A. The Eleventh Circuit did not find, and Mr. Walsh did not show, lack of notice.

Neither the District Court nor the Eleventh Circuit undertook a "lack of notice" analysis when they looked "behind" the Certificate of Compliance. This was error.

The record shows that Mr. Walsh did have notice—he participated in the litigation. For instance, Mr. Walsh filed a Motion to Dismiss. [Doc. 21]. He drafted, executed, and filed an Affidavit. [Doc. 21-2]. Mr. Walsh filed a Special Answer and Appearance. [Doc. 22]. Mr. Walsh responded to discovery. [Doc. 26-4]. This is not sufficient alone, evidently, to show notice but it is a factor in showing actual notice of the proceedings. Very importantly, though, is the fact that Mr. Walsh continued to *evade service* while participating in the litigation.

As stated in Ms. Winston's Response in Opposition to Walsh's Motion to Dismiss, Mr. Walsh intentionally made it difficult to be located. In his supplemental response to Petitioners' Interrogatory No. 2, which asked Mr. Walsh to list his addresses, Mr. Walsh stated he was "mak[ing] no admission as to his residence…" [Interrog. Resp. No. 2, Doc. 26-4 at 2-3]. In other words, Mr. Walsh specifically refused to provide his address when he had an obligation to do so. Mr. Walsh then went on to state, under oath, that from November 2014 to October 2015, he lived in Lizella, Georgia. From October 2015, through January 2017, Mr. Walsh lived in Macon, GA. [*Id.*] In

February 2017, Mr. Walsh stated he lived in Leicester, UK, and "afterward" he lived in Forest Hill, UK. [*Id.*] Mr. Walsh then stated that from September 2017 through July 2018, and until "serve was attempted" Mr. Walsh lived in Wapping, UK. [*Id.*] This both evinces evading service of process *and* that Mr. Walsh did not have a "regular" or "usual" home of his own. Based on the records, and his conduct, the only stable address Mr. Walsh had was his sister's address, which his entire family used for a variety of reasons, and where he was served.

Based on the above, Mr. Walsh had notice of the suit; indeed, he had such notice that the purposefully avoided service of process while engaging in litigation.

B. The Eleventh Circuit did not analyze for, and Mr. Walsh did not show, prejudice.

Neither the District Court nor the Eleventh Circuit undertook a prejudice analysis. This was error.

Petitioners did not seek a default or to otherwise pursue her claims against Mr. Walsh without his participation in the action. Indeed, Petitioners expended tremendous resources to locate Mr. Walsh *so that he could defend* against the lawsuit. [Doc. 30-1, Decl. of A. Tate]. There would have been no prejudice to Mr. Walsh from finding that service had been effectuated. *Unite Nat'l Retirement Fund v. Ariela* is informative from this perspective. 643 F. Supp. 2d 328, 335 (S.D.N.Y. 2008).

In *Unite Nat'l Retirement Fund*, one of the defendants denied receiving service in Mexico pursuant to the Hague Convention. *Unite Nat'l Retirement Fund*, 643 F. Supp. 2d at 331-32. Yet, the process server described going from one home to another, being re-directed by defendants' employees, and then being told that the defendant "wasn't there." [*Id.*] At one point, the process server was able to communicate via an employee's radio that she had important documents for the defendant. [*Id.*] Similarly, in this case, Petitioners made concerted efforts to have the documents delivered to Walsh, chasing him around the world to serve him. The Sheriff's account of service attempts tell a story of evasion: "Diligent search made and defendant Mark Anthony Walsh not to be found in the jurisdiction of this Court." [Doc. 21-3]; "Diligent search made and defendant Mark Anthony Walsh not to be found in the jurisdiction of this Court. Apparently avoiding service." [Doc. 21-4]; "Return – Advised Person is living in the U.K. […] I received a call back from Amber Chatham whom advised that Mark no longer owns this property. She believed he and his wife resides in the U.K. and will give them my message." [Doc. 21-5]. Eventually, though, Mr. Walsh received notice of this action, as the defendant did in *Unite Nat'l Retirement Fund*. This was sufficient in that case and should have been sufficient in this one.

Further, the District Court in *Unite Nat'l Retirement Funds* found, "[the defendant] has already received the summons and complaint in the prior, related action, asserting the same claims as in the instant action against [defendants]. Accordingly, [the d]efendants here have actual notice of this litigation

and thus the ability to defend the claims presented in the Complaint." *Unite Nat'l Retirement Fund*, 643 F. Supp. 2d at 335. It is undeniable that Mr. Walsh received a copy of the Complaint both in the related state court action and in this federal case. Mr. Walsh filed a Motion to Dismiss the state court action, clearly understanding the claims against him. [Doc. 22-3]. Mr. Walsh then filed motions to dismiss in this action, again clearly demonstrating a thorough understanding of the claims against him. Mr. Walsh filed a Motion to Dismiss in this action on April 12, 2019. [DS at ECF Nos. 4, 5 (Apr. 12, 2019); Doc. 21; Doc. 21-1 (Jul. 29, 2019)]. Mr. Walsh also filed a Motion for Summary Judgment in November 2019. [Doc. 33, Doc. 33-1].

Walsh cannot contend he did not have notice of this action nor can he point to any prejudice caused by the Complaint being served via his mailbox at the Mockbeggar Address rather than through any other address in London, Leicester, or wherever else Mr. Walsh now contends he lives. It was error for the Eleventh Circuit to proceed without even attempting the analysis and had it performed that analysis, Petitioners would have prevailed.

III. Under United Kingdom case law, Petitioners served Mr. Walsh in substantial compliance with the Civil Procedure Rules of England and Wales.

Rule 6.3(1)(c) of the Civil Procedure Rules of England and Wales provides that "[a] claim form may . . . be served by . . . leaving it at a place specified in rule 6.7, 6.8, 6.9 or 6.10[.]" The local rule at issue is Rule 6.9. Rule 6.9 is the rule of last resort when personal service, service on a solicitor, and service at an address given by the defendant are not available. *See* 6.7, 6.8, 6.10. Of these, Rule 6.9 sets out the method of service of documents where a defendant has not provided an address at which they may be served. Subsection two allows for service upon an individual at his "usual or last known residence." Rule 6.9(2). With respect to Rule 6.9, this section makes two arguments.

First, the Eleventh Circuit incorrectly analyzed Petitioners' service of process of Mr. Walsh under Rule 6.9, deciding whether the address was a "usual or last known residence," by omitting key facts from its analysis: that Mr. Walsh used the Mockbeggar Address as his own, that he admitted using the Mockbeggar Address on legal or business documents, that he admitted to staying at that address with Ms. Winston, and that his third wife lived at the address where service was effected, with Mr. Walsh's sister. In doing so, the Eleventh Circuit misstated the intent standard as one of actual knowledge instead of a reasonable belief. Second, even if the address where Mr. Walsh was served was not the proper address,

Rule 6.15(2) permits, and English caselaw supports, a court retrospectively validating the steps taken by Ms. Winston to serve Mr. Walsh.

A. Under Rule 6.9, a usual or last known residence may be established by the fact that Mr. Walsh's third wife lived at the address and that Petitioners possessed a reasonable belief that the address was correct.

Rule 6.9(2) allows for service of a claim form at a defendant's usual or last known address. Paragraphs (3) to (6) of Rule 6.9 then specify what happens if the plaintiff has reason to believe that the defendant no longer resides at his last known address.

The first inquiry is whether the address where the defendant was served was the defendant's usual or last known address. The test of whether a person's use of a property characterizes it as his "residence" is his pattern of life. *See Varsani v. Relfo Ltd*, [2010] EWCA (Civ) 560, 2010 WL 1990741 (Eng.). In *Varsani*, the claim form was not served personally on the defendant but on his father, at an address which was owned by the defendant and his wife and where the defendant's wife and his family permanently lived and that the defendant visited regularly. *Id*. The court noted that a person who had more than one residence could have more than one "last known residence." *Id.* The standard to be used was whether the party serving the claim was able to satisfy the court that there was a "good arguable case" that the premises served at were the usual or last known residence. *Id*. The deputy High Court Judge held, and the Court of

Appeal affirmed, that the service was valid because of the defendant's quality of his use of the property as a home; an important, relevant factor was that the defendant's immediate family lived there. *See id*.

Here, Petitioners believed Mr. Walsh lived at the Mockbeggar Address. This belief was supported by four pieces of evidence:

1) Mr. Walsh used the Mockbeggar Address as his own to personally import vehicles into the United Kingdom.
2) Mr. Walsh's then wife, Melissa Walsh, registered a company called "Hide the Bag" with Companies House, the United Kingdom's registrar of companies, and listed as her primary place of residence, Terra Nova, New Road, Mockbeggar, Ringwood, Great Britain, BH23 3NJ. [Doc. 26-2].
3) Petitioners had knowledge that the owner of the Terra Nova, New Road Mockbeggar Ringwood address was Mr. Walsh's sister, that this residence had multiple bedrooms, and that it was used as a B&B. *See* [Doc. 30-1, ¶¶ 44, 49].
4) Mr. Walsh referenced the Mockbeggar Address in response to an Interrogatory asking him to list addresses he had used on legal or business records. [Doc. 26-4].

The Eleventh Circuit Court of Appeals erred when it failed to consider the above and it incorrectly applied controlling case law.

First, the Eleventh Circuit recognized that determining where a person resides is a "fact-driven context-based test" and, under United Kingdom law, looks to "the defendant's pattern of life." [Appx at 30a, *Winston v. Walsh*, Case No. 20-11614 at 7 (quoting [2010] EWCA (Civ) 560 (Eng.))]. The Eleventh Circuit noted that "some facts" indicated Mr. Walsh spent "some time" at Terra Nova, "Walsh's sister lived there, his wife and sister's company operated from there, and he shipped cars there on occasion." [Appx at 31a]. The Eleventh Circuit then accepted the District Court's holding that these did not demonstrate a "pattern of residential use." [*Id.*] There is no case law to support that finding and, therefore, it is in error. Indeed, the case law that both the District Court and the Eleventh Circuit refer to support Petitioners' position.

The Eleventh Circuit referred to *Varsani v. Relfo Ltd. (In Liquidation)* as "particularly instructive." [*Id.* at 6]. The *Varsani* court reached its result by, in part, noting the fact that the defendant's wife and children lived at the residence. S*ee Varsani*, 2010 WL 1990741. Similarly, then, Mr. Walsh's wife and sister used the Mockbeggar Address as their own and Mr. Walsh, during this time period, continued to ship Land Rovers from the United Kingdom to Georgia, listing Mockbeggar as *his* importer address. Data from the U.S. Customs data indicated that at least 4 shipments of Land Rover vehicles were shipped by Mr. Walsh between October 2016 and July 2017. *See* [Doc. 30-13]; [Doc. 26-1]. According to the data provided to U.S. Customs, the consignees of the bills of ladings, i.e., the recipients, were either Mr. Walsh or his third wife, Melissa Walsh, and *the*

address of the shipper (Walsh) was the Mockbeggar Address. *See* [Doc. 30-13]. The fact that Mr. Walsh used the address to ship goods to as his personal place of business and that his wife and sister lived there support a reasonable belief that Mr. Walsh had established the requisite pattern of life there. *See Varsani*, 2010 WL 1990741).

Additionally, in reaching its conclusion, the District Court erroneously decided that Mr. Walsh living with his sister was inconsistent with the Mockbeggar Address being Mr. Walsh's residence. [Appx at 21a.] The Court of Appeals affirmed this finding. However, this is puzzling. There is nothing inconsistent with an individual maintaining a residence and living with other family members; indeed, in *Varsani* the defendant lived with, in addition to his wife, his father and his wife's family, but there was no suggestion that this counted against the address being the defendant's residence.

Further, the District Court put decisive weight on (and the Eleventh Circuit affirmed this approach) Mr. Walsh's own first supplemental response to Petitioners' first set of interrogatories where Mr. Walsh denied he had resided at the Mockbeggar Address *after* service had already been effectuated there. [Appx at 21a]; [Doc. 30-17, Exhibit 16]. Yet, the District Court entirely ignored that in those same responses, Mr. Walsh listed his sister's address as one he had previously used in legal or business documents. The weight given to Mr. Walsh's self-serving denial is even more puzzling given that the Mr. Walsh's affidavit and interrogatories make no attempt to explain why his wife presented the Mockbeggar Address as her own to the British

government or why Mr. Walsh himself used that address before and after he had already signed his affidavit to the courts denying the Mockbeggar Address was his.

B. Under Rule 6.9, a plaintiff must possess a reasonable belief that the defendant still lives at the last known address, not actual knowledge.

Rule 6.9(3) requires that a plaintiff possess a "reasonable belief" that the defendant still lives at the last known address. In *Collier v. Williams*, [2006] EWCA (Civ) 20, 2006 WL 63678, at *263 (Eng.), the English Court of Appeal examined the words "last known residence" of Rule 6.9 in light of whether the plaintiff had "actual knowledge" that the defendant resided there. *Id.* at *263–64. The Civil Procedure Rules were amended in 2008 (SI 2008 No 2178) and substituted a new CPR Pt 6, with effect from 1 October 2008. *See Idemia France SAS v Decatur Europe Ltd*, 2019 WL 01596811 n.29 [High Court of Justice Business and Property Courts Queen's Bench Division Commercial Court] [2019]. As amended, Rule 6.9(3) requires that a plaintiff possess a "reasonable belief" that the defendant still lives at the last known address and not, as the District Court erroneously stated, "actual knowledge." [Doc. 40, Dist. Ct. Op. at 20].

In *Idemia France SAS*, the plaintiff did not possess a "reasonable belief" when the plaintiff continued to attempt service on a defendant despite the defendant's protestations that the address was not their last known address. Here, in contrast, Mr.

Walsh's protestations that he lived elsewhere were all made *after* service was made on his Mockbeggar Address. Defendants, across the board, do not welcome the news they are parties to a lawsuit. Allowing a defendant to claim the service address is "not theirs," while continuing to use that address, would defeat the purpose of service of process.

The facts discussed above that Mr. Walsh's third wife listed the address as her residence, that Mr. Walsh shipped vehicles from the premises, and that the residence was owned by Mr. Walsh's sister and contained many bedrooms all support finding that Petitioners had a "reasonable belief" that Mr. Walsh's last known address was the Mockbeggar Address. Mr. Walsh himself was aware of Petitioners' reasonable belief because he referenced it in his own affidavit.

While denying that he resided at the Mockbeggar Address, Mr. Walsh also admitted that he and Ms. Winston had stayed there when they were married, "Jeanean Elizabeth Winston is aware that this address is not my residence but belongs to my sister as Jenean had visited there and stayed with the family while we were married." [Aff. of M. Walsh, Doc. 21-2 at ¶ 9].

This is sufficient under Rule 6.9, and the Eleventh Circuit's conclusion to the contrary ignores the law.

C. Even if Petitioners did not properly serve Mr. Walsh, Rule 6.15 and English case law support retrospectively validating Petitioners' steps to serve Mr. Walsh as "Good Service."

Rule 6.15 (1) states, "[w]here it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place." Rule 6.9(3-6) explicitly provides that when a plaintiff lacks sufficient reason to believe that the address for the defendant is one at which the defendant still resides, then a plaintiff may apply for an order under Rule 6.15 permitting service at an alternative place.

Even if the plaintiff was wrong about a defendant's residence, however, and even if the plaintiff did not make a motion for an alternative form of service, a court may still grant an order under Rule 6.15(2) finding that the steps the plaintiff did take to effect service were valid. For example, in *Kaki v. Nat'l Private Air Transp. Co* [2015] EWCA Civ 731; [2016] C.L.C. 948, CA (Case No.A3/2014/1912), the court retrospectively declared the steps taken by the plaintiff to bring its claim form to the defendant Saudi company constituted good service under Rule 6.15(2) when the claim had been brought to the attention of the defendant's attorney and the plaintiff had made reasonable efforts over a prolonged period of time.

The Supreme Court of England, in analyzing Rule 6.15, laid down three factors that should be considered when determining whether there was a

"good reason" to retrospectively validate the service as good service: (i) whether the claimant has taken reasonable steps to effect service in accordance with the rules; (ii) whether the defendant or his solicitor was aware of the contents of the claim form at the time when it expired; and (iii) what, if any, prejudice the defendant would suffer by the retrospective validation of a non-compliant service of claim form, bearing in mind what he knew about its content. *Barton v Wright Hassall LLP* [2018] UKSC 12 at 10. Lord Sumpton, writing for the majority, called the second factor, the "critical factor," even though "the mere fact that the defendant learned of the existence and content of the claim form cannot, without more, constitute a good reason." *Id*. at 9(2). The underlying rationale is that "service" is described as "steps required to bring documents used in court proceedings to a person's attention;" thus, there may be cases in which formal service is not necessary to achieve that aim. *See Barclays Bank of Swaziland Ltd v Hahn* [1989] 1 WLR 506, 509 (quoting, per Lord Brightman, the definition of 'service' in the glossary to the Civil Procedure Rules). Neither the District Court nor the Eleventh Circuit undertook this analysis.

Under the first factor, courts have distinguished between plaintiffs who made an attempt to serve a claim by one of the methods permitted but were ineffective from claims where no attempt was made to abide by the rules. For example, in *Barton*, the plaintiff did not follow the normal rules of service of claim form under CPR Rule 6.3, but instead served the documents by email on the last day before the expiry of the claim form. *Barton v Wright*

Hassall LLP [2018] UKSC 12 at 4. Because service by email had never been a permitted method of service under the Rules without a party's previous consent, and here there was no such content, the court found the plaintiff failed to comply with the first factor. *Id*. at 16.

Another seminal case by the English Supreme Court interpreting Rule 6.15(2) shows that service should be declared valid when a plaintiff attempted service under the rules but had the wrong address. In *Abela & Ors v. Baadarani* [2013] UKSC 44 (26 June 2013), the plaintiffs received permission from the court to attempt service out of jurisdiction and attempted to serve a claim form upon the defendant at an address in Lebanon. *Id*. The address proved to be incorrect. *Id*. In addition, the plaintiffs, though not exhausting all means, had attempted service by other means by proceeding through diplomatic channels in Lebanon. *Id*. Despite the attempts being *formally* unsuccessful, knowledge of the claims had reached the defendant and his solicitors. *Id*. Further, the court noted that the respondent was unwilling to cooperate with service of the proceedings by disclosing his address in Lebanon. *Id*. The Supreme Court of England found that while a defendant was not under a duty to disclose his address, his refusal to cooperate and provide an address for service was "a highly relevant factor in deciding whether there was a good reason for treating as good service the delivery of the documents in Beirut," given that the documents came to the defendant's knowledge. *Id*.

Here, a summons was issued for Mr. Walsh at his residence at the Mockbeggar Address on March 5, 2019. [Doc. 30-1, at 22]. Petitioners' counsel had

received judicial imprimatur from the United Kingdom's Central Authority to effect service at an address. [Doc. 30-1, ¶¶ 58-60], [Doc. 30-14]. As discussed above, even if it was ultimately ineffective, Petitioners took reasonable steps to ensure compliance with Rule 6.9(2). Moreover, like in *Abela & Ors*, Petitioners had previously attempted service by other means.

On August 11, 2017, the Bibb County Sheriff's Office attempted service at another property Mr. Walsh owned on Cherry Street. [Doc. 30-4]. The Jones County Sheriff's Office attempted service six times at Mr. Walsh's Lakeridge Lane address, between August 17 and 24 and a message was left on Mr. Walsh's phone. [Doc. 30-5]. The Sheriff Deputy stated that service was incomplete because "Mark Anthony Mr. Walsh [was] apparently avoiding service." *Id*. In September 2017, Petitioners' attorney hired a private investigator, who spent two months searching databases and Mr. Walsh's other Georgia property in order to locate him. [Doc. 30-1 at ¶¶ 14-16]. In November 2017, Petitioners filed a motion for service by publication with the Supreme Court of Georgia, which was granted on January 11, 2018. [*Id.* at ¶¶ 24-27]. In addition, Petitioners' counsel undertook extensive efforts over a two-year period to locate company registers and shipping data that would reveal Mr. Walsh's address in the United Kingdom. *See* [*Id*.].

Of particular significance is the fact that Mr. Walsh and his lawyers learned and had knowledge of the claims against Walsh. [*Id*. at ¶ 29]. On August 16, 2017, the Jones County Sheriff's Office attempted service and left messages on Mr. Walsh's phone. [Doc.

30-5]. A neighbor, Amber Chatham, told the Bibb County Sheriff deputies that she would get a message to Mr. Walsh in England. [Doc. 30-4]. And, following the January 11, 2018 issue of an order for service by publication by the state court, and in response to the Georgia statute's direction to file an answer within 60 days of the order, Mr. Walsh's *lawyers filed a "special answer" in response to the motion for service by publication*. *See* (ECF 22-2, Special Answer and Appearance of Mark Mr. Walsh from Superior Court case); (ECF 22-3, Def. Br. From Superior Court case). This supports a reasonable inference that Mr. Walsh and his attorneys were attentively watching the state court docket, and thus knew of the allegations in the complaint against Walsh.

While Mr. Walsh was not under a duty to disclose his address, he refused to cooperate and provide an address for service. First, Mr. Walsh fled the country on August 4, 2015, after his son was found dead on August 2, 2015, even though a Bibb County detective, Investigator Clausen, had requested that he come in to give a statement. [Doc. 19, Compl. ¶ 2]; [Doc. 30-16, ¶ 15]. Mr. Walsh did not provide another address for service or means of communication. On March 21, 2018, Petitioners sent a waiver of service to Mr. Walsh's attorneys, but Mr. Walsh's attorneys stated that Mr. Walsh refused to waive service. [Doc. 30-1 ¶ 30]. On March 12, 2018, Mr. Walsh filed an affidavit, but he did not provide his address. [Doc. 30-7]. On July 22, 2018, the court advised Mr. Walsh that he must provide his addresses to Petitioners. Mr. Walsh placed his Stonington home on the market the next day. *See* [Doc. 30-9]. On April 12, 2019, Mr. Walsh attached a second affidavit, this time finally

providing a list of addresses he claimed to have lived at. [Exhibit 14, April 12, 2019 Affidavit of Mark Walsh].

To conclude, like in *Abela & Ors*, Petitioners took reasonable steps to ensure compliance with the rules. Even in the case that Petitioners had the wrong address, Petitioners' efforts would be rendered ineffective, not contrary to the rules. Rule 15(2), for example, does not require an application for service by an alternative method before a plaintiff attempts service on his own initiative if it is largely in compliance with the rules. It is clear Petitioners had attempted service by other means permitted by law. Mr. Walsh and his counsel had knowledge of the claims against Mr. Walsh and thus cannot claim they were prejudiced by lack of notice. Finally, the Supreme Court of England stressed that a relevant factor is when a defendant does not cooperate with plaintiffs. Mr. Walsh's actions clearly demonstrate non-cooperation. Thus, English caselaw supports finding Petitioners' service of Mr. Walsh was retrospectively good service.

IV. Mr. Walsh's own customs declarations as well as his interrogatory responses, and his wife's declared place of residence, raise questions as to the veracity of Mr. Walsh's self-serving affidavit.

As noted above, courts generally "decline to look behind the certificate of service to adjudicate the issues of [the receiving country's] procedural law" and the presumption of proper service can only be

overcome by strong and convincing countervailing evidence. *Northrup King*, 51 F.3d at 1390. Ordinarily, "[a] signed return of service constitutes *prima facie* evidence of valid service which can be overcome only by strong and convincing evidence." *Strabala v. Qiao Zhang*, 318 F.R.D. 81, 116 (N.D. Ill. 2016) (citing *Homer v. Jones-Bey*, 415 F.3d 748, 752 (7th Cir. 2005); *O'Brien v. O'Brien Associates, Inc.*, 998 F.2d 1394, 1398 (7th Cir. 1993)). Once such a *prima facie* showing is made, the burden shifts to the defendant to demonstrate that service was not received. *Homer,* 415 F.3d at 752 (citing *Jones v. Jones,* 217 F.2d 239, 242 (7th Cir. 1954)). Furthermore, an uncorroborated defendant's affidavit merely stating that he has not been personally served with summons is insufficient to overcome the presumption favoring the affidavit of service. *Strabala,* 318 F.R.D. at 116 (internal citation omitted).

The case of *NordAq Energy* provides a factual example similar to the case here, illustrating how a court should weigh a defendant's evidence when a defendant challenges a Hague central authority's certificate of service. In *NordAq*, the defendant was served by mail at his alleged residence in London. The defendant provided an affidavit to challenge the validity of service stating that although he was in London at the time of service, he did not maintain a residence there and had not resided at that house for over 25 years. *See NordAq Energy*, 2017 WL 9854543, at *2. However, the plaintiff's evidence showed the house was titled in the name of the defendant and his wife, and that they purchased the residence only 15 years ago. *See id*. Further, numerous emails between

the defendant and his wife discussed the defendant's plans to return "home" to his wife, who was residing at the London house where service occurred. *Id*.

Here, on May 21, 2018, John Pierceall, Esq. mailed the Request for Service Abroad, and Mr. Walsh was served at Terra Nova, New Road, Mockbeggar, Ringwood, Great Britain, BH23 3N on March 5, 2019. [Doc. 20-1, ¶¶ 58, 64]. On April 12, 2019, Mr. Walsh provided an affidavit stating that he had never resided at the Mockbeggar Address. [Doc. 21-2, ¶ 8]. However, Mr. Walsh listed that address as his address with United States Customs in 2016, 2017 and 2018 when shipping Land Rovers from the United Kingdom to Georgia. [Doc. 30-13, at 12 (listing address for Mark Walsh as New Road, Mockbeggar, Ringwood]; [Doc. 26-1]. Further, Mr. Walsh's third wife, Melissa Walsh, registered a company on April 25, 2017 called "Hide the Bag" with Companies House, the United Kingdom's registrar of companies, and listed the Mockbeggar Address as her primary place of residence. [Doc. 26-2]. Therefore, the Mockbeggar Address was the marital home and Mr. Walsh's home for purposes of importing his car collection. In other words, the Mockbeggar Address *was* Mr. Walsh's address.

V. Mr. Walsh's evasive actions only further undermine the credibility of his self-serving affidavit.

Furthermore, Mr. Walsh maintained that since moving back to the United Kingdom on January 24, 2017, he had decided to remain there indefinitely. [Doc. 21-2, ¶ 2]. But his actions were inconsistent with

this. If a plaintiff's complaint and supporting evidence conflict with the defendant's affidavits, as it does here, the court must construe all reasonable inferences in favor of the plaintiff. *Diamond Crystal Brands, Inc*, 593 F.3d at 1257; *see Home Legend,* No. 4:12-CV-0237-HLM, 2014 WL 12489761, at *11.

In February 2017, Mr. Walsh bought a home in Bibb County, Georgia. [Doc. 30-1, ¶ 6]; *see* [Doc. 30-8, Exhibit 7]. Similarly, in November 2017, an associate of Mr. Walsh's, who refurbished Land Rovers shipped by Mr. Walsh, attested that he was under the impression Mr. Walsh would be returning permanently to Georgia in "in the next month or so." [Doc. 30-6, Ex. 5, at 7].

Taken together, these inconsistences are not explained by Mr. Walsh's affidavit and are sufficient to raise doubts as to the validity of his affidavit. Because there are doubts raised about the validity of Mr. Walsh's affidavit, the District Court and the Eleventh Circuit were incorrect to conclude that the presumption of proper service by the United Kingdom's Central Authority had been overcome by strong and convincing countervailing evidence. *See Northrup King*, 51 F.3d at 1390.

VI. There are important policy reasons why courts should defer to Certificates of Authority, particularly because United States courts are ill-equipped to apply foreign law.

United States courts are ill-equipped to assess and apply foreign law. Generally, courts must contend

with problems of translation and access to court records and documents. Here, the courts are dealing with the English system of common-law, a system our own is rooted in but even so, the "rules" of procedure cannot be separated "from the procedural, constitutional, and cultural norms of the foreign legal system." Tanya J. Monestier, *"Whose Law of Personal Jurisdiction: The Choice of Law Problem in the Recognition of Foreign Judgments"* 1729, 1749. *BUL Rev*. 96 (2016). United States courts are hard-pressed to determine the outcome of determinations in other legal systems. In addition, however, when United States courts are called upon to interpret foreign laws governing service of process, such interpretation through the prism of the Hague Convention, must be consistent.

Tanya Monestier's analysis of the First Circuit's difficulties in applying Canadian law in *Evans Cabinet Corp. v. Kitchen Int'l, Inc*., is illustrative. 593 F.3d 135, 143 (1st Cir. 2010). The First Circuit relied on Article 3148 of the Quebec Civil Code as providing personal jurisdiction, but the provision was wholly inapplicable. *See* Tanya Monestier, *Whose Law of Personal Jurisdiction*, at 1754, *Evans Cabinet,* 593 F.3d at 145. The provision allowed for jurisdiction when an obligation for a contractual relationship took place in Quebec, but not when a contractual relationship was established *in* Quebec. Tanya Monestier, *Whose Law of Personal Jurisdiction*, at 1754. The District Court's struggle, and ultimate failure, to analyze properly the English Rule 6.9(2), which is controlling in this case, reveals the same difficulty. The District Court ignored an important factor, relevant to the English court's

finding in *Varsani*, that one's spouse's residence is relevant to establishing the residence of the other spouse, and the District Court misapplied the intent standard for Rule 6.9.

CONCLUSION

WHEREFORE, based on the foregoing, Petitioners respectfully request that this Court grant certiorari for the purpose of entering an Order Reversing the Eleventh Circuit's *per curiam* Order and Remanding this action for further litigation.

Respectfully submitted this 1st of March 2021.

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