Neutral Citation No: [2019] NIQB 42 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **COL10957** ***Delivered: Ex Tempore 7/5/2019***

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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COMMERCIAL DIVISION

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CYCLONE PROMOTIONS LIMITED AND BLAIN McGUIGAN

-v-

CARL FRAMPTON AND RIP ROCK LIMITED

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COLTON J

[1] The defendants in this action have brought an application seeking to set aside the default judgment obtained by the plaintiffs against the first defendant on the grounds that:

(a) The default judgment was irregularly obtained.

(b) Each of the defendants has a defence to the claim made by the plaintiffs.

[2] The context in which the application is brought is important.

[3] On 23 November 2017 the plaintiffs issued a claim in England against the first defendant ("the English proceedings"). In this jurisdiction the first named defendant had issued two sets of proceedings, one against Cyclone Promotions Limited (the first named plaintiff in this action) – Action 118 and the second against Barry McGuigan, Sandra McGuigan and Cyclone Promotions (UK) Limited – Action 122 ("the Northern Ireland proceedings").

[4] All of these proceedings arise from a dispute between the well-known boxer and former world champion Carl Frampton and Barry McGuigan, other members of the McGuigan family and various iterations of Cyclone Promotions.

[5] A dispute arose as to the jurisdiction of this court to hear the Northern Ireland proceedings.

[6] After a contested hearing Horner J determined that this court has jurisdiction to hear the claims brought by Frampton (Actions 118 and 122) and that the Northern Ireland Court is not a forum non conveniens.

[7] His draft judgment was delivered in June 2018 and the finalised judgment was delivered on 14 September 2018.

[8] In the meantime there were on-going issues in relation to the English proceedings.

[9] After Horner J's first judgment the solicitors acting for Blain McGuigan and Cyclone Promotions in England – CRS – sought an agreement that the English proceedings should be discontinued but with no order as to costs so that they could be replicated and commenced in Northern Ireland.

[10] Frampton did not agree to this and a dispute then arose as to his entitlement to costs and the scale of any costs.

[11] CRS then changed its approach and sought agreement from Frampton that the English proceedings be stayed.

[12] On 4 October CRS wrote to Frampton solicitors in the following terms:

> *"… In the circumstances, we propose the parties agree a stay of the English proceedings (including a stay of two outstanding applications in the English proceedings and the determination of the costs of the English proceeding and the two outstanding applications), pending the determination of the claims and any counterclaims in the Northern Irish proceedings.*
>
> *We consider it would be far simpler and more cost effective for the English court to determine matters in the English proceedings, once the Northern Irish proceedings have been decided upon.*
>
> *We would be grateful if you could confirm whether your client is going to agree to a stay of the English proceedings on the terms set out in this letter."*

[13] Frampton's position remained, in light of Mr Justice Horner's ruling, that the English proceedings had to be discontinued with the usual costs consequences.

[14] In the event the English claim was stayed by way of a case management order by Master Yoxall in October 2018.

[15] The Northern Ireland proceedings came before me on 10 December 2018 and a trial date was set for 13 May 2019 with various directions. That trial date was subsequently changed to 7 May 2019.

[16] The writ in this action was issued on 30 January 2019.

[17] A copy of the writ was e-mailed to Frampton's solicitors, Finucane Toner, on 5 February 2019 and served by post on 7 February 2019.

[18] By letter of 6 March 2019 Finucane Toner corresponded with the plaintiffs' solicitors in this jurisdiction, Eamonn McEvoy and Co, requiring the plaintiffs/English claimants to "elect" as between the English proceedings and the new Northern Ireland proceedings indicating that if they chose to discontinue the English proceedings they would seek costs in respect of those proceedings and enter an unconditional appearance to these proceedings.

[19] On 8 March 2019 Eamonn McEvoy and Co solicitors served a default judgment which appeared to have been obtained against the first defendant (Frampton) on 20 February 2019.

[20] It is this judgment which the defendants now seek to set aside.

[21] It is clear from the writ of summons and from the draft statement of claim subsequently served that these proceedings raise substantially the same if not identical issues as the English proceedings. It is correct that an additional defendant, Rip Rock Limited, Frampton's management company, has been added although no judgment has been marked against it.

[22] As to the grounds relied upon I agree that the judgment has been obtained irregularly. The endorsement on the writ seeks a series of reliefs; declarations, accounts and enquiries and the like which are not relief or claims within the meaning of Order 13 Rules 1-4 and as such judgment cannot be obtained in the manner in which the plaintiffs have proposed to do – see Order 13 Rule 6.

[23] It is correct that a plaintiff may waive elements of a claim and proceed with a claim for damages only (which is a relief within Order 13 Rules 1-4), but no such waiver was indicated before the judgment order was made.

[24] Whilst not technically speaking a legal irregularity I would add that the manner in which this action was commenced and judgment obtained was inconsistent with the representations in the CRS correspondence to which I have already referred and upon which the stay of the English proceedings was granted to the same litigants there.

[25] I am also satisfied that the first defendant against whom judgment has been marked has established that there is a serious issue to be tried in these proceedings

and that he can establish an arguable case. Mr Liam McCollum QC who appeared with Mr Philip McEvoy for the plaintiffs is critical of the failure of the first defendant to set out the basis of his potential defence; with the affidavit filed in support simply referring to passages of the judgment of Horner J on the jurisdictional issue.

[26] However, this issue has to be seen in context and on the basis of the information before the court. The court has seen all the pleadings in the now four actions and it is abundantly clear that the issues in this action are inextricably linked to the issues in the Northern Ireland proceedings, something which was clearly acknowledged by the correspondence from CRS, after the judgment of Horner J.

[27] Accordingly, I make an order setting aside the judgment.

[28] That being so, the defendants seek a number of further orders – requiring the plaintiffs to elect as between the courts of this jurisdiction and the English court, or in the alternative an order striking out the action on the grounds that it is vexatious and/or otherwise an abuse of process of the court.

[29] The basis of these applications is that this action has been commenced after the English proceedings in circumstances where that claim has not been discontinued. In short the plaintiff should elect between the Northern Ireland and the English proceedings.

[30] As a general principle the same party should not be allowed to seek to keep alive proceedings in two separate jurisdictions, those proceedings raising either at the present time or inevitably in the future exactly the same issues. To do so, in the words of Sir Nicolas Browne-Wilkinson in the case of **Australian Commercial Research and Development Limited v ANZ** [1989] 3 All ER 65 would "*verge on the vexatious*". The principle underlying this is that it would be oppressive for a defendant to face both actions simultaneously. The principle in **ANZ** has been endorsed by the High Court and the Court of Appeal in this jurisdiction – in the case of **Lough Neagh Exploration Limited v Morrice** [1999] NI 258.

[31] In the **Lough Neagh** case the plaintiff had issued proceedings in the Republic of Ireland where the defendant had successfully applied for security for costs against the plaintiff. The plaintiff's claim had been struck out by reason of its failure to comply with the order for security for costs. The plaintiff had appealed to the Supreme Court against the dismissal.

[32] While the Republic of Ireland proceedings were still proceeding and close to the expiry of the time limit for the provision for security for costs the plaintiff issued the writ in Northern Ireland.

[33] Unsurprisingly, the court drew the inference from the timing and the nature of the Northern Ireland proceedings that the plaintiff's decision to issue the proceedings in this jurisdiction was brought about by the difficulties facing the

plaintiff in the future progress of the Irish proceedings as a result of the security for costs order. In the circumstances facing the defendant in the **Lough Neagh** case, in particular because of the significant commercial damage it would suffer, the court held that it would be unfair to the defendants to allow the action to proceed.

[34] However, as is frequently the case in the law, everything turns on context. The boundaries of what constitute an abuse of the process of the court are not fixed.

[35] It is a fundamental principle which weighs heavily with me in determining this issue that parties to a dispute should litigate their interrelated disputes at the one time in the interests of justice, expedition and convenience.

[36] Following the decision of Horner J, the proper jurisdiction for determining what are clearly interrelated disputes in this action and the Northern Ireland proceedings is Northern Ireland.

[37] One must look at the purpose of this action. The outcome of proceeding with it will be to ensure that all the interrelated disputes between the parties will be determined at the one time and by the same court in this jurisdiction. Mr Gavin Miller QC who appears for the defendants with Mr Peter Girvan is correct to point out that this approach is inconsistent with the basis upon which the English action has been stayed, namely that that action be stayed pending the determination of the claims and any counterclaims in the Northern Ireland proceedings. The absence of any counterclaim by Cyclone Promotions Limited in the Northern Ireland action is also consistent with that approach.

[38] However, this does not undermine the propriety of issuing and proceeding with this action. The plaintiffs have given an express undertaking that irrespective of the outcome in this action the only dispute it will raise in the English action will be confined to the issue of costs. The defendants will not therefore be exposed to defending the same action in two jurisdictions.

[39] It is a moot point what bearing, if any, the outcome of these proceedings will have on the issue of the costs incurred in the English action, but the sole issue to be determined there is the appropriate order for costs up to the stay – as confirmed by the plaintiffs' undertaking given in court. The plaintiffs will still have to face that issue. Unlike the **Lough Neagh** case they are not circumventing it.

[40] In the circumstances I do not consider that it is an abuse of process of the court to permit the action to proceed and I decline to make any order striking out the action.

[41] The defendants' application was brought at a time when the Northern Ireland actions were listed to commence on 7 May 2019.

[42] Given the short timescale involved and the circumstances in which the action was commenced I would have been minded to stay the action (like the English proceedings) as it would have been unfair and impractical in all the circumstances to require the defendants to defend the claim, although I would have heard further argument on the point.

[43] The situation has now changed due to circumstances unrelated to this action. I therefore consider that it is desirable that this action is progressed in such a way as to be heard at the same time as the two existing Northern Ireland proceedings.

[44] I make it clear however that the two existing Northern Ireland proceedings shall have priority and will not be adjourned on the basis of a lack of readiness in respect of this "*new action*".

[45] With appropriate directions from the court and the co-operation of the parties it ought to be possible, given the interrelationship between the actions, to have them heard and determined at the same time but if this proves impossible the existing Northern Ireland proceedings will proceed alone.

[46] Accordingly, as I indicated to the parties by e-mail on 19 April 2019 I direct as follows:

(1) The application by the defendants to set aside the default judgment is granted.

(2) The defendants are to lodge and serve a memorandum of appearance in the action by close of business on 19 April 2019.

(3) The plaintiffs shall formally serve the statement of claim (which will be provided to the parties and the court) within two days of the memorandum of appearance being served.

(4) The defendants shall serve the defence within 21 days from the service of the statement of claim. (Amended by agreement to 14 days)

(5) The application to strike out or stay the action is dismissed on the express undertaking that the plaintiff will not pursue the claim number; H017X04251 in England and Wales, save for the issue of costs in that action.