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No: 124122/2017; 124118/2017

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (COMMERCIAL LIST)

WRIT NO: 124122/2017

Between:

CARL FRAMPTON

Plaintiff;

and

FINBAR PATRICK "BARRY" McGUIGAN

First Defendant;

SANDRA McGUIGAN

Second defendant;

CYCLONE PROMOTIONS (UK) LIMITED

Third Defendant;

WRIT NO: 124118/2017

Between:

CARL FRAMPTON

Plaintiff;

and

CYCLONE PROMOTIONS LIMITED

Defendant.

HORNER J

Framework of Judgment

A. INTRODUCTION

[1] Carl Frampton ("Frampton"), a boxer of formidable reputation and a former World Champion, is locked in litigation with Barry McGuigan ("McGuigan"), a retired boxer also of formidable reputation and a former World Champion, various companies, many of which include the name "Cyclone" in their title and in which McGuigan has or has had an interest, and other members of the McGuigan family, his wife, Sandra McGuigan ("Sandra") and his son, Blain McGuigan ("Blain") who either are or were directors in companies in which McGuigan has or has had an interest. I refer to these parties who are litigating with Frampton generically as the "Cyclone Connection" for ease of reference.

[2] Frampton wants the Northern Ireland court to determine the outcome of the two sets proceedings which he has issued here, and if possible, the one set of proceedings which the Cyclone Connection has issued in England. The Cyclone Connection wants the English court to hear and determine the claim it has issued in England and served on Frampton and indeed to hear all the disputes between it and Frampton. Neither party is prepared to give way. The issue of jurisdiction has come on before the Northern Ireland court first. In due course the English court will have to consider what it should do in respect of the proceedings which have been brought by the Cyclone Connection against Frampton in England and it may also have to consider an arbitration arising out of the Approved Boxer/Manager Agreement between Frampton and McGuigan which has been stayed by consent for a period of three months to permit the parties to file their pleadings in the English court proceedings.

[3] This is a matter that has been vigorously contested on both sides. There is a plethora of background information contained in four ring binders, which are relied on by both sides. There are countless authorities which the court has been referred to by both parties in support of their various claims and counterclaims.

Surprisingly, there is no affidavit from McGuigan, although there are lengthy affidavits from his instructing solicitor and his wife, Sandra. There has been reference to various statutes, European Directives, Conventions and Regulations and text books, all of which have required careful consideration.

[4] I am indebted to the detailed skeletons filed by both sides supplemented by extensive oral submissions over 2 days. I did make it clear to both sides that if either side wished the court to consider a particular argument, then it had to be opened in court. Further, given the number of authorities to which the court has been referred, I expected the Practice Direction to be followed. Consequently, I have read in full those authorities which have been asterixed and those sections of the other authorities which have been highlighted by the parties.

[5] It is fair to say that almost every point which could be taken has been taken. Many of those arguments have been developed before me with considerable skill on both sides. Both sets of counsel are to be congratulated on the quality of their submissions, both written and oral, in this keenly contested dispute on jurisdiction. I have taken them all into account although to deal with each point of contention individually would result in a judgment which would necessarily be even more prolix and diffuse than the present one.

B. BACKGROUND FACTS

[6] Frampton, aka "The Jackal", was born in Tiger's Bay on 21 February 1987. This fiercely loyalist area is separated from the republican neighbourhood of New Lodge by the main New Lodge Road. From his birth, this area in which he has lived has been scarred by sectarian violence. Frampton married Christine Frampton ("Christine") who was raised in Poleglass, a housing estate with both republican and nationalist sympathies in West Belfast. Theirs is a "mixed" marriage.

[7] Frampton learnt his boxing skills in the Midland Boxing Club off the Shore Road. He was a two times Irish Amateur title holder and won a silver medal at the European Amateur Championships. Boxing, like rugby in Ireland, is a sport where members of the national team come from both sides of the border. In 2014 Frampton fought Kiko Martinez at the Odyssey Arena aka "The Jackal's Den" for the IBF Super Bantamweight Championship. He was successful and became World Champion. Frampton's successes in the ring have united a divided and troubled city and country. Both Northern Ireland's Protestant and Catholic communities have celebrated the success of this local lad and have rejoiced in his good fortune. Frampton rightly enjoyed an official reception which was given in his honour at Belfast City Hall.

[8] In truth Frampton was following in the very large footsteps of McGuigan aka "The Clones Cyclone", a Roman Catholic from Clones, just over the border in the Republic of Ireland, married to a Protestant, Sandra. Years before McGuigan had united both sides of a very divided Northern Ireland community when he fought

and won the World WBA featherweight title against Eusebio Pedroza at Loftus Road, London, in 1985 before 27,000 adoring fans and a record television audience of 18 million viewers. McGuigan enjoyed a fantastic boxing career, being a hero to both sides of a bitterly divided Northern Ireland.

[9] Both the Jackal and the Clones Cyclone can rightly claim to be boxing legends. Their adulation knows no petty religious or political divides. Both men are defiantly non-sectarian and both have achieved not only enormous success in the boxing ring but also have helped in healing religious and political divides in a troubled province.

[10] The Clones Cyclone was guided to the very top by Mr Barney Eastwood, a well-known and successful Northern Ireland bookmaker who effectively both managed and promoted McGuigan. Their relationship, like that of McGuigan and Frampton, was originally very close. But they fell out. There were acrimonious libel proceedings which McGuigan lost. He ended up on the wrong side of a judgment for very substantial damages and costs. Their relationship never recovered. McGuigan retired aged 28 having fought 35 professional contests. He won all but 3. Twenty-eight of his successes were achieved by knockout. In 2005 he was inducted into the International Boxing Hall of Fame.

[11] Frampton and McGuigan have also fallen out big time. There are 3 sets of proceedings which have followed the breakdown in their relationship. As I have already noted, one set of proceedings has been issued in England by the Cyclone Connection. Two sets of proceedings have been issued by Frampton against the Cyclone Connection in Northern Ireland. The parties to the litigation differ because of the involvement of various companies and members of McGuigan's family but essentially all these proceedings are an almost inevitable consequence of the complete breakdown in the relationship between Frampton, the boxer and McGuigan, the manager and alleged promoter. Mr McCollum QC's contention on behalf of the Cyclone Connection was that all three proceedings were inextricably linked. This was not disputed by Mr Millar QC on behalf of Frampton.

[12] The first set of proceedings brought by Frampton in Northern Ireland is under Writ No: 124122 ("the First Claim") and it is brought against McGuigan, his wife, Sandra and Cyclone Promotions (UK) Limited ("CPUK"), that is company no: 10493415. McGuigan and Sandra are sued as directors of Cyclone Promotions (UK) Limited (company no: 9320366). This company was formed on 20 November 2014 but was dissolved on 18 October 2016. CPUK was then formed on 23 November 2016. The First Claim primarily concerns an International Promotional Agreement ("IPA") entered into in England between Frampton represented by his manager, McGuigan and an entity entitled Cyclone Promotions//Blain McGuigan. Cyclone Promotions in these proceedings is said to be Cyclone Promotions (UK) Limited, an English company. There are allegations contained in the First Claim, inter alia, of breach of fiduciary duties and breach of trust. McGuigan is sued as constructive trustee in respect of dishonest assistance. There are also claims against McGuigan in respect of breach of duty, negligence and misrepresentation arising out

of two Approved Boxer/Manager Agreements of 2012 and 2015 ("the 2012 Agreement" and "the 2015 Agreement") entered into between Frampton and McGuigan. A further claim is made of unjust enrichment against CPUK. Frampton seeks, inter alia, damages and equitable compensation for all these alleged wrongs. The second set of proceedings brought by Frampton is against the Northern Ireland company, Cyclone Promotions Limited (company no: NI619080) and is commenced by Writ No: 124118 ("the Second Claim"). In this action, which also primarily concerns the IPA, Frampton seeks, inter alia, a declaration that the IPA is void due to its failure to identify the registered name of the company which it is claimed was contracting with Frampton. This has been developed in the supplemental skeleton argument filed on behalf of Frampton which states:

> "At common law, if one party believes he is dealing with person A when he is in fact dealing with B or with a **non-existent** person and he communicates to B an offer that is intended only for A, the mistake as to identity may prevent the contract coming into existence. If the mistake is operative the contract is void ab initio – Chitty on Contracts 32nd Edition paras 3-036-3-044, 6-008, *Shogun Finance Limited v Hudson* [2004] 1 AC 919 [46]-[55], [178]."

In the alternative it seeks a declaration that the parties to the IPA were Frampton and Cyclone Promotions (UK) Limited (company no: 9320366). Finally, the relief claimed in the Second Claim includes a declaration that the IPA is void and unenforceable against Frampton on the grounds of uncertainty as to its terms regardless of who entered into it on behalf of the Cyclone Connection.

[13] The claim brought by Cyclone Promotions Limited, that is the Northern Ireland company previously identified, and Blain McGuigan, in England (Claim No. HQ17X04251) against Frampton is for breach of the IPA referred to above. The Cyclone Connection made the case before me in their skeleton argument and also in the Particulars of the Claim filed in England that the Cyclone Promotions referred to in the IPA is in fact Cyclone Promotions Limited (company no: NI1619080). The Cyclone Connection also made the case that Blain McGuigan was a joint promoter with Cyclone Promotions Limited, and did not make the case that he had signed the IPA as a Director of the limited company. The claim is that Frampton is in breach of the IPA and that this has resulted in an unquantified claim for loss and damage relating, inter alia, to the loss of profits suffered by Cyclone Promotions Limited (and Blain McGuigan) in respect of the Frampton fights it could have promoted but has been prevented from so doing by the unlawful actions of Frampton. The response of Frampton to such a claim has been to point out the difficulty that Cyclone Promotions Limited will have in making out a claim for loss of profits when it apparently promoted the other fights and in doing so incurred substantial losses. It is apparently insolvent. The forensic accountant retained on behalf of Frampton, Nicola Niblock of ASM states:

> "Given the significant level of losses incurred by the Northern Ireland company one would question whether the promotional revenues including television and sponsorship monies in relation to the Carl Frampton bouts were actually recognised in the NI company." See 3.48 of her report.

There has been no response yet to this conclusion reached by Ms Niblock.

[14] There is however other problems associated with this claim. First of all it is not at all clear who Cyclone Promotions is. It could be any one of a number of organisations which include the name Cyclone Promotions in their title and in which the McGuigan family is or has been involved. Secondly, it is not immediately clear if Blain McGuigan did enter into the IPA on his own behalf or in some other capacity, such as a director of Cyclone Promotions Limited. Thirdly, the Northern Ireland company Cyclone Promotions Limited which has sued has its registered office at Carnbane Business Centre, Carnbane, Newry. The IPA which lies at the heart of this case is appended to the claim form. It is dated 17 February 2015 but it gives the address of Cyclone Promotions Limited as 35/27 Parkgate Road, London, which is the address of Cyclone Promotions (UK) Limited (company no: 9320366). That company was dissolved on 18 October 2016.

[15] The 2015 Agreement was subject to the following material terms:

(a) Condition 2 records that Frampton had appointed McGuigan as his "sole and exclusive manager" and authorised him to act as Frampton's agent throughout the period of the 2015 Agreement.

(b) Condition 3 related to the general obligation of the manager to ensure suitable training and boxing engagements.

(c) Condition 4 required McGuigan to arrange Frampton's professional affairs and engagements so as to secure for the boxer all due and proper profit and reward and which at Condition 5 required him to ensure that the terms of every engagement arranged for Frampton was on terms which were "fair and reasonable and as advantageous to the Boxer as are reasonably obtainable".

(d) Condition 6 dealt in detail with conflicts of interest and requirement to notify the British Boxing Board of Control of any engagement of Frampton where the manager might have a "financial" or other association with the intended Promoter that might reasonably be "thought to affect the Manager's ability to act independently in the best interests of the Boxer". It also required McGuigan to give Frampton a written copy of the terms agreed and required him to fully explain them to Frampton with an opportunity for Frampton to renegotiate them.

(e) Condition 7 provided that McGuigan will promptly give the Boxer a full and accurate written account of any money which the Manager receives and any reasonable and proper expenses which he incurs in connection with the performance of his obligations under this Agreement.
There is also a requirement on each party to permit the records of expenses to be inspected at any time.

(f) Condition 10 dealt with the receipts, expenses and commission. It sets out the entitlement of McGuigan to 25% commission as manager.

(g) Condition 11 provided for a 3 year duration of the Agreement.

(h) Condition 13 permitted the termination of the Agreement if either party is in "serious breach of his obligations".

(i) Condition 17 noted that the Agreement "shall be governed by and construed in accordance with English law".

The terms are intended to ensure that Frampton was properly rewarded for his endeavours and that there was a transparent process in place to ensure that Frampton not only received his lawful entitlement but also that he was able to check that he was indeed receiving his fair share.

[16] The IPA was entered into between Cyclone Promotions//Blain McGuigan as promoter and Frampton as the Boxer represented by his Manager, McGuigan. It contained the following material terms:

(a) It guaranteed the promoter the exclusive worldwide promotional rights for all professional boxing bouts, including exhibitions of Frampton for a period of 3 years.

(b) It provided details as to the size of purses Frampton was to receive depending on the nature of the bout.

(c) It gave the Promoter certain intellectual property rights including unlimited rights "to transmit, photograph, record or otherwise reproduce the contests".

(d) The term is for at least 3 years but can be terminated prematurely for a number of reasons or extended for a number of reasons.

(e) The remit is to be construed in accordance with "UK law" and each party agrees to submit to the jurisdiction of the "UK courts".

There is no term in the IPA which reflects any entitlement of Frampton to 30% of the profits from the promotions of his fights. It is Frampton's case that he moved from

Eddie Hearn's Matchroom to Cyclone Promotions//Blain McGuigan on the specific promise that the new arrangements would entitle him to this 30% cut.

I have attached the 2012 Agreement, the 2015 Agreement and the IPA to this judgment as a brief summary of their terms cannot adequately set out the nature of the various relationships.

[17] It is to some degree surprising that Frampton has issued two different sets of proceedings. The First Claim pleads that Cyclone Promotions (UK) Limited (company no: 9320366) was the party that entered into the IPA with Frampton. The Second Claim seeks relief against Cyclone Promotions Limited (company no NI619080) in respect of the IPA. Further and in the alternative, it seeks a Declaration that Frampton entered into the IPA with Cyclone Promotions (UK) Limited (company no: 9320366). The proceedings brought by the Cyclone Connection in England for breach of the IPA are in the name of Cyclone Promotions Limited, the Northern Ireland company (no: NI 619080). The advantage of Carl Frampton suing and Cyclone Promotions (UK) Limited in the alternative in the one set of proceedings is that Frampton would have been in a position to argue that both claims are so closely connected in that they relate to the IPA and the issue of who were the contracting parties. Further there is obviously a clear risk of irreconcilable judgments if such claims are heard separately: see paragraph 385 of Halsbury's Laws of England (5th Edition) Volume 19 on the Conflict of Laws and paragraph 5 of Schedule 4 to the Civil Jurisdiction and Judgments Act 1982 ("the 1982 Act") which permits a plaintiff to sue a number of defendants in Northern Ireland if one of them is domiciled there and "provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings". In those circumstances any objection by the Cyclone Connection to the Northern Ireland court having jurisdiction might have been more difficult to make. However, this court has to deal with the different sets of proceeding which are before it.

[18] That is a brief overview of all 3 sets of proceedings. It has to be recognised that it is exceptionally difficult to follow or understand what has happened or is alleged to have happened because many of the legal entities have used or use the same or similar names. Companies within the Cyclone Connection use the same names as companies that have been dissolved. One of the many issues, which this litigation will have to resolve, is whether this was a deliberate decision on the part of the Cyclone Connection to sow the seeds of confusion and make it much more difficult and complicated for Frampton to enforce his legal rights. However, it is not for this court on the hearing of an interlocutory application to reach a final view. That task awaits the court which will hear all the evidence and which will to be able to make a final determination on the basis of all the evidence adduced before it. The First and Second Claims will have to be set out clearly, carefully and in some detail in Statements of Claim. I have seen a draft Statement of Claim in the Second Claim but no such draft Statement of Claim in the First Claim. I will return to the

importance of not reaching final conclusions on an interlocutory application such as this later on in this judgment.

C. THE ISSUES

[19] It is agreed among the parties that the two issues that this court must determine in respect of the challenge to the jurisdiction of this court and its right to hear and determine the First Claim and the Second Claim, are:

(i) Has this court jurisdiction under the 1982 Act to hear and decide the First and/or Second Claim?

(ii) If it does have jurisdiction in either or both claims, has the Cyclone Connection satisfied the court on the balance of probabilities that Northern Ireland is a forum non-conveniens and that the two Claims should be heard and determined in England?

D. RELEVANT LEGISLATIVE PROVISIONS

[20] The rules which provide for the allocation of cases within the different jurisdictions of the United Kingdom are set out in Schedule 4 to the 1982 Act, as amended by the Civil Jurisdiction and Judgment Order 2001, Schedule 2, Paragraph 4. These rules are inserted by the Civil Jurisdiction and Judgments Order 2001:

> "which take the form of a new Schedule 4 to the 1982 Act, and apply whether the international jurisdiction of the courts of the UK is derived from the Brussels I Regulation (original or recast), the Lugano Convention or the Brussels Convention. They also apply where there is no international question of jurisdiction, but simply a question as between the national jurisdictions of England, Scotland and Northern Ireland": see Briggs on Civil Jurisdiction and Judgments (6th Edition) at 2.312.

[21] Section 16 of the Act provides:

> "(1) Provisions set out in Schedule 4 … shall have the effect for determining, for each part of the United Kingdom, whether the courts of law of that part, or any particular court of law in that part, have or has jurisdiction proceedings where:
>
> (a) the subject matter of the proceedings is within the scope of the Regulation as determined by Article 1A

of the Regulation (whether or not the Regulation has effect in relation to the proceedings); and

(b) the defendant of defender is domiciled in the United Kingdom or the proceedings are of a kind mentioned in [Article 24 of the Regulation].

…

(3) In determining any question as to the meaning or effect of any provision contained in Schedule 4 –

(a) regard shall be had to any relevant principles laid down by the European Court in connection with the Title II of the 1968 Convention; and

(b) any relevant decision of that court as to the meaning or effect of any provision of that Title. …"

[22] It is also agreed that the different courts of the United Kingdom applying these provisions are required to have regard to, rather than apply any relevant decisions of the European Court of Justice as to the meaning or effect of the Brussels Convention or the Brussels I Regulation.

[23] Schedule 4 states:

"(1) Subject to the rules of the Schedule persons domiciled in a part of the United Kingdom shall be sued in courts of that part.

(2) Persons domiciled in a part of the United Kingdom may be sued in the courts of another part of the United Kingdom only by virtue of Rules 3-17 of this Schedule.

(3) A person domiciled in a part of the United Kingdom may, in another part of the United Kingdom, be sued –

(a) In matters relating to a contract, in the courts of the place or performance of the obligation in question;

…

(c) In matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur.

(4) Proceedings which have as their object a decision of an organ of a company or other legal person or of an association of natural or legal persons may, without prejudice to the other provisions of this schedule, be brought in the courts of the part of the United Kingdom which that company, legal person or association has its seat.

(5) A person domiciled in a part of the United Kingdom may, in another part of the United Kingdom, also be sued –

(a) where he is one of a number of defendants, in the courts for the place where anyone of them was domiciled, provided the claims are so closely connected that it is expedient to hear and determinate together to avoid the risk of irreconcilable judgments resulting from separate proceedings."

As can be seen a defendant's domicile determines jurisdiction subject to a number of derogations, two of which I will discuss later on in this judgment.

[24] Section 41 of the Act deals with the domicile of individuals and is summarised in Volume 19 of Halsbury's Law of England (5th Edition) at 376 thus:

"…, an individual is domiciled in the United Kingdom if, and only if, he is resident in the United Kingdom, and the nature and circumstances of his residence indicates that he has a substantial connection with the United Kingdom. Similarly, an individual is domiciled in a particular part of the United Kingdom if, and only if, he is resident there, and the nature and circumstances of residence indicate that he has a substantial connection with that part.

An individual is domiciled in a particular place in the United Kingdom if, and only if, he is domiciled in a part of the United Kingdom in which that place is situated, and he is resident in that place."

[25] The 1982 Act treats the seat of a corporation as its domicile: see Section 42 of the Act and paragraph 377 of Volume 19 of Halsbury's Law of England. A corporation is domiciled in Northern Ireland, if it was formed in Northern Ireland and has its registered office here. It will also have a domicile in another part of the United Kingdom if its central management and control are exercised in that part.

[26] It is also important to observe that while at common law a person or a company can have only one jurisdiction, this is not the position under the 1982 Act. Dicey, Morris and Collins in Conflict of Laws (15th Edition) state at 11.085:

> "It is frequently necessary to determine the **place** of an individual's domicile, or the part of the United Kingdom in which he is domiciled. An individual is domiciled in a particular place in the United Kingdom if, and only if, he is –
>
> (a) domiciled in a part of the United Kingdom in which that place is situated; and
>
> (b) resident in that place.
>
> He is domiciled in a particular part of the United Kingdom if, and only if:
>
> (a) he is resident in that part; and
>
> (b) the nature and circumstances of his residence indicate that he has a substantial connection with that part, but if he is domiciled in the United Kingdom and has no substantial connection with any particular part, he is to be treated as domiciled in the part of the United Kingdom in which he is resident. The latter provision deals with the case where a person has ties to the United Kingdom but does not stay long at any one place.
>
> It will be apparent from the above that a person may be domiciled in more than one Member State or Convention State. The United Kingdom legislation seeks to answer the questions:
>
> (a) whether an individual is domiciled in the United Kingdom; and
>
> (b) whether an individual is domiciled in a State other than a Member State or a Convention State."

[27] Section 49 deals with the powers of the court to stay, sist, strike out or dismiss proceedings. It states:

> "Nothing in this Act shall prevent any court in the United Kingdom from staying, sisting, striking out or dismissing any proceedings before it, on the ground of forum non-conveniens or otherwise, where to do so is not inconsistent with the 1968 Convention (or, as the case may be, the Lugano Convention) (or the 2005 Hague Convention)." (Emphasis added)

An attempt to persuade Lord Dyson in the Court of Appeal in England in *Cooke v McNeill* [2016] 1 WLR 1672 that the doctrine of forum non conveniens had no application to a purely domestic case was curtly rejected: see para [30].

[28] The above provisions are an attempt to achieve a scheme which will prevent there being irreconcilable and inconsistent judgments in the different courts of the United Kingdom by setting out rules to determine which courts shall have jurisdiction to hear cases that may have some connection with two or more of the jurisdictions. As can be seen the basic rule is that jurisdiction is determined by the defendant's domicile, but that is not an exclusive ground of jurisdiction. There are alternative grounds in respect of contract and tort but it is accepted that these are derogations from the general rule which confers jurisdiction on the courts of the defendant's domicile, and therefore should be interpreted restrictively in order to achieve the aims of the scheme. As Lord Hodge pointed out in *AMT Futures Limited v Marzillier mbH* [2017] 2 WLR 853 at paragraph [13]:

> "The derogating grounds of jurisdiction are justified because they reflect a close connection between the dispute and the courts of a member state other than that in which the defendant is domiciled. That close connection promotes the efficient administration of justice and proper organisation of the action …"

[29] The same reasoning applies, mutas mutandi, to the division of jurisdiction in the United Kingdom under the 1982 Act. A defendant who is domiciled in a particular part of the United Kingdom may nevertheless be sued in another part of the United Kingdom if the matter is subject to the special jurisdiction of the courts of that other part of the United Kingdom. Similarly, any derogation from the principle of domicile as determining the jurisdiction has to be interpreted restrictively.

E. EX PARTE APPLICATION

[30] Carswell LCJ in giving judgment in *Re Moloney's Application for Judicial Review* [2000] NIJB 195 at 201(H)-202(B) stated:

> "*Good faith and the ex parte application*

> It is a well-established principle applicable to ex parte applications for relief of certain kinds that the applicant is under duty to make full and fair disclosure of all material facts known to him or of which he should obtain knowledge on making proper enquiries. It was first applied to ex parte applications for injunctions, then to applications such as those for a rule nisi for a writ of prohibition *(R v Kensington Income Tax Commissioners, ex parte Princess Edmond de Polignac* [1917] 1 KB 486). Its most common application in modern conditions is in applications for Mareva injunctions and Anton Piller orders.
>
> … It is quite apparent from the judgments in *Brink's-MAT Limited v Elcombe* [1998] 3 All ER 188 that innocent non-disclosure, in the sense that the importance of the material was not perceived by the applicant, may be sufficient to cause the court to discharge the ex parte order. The court has a discretion whether to discharge the order, and, finding on the facts, may decide not to do so or may grant a new order …"

[31] In this case Frampton says that the Cyclone Connection failed to make material disclosure to the court when the Cyclone Connection applied for leave to enter a conditional appearance under Order 12 Rule 8 of the Rules of the Court of Judicature (NI) 1980 ("the Rules"), so enabling the Cyclone Connection to dispute the court's jurisdiction at a later date and to seek to have the order granting leave set aside as a consequence.

[32] Frampton's solicitor, John Finucane ("JF") complains in his affidavit of 7 February 2018 of four specific matters that should have been disclosed on the application for leave to enter a conditional appearance. They are:

(i) the date the Cyclone Connection received the writs;

(ii) the correspondence sent to the Cyclone Connection's solicitors on 6 December 2017;

(iii) the ownership of property by the Cyclone Connection in Northern Ireland; and

(iv) the close connection between the boxing career (and the management of promotion of the boxing career) of Carl Frampton and Northern Ireland.

[33] It is important to appreciate that the purpose served by a defendant entering a conditional appearance is to ensure that this does not prejudice any arguments that

the defendant may wish to make on the issue of jurisdiction. A conditional appearance simply holds the ring and allows the battle on jurisdiction to be effectively joined at a later stage. Without the ability to enter a conditional appearance, a plaintiff might mark judgment in default. If the defendant then tries to set aside that judgment, he might be taken to have accepted that the court had jurisdiction in the first place. In effect, the ability of the defendant to enter a conditional appearance prevents a plaintiff from securing a technical knock-out on jurisdiction until the parties have had an opportunity to either reach agreement on that issue or to argue it out in full before a judge. As Mr McCollum QC said the bar for entering a conditional appearance is set very low.

[34] In the circumstances and bearing in mind that the entering of a conditional appearance does not prejudice a plaintiff in any way but merely permits the issue of jurisdiction to be argued fully at a later date, I do not consider that any of the matters complained of, taken at their height, and I accept they are keenly disputed, do not constitute material non-disclosure on the part of the Cyclone Connection for the purpose of seeking leave to enter a conditional appearance.

F. THE PRESENT APPLICATION

[35] It is essential to remember that at this interlocutory stage the evidence which has been adduced on both sides has not been tested. At present, both sides have made various claims and counterclaims. The court does not have all the evidence. It does not even have full pleadings. It cannot see the complete picture. Accordingly, it is not possible for the court to reach any concluded view about the veracity of the various claims being made by each side and also whether such claims are legally sound. It will not be possible for the court to do so until the parties' respective cases have been truly tested in court. This will not take place until the trial is held. Then the judge having heard oral testimony from both sides, and having had the opportunity of viewing that evidence being tested under cross-examination will be able to reach a concluded view on the allegations of Frampton on the one hand and the counter-allegations of the Cyclone Connection on the other. In the meantime prudence dictates that any final judgment on the conduct or actions of either Frampton or the Cyclone Connection should be reserved. Any judgment must necessarily be provisional until the trial or trials take place.

G. THE BURDEN AND STANDARD OF PROOF

[36] There does not appear to be any difference between the parties as to what is required in order to establish jurisdiction. Firstly, the applicant must establish a good arguable case of domicile or any of the grounds of derogation set out in Schedule 4 at paragraphs 3(a) and/or (c) of the 1982 Act: *Seaconsar (Far East) Ltd v Bank Markazi* [1993] 3 WLR 756 at pages 763-764. The concept of a good arguable case requires a degree of flexibility but does not require proof as high as the civil standard of the balance of probabilities but higher than whether there is a serious question to be tried: see *Canada Trust Co v Stolzenburg (No. 2)* [1998] 1 WLR 547.

[37] Secondly, in relation to the merits of the substantive claims, the party must show "a serious question to be tried" in that there must be a substantial question of fact or law, or both, arising on the facts disclosed by the affidavit evidence.

[38] Thirdly, the court has power to order a stay on the ground of forum non conveniens. Halsbury's Laws of England (5th Edition at Volume 9 para 407) states:

> "As a general rule the party seeking the stay (usually the defendant) must establish that there exists another forum to whose jurisdiction he is amenable, and which is clearly or distinctly more appropriate than [Northern Ireland] for the trial of the action. If the defendant fails to establish this, stay on the ground will not be granted; if the defendant succeeds in establishing it, the claimant will nevertheless be permitted to proceed in [Northern Ireland], and the action will not be stayed, if in the interests of justice the action should be permitted to proceed."

Thus, the onus of proof that is to the civil standard, rests with the Cyclone Connection to satisfy the court to stay the First Claim and Second Claim on the ground of forum non conveniens, if I find against it on the first two issues.

H. LIS ALIBI PENDENS AND SERVICE OF PROCEEDINGS

[39] Halsbury's Laws of England (5th Edition) Volume 19 paragraph 404 states:

> "**Lis Alibi Pendens**
>
> Where proceedings involving the same cause of action and between the same parties are brought in the court of different Regulation states or contracting states, any court other than the court first seised must have its own motion to stay its proceedings until such time as the jurisdiction of the court first seised is established. Where the jurisdiction of the court first seised is established, any other court must decline jurisdiction in favour of that court. A court seised second is not permitted to continue to hear the case on the ground that it considers that the court first seised does not have, or should not be exercising, jurisdiction."

[40] Unsurprisingly, much time was spent debating which jurisdiction was first seised of the proceedings between the Cyclone Connection on the one hand and Frampton on the other. The Cyclone Connection claims it is the English court.

Frampton claims it is the Northern Ireland court. As I pointed out earlier in this judgment there is an obvious risk of inconsistent or contradictory judgments given the confusion over, for example, what entity is the "Cyclone Promotions", which entered into the IPA.

[41] There is no dispute that the Cyclone Connection's claim against Frampton was issued before either of Frampton's two writs were issued. The Cyclone Connection's claim was issued on 23 November 2017. The writs issued by Frampton were dated 1 December 2017. However, the Cyclone Connection's English Claim Form (a copy not the original) was served personally on Frampton on 11 December 2017. Before that an attempt had been made to serve Frampton by sending the Claim Form to his instructing solicitor, JF, who claimed by letter dated 6 December 2017 (and received on 8 December 2017 by the Cyclone Connection's solicitor) that his firm did not have the authority of Frampton to accept service of the English proceedings. By the time the English claim form was served on Frampton, the writs issued by Frampton had been validly served on the Cyclone Connection. This is not contentious.

[42] No correspondence was sent to Frampton because JF, Frampton's solicitor, specifically requested that the Cyclone Connection's solicitors, CRS, should send "all correspondence to ourselves". Unlike other correspondence, JF did not respond promptly to the proposed service of proceedings by the Cyclone Connection although there are good grounds for concluding that both JF and Frampton were well aware of these proceedings having been issued. Indeed, JF "tweeted" on 26 November 2017 that proceedings had been issued on 23 November 2017. That tweet of JF was subsequently "retweeted" by Frampton on 26 or 27 November 2017.

[43] The Cyclone Connection claims that it was the date of the issue of proceedings which resulted in the English court being seised of its proceedings first and that Frampton's proceedings were thus issued subsequent to the English court being seised of the English claim before it. It is alleged, inter alia, that the certification on Writ 124122, the First Claim, is erroneous because proceedings were then pending in England and Wales. Further, technical defects were raised about both the writs issued by Frampton because of alleged breaches of Order 6 which I do not intend to deal with. These technical arguments were not pursued before me, presumably in the light of Morgan J's decision in *Breslin v McKenna* [2005] NIQB 53.

[44] Mr McCollum QC on behalf of the Cyclone Connection complained that the behaviour of Frampton's solicitors was "a pantomime" as they "jockeyed" to try and put their client into a better position in respect of the different sets of proceedings which were being issued. He complained that this was not consistent with providing better access to justice and what he claimed was the "more efficient, consumer friendly approach" that the courts had now adopted. The Rules, he claimed, were not enacted to enable the process to be manipulated in the manner demonstrated by Frampton and his legal advisers. Mr Millar QC responded by

pointing out that the rules for service were there to be observed and that Frampton and his legal advisers had acted according to those Rules.

[45] As I have said, the Cyclone Connection's central submission is that the English court became seised of proceedings when the claim form was issued. There is no doubt that this is correct if the jurisdictional dispute was between persons in different member states as a consequence of Article 32 of the Regulation (EU) no 1215/2012 ("the Regulation"). It is not difficult to understand why when there are claims between parties in different member states that it is necessary that there should be a uniform rule which gives jurisdiction to the court of the party which first issued proceedings. But in this case the court is concerned with how jurisdiction is determined in respect of jurisdictional issues within one country, that is the United Kingdom and the considerations are different.

[46] In *Dresser UK Ltd v Falcongate Freight Management Ltd* [1992] QB 502 at 523 Bingham LJ said:

> "With genuine respect to the contrary opinions of Hirst J and Hobhouse J, it is in my judgment artificial, far-fetched and wrong to hold that the English court is seised of proceedings, or that proceedings are decisively, conclusively, finally or definitively pending before it, upon mere issue of proceedings, when at that stage:
>
> (i) the court's involvement has been confined to a ministerial act by a relatively junior administrative officer;
>
> (ii) the plaintiff has an unfettered choice whether to pursue an action and serve the proceedings or not, being in breach of no rule or obligation if he chooses to let the writ expire unserved;
>
> (iii) the plaintiff's claim may be framed in terms of the utmost generality;
>
> (iv) the defendant is usually unaware of the issue of proceedings and, if unaware, is unable to call on the plaintiff to serve the writ or discontinue the action and unable to rely on the commencement of the action as a lis alibi pendens if proceedings begun elsewhere;
>
> (v) the defendant is not obliged to respond to the plaintiff's claim in any way, and not entitled to do

so save by calling on the plaintiff to serve or discontinue;

(vi) the court cannot exercise any powers which, on appropriate facts, it could not have exercised before issue;

(vii) the defendant has not become subject to the jurisdiction of the court.

It would be wrong, at this early stage in the life of the Convention (in so far as it affects the United Kingdom), to attempt to formulate any rule which would govern all problems which may arise in the future. I am, however, satisfied that the English court became seised of these proceedings, which first became definitively pending before it, when the defendants were served on 13 July 1989. The plaintiffs and defendants then became bound by the Rules of Court to perform the obligations laid upon them respectively or suffer the prescribed consequences of default. The defendants became subject to the court's jurisdiction unless they successfully challenged or resisted it which they were required to do then or not at all. In the ordinary, straightforward case service of proceedings will be the time when the English court becomes seised. I would, however, stress the qualification, because that is not an invariable rule. The most obvious exception is where an actual exercise of jurisdiction (as by the granting of a Mareva injunction or the making of an Anton Piller order or the arrest of a vessel) precedes service: plainly the court is seised of proceedings when it makes an interlocutory order of that kind. Further exceptions and qualifications may well arise in practice, but they do not fall for consideration in this case. I would accordingly answer the important same question in the defendants' favour."

[47] The law both in Northern Ireland and England is clear. A court of any different part of the United Kingdom becomes seised of a case when the originating process is served not when it is issued: e.g. see Civil Jurisdiction and Judgments (6th Edition) at 2.268 and see para 404 of Halsbury's Laws of England (5th Edition) Vol 19 on the Conflict of Laws.

[48] In *Barton v Wright Hassall LLP* [2018] UKSC 12 the Supreme Court had to consider the issue of service of a Claim Form, and the particulars of the claim on Wright Hassall's instructing solicitors, Berrymans Lace Mawer, who had emailed

Mr Barton, a personal litigant, asking him to address all future correspondence to them (which is similar to the present circumstances). On 24 June 2013 the last day before the expiry of the claim form, Mr Barton had sent them an email which began:

> "Please find attached by means of service upon you.
>
> 1. Claim Form and Response Pack
>
> …"

[49] On 4 July 2013 Berrymans wrote to Mr Barton, saying that they had not confirmed that they would accept service by email. In the absence of that confirmation, email was not a permitted mode of service. In those circumstances, they said they did not propose to acknowledge service or to take any other step. They added that the claim form had therefore expired unserved and that the claim was now statute-barred. The Supreme Court dismissed the appeal by Mr Barton of the decision of the Court of Appeal against the decision that service by email should not be validated. The Supreme Court by a majority of 3-2 held that what constitutes "good reason" for validating the non-compliant service of a claim form is essentially a matter of factual evaluation. The main factors, the weight of which will vary with the circumstances, are likely to be:

(i) Did the claimant take reasonable steps to serve in accordance with the rules?

(ii) Did the defendant or his solicitor know of the contents of the claim form when it expired?

(iii) What, if any, prejudice will the defendant suffer from validation of the non-compliant service?

[50] In this case the Cyclone Connection, I understand, has not asked that what appears to be the non-compliant service of the claim form be validated by an order under CPR Rule 6.15. I am not surprised because it seems that on the facts such an application would be likely to fail. There is no good reason offered as to why service was not effected in accordance with the Rules: e.g. see *Higgins & Others v ERC & Others* [2017] EWHC 2190 (Ch) at para [16].

[51] On the basis of the information which has been adduced before this court, service was effected on the Cyclone Connection in respect of the First Claim and the Second Claim in accordance with the Rules before service was effected by the Cyclone Connection in respect of its proceedings against Frampton. The Northern Ireland court was therefore seised first of the proceedings brought by Frampton.

[52] Accordingly, it follows that there were "no proceedings involving the same parties and cause of actions" pending in England and Wales or another Convention

territory at the time the First Claim and the Second Claim were issued and served. Therefore the endorsement on the proceedings issued by Frampton on both writs of summons is unobjectionable and certainly does not invalidate these proceedings. In due course it will be a matter for the English courts to determine, what consequences, if any, follow from the failure of the Cyclone Connection to ensure that there was an endorsement on the claim form in accordance with the Act. It will also be for the English court to determine whether the proceedings before it involve the same parties and/or the same claims as are contained in the First Claim and the Second Claim and if so, inter alia, what consequences should follow.

[53] The assertion by the Cyclone Connection's solicitor, Mr Sykes that the English claim "will proceed" is presumptuous. Mr Sykes does not speak for the English court. It will have to consider in due course whether to accept or decline jurisdiction. On reflection Mr Sykes may consider that such a statement in an affidavit, which in this jurisdiction deals with facts, was unwise.

I. THE DOMICILE OF BARRY McGUIGAN AND SANDRA McGUIGAN

[54] It is asserted in the Second Claim that McGuigan has domicile in Northern Ireland and can therefore be sued there. This also allows two other defendants who are not domiciled there "provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings": see Schedule 4 paragraph 5(a). The argument is put forward that this man, who was born in the Republic of Ireland and who lives in Kent, England, has domicile in Northern Ireland. It was also pointed out with some force that it was initially his solicitor who swore an affidavit setting out the facts of McGuigan's alleged domicile. There was then a further affidavit from his wife, Sandra. McGuigan has chosen not to provide sworn affidavit evidence and has been content to rely on the affidavits of his wife and his solicitor.

[55] The affidavit of Mr Sykes, McGuigan's solicitor, does not specifically deal with the possibility that McGuigan may be domiciled in Northern Ireland but does state that the McGuigans are domiciled in England at an address in Kent, England. Sandra says that they do not own any property in Northern Ireland. They stay in Clones when they are visiting family and they have no other interest in any property in Northern Ireland. She does accept that they both stay in hotels in Northern Ireland especially during fight weeks when the fighters that McGuigan manages are participating in boxing bouts in Belfast. She claims that McGuigan stays in Belfast hotels about 1-2 days per month and certainly not more than 3-4 days per month outside fight weeks. She has also given clear evidence of the roots that the McGuigan family, and Barry McGuigan in particular, have planted in England and of McGuigan's involvement with various charities and clubs in England.

[56] I have no hesitation in rejecting the claim that either McGuigan or Sandra McGuigan is domiciled in Northern Ireland for the purposes of the Act, despite the

absence of any affidavit from McGuigan. It does seem as if the claim that McGuigan was domiciled in Northern Ireland was originally prompted by erroneous information that McGuigan was a property owner in Northern Ireland at 9 Lackey Road, Enniskillen, and/or that he owned property in and around Newtownbutler. It also seemed to proceed on the basis that Northern Ireland and Ulster could be used interchangeably, although Mr Millar QC denied that there was any geographical confusion on his part or on the part of Frampton's legal team. Nevertheless, I struggled to see the relevance of the evidence adduced of McGuigan owning property or residing at 5 Cardun, Clones, or owning a hotel in Co Cavan or staying with Sandra's family in Co Monaghan or indeed owning a hairdressers, "The Head to Toe", in Clones. This evidence is only relevant if Northern Ireland comprised the nine counties of the province of Ulster.

[57] Whatever the basis on which the claim has been made that either McGuigan or Sandra is domiciled for the purposes of the Act in Northern Ireland I am satisfied on the evidence that:

(a) The McGuigans have neither a permanent home nor indeed a temporary one in Northern Ireland.

(b) McGuigan stays for short periods at hotels in Belfast and this is wholly dependent on his commitment to the various fighters he manages.

(c) His stays in Northern Ireland are on an irregular basis.

(d) Sandra's visits are even less frequent.

[58] Section 41(3) of the Act provides:

> "An individual is domiciled in a particular part of the United Kingdom if, and only if –
>
> (a) he is resident in that part; and
>
> (b) the nature and circumstance of his residence indicate that he has a substantial connection with that part."

[59] In *Foote Cone and Belding Reklam Hizmetleri AS and others v Theron* [2006] EWHC (Ch) 1585 Patten J said as follows:

> "[14] Residence itself is not a defined term under the 1982 Act but has been the subject of judicial decisions by the courts of this country. In *Dubai Bank Ltd v Abbis* the Court of Appeal held that for the purposes of Section 41 of the 1982 Act the word **resident** had to be given its

> ordinary meaning and that a person was resident for the purposes of that section in a particular part of the United Kingdom if that part of the United Kingdom was his settled or usual place of abode. Saville LJ in his judgment said that a settled or usual place of abode denotes some degree of permanence or continuity.
>
> [15] In that case the issue concerned the occupational flat in London and one of the pieces of evidence considered by the judge and by the Court of Appeal was whether or not the defendant was registered at those premises for council tax purposes. Saville LJ indicated in his judgment that he thought that this was a highly material circumstance for purposes of deciding whether or not the requirement of residence had been fulfilled. But, clearly, the application of a test requires a consideration of all relevant circumstances, depending on the facts of any particular case.
>
> [16] For me to be satisfied in this application as to whether or not Mr Theron was at the date of the issue of these proceedings domiciled in England, it is not necessary for me to reach a conclusive view about that matter. In *Canada Trust v Stolzenberg No: 2* [1992] 1 WLR 547 it was accepted, and the House of Lords subsequently confirmed, that the Claimant had simply to establish a good arguable case that the Defendant was domicile in the jurisdiction at the date of the issue of proceedings."

[60] There has been no evidence adduced before me that would allow me to conclude that Northern Ireland in general or Belfast in particular was a settled or usual place of abode for McGuigan.

[61] Accordingly, I remain unpersuaded to the requisite standard that McGuigan is domiciled in Northern Ireland. If I am wrong as to the nature of his residence in Northern Ireland, then the evidence adduced before me does not indicate any substantial connection with Northern Ireland when all his circumstances are considered. His connection with Northern Ireland arises solely from his management of Northern Ireland fighters who may box in Belfast from time to time, but who may box elsewhere.

[62] The claim that Sandra is domiciled in Northern Ireland is even weaker because her visits to Northern Ireland are even less frequent and more irregular. Accordingly, the same reasoning applies to her but with even greater force. The evidence adduced falls far short from that which is necessary to establish a good arguable case of domicile on the part of either Barry or Sandra McGuigan.

J. THE CYCLONE CONNECTION COMPANIES

[63] As I have observed there are two companies which are parties to the present proceedings in Northern Ireland. CPUK (company no: 10493415), a company which was incorporated on 23 November 2016, some three weeks after Cyclone Promotions (UK) Ltd (company no: 09320366) was dissolved on 18 October 2016. In the First Claim McGuigan and Sandra are sued as Directors of this company. CPUK is sued in its own right. In the Second Claim, Frampton has sued Cyclone Promotions Ltd (company no: NI 619086). This company is registered in Northern Ireland. In the claim brought against Frampton in England, this company, Cyclone Promotions Ltd and Blain McGuigan have sued, with Blain McGuigan apparently suing in his own capacity, although he is the Director of Cyclone Promotions Ltd, alleging that, inter alia, Frampton has repudiated the IPA and/or is in breach of the IPA. It is alleged that as a consequence Cyclone Promotions Ltd (and Blain McGuigan) have suffered loss and damage. It is difficult at this stage for this court to reach a final conclusion on the trading of the companies within the Cyclone Connection. The organisation and trading of the companies within the Cyclone Connection appears to be both complex and confusing.

[64] The report of ASM, Chartered Accountants, obtained on behalf of Frampton does raise serious issues as to whether funds earned by Frampton's fighting have been syphoned-off or diverted to other entities controlled by the Cyclone Connection.

There is also prima facie evidence of:

(a) Breaches of the Companies Act 2006 as a consequence of the failure of companies within the Cyclone Connection to display their name on, inter alia, business documents. For example, the IPA which lies at the heart of these claims simply refers to Cyclone Promotions when there are least 3 companies which contain the term Cyclone Promotions, although they all have different shareholders and Directors.

(b) Companies in the Cyclone Connection being incorporated with the same name as other registered companies. The incorporation of the new company with the same name takes place shortly after the original company has been dissolved or changed its name prior to the new company being established.

(c) Companies within the Cyclone Connection being in breach of the requirements of the Companies Act 2006 by filing their accounts or annual returns late.

The report also raises serious concerns about how Cyclone Promotions Limited, if it was indeed Frampton's promoter as the Cyclone Connection assert, could have reported losses in each of its reported trading years despite Frampton's successes in the ring, and ended up with a progressively deteriorating balance sheet leading to

nett liabilities which as of 29 March 2016 amounted to nearly £550,000. As I have noted, there is also the absence of any evidence that the income/profits from the promotions of Carl Frampton's bouts had been reported or recognised in the financial accounts of Cyclone Promotions Limited: see 3.46 of the ASM report.

[65] There are other aspects of this case which are troubling and require proper explanations. These include:

(i) In respect of the five fights between 28 February 2015 and 28 January 2017 there are only three bout agreements which have been produced. Of the three agreements only one of is with Cyclone Promotions.

(ii) HMRC has demanded £397,000 approximately in respect of tax liability of Cyclone Promotions Limited. The explanation provided by the Cyclone Connection is that this related to a reclaim of VAT. But there are no documents available to explain how this liability arose. Frampton disputes any responsibility on his part to repay this to HMRC.

(iii) The requirement in the 2015 Agreement at Condition 7 to provide to Frampton a "full and accurate written account of any money which the Manager receives, and reasonable and proper expenses which he incurs" in performing his obligations under the Agreement seems to have been ignored. No detailed account of income received or of expenses incurred has been provided.

[66] There has only been partial disclosure to date. It is not possible to reach any concluded view on the basis of the current evidence. But the organisation of the companies in the Cyclone Connection raises many questions. There is prima facie evidence of breaches of company law. There are serious questions raised as to where the income and profits from the Frampton fights have gone. Frampton claims that it is the unlawful acts of the Cyclone Connection in syphoning off or diverting this income stream which has prevented him from receiving his lawful share. Finally, there is a serious issue as to whether or not Cyclone Promotions Ltd should be trading at all given its apparently parlous financial circumstances.

K. THE SECOND CLAIM

[67] The Second Claim against Cyclone Promotions Ltd is a claim against a company which has a Northern Ireland domicile and therefore the Northern Ireland court would appear to enjoy jurisdiction. I do not understand this to be contentious. The relief sought includes, inter alia, asking the court to determine whether the IPA that was entered into between Frampton on the one part and Blain McGuigan//Cyclone Promotions is void.

[68] There is, as Mr Millar QC put it, a presumptive entitlement that the Northern Ireland court should have a jurisdiction. Or as is sometimes said, "defendants play at home". I do not understand this to be contentious. The relief sought includes, inter alia, asking the court to determine whether the IPA was entered into between Frampton on the one part and Blain McGuigan//Cyclone Promotions on the other part, is void. This is a well-recognised ground for relief in proceedings where there is a jurisdictional dispute: see Dicey, Morris and Collins on the Conflict of Laws (15th Edition) at 12-048 and, for example, *Agnew v Lansforsakringsbolagens (AB)* [2000] 2 WLR 497 per Lord Wolff at pages 506-507.

[69] Mr Sykes, solicitor for the Cyclone Connection avers, inter alia, that:

(a) The commercial premises out of which Cyclone Promotions Ltd operated was in England.

(b) The business of Cyclone Promotions Ltd was carried out by employees and agents in England and Wales, and in particular by Blain McGuigan who is a co-signatory of the IPA and who is resident in England.

(c) The accounts and administrative activities relating to the IPA were addressed in the English offices.

(d) Frampton's training camps were in England when he fought Avalos, Quigg and Santa Cruz.

[70] However, it is noteworthy that:

(a) Mr Sykes is a solicitor. It is not clear whether he is making all these statements from his own first-hand knowledge or from the information he has been given. If the latter, the source of this information is not included in his affidavit: see Order 41 Rule 5 of the Rules of the Court of Judicature (NI) 1980.

(b) There is no affidavit from McGuigan or Blain McGuigan or any other Director or officer dealing with the issue of where central management or control has been exercised or where its place of business is.

(d) Sandra McGuigan, Director in Cyclone Promotions Ltd, omits to deal with this issue in her affidavit.

(e) There is a complete absence of any documentary evidence. This is against the background where every company will leave a paper trail of some sort which will either provide support for or undermine the claims of Mr Sykes. No explanation is offered for the failure to exhibit the relevant documentary evidence in support of the affidavit of Mr Skyes.

[71] However unsatisfactory the state of the evidence, it is unnecessary for me to reach a conclusion on this issue because:

(a) It is accepted that Cyclone Promotions Ltd is domiciled in Northern Ireland. It has been incorporated in Northern Ireland and has its registered office here.

(b) I am satisfied that Northern Ireland was the first jurisdiction seised of any of these proceedings, namely the First and Second Claims.

[72] I have concluded that:

(a) There are serious issues to be tried in the Second Claim. These include:

(i) Is the IPA void because of a mistake on the part of Frampton as to the party with whom he was contracting?

(ii) Was the party with whom Frampton was contracting in respect of the IPA, Cyclone Promotions Limited (company no: NI619080), Cyclone Promotions (UK) Limited (company no: 9320366), or some other entity identified as Cyclone Promotions and/or Blain McGuigan either on his own behalf or as a director or shadow director of one of the three companies mentioned in paragraph [63] above or some other company?

(iii) In any event are the terms of the IPA too uncertain to be enforced regardless of who the contracting parties are?

(iv) On the basis that Blain McGuigan signed the IPA in his own right, that is as a co-promoter along with Cyclone Promotions (who the Cyclone Connection assert is Cyclone Promotions Limited), this gives rise to two immediate problems. Firstly, the agreement was not executed lawfully and in accordance with Sections 43 and 44 of the Companies Act 2006. Secondly, if Blain McGuigan executed the IPA in his own right rather than as a Director he placed himself in a conflict of interest and was therefore acting contrary to Sections 175-177 of the Companies Act 2006.

(b) There is a good arguable case that the court has jurisdiction to hear the Second Claim because Cyclone Promotions Limited is domiciled here. It was incorporated in Northern Ireland and it has its registered office here.

(c) It is a matter for the English courts to decide, after hearing argument, whether they will accept jurisdiction for the claim brought by "Cyclone Promotions//Blain McGuigan" against Frampton.

(d) Further, for reasons which I will set out later in this judgment I am not persuaded by the argument advanced by the Cyclone Connection that Northern Ireland is "forum non conveniens" in respect of these disputes.

[73] There is a complaint in the Second Claim about breaches of Sections 82 and 83 of the Companies Act 2006 and of breaches of the Companies (Trading Disclosures) Regulations 2008. Breaches of these Regulations or of sections of the 2006 Act give rise to a criminal offence. I am not sure that breaches of sections of the Companies Act or of the regulations necessarily advance the case made by Frampton. Certainly no specific arguments were advanced to me on these issues.

L. THE FIRST CLAIM

General Observations

[74] This leaves the court to decide whether it has jurisdiction to hear the First Claim (Writ No. 124122). That will require the court to determine:

(a) Whether there are serious issues to be tried in the First Claim?

(b) Whether there is a good arguable case that Northern Ireland has jurisdiction?

(c) Whether Northern Ireland is forum non conveniens?

[75] There has been no evidence adduced that the income or profits from Frampton's fights were recognised in the accounts of Cyclone Promotions Limited. Indeed, there is no reliable evidence of Cyclone Promotions Limited receiving any income, making any profit or doing anything other than running up debts. There is no explanation for how Cyclone Promotions Limited became saddled with such significant indebtedness. The replying affidavit of Sandra McGuigan does attempt to deal with the lodgement of monies from the sale of tickets by Mr Frampton Senior. But she has exhibited no supporting documents to demonstrate, for example, that "an equivalent amount was transferred from Barry McGuigan's account in the Ulster Bank or other personal account of Mr McGuigan's to an account in the name of Cyclone Promotions Limited". As I observed there is no affidavit from Barry McGuigan, the explanation offered by Sandra McGuigan is vague and there are no vouching documents. Similarly, the arrangements which the Framptons had with Rip Rock Limited and Rip Rock (NI) Limited are also far from clear. Sandra McGuigan alleges that 89% of the monies paid by Cyclone Promotions Limited and Cyclone Promotions (UK) Limited was paid to Rip Rock Limited. Ms Niblock in her report has raised a whole host of pertinent issues. As I have said it is impossible to reach a final concluded view on the financial affairs of Frampton and the Cyclone Connection without full disclosure being made by each side. I still do not understand even on the case made by the Cyclone Connection how the

proceeds of the Gonzales fight on 18 July 2015 went to Cyclone Promotions (UK) Limited (company no: 9320366).

[76] Frampton claims that he is entitled to sue in Northern Ireland even if the McGuigans are not domiciled in Northern Ireland. He claims to be entitled to rely on the special jurisdiction of Schedule 4 to the 1982 Act which applies a modified version of the jurisdictional provisions of the Regulation, namely that a person domiciled in one part of the UK can be sued in another part of the UK:

> "(i) In matters relating to a contract, in the courts for the place or performance of the obligation in question. ("The contractual ground")
>
> (ii) In matters relating to tort, delict or quasi-delict in the courts of the place where the harmful event occurred or may occur." ("The tortious ground")

See para 367 of Vol 19 of Halsbury's Laws of England at Volume 19 (5th Edition).

[77] The first issue for the court both in respect of the contractual and tortious grounds is whether there are serious issues to be tried on the merits. This is not an issue in which either side paid particular attention in the arguments addressed to this court presumably for the good reason that it is a relatively modest threshold that has to be surmounted. The submissions of both sides were largely directed to the issue of whether Frampton could establish that the Northern Ireland court had jurisdiction. Both the contractual and tortious grounds primarily focus on the diversion of funds by the Cyclone Connection which Frampton claims are due to him for the fights in which he participated. There is also the claim that the Boxing Manager/Agent Agreement was breached when Frampton was permitted to enter into the IPA and Bout Agreements on less favourable terms than he could reasonably have expected to have obtained because of McGuigan's conflicted position as someone involved in both the management of Frampton and the promotion of Frampton's fights, whether directly or indirectly through his offspring. There are undoubtedly serious issues to be tried on the merits of the claims made by Frampton in the First Claim for the reasons I have set out above, subject to some minor exceptions which I deal with below.

The Contractual Claim

[78] It is clear in respect of both the contractual ground and the tortious ground, that these are exceptions to the general rule, namely that domicile should determine jurisdiction. Therefore, as I have noted, they should be interpreted restrictively. In respect of the contractual ground this is a two-step process. In *De Bloos SPRL v Bouyer SA* [1976] ECR 1497 the European Court held that the "obligation" was the contractual obligation which formed the basis of the legal proceedings. Once the relevant contractual obligation has been identified the next issue is to determine

where it is to be performed. In *GIE Groupe Concorde v The Master of the Vessel "Suhadiwarno Panjan"* [1999] ECR I-6307 the ECJ reaffirmed that the place or performance of the obligation is to be determined in accordance with the law governing the obligation in question according to the conflict of laws of the courts seised: see Dicey, Morris & Collins on the Conflicts of Law at 11-278.

[79] A promoter is someone who "publicises and sells" the fighter. In doing so he has to negotiate with the boxer's manager to ensure that the boxer is properly remunerated for his efforts. The remuneration may be achieved in various ways, whether it is by receiving an agreed purse and/or a share of the gate receipts and/or a share of the broadcasting rights and/or a share of the merchandising rights and/or other income generated from each fight. These days promoting boxing matches can be (and is in the case of Frampton) a multi-jurisdictional arrangement involving not only negotiating bout agreements with the boxers and dividing gate receipts but also dealing with the different income streams referred to above. The manager is the boxer's agent and, inter alia, also organises the training and helps select his opponents. His primary function is to negotiate the boxer's purse and other financial rewards so as to ensure that the fighter is properly remunerated. It is from this remuneration that the manager takes his "cut". There are obvious conflicts of interest between the promoter and the manager, as agent of the boxer. The more money a promoter takes for himself, the less is left for the boxer. This obvious conflict is highlighted in the 2015 Agreement which deals with possible conflicts of interest, including those of the boxer and the promoter e.g. see Clause 6, which Frampton claims McGuigan breached.

[80] McGuigan himself was live to this obvious conflict of interest if one person acted as both manager and promoter. He said in "Barry McGuigan: The Untold Story" at page 276:

> "One thing that must, simply must, be done away with is this crazy situation where a manager can also be a promoter. The Board tried to abolish the practice in 1989, but all that happened was that a manager would get a son or a friend or a business associate to be the promoter of record and the whole charade continued exactly as before. The Board had to reinstate the rule at the 1990 AGM but I am sure that if the boxers had been organised enough to out vote the managers and promoters the rule would have been abolished years ago.
>
> There should never be any financial connection whatsoever, either directly or indirectly, between any manager and any promoter. Even a blind man can see that when you have the one person wearing the two hats – or having somebody else wear one for him – then that is an obvious conflict of interest."

[81] It is interesting to note that McGuigan's trenchant criticism was not just against one man acting as manager and promoter, but it was also against attempts to escape this obvious conflict of interests by the manager having his son or some other relative act as promoter. No reason has been offered in these proceedings to date as to why McGuigan would not have had this uppermost in his mind when he permitted his son, Blain, to become a Director in Cyclone Promotions Limited, which McGuigan alleges was promoting Frampton, a boxer for whom McGuigan was both acting as manager and agent. Or if the Cyclone Connection is correct why McGuigan permitted Blain to act as a co-promoter? On the evidence adduced to date, there was at the very least an indirect financial connection between the manager and the promoter. On one view a court could conclude that the primary qualification Blain had for acting as a Director of the company promoting Frampton and/or as the joint promoter of Frampton was his close family ties to McGuigan. However, this is necessarily a provisional view and a final determination will have to await a full hearing of the evidence.

[82] There can be no doubt that in professional boxing, a boxer craves glory. But the glory that comes with winning one of the many titles available is not the be all and end all. The boxer will also want to accumulate as much wealth as possible in order to ensure that he can provide for himself and his dependants now and in the future. As George Foreman, a former world boxing champion, said:

> "The question is not at what age I wish to retire, it is at what income."

[83] Professional boxing may be about skill, stamina, power and courage, it may be about glory and fame, but in the final analysis it is a commercial enterprise and it comes down to money and how the money generated by the boxer's bouts should be shared between the boxer (and his manager) of the one part and the promoter of the other. The obligation in these proceedings relates to the payment or non-payment of what Frampton claims was his lawful share, his slice of the cake ("the Share"). The obligation which lies at the heart of this case, the obligation in question, is the obligation owed by McGuigan as Frampton's manager and agent to ensure that Frampton received his Share (in the widest possible sense) and that sums were not syphoned off or diverted into bank accounts controlled by the Cyclone Connection as Frampton alleges.

[84] Having identified the nature of the obligation in question in this case, the next issue is to find the place of performance of that obligation. Under the common law where there was no place for payment provided by the terms of contract, then it is the duty of the debtor to seek out his creditor at his residence or place of business within the jurisdiction: see 11/1/31 of Volume I of the White Book (1999) and the cases cited thereat. If that conclusion is incorrect, then it is clear on the basis of the evidence of Ms Nicola Niblock of ASM, Chartered Accountants, that the majority of the income that is likely to have been raised by Frampton's professional fights, has been raised in Northern Ireland: see 3.48 and 4.8 of her report. There can be no real

doubt that so far as the obligation in question is concerned the centre of gravity is Northern Ireland.

[85] There is a desultory claim made that McGuigan was in breach of the agreement because he failed "to make necessary arrangements for Frampton's training preparations for the bouts". There is no serious issue raised about this on the basis of the affidavit evidence which has been filed. Nor did Mr Millar QC attempt to mount any argument on this issue. I do not consider that there is a serious issue to be tried on the merits in respect of this allegation for breach of contract.

The Tort, Delict or Quasi-Delict Claims

[86] The main thrust of the claims made by Frampton in tort is those grounded upon the "equitable wrongs" which Frampton claims were committed by the Cyclone Connection. Such claims are caught by the phrase "matters relating to tort, delict or quasi-delict": see *Casio Computers v Sayo* [2001] 1 LPr 43 at paras [15]-[17] and see *Kalfelis v Bankhaus Schroder Munchmeyer Hengst and Co* [1988] ECR 5565. As I have said little time was expended by either side on the issue of whether there is a serious issue to be tried on the merits on what I refer to for ease of reference as the tortious claims because it is a low hurdle which can be easily overcome. I am satisfied that there has been sufficient evidence adduced in the affidavits to overcome that obstacle and that serious issues on the merits have been raised on the tortious claims.

[87] Frampton however has to establish jurisdiction on the basis of a good arguable case by demonstrating:

(a) that the damage which occurred was suffered within Northern Ireland; and/or

(b) the harmful event/wrongful act occurred within Northern Ireland: see Civil Jurisdiction and Judgments (6th Edition) at 2.198 and *Handelskwekerij GJ Bier BV v Mines de Potasse d'Alsace* [1976] ECR 1735 at pages 1746-147.

[88] The Supreme Court considered Article 7 of the Brussels I Regulation which is the equivalent to Rule 3(c) of Schedule 4 of the 1992 Act in the case of *AMT Futures Ltd v Marzillier, Dr Meier and Dr Guntner Rechtsanwaltsgesellschaft mbH* [2017] 2 WLR 853. Lord Hodge delivered the judgment with which the rest of the court agreed. He said:

> "**The Judgments Regulation**
>
> 12. The general principle is that civil actions are to be brought against individuals and companies in the courts of the place where they are domiciled. It would be

contrary to the objectives of the Judgments Regulation to interpret it as requiring the recognition of the jurisdiction of the courts of the claimant's domicile, except where it expressly so provides, as that would enable the claimant to determine the competent court by choosing his own domicile: *Dumez France SA and Tracoba Sarl v Hessische Landesbank (Helaba) (Case C-220/88) [1990] ECR I-49*, paras 16–19; *Kronhofer v Maier (Case C-168/02) [2004] 2 All ER (Comm) 759*, para 20.

13. The derogations from the general rule which confers jurisdiction on the courts of the defendant's domicile, including article 5(3), must be restrictively interpreted in order to achieve the aims of the Judgments Regulation: *Kronhofer v Maier* (above), paras 12–14; *Coty Germany GmbH v First Note Perfumes NV (Case C-360/12) [2014] Bus LR 1294*, paras 43–45. The derogating grounds of jurisdiction are justified because they reflect a close connection between the dispute and the courts of a member state other than that in which the defendant is domiciled. That close connection promotes the efficient administration of justice and proper organisation of the action: *Dumez France SA and Tracoba Sarl v Hessische Landesbank* (above), para 17; *Kronhofer v Maier* (above), para 15.

14. It is necessary, in my view, to distinguish between the terms of a derogating ground of jurisdiction on the one hand and the rationale or justification for the ground on the other as it is the former which confers jurisdiction, not the latter. I discuss this point further in para 29 below.

15. The CJEU has ruled on the correct approach to article 5(3). It has interpreted the phrase "the place where the harmful event occurred" (a) to give the claimant the option of commencing proceedings in the courts of the place where the event occurred which gave rise to the damage or in the courts of the place where the damage occurred (if the event and damage were in different member states): *Handelskwekerij GJ Bier BV v Mines de Potasse d'Alsace SA (Case C-21/76) [1978] QB 708*, para 24; (b) as "the place where the event giving rise to the damage, and entailing tortious … liability, directly produced its harmful effect upon the person who is the immediate victim of the event" and thus not the place

where an indirect victim, such as the parent company of the immediate victim, suffered financial loss as a result: *Dumez France SA and Tracoba Sarl v Hessische Landesbank (Helaba)* (above), para 20; and (c) consistently with (b) above, where a victim suffered harm in one member state and consequential financial loss in another, as referring to the place where the initial damage occurred: *Marinari v Lloyds Bank plc (Case C-364/93) [1996] QB 217*, paras 14 and 15. The focus in (b) and (c) is thus on where the direct and immediate damage occurred.

16. Similarly, in *Kronhofer v Maier* (above) an investor domiciled in Austria raised an action in his country against investment consultants based in Germany who had given him investment advice by telephone which led him to send funds to Germany to be placed in an investment account and used in an unsuccessful speculative investment. He argued that, because the financial loss caused by that investment diminished the totality of his assets which were concentrated in Austria, he could sue in the courts of the country of his domicile. The CJEU did not agree. It held that Article 5(3) did not allow a claimant who had suffered financial damage resulting from the loss of part of his assets in another contracting state to sue in the place of his domicile or where his assets were concentrated."

He then went on to say:

"40. Recent case law of the CJEU does not suggest that the court has moved from the principles and approach which I have set out in paras 11–13 and 15–16 above. The CJEU has repeatedly stated in recent times that the provisions of the Regulation must be interpreted independently by reference to its scheme and purpose, and derogations from the general rule that jurisdiction is given to the Court of the defendant's domicile have to be interpreted restrictively: *Melzer v MF Global UK Ltd (Case C-228/11) [2013] QB 1112*, paras 22, 24; *Coty Germany (above)*, paras 43–45; and *Kolassa v Barclays Bank plc (Case C-375/13) [2016] 1 All ER (Comm) 733*, para 43.

41 The focus in Article 5(3), which is relevant to AMTF's claim, remains on the place where the event resulted in the initial damage: *Zuid-Chemie BV v Philippo's Mineralenfabriek NV/SA* (above), paras 26–32; *Universal*

> *Music International Holding BV v Schilling* (Case C-12/15) [2016] QB 867, paras 30–34. There is no complexity in the present case in identifying that place which might cause the CJEU to develop a special rule as to the location of the harmful event."

[89] Dicey, Morris & Collins in the Conflict of Laws Volume I (15th Edition) at 11R-284 summarise the situation concisely as follows:

> "The court has jurisdiction, in matters relating to tort, if (Northern Ireland) is the place where the harmful event occurred, ie, if (Northern Ireland) is the place where the damage occurred or where the event which gave rise to the damage occurred."

[90] The case being made by Frampton in the First Claim against the Cyclone Connection will no doubt become clearer following service of a rule compliant Statement of Claim. As I understand the case, which is presently being made, includes the following claims:

(a) Frampton through McGuigan, his manager, entered into an IPA with Cyclone Promotions (UK) Limited.

(b) Frampton agreed terms for 5 (sic) separate title bout contracts in Northern Ireland (2), England (1) and the United States of America (3).

(c) The purses apart from the fight against Santa Cruz on 28 January 2017 were paid to Cyclone Promotions (UK) Limited.

(d) Cyclone Promotions (UK) Limited then received substantial monies in respect of the broadcasting rights, ticket sales and merchandising, including Frampton's capital share.

(e) Cyclone Promotions (UK) Limited owed to the plaintiff various duties in respect of those monies but it went into dissolution without paying to Frampton his Share, that is significant sums of money which were then due to him.

(f) The purse monies in respect of the boxing match against Santa Cruz on 28 January 2017 were paid to CPUK, a company bearing the same name but incorporated immediately after Cyclone Promotions (UK) Limited's dissolution.

(g) It is alleged that this failure to account to Frampton for his Share was as a consequence of the equitable wrongs carried out by, inter alia, McGuigan and Sandra McGuigan as Directors of Cyclone Promotions (UK) Limited and that

> CPUK owes money due in respect of, inter alia, the second Santa Cruz fight. It is alleged that money was siphoned off which included "purse monies, broadcasting rights, ticket sales and merchandising proceeds" received by Cyclone Promotions (UK) Ltd, to which it was not entitled and that McGuigan dishonestly assisted Cyclone Promotions (UK) Limited in diverting funds to which it was not entitled.

[91] Finally, there is a claim for breach of fiduciary duty, negligence and misrepresentation which occurred as a consequence of the provision of services by McGuigan, as boxing manager/agent and arising out of his conflicted position as boxing manager/agent and promoter/father of the promoter. It is also alleged that he failed to protect Frampton's financial interests by ensuring that he was paid the money due to him before Cyclone Promotions (UK) Ltd was dissolved.

[92] In *Bier BV v Mines de Potasse d'Alsace SA* [1978] QB 708 the ECJ held that the place where the damage occurred was to be determined, not by the diverging solutions of national law, but by an autonomous interpretation and that the meaning of the expression "the place where the harmful event occurred" in Article 5(3) must be interpreted so that the plaintiff has an option to commence proceedings either at the place where the damage occurred or at the place of the event giving rise to it.

[93] It is important to understand that the place of damage does not necessarily mean the place where the plaintiff may suffer economic loss as "that is not of itself sufficient to confer jurisdiction on that place, for otherwise the place of business of the claimant would almost automatically become another basis of jurisdiction": see 11-287 of Dicey, Morris & Collins on Conflicts of Law Volume I (15th Edition).

[94] The place of damage should be where the wrongful act occurred or where the economic loss was actually suffered. In this case the answer to either question is the same.

[95] There is some evidence that substantial monies representing the proceeds of ticket sales and collected by Frampton's parent, were paid into a bank account in Northern Ireland which was controlled by the Cyclone Connection and that this money was diverted from Frampton. This allegation is vehemently denied by Sandra, although she has chosen, presumably deliberately, not to exhibit any documentary evidence in relation to the bank account that would demonstrate the falsity or otherwise of the allegations being made by Frampton's parents. But much more importantly at this stage there is unchallenged evidence from Ms Nicola Niblock of ASM Accountants that the main losses have been suffered by Frampton as a result of the Cyclone Connection's conduct in Northern Ireland. This is where in the main, the divergence of funds took place because this where the profits from the fights were mostly earned. Ms Niblock stated, and there has been no contradicting accountancy evidence to challenge this:

> "… in our opinion it is likely that the majority of the profits generated in respect of Carl Frampton, the fighter and brand, were generated in Northern Ireland."

[96] There is a good arguable case at this stage that the majority of the money which Frampton lays claim to as his Share, must have been "syphoned off" or diverted in Northern Ireland, if the case Frampton is putting forward is accepted. Both the diversion of money and the damage to Frampton, in this case financial loss occurred for the main part in Northern Ireland. Accordingly, I am satisfied to the requisite standard that the equitable wrongs which Frampton claims he suffered as a consequence of the actions of the defendants in the First Claim were sustained in Northern Ireland. Furthermore, there is a good arguable case on the evidence adduced that the harmful event, that is the unlawful diversion of his Share to the Cyclone Connection also, for the most part, took place in Northern Ireland.

[97] Mr McCollum disputed that there was an absence of the necessary close connectivity with Northern Ireland in respect of either ground. But the defendants were providing services for Frampton, a Northern Ireland domiciled boxer in a worldwide sport of which Frampton was and is central. Most of the bouts from 2013 took place in Northern Ireland. Most of the income was generated in Northern Ireland. It is in Northern Ireland where the domiciled fighter could expect to be paid. On the basis of the evidence before this court there is the necessary "connectivity". It is Northern Ireland that is the centre of gravity in this dispute.

M. UNJUST ENRICHMENT

[98] A claim for unjust enrichment was made by Frampton but this was ultimately not pursued.

N. EXCLUSIVE JURISDICTION

[99] Although there were arguments contained in the skeleton arguments that the English court had been given exclusive jurisdiction by the terms of the IPA and/or the Boxer/Manager agreement, no such arguments were pursued before me.

[100] The IPA was stated "to be constructed (sic) in accordance with United Kingdom law and each party were to agree to submit to the jurisdiction of the UK courts". I accept that in an agreement between parties of different states the agreement to submit to UK law has been construed as meaning English law. However, the position will of course be very different where the parties are both domiciled in different parts of the United Kingdom. In those circumstances UK law can mean English law, Scottish law or Northern Ireland law. At the very least the use of the words "United Kingdom law" is, ambiguous and such ambiguity should be construed proferentem the Cyclone Connection whose terms these are.

[101] The 2012 Agreement and 2015 Agreement do not purport to give the English courts exclusive jurisdiction. These agreements simply say that they shall "be governed by and construed in accordance with the English law". The parties accepted that there is no difference between English law and Northern Ireland law so far as contract and/or tort are concerned.

O. FORUM NON CONVENIENS

[102] Both sides agreed that the court had power to stay the proceedings brought by Frampton on the ground of forum non conveniens where to do so was not inconsistent with the Brussels I Regulation or the Brussels or Lugano Conventions.

[103] Halsbury's Laws of England Volume 19 paragraph 407 states:

> "As a general rule the parties seeking the stay (usually the defendant) must establish that there exists another forum to whose jurisdiction he is amenable, and which is clearly and distinctly more appropriate than (Northern Ireland) for the trial of the action. If the defendant fails to establish this, a stay on this ground will not be granted; if the defendant succeeds in establishing it, the claimant will nevertheless be permitted to proceed in (Northern Ireland) and the action will not be stayed, if in the interests of justice the action should be permitted to proceed.
>
> In determining whether there is another forum clearly or distinctly more appropriate than (Northern Ireland) for the trial of the action, the court is entitled to take into account all factors connected to the parties, the claim or the action, including:
>
> (i) the residence of the parties;
>
> (ii) the factual connections between the dispute and the courts, such as the place where the relevant events occurred and the residence of the witnesses;
>
> (iii) the law which will be applied to resolve the dispute;
>
> (iv) the possibility of lis alibi pendens or other related proceedings; and
>
> (v) the question whether other persons may become parties to the litigation.

> The question of which factors are relevant, the weight to be accorded to each of them (which will vary from case to case), is essentially one for the discretion of the trial judge, with whose assessment an appellate court will be reluctant to interfere."

[104] The principle of forum non conveniens was set out by Lord Goff in his speech to the House of Lords in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 450. It has since been analysed and further refined in other cases. It is most recently considered, reviewed and "refreshed" in in *VTB Capital Plc v Nutritek International Corp* [2013] UKSC 5.

[105] As there is no agreement on the choice of a court, it is for the Cyclone Connection who wishes the court to stay the proceedings to show that the interests of justice favour a stay. To make out this plea, the Cyclone Connection must show that there is another available forum, which is clearly or distinctly more appropriate than Northern Ireland for the resolution of the dispute. If the Cyclone Connection succeeds in the first limb of the *Spiliada* test, then the burden passes to Frampton to show why despite there being an obviously more appropriate forum in England, that it would be unjust to leave him to go to England. That is the second limb of the *Spiliada* test: see Briggs on Civil Jurisdiction and Judgments (6th Edition) at 4-30. It is also worth noting that if the Cyclone Connection is able to discharge the burden placed upon it at the first stage, then the presumption in favour of a stay is a heavy one for Frampton to overcome.

[106] Dicey, Morris & Collins in the Conflict of Laws Volume 1 (15th Edition) at Rule 38 set out the test thus:

> "[1] (Northern Irish) courts have jurisdiction, whenever it is necessary to prevent injustice, to stay or strike out proceedings in (Northern Ireland).
>
> [2] Subject to the provisions of Council Regulation (EC) 44/2001 and the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters ('the Brussels I Regulation' and the 'Lugano Convention' respectively), a (Northern Irish) court has power to order a stay of proceedings on the basis that (Northern Ireland) is an inappropriate forum if:
>
> (a) the defendant shows that there is another court with competent jurisdiction which is clearly distinctly more appropriate than (Northern Ireland) for the trial of the action; and

(b) it is not unjust that the claimant be deprived of the right to trial in (Northern Ireland)."

[107] There is no dispute that Frampton will receive a fair trial in England in respect of both Claims currently before the court in Northern Ireland. However, in the Second Claim the defendant is domiciled in Northern Ireland. In the First Claim there is a closer and more real connection with Northern Ireland when compared with England: see *Deutsche Bank AG v Highland Crusader Off-Shore Partners LP* [2009] EWCA Civ 725. Frampton is a Belfast fighter who was born, bred and who lives in Northern Ireland. Most of the income generated from his fights has been generated in Northern Ireland. Cyclone Promotions Ltd is a Northern Ireland company. Against that Frampton trains in England. The McGuigans live in England. Cyclone Promotions (UK) Ltd was registered in England, as is CPUK and it is claimed that both it and Cyclone Promotions Ltd have or had their places of business in London.

[108] However, the First Claim relates primarily to, allegations of the diversion or misapplication of money generated by Frampton's boxing endeavours into entities controlled by the Cyclone Connection. Although, as I have recorded, there are the observations of Frampton's parents about where the proceeds of certain ticket sales were lodged, much more telling evidence comes from Nicola Niblock as to where the majority of money has been earned and which Frampton claims has been syphoned off by the Cyclone Connection.

[109] As I have stated the law to be applied, that is the law of contract and tort, is the same in England as in Northern Ireland. There is also a lis alibi pendens which I have discussed earlier in the judgment. I have no hesitation in concluding that having read all 4 files of material which has been filed in court that Northern Ireland, and in particular Belfast, is most closely connected with this dispute. It is where the money is alleged in most part to have been wrongly diverted. It is the centre of the obligation in question. *Bateman and Others v Birchal Blackburn LLP* [2014] NIQB 112 sets out various matters which the court should take into account in determining the issue of forum non conveniens. I have considered all those factors. I have also taken into account the decision of *Lennon v Scottish Daily Record and Sunday Mail Limited* [2004] EWHC 359 (QB) at para [18]. I am satisfied the Northern Ireland court can offer an expeditious trial. It will be considerably less expensive to litigate in Belfast rather than in London. As I have already observed, the law in Northern Ireland is the same as it is in England and Wales, witnesses will not be inconvenienced and it will be held in a country in which all the parties are closely connected, even if some of them are not domiciled here.

[110] I do accept that there will be witnesses who live in England. There will also be a number of witnesses who live in Northern Ireland. But witnesses living in England, who have any difficulty in coming to Belfast, will be able to give evidence by video link or by Skype. This has worked successfully in my experience in other cases with evidence being given by video link or Skype from, for example, Tehran and the Ukraine. There will be no need for those witnesses to travel, if they do not

wish to do so. The case will come on for hearing more quickly in Northern Ireland. This case can be listed for the Michaelmas Term when the new Business and Property Court will commence its operation. The case will be case managed in the commercial list by a High Court Judge.

[111] Finally, it is also logical and makes good sense to deal with the issue of whether the IPA is void before moving on to consider issues of whether or not the IPA has been repudiated and, if so, whether damages should be paid by Frampton, which lies at the heart of the claim presently being pursued by Cyclone Connection in England against Frampton.

[112] In the circumstances the Cyclone Connection has failed to persuade the court that Northern Ireland is forum non convienens. The Northern Ireland court is more appropriate for the trial of both these Claims. Indeed, it would be unjust in all the circumstances if Frampton was deprived of his right to a trial in Northern Ireland in respect of both these Claims.

P. CONCLUSION

[113] On the basis of the present information, the court has reached the following conclusions:

(i) The Northern Ireland courts were seised of the proceedings commenced by Writ Nos: 124118 and 124122 before the English claim No: HQ17X04251 was served. It is the date of service of proceedings which determines priority in the United Kingdom.

(ii) It will be for the English court to decide whether it deals with the claim brought by Cyclone Promotions Ltd and Blain McGuigan against Carl Frampton, who is domiciled in Northern Ireland.

(iii) In any event, logically it makes sense to deal with the issue of whether or not the IPA is void and/or unenforceable before considering whether or not it has been repudiated by Frampton and gives rise to a claim for damages.

(iv) Neither McGuigan, nor his wife, nor his son Blain, nor Cyclone Promotions (UK) Ltd, nor CPUK are or were domiciled in Northern Ireland.

(v) There are serious issues raised on the merits of the claims made by Frampton save where I have stated otherwise.

(vi) The Northern Ireland courts have jurisdiction to hear the claims brought by Frampton on the basis that Cyclone Promotions Ltd is a company formed in Northern Ireland with its registered office in Northern Ireland and thus is domiciled here. Secondly, while McGuigan, Sandra McGuigan, CPUK and Cyclone Promotions (UK) Ltd are not domiciled in Northern Ireland,

Frampton is entitled to rely on the special jurisdiction, namely that Northern Ireland is the place of performance of the obligation in question.

(vii) Further and in the alternative, Northern Ireland is both the place where the harmful event occurred and/or where the event which gave rise to the damage occurred.

(viii) The Cyclone Connection has failed to satisfy the court that the appropriate forum for hearing these two actions is England. On the evidence available to the court Northern Ireland is the appropriate jurisdiction for the hearing of both claims brought by Frampton against the Cyclone Connection. It is noteworthy that Northern Ireland was first seised of these proceedings. The case will come on for hearing here more expeditiously, and the costs incurred on both sides are likely to be of a much more modest order.

(ix) The issue of whether or not a claim for unjust enrichment can be made against the Cyclone Connection in Northern Ireland was not pursued.

(x) Frampton has not raised a triable issue that McGuigan as his manager was in breach of contract by failing to make the necessary arrangements for his training and preparation for his bouts. This case was simply not argued before me.

(xi) Mr McCollum QC had submitted that only all three sets proceedings can be heard in England and Wales. I do not accept that this is correct. However it will be a matter for the English court in due course to decide what approach it takes to the proceedings currently before it, which all parties agree, can be heard in Northern Ireland because of the domicile of Cyclone Productions Limited.

[114] Therefore in answer to the two central issues proposed to the court by the parties I say:

(i) Yes, this court has jurisdiction to hear the Claims brought by Frampton subject to the qualifications expressed in this judgment.

(ii) No, the Northern Ireland court is not a forum non conveniens.

[115] After I produced a draft judgment I heard the parties on the issue of what costs order I should make. I have received both written and oral submissions which I have taken into account. My decisions in respect of costs are as follows:

(i) As I have heard this application , I consider that I am best placed to make the order for costs and it is not appropriate or fair to reserve this matter to the trial judge.

(ii) The First Claim raised many more issues and occupied considerably more of the court's time than the Second Claim.

(ii) Costs normally follow the event: see Order 62, Rule 3 of the Rules of the Supreme Court (NI). The event was whether the Northern Ireland court had jurisdiction to hear either or both the Claims. Frampton succeeded in establishing that the Northern Ireland court had jurisdiction in respect of both the First Claim and the Second Claim.

(iii) The hearing was an interlocutory one. The jurisdiction bar is a low one and the court is not in a position to determine who is right and wrong in respect of many matters which remain highly contentious. As I have made clear the court will only be able to make a judgment when it has heard from both sides. It will be for the trial judge to determine where the truth lies when he has heard sworn testimony which has been tested on cross-examination. I consider that it would be unfair for Frampton to be given the costs of this application now if it should turn out that the allegations he had made against the Cyclone Connection were baseless as the Cyclone Connection claims. Such an award would not be in accordance with the over-riding objective of the Rules of the Supreme Court (NI) under Order1, Rule1 A. I also note that Valentine in his book on Civil Proceedings in Northern Ireland suggests that normally the costs of interlocutory proceedings should be the successful party's costs in the cause: see 17.65.

(iv) Frampton while successful on the issue of jurisdiction, did raise arguments on other issues which he has lost as appears from this judgment. In the First Claim, for example, considerable time was spent on the issue of the domicile of the McGuigans, which I have decided against Frampton. It was suggested that this evidence was also relevant to the issue of forum non conveniens which was resolved in Frampton's favour. I reject that. If there was any overlap, it was modest. The proper way to reflect Frampton's failure on this issue and others in both actions is to apportion costs.

[116] In the circumstances and for the reasons given I award Frampton two thirds of his costs in the First Claim and nine tenths of his costs in the Second Claim. The plaintiff's costs are to be costs in the cause.