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COURT DECIDES IT HAS JURISDICTION TO HEAR CLAIMS BROUGHT BY CARL FRAMPTON

Summary of Judgment

Mr Justice Horner, sitting today in the High Court in Belfast, determined that the Northern Ireland court has jurisdiction to hear two claims brought by Carl Frampton against Barry McGuigan. It will now be for the English court to determine whether it considers it should hear a claim brought in London by Cyclone Promotions Limited and Blain McGuigan against Frampton and whether London is the more appropriate forum to hear all the disputes.

Three sets of proceedings have been issued following the breakdown in the relationship between Carl Frampton (“Frampton”) and his former manager Barry McGuigan (“McGuigan”). Frampton wants the court in Northern Ireland to determine the outcome of the proceedings while McGuigan wants the English court to hear all the disputes. The Court was told that neither party is prepared to give way. The judgment today relates to the issue of jurisdiction only. It is being heard before the NI court first but in due course the English court will have to consider what it should do in respect of the proceedings against Frampton which have been brought in England. The English court may also have to consider an arbitration arising out of the 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 proceedings there.

The Northern Ireland Claims

Two claims have been issued in Northern Ireland by Frampton against McGuigan and a number of companies with the name “Cyclone” in their title and in which McGuigan or members of his family have or have had an interest (his wife Sandra and his son Blain). These parties are referred to in the judgment as the “Cyclone Connection”.

- The First Claim is brought against McGuigan, his wife Sandra and Cyclone Promotions (UK) Limited (“CPUK”). McGuigan and his wife are sued as directors of Cyclone Promotions (UK) Limited, a company registered in England, which was formed on 20 November 2014 but dissolved on 18 October 2016. CPUK, also an English company, was then formed on 23 November 2016. The claim primarily concerns an International Promotional Agreement (“IPA”) entered into between Frampton represented by his manager McGuigan and an entity entitled Cyclone Promotions//Blain McGuigan (Cyclone Promotions is said to be Cyclone Promotions (UK) Limited). The claim seeks a declaration that the IPA is void and unenforceable on the grounds of uncertainty as to its terms. There are allegations of breach of fiduciary duties, breach of trust, negligence, and misrepresentation. Frampton seeks damages and compensation for these wrongs. A further claim of unjust enrichment is also made against CPUK.

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- The Second Claim is against Cyclone Promotions Limited, a NI company, and also primarily concerns the IPA. It seeks a declaration that the IPA is void due to its failure to identify the registered name of any company or its terms.

The English Claim

The Third Claim has been issued in England by Cyclone Promotions Limited and Blain McGuigan against Frampton for breach of the IPA. The alleged breach has resulted in an unqualified claim for loss and damage relating to the loss of profits suffered by Cyclone Promotions Limited in respect of fights it could have promoted but has been prevented from so doing by the unlawful actions of Frampton. He has responded by pointing 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 – Cyclone Promotions Limited is apparently insolvent.

Mr Justice Horner commented:

“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 use the same names as companies that have been dissolved. One of the many issues which this litigation will have to resolve will involve the court determining 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 have to make a final determination on the basis of the evidence adduced before it.”

The Issues

The parties agreed that the issues to be determined in respect of the two claims issued by Frampton in NI are:

- Has the NI court jurisdiction to hear and decide the claims;
- If it does have jurisdiction, has the Cyclone Connection satisfied the court on the balance of probabilities that the claims should be heard and determined in England.

The Civil Jurisdiction and Judgments Act 1982, as amended, (“the 1982 Act”) provides for the allocation of cases within the different jurisdictions or parts of the UK. This is to prevent there being irreconcilable and inconsistent judgments in the different courts of the UK. The general rule is that, subject to derogations including for contract and tort, jurisdiction is determined by an individual or a company’s domicile (in the case of a company its seat will generally dictate its domicile).

The application

Mr Justice Horner stated that at this interlocutory stage of the proceedings, the evidence which has been given by both sides has not been tested and the court does not have all the

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evidence. 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 but 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.

The burden of proof

The parties agreed that:

- Frampton must establish a good arguable case of domicile or any of the grounds of derogation set out in the 1982 Act;
- Frampton must also show that there is 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; and
- The court can order a stay on the ground of forum non conveniens if the Cyclone Connection can satisfy the court on the balance of probabilities that there exists another forum to whose jurisdiction they are amenable and which is clearly or distinctly more appropriate for the trial of the action.

Service of Proceedings

Mr Justice Horner said there was no dispute that the Cyclone Connection's claim against Frampton, which was issued on 23 November 2017, issued before either of Frampton's two writs (which were dated 1 December 2017). However, Frampton's claims were served in accordance with court rules before proceedings were brought by the Cyclone Connection in England. The Cyclone Connection claims that the English court was seised of the proceedings first and that Frampton's proceedings were issued thereafter. Counsel on behalf of the Cyclone Connection complained that the behaviour of Frampton's solicitor 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".

Mr Justice Horner commented that the Cyclone Connection had not effected service on Frampton before Frampton's writs were served on the Cyclone Connection: "Frampton's solicitors may well have known of the claim made against them before service, although this is not entirely clear because the solicitor (John Finucane) or Frampton have not addressed it in their affidavits":

"On the basis of the information which has been adduced before this court, service was effected on the Cyclone Connection in respect of [Frampton's claims] 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. Accordingly, it follows that there were "no proceedings involving the same parties and causes of action" pending in England and Wales or another Convention territory at the time [Frampton's claims] were issued and served."

The judge concluded that the endorsement on the proceedings issued by Frampton is unobjectionable and does not invalidate the 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

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Cyclone Connection to ensure that there was an endorsement on the claim form in accordance with the 1992 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 Frampton's claim and if so, what consequences should follow.

Mr Justice Horner said that the assertion by the Cyclone Connection's solicitor, that the English claim "will proceed" is "presumptuous and ill-considered" as it will be for the English court to consider in due course whether to accept or decline jurisdiction.

Frampton's Second Claim

The Second Claim by Frampton is brought against Cyclone Promotions Ltd, a company registered in NI. It was asserted that McGuigan has domicile in Northern Ireland and can therefore be sued there. It was also asserted that other defendants who are not domiciled in NI can be sued in this jurisdiction "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". Mr Justice Horner rejected this and said that neither McGuigan nor Sandra McGuigan is domiciled in NI for the purposes of the 1992 Act. He noted that McGuigan will stay for short periods at hotels in Belfast on an irregular basis and this is wholly dependent upon his commitment to the various fighters he manages.

Mr Justice Horner repeated that the organising and trading of the companies within the Cyclone Connection is both complex and confusing. He referred to prima facie evidence before the court of breaches of the Companies Act 2006 by companies within the Cyclone Connection for filing their accounts or annual returns late and of serious concerns about how Cyclone Promotions Limited could have reported losses for each of its trading years despite Frampton's successes in the ring. The judge also noted the absence of any evidence that the income/profits from the promotions of Frampton's bouts had been reported or recognised in the financial accounts of Cyclone Promotions Limited:

"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. 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."

Mr Justice Horner concluded:

- There are serious issues to be tried on the Second Claim including whether the IPA is void because of the failure to identify the registered name of the company and whether the terms of the IPA are too uncertain to be enforced.
- There is a good arguable case that the court has jurisdiction to hear the Second Claim because Cyclone Promotions is a Northern Ireland company with a Northern Ireland domicile.
- 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.

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- He was not persuaded by the argument advanced by the Cyclone Connection that Northern Ireland is forum non conveniens in respect of these disputes.

Frampton's First Claim

This claim relates primarily to the IPA entered into in England between Frampton, represented by his manager McGuigan, and an entity entitled Cyclone Promotions//Blain McGuigan (noted above as being Cyclone Promotions (UK) Limited). The judge commented that there had been no reliable evidence adduced that the income or profits from Frampton's fights were recognised in the accounts of Cyclone Promotions Limited or how it came to be saddled with such significant indebtedness: "It will only be possible to reach a final concluded view on the financial affairs of Frampton and the Cyclone Connection after full disclosure has been made by each side."

Frampton claims he is entitled to sue in NI even if the McGuigans and Cyclone Promotions (UK) Limited are not domiciled here. The first issue for the court is whether there are serious issues to be tried. The submissions of both sides were largely directed to the issue of whether Frampton could establish that the NI court has jurisdiction. Mr Justice Horner said that both the contractual and tortious claims 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 a 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 because of McGuigan's conflicted position as someone involved in both the management of Frampton and the promotion of Frampton's fights. Mr Justice Horner said the modest hurdle of whether there is a serious issue question to be tried in respect of both the contractual and tortious grounds had therefore been overcome.

Contractual claims

The obligation in question in the respect of the contractual claim is the failure of the Cyclone Connection to account to Frampton for what he claims was his lawful entitlement to the purse monies from seven fights including ancillary broadcasting rights, ticket sales and merchandising (referred to as "his Share"). Mr Justice Horner said there are obvious conflicts, which McGuigan was live to, 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 Boxer/Manager Agreement. The judge said it is interesting that McGuigan's trenchant criticism in his autobiography of a person acting as both manager and promoter was not against one man acting as such but it was 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, who was a Director in Cyclone Promotions Limited, to act as a promoter for a boxer that McGuigan was both acting as manager and agent for. On the evidence adduced to date, there was at the very least an indirect financial connection between the manager and the promoter (whose only qualification for acting as promoter on the evidence filed in court appears to be his close family ties with

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McGuigan). However this is necessarily a provisional view and a final determination will have to await a full hearing of the evidence.”

The obligation in these proceedings relates to the payment or non-payment of what Frampton claims was his lawful Share and that, as is claimed, it is not “siphoned off into the bank accounts controlled by the Cyclone Connection”. Having identified the nature of the obligation in this case, the judge said 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 the contract, then it is the duty of the debtor to seek out his creditor at his residence or place of business within the jurisdiction. The judge said that if that conclusion is correct, then it is clear that the majority of the income that is likely to have been raised by Frampton’s professional fights has been raised in Northern Ireland.

The Tortious Claims

The main thrust of the tortious claims made by Frampton are those grounded upon the “equitable wrongs” which he claims were committed by the Cyclone Connection. Mr Justice Horner was satisfied that there is a serious issue to be tried. Frampton claims that he entered into an IPA with Cyclone Promotions (UK) Limited through McGuigan, his manager and agreed terms for 5 title bouts. The purses apart from the fight against Santa Cruz on 28 January 2017 were paid to Cyclone Promotions (UK) Limited which also received substantial monies in respect of the broadcasting rights, ticket sales and merchandising. Cyclone Promotions (UK) Limited owed Frampton various duties in respect of those monies but it went into dissolution without paying him his Share. Frampton alleges that this failure to pay him his Share was as a consequence of the equitable wrongs carried out by McGuigan and Sandra McGuigan as Directors and that Cyclone Promotions (UK) Limited owes money in respect of the second Santa Cruz fight. It is alleged that money was syphoned off to Cyclone Promotions (UK) Limited which it was not entitled to and that McGuigan dishonestly assisted Cyclone Promotions (UK) Limited in diverting funds to which it was not entitled. Frampton also claims a breach of fiduciary duty, negligence and misrepresentation occurring 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) Limited was dissolved.

Mr Justice Horner said there was some evidence that substantial monies representing the proceeds of ticket sales which were collected by Frampton’s parents 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 McGuigan but the judge said 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 parent.

There is also unchallenged evidence that the majority of the profits generated in respect of Frampton the fighter and brand were generated in Northern Ireland. The judge said there is therefore a good arguable case at this stage that the majority of the money which it is alleged Frampton is laying claim to as his Share must have been “siphoned off” or diverted in Northern Ireland if Frampton proves his case:

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“I am satisfied to the requisite standard that the equitable wrongs which Frampton claims he suffered as a consequence of the actions of the Cyclone Connection 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, took place in Northern Ireland.”

Counsel for the Cyclone Connection disputed that there was an absence of the necessary close connectivity with Northern Ireland. Mr Justice Horner rejected this and said that “Northern Ireland is the centre of gravity in this dispute”.

Forum Non Conveniens

Parties seeking a stay on this ground must establish that there exists another forum to whose jurisdiction they are amenable and which is clearly and distinctly more appropriate than Northern Ireland for the trial of the action. It is therefore for the Cyclone Connection to show this and then for Frampton to show why it would be unjust to leave him to go there. The judge said there can be no doubt that Frampton would receive a fair trial in England in respect of both claims currently before the court in Northern Ireland but in the Second Claim the defendant, Cyclone Promotions Limited, is domiciled in Northern Ireland. Further, in the First Claim there is a closer and more real connection with Northern Ireland when compared with England:

“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 Limited is a Northern Ireland company. Against that, Frampton trains in England. The McGuigans live in England. Cyclone Promotions (UK) Limited 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. ... I have no hesitation in concluding that ... Northern Ireland and in particular Belfast, is most closely connected with this dispute. It is the centre of the obligations in question. ... 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. The law is the same in Northern Ireland 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 the witnesses are not domiciled here.”

The judge concluded that the Cyclone Connection had failed to persuade the court that Northern Ireland is forum non conveniens and said it would be unjust in all the circumstances if Frampton was deprived of his right to a trial in Northern Ireland in respect of the First and Second Claims.

Conclusion

On the basis of the evidence adduced before the Court, the following conclusions were reached:

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1. The Northern Ireland courts were seised of the proceedings commenced by Frampton before the English claim was served. It is the date of service of proceedings which determines priority in the United Kingdom.
2. It will be for the English courts as to whether they deal with the claim brought by Cyclone Promotions Ltd and Blain McGuigan against Carl Frampton.
3. 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.
4. Neither McGuigan, nor his wife, nor his son Blain, nor Cyclone Promotions (UK) Ltd, nor CPUK are or were domiciled in Northern Ireland.
5. There are serious issues raised in the merits of the claims made by Frampton.
6. 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.
7. Alternatively, Northern Ireland is both the place where the harmful event occurred and/or where the event which gave rise to the damage occurred.
8. The Cyclone Connection has failed to satisfy the court that the appropriate forum for hearing these two actions is England. In fact on the basis of 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 and that the case will come on for hearing here more expeditiously.
9. The issue of whether or not a claim for unjust enrichment can be pursued against the Cyclone Connection in Northern Ireland requires further argument. If the court determines it does not have jurisdiction to hear such a claim after further argument, then that claim will be stayed.
10. Frampton has not raised a triable issue that McGuigan as his manager in breach of contract failed to make the necessary arrangements for Frampton's training and preparation for his bouts. This case was not argued before Mr Justice Horner.
11. Although Counsel for the Cyclone Connection submitted that only all three sets of proceedings can be heard in England and Wales, the judge did not accept that this is correct. He said 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.

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In answer to the two central issues proposed by the court to the parties, Mr Justice Horner concluded:

- The court in Northern Ireland has jurisdiction to hear the Claims brought by Frampton subject to the qualifications expressed in the judgment; and
- The Northern Ireland court is not a forum non conveniens.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (www.judiciary-ni.gov.uk).

ENDS

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