THE HIGH COURT

COMMERCIAL

[2014 No. 774S]

BETWEEN

NATIONAL ASSET LOAN MANAGEMENT LIMITED

PLAINTIFF

AND

HENRY A. CROSBIE

DEFENDANT

THE HIGH COURT

COMMERCIAL

[2014 No. 5261P]

BETWEEN

HENRY A. CROSBIE

PLAINTIFF

AND

NATIONAL ASSET MANAGEMENT AGENGY AND

NATIONAL ASSET LOAN MANAGEMENT LIMITED

DEFENDANTS

JUDGMENT of Mr. Justice Keane delivered on the 31st July 2014

Introduction

1. On the 27th June 2014, the Commercial Court granted summary judgment in proceedings entitled *"National Asset Loan Management Ltd v. Henry A. Crosbie, Record No. 774S of 2014*". The relevant application had been heard on the 14th May 2014. For clarity, I will refer to those proceedings in this judgment as "the first proceedings." On the 12th June 2014, the defendant in the first set of proceedings, Mr. Crosbie, commenced separate plenary proceedings entitled *"Henry A. Crosbie v. National Asset Management Agency and National Asset Loan Management Ltd, Record No. 5261P of 2014*." For the remainder of this judgment, I will refer to those proceedings as "the second proceedings." The second proceedings were admitted into the Commercial Court on the 7th July 2014.

2. There are two applications now before the court. The first is an application on behalf of Mr. Crosbie in the first proceedings for a stay on enforcement or execution in certain specified ways of the judgment against him. The stay that is sought is not one pending appeal, nor is it one for a time certain. It is a stay pending the determination by the High Court of the second proceedings.

3. The second application is brought on behalf of NAMA and NALM and is for an order striking out the second proceedings, or part of them, for failure to comply with s. 182 of the National Asset Management Agency Act 2009 ("the NAMA Act").

4. I heard both applications together on the 11th July 2014.

The first proceedings

5. In my judgment in the first proceedings, I found that Mr. Crosbie had failed to satisfy me that he had a fair or reasonable probability of having a real or *bona fide* defence to the claim of National Asset Loan Management Ltd ("NALM") to judgment against him in the sum of €77,095,090.59 in respect of a number of personal loans that he had obtained and a number of guarantees that he had entered into.

6. In asserting a defence to the claim by NALM, Mr. Crosbie had contended for the existence of a solemn and binding written agreement between the parties whereby, in consideration of Mr. Crosbie providing security interests in certain assets to the plaintiff, and of his divesting himself of certain other assets, NALM would no longer have recourse to Mr. Crosbie's remaining assets.

7. In my judgment, I concluded that the agreement contended for, the terms of which are contained in a letter written by Mr. Crosbie's solicitor on the 24th August 2012 ("the McCabe letter"), is incapable of conveying to any reasonable person, having the background knowledge available to the parties, that it is an agreement on the part of NALM not to seek a money judgment against Mr. Crosbie.

8. In reaching that conclusion, I acknowledged that, taking the terms of the agreement evidenced by the McCabe letter at the high water mark from Mr. Crosbie's perspective (as the Court is obliged to do in considering the test for summary judgment), those terms

are capable of establishing certain binding obligations owed to Mr. Crosbie by both NALM and the National Assets Management Agency ("NAMA"), in consideration of certain steps taken by Mr. Crosbie.

9. I pause here to note that, in identifying asserted propositions of fact or law that - if proved in evidence or established by argument - may be capable of establishing a fair or reasonable probability that a defendant has a real or *bona fide* defence, the Court is not purporting to adjudicate on whether those propositions are, in fact, correct.

10. The relevant propositions that I identified in that particular context, at paragraphs 67 and 68 of my judgment, were that NAMA and NALM had agreed not to take enforcement action against certain identified assets of Mr. Crosbie and not to petition for Mr. Crosbie's bankruptcy without first taking certain specified steps, for as long as the parties were bound by that agreement.

11. Specifically by reference to that portion of my earlier judgment, Mr. Crosbie now seeks the grant of a stay on *"any enforcement and/or execution by the plaintiff and/or the National Asset Management Agency ("NAMA") of the judgment herein against the defendant in any manner that touches upon or affects the issues and matters set out and referred to in paragraph 67 of the judgment delivered on the 27 June 2014 pending the determination by the High Court by way of plenary hearing of the said issues and matters, or until further order of the Court."*

The second proceedings
12. In the plenary summons that issued on the 12th June 2014, Mr. Crosbie seeks four separate declarations, an injunction and damages against NAMA and NALM.

13. Mr. Crosbie seeks the following declarations. First, that the terms of the McCabe letter constitute a binding, enforceable and effective agreement between the parties. Second, that the said agreement precludes either NAMA or NALM from enforcing the plaintiff's indebtedness to them by litigation in general or bankruptcy proceedings in particular. Third, that the debt secured on the Bord Gáis Energy Theatre was not within any of the "classes of eligible bank asset", as defined under s. 69 of the NAMA Act, such that NAMA was not entitled to acquire that debt under either s. 12 or s. 84 of that Act. Fourth, that NAMA and NALM are not entitled to enforce or pursue the debt secured against the Bord Gáis Energy Theatre for that reason.

14. The injunction that Mr. Crosbie seeks is one preventing NAMA and NALM from enforcing, by litigation or bankruptcy procedures, Mr. Crosbie's indebtedness.

15. Finally, Mr. Crosbie seeks an award of damages for misfeasance in public office.

16. NAMA and NALM entered an appearance to the second proceedings on the 20th June 2014. On the 2nd July 2014, they issued a motion returnable to the Commercial Court on the 7th July 2014. That motion seeks, in substance, two distinct reliefs. The first is an order admitting the proceedings to the Commercial Court. On consent between the parties, Kelly J. made that order on the return date. The second is an order striking out the proceedings, in whole or in part, for failure to comply with the requirements of s. 182 of the NAMA Act. Kelly J. decided that it was more appropriate that I should deal with that application.

The law
17. Chapter 2 of Part 10 of the NAMA Act (comprising ss. 181 and 182) states (in relevant part):

> "***181.***- (1) The provisions of this Chapter apply in relation to legal proceedings commenced on or after 30 July 2009 by a person who is a debtor, associated debtor, guarantor or surety in relation to a bank asset, or a participating institution in connection with a bank asset if the bank asset is specified (whether at the commencement of the proceedings or afterwards) in an acquisition schedule.
>
> (2) The provisions of this Chapter apply in relation to legal proceedings referred to in *subsection (1)* on and from the time at which the bank asset concerned is specified in an acquisition schedule.
>
> ***182.***- (1) Subject to *subsection (2),* a claim to which this Chapter applies gives rise only to a remedy in damages or other relief that does not in any way affect the bank asset, its acquisition, or the interest of NAMA or the NAMA group entity or (for the avoidance of doubt) any property the subject of any security that is part of such a bank asset.
>
> (2) A person may apply for an order that the person may apply for a remedy other than or in addition to that permitted by *subsection (1)* in relation to which this Chapter applies.
>
> (3) An application for an order mentioned in *subsection (2)* shall be made only by leave of the Court. An application for such leave may be made *ex parte*.
>
> (4) Leave shall not be granted to apply for an order under *subsection (2)* unless the Court is satisfied that the application raises a substantial issue for the Court's determination and-
>
> (a) the application for leave is made to the Court within 30 days after the later of-
>
> (i) the notification by the participating institution to the relevant debtor, associated debtor, guarantor or surety under *section 96*, and
>
> (ii) the accrual of the cause of action in respect of which the legal proceedings arose,
>
> or
>
> (b) the Court is satisfied that-
>
> (i) there are substantial reasons why the application was not made within that period, and
>
> (ii) it is just and equitable in all the circumstances to grant leave having regard to the interest of any affected person.

(5) If the Court grants leave to apply for an order under *subsection (2),* the applicant shall serve on NAMA the order granting leave and the application.

(6) The Court shall make an order under *sub-section (2)* if and only if the Court is satisfied that if the applicant's claim were established, damages would not be an adequate remedy.

…."

18. Chapter 3 of Part 10 of the NAMA Act deals with "Legal Proceedings Generally". Section 183 therein states:

"This Chapter applies in relation to all legal proceedings-

(a) to which NAMA or a NAMA group entity is or becomes a party,

(b) relating to a designated bank asset or acquired bank asset, or

(c) otherwise relating to NAMA."

19. Section 192 provides:

"(1) Where injunctive relief is sought on an interim or interlocutory basis in proceedings to which this Chapter applies –

(a) to compel NAMA or a NAMA group entity to take or refrain from taking any action, or

(b) to compel any other person to take or refrain from taking any action where the relief if granted would adversely affect NAMA or a NAMA group entity,

the Court shall have regard, in determining whether to grant such relief, to the public interest.

(2) In considering the public interest, the Court shall have regard to-

(a) the purposes of this Act, and

(b) the importance of permitting NAMA to discharge its functions in an expeditious and efficient manner.

(3) Unless the Court is satisfied that not granting injunctive relief would give rise to an injustice, the Court shall not grant such relief where a remedy in damages would be available to the person who seeks that relief.

(4) For the purposes of *subsection (3),* the possibility that the action against which injunctive relief is sought would or might result in a person being declared bankrupt or ordered to be wound up or otherwise adversely affected is not, of itself, sufficient to establish that not granting such relief would give rise to an injustice."

20. Section 2 of the NAMA Act states:

"The purposes of this Act are-

(a) to address the serious threat to the economy and the stability of credit institutions in the State generally and the need for the maintenance and stabilisation of the financial system in the State, and

(b) to address the compelling need-

(i) to facilitate the availability of credit in the economy of the State,

(ii) to resolve the problems created by the financial crisis in an expeditious and efficient manner and achieve a recovery in the economy,

(iii) to protect the State's interest in respect of the guarantees issued by the State pursuant to the Credit Institutions (Financial Support) Act 2008 and to underpin the steps taken by the Government in that regard,

(iv) to protect the interests of taxpayers,

(v) to facilitate restructuring of credit institutions of systemic importance to the economy,

(vi) to remove uncertainty about the valuation and location of certain assets of credit institutions of systemic importance to the economy,

(vii) to restore confidence in the banking sector and to underpin the effect of Government support measures in relation to that sector, and

(viii) to contribute to the social and economic development of the State."

The arguments for a stay

21. Mr. Crosbie submits that he is entitled to a stay on the enforcement or execution in certain specified ways of the summary judgment given against him in the first proceedings, pending the determination of the second proceedings that he has instituted against NAMA and NALM.

22. In advancing that application, Mr. Crosbie relies upon a number of decisions that deal with the principles that govern the grant or refusal of a stay upon an order of the High Court pending an appeal to the Supreme Court, and also upon various leading cases on the circumstances in which it is appropriate to grant an interlocutory injunction pending the trial of an action.

23. This is not an application for a stay on the Court's order pending appeal to the Supreme Court, although Mr. Crosbie reserves his right to make such an application (presumably, should the present application fail). Nor is it an application for an interlocutory injunction. Rather, Mr. Crosbie contends that the principles applicable to the grant of such relief apply to the present circumstances by analogy.

24. There is no doubt that the Court has discretion to grant a stay on a judgment. As the authors of Delany and McGrath, *Civil Procedure in the Superior Courts* 3rd ed. (Dublin, 2012) observe (at para. 26-74): "It is common for a court to place a stay on [summary] judgment for a period of time to give a defendant an opportunity of trying to satisfy the judgment, to negotiate with the judgment debtor or even on an *ad misericordiam* basis."

25. There is no precedent of which I am aware, nor has any been cited to me, for the grant of a stay on execution or enforcement in certain specified ways of an order granting summary judgment pending the determination of separate plenary proceedings. However, I accept that the novelty of the application concerned is not, in itself, a bar to relief.

26. It seems to me that the principles that I must apply in considering Mr. Crosbie's application for a stay are those set out by the Supreme Court (*per* Clarke J.; Denham C.J., Hardiman, Fennelly and O'Donnell JJ concurring) in *Okunade v. Minister for Justice* [2012] 3 I.R. 152. That was a case involving an appeal against the refusal of an application for an injunction or stay pending an interlocutory application for leave to seek Judicial Review that was governed by the terms of s. 5 of the Illegal Immigrants (Trafficking) Act 2000. In considering whether there was any significant difference between the principles underlying the grant of a stay and those governing the grant of an injunction, Clarke J. stated (at pp. 178-9 of the report):

> ***"[65]...*** I am not satisfied that there is any difference *per se* in the proper approach to be adopted by the court in considering whether to stay an existing reviewable measure (in the words of O. 84, r. 20(7)(a) to consider whether to "otherwise direct" that there not be a stay) or put in place some other regime (such as by way of injunction), necessary to properly protect the interests of all parties pending a full trial. The underlying situation is the same in both cases. There is an inevitable risk that, with the benefit of hindsight, and after a full trial has been conducted, an injustice may be seen to have been done. A party may be subject to a challenged reviewable measure only to find that the measure is held to be invalid after a full trial. If the court does not, on a temporary basis, stay that measure or otherwise prevent it from having effect pending trial then there is an obvious risk of injustice in subjecting the party concerned to the measure in question only to find that the measure is invalid.
>
> ***[66]*** On the other hand, an order by way of stay or injunction, which has the effect of absolving a person or body from being subject to an otherwise valid measure pending trial itself, runs the risk of injustice, for if the result of the trial is that the measure is found to be valid, the person or body will have escaped from being subject to what, in that eventuality, is found to be a lawful measure for whatever period of time elapses between the stay or injunction being imposed and the final resolution of the proceedings.
>
> ***[67]*** In both cases the problem stems from the fact that the court is being asked, on the basis of limited information and limited argument, to put in place a temporary regime pending trial in the full knowledge that the court does not know what the result of the trial will be. It seems to me that, recognising that a risk of injustice is an inevitability in those circumstances, the underlying principle must be that the court should put in place a regime which minimises the overall risk of injustice. It seems to me that the underlying principle remains the same whether the court is considering placing a stay on a measure or granting an injunction. Indeed, although it is unnecessary to go into detail for the purposes of this case, it seems to me that a like general principle underlies the approach of the court in many other types of cases where the same broad problem arises. In many situations it is necessary to decide what is to happen in the intervening period pending a trial or other determination (or indeed an appeal) when, by definition, it is not possible to decide what the ultimate outcome will be. All such cases involve the risk that, when the dust has settled, it will be seen that some person or body has suffered either by the intervention of the court or, equally, by its non-intervention. However, the only way to remove that risk of injustice would be by deciding the case, issue or appeal immediately. The whole problem is that that process takes time. In those circumstances, I do not believe that the test as to whether the court should intervene pending trial depends on whether the temporary measure sought is described as a stay or as an injunction or, indeed, as any other form of order which might arise on the special circumstances of an individual case. The court must, in all cases, act so as to minimise the risk of injustice."

27. It is an oft-stated principle that the overriding consideration in deciding whether to grant a stay pending an appeal to the Supreme Court is to maintain a balance so that justice will not be denied to either party: see, for example, the judgment of McCarthy J. in the Supreme Court in *Emerald Meats Ltd v. Minister for Agriculture* [1993] 2 I.R. 443 (at 446). The balance of convenience test applied by the Supreme Court in *Irish Press plc v. Ingersoll Irish Publications Ltd (No. 3)* [1995] 1 ILRM 117 is, as the judgment of Finlay CJ in that case makes clear (at pp. 120-1 of the report), a constituent element of the overriding test identified in both *Redmond v. Ireland* [1992] 2 IR 362 and *Emerald Meats*.

28. In this case, Mr. Crosbie contends that the injustice that he will suffer, if the Court does not intervene by granting a stay on the execution or enforcement of the summary judgment that NALM has obtained against him pending the determination of the plenary proceedings that he has now brought, is the financial loss he will incur to the extent that NALM succeeds in enforcing that judgment against those of his assets to which, he contends, it has previously agreed to relinquish any claim. He also contends that he will suffer damage to his means of livelihood insofar as any enforcement action is taken against those particular assets or there is a petition for his bankruptcy (presumably, over and above any damage caused to his means of livelihood by the summary judgment already given against him). Finally, Mr. Crosbie argues that he would suffer particular damage if NALM was not prevented from registering a judgment mortgage against his interest in his family home in contravention of what he asserts is a valid and subsisting agreement by NALM to release (and, presumably, never reassert) any security interest in that asset, amongst certain others that are the subject of the asserted agreement. The specific damage that Mr. Crosbie apprehends in that regard is the inhibition that a judgment mortgage would represent both on the saleability of that property and on his ability to offer it as security for any further borrowing in which he might seek to engage.

29. It seems to me that, were the Court to accede to Mr. Crosbie's application for a stay, the countervailing risk of injustice to NALM and NAMA is that, in the event that Mr. Crosbie's claims are found to be without merit, the relevant assets might by then have been dissipated or applied in satisfaction of his other debts, leaving NAMA and NALM with an irrecoverable loss to the value of those vanished assets.

30. A further matter that, it seems to me, the Court is obliged to weigh in the balance, is whether it is appropriate or desirable in general to consider the grant of a stay on the execution or enforcement of a summary judgment pending the outcome of quite

separate plenary proceedings. In the first place, there is a strong argument to be made that such a stay would, quite simply, subvert the purpose for which the summary judgment process was designed, which is - in the words of Lavery J. in *Prendergast v. Biddle* (Unreported, Supreme Court, 31st July, 1957) - "to enable speedy justice to be done." Similarly, it must not be forgotten that these are Commercial Court proceedings and, as Kelly J. stated in *Abbey International Finance Limited v. Point Helicopters Limited* [2012] 2 I.R. 694 (at p. 701):

> "The purpose of setting up [the Commercial List] was, as I indicated in *IBB Internet Services Limited v. Motorola Limited* [2011] 2 ILRM 321, to achieve the objective of 'speedy, efficient and just determination of commercial disputes'."

31. Approaching the matter in another way, there is much force in the argument that any interlocutory relief designed to maintain what is asserted to be the *status quo* pending the determination of a claim made in plenary proceedings ought properly to be sought by way of injunction (or other equivalent measure) in *those* proceedings. An obvious difficulty with an application such as the present one is that - whether the Court is being asked to apply the "*bona fide*/fair/serious question to be tried" test, associated with an interlocutory injunction application made under the *Campus Oil* guidelines, or a test analogous to the "reality of the appeal" test associated with an application for a stay pending appeal - it requires the Court to form a view in one set of proceedings on a question to be tried in an entirely separate set of proceedings.

32. A third point, which follows from the previous one, is that it is necessary to ensure that the broad discretion of the court to grant a stay on summary judgment is not invoked, or inadvertently used, as a device to circumvent any more stringent requirement or test that the Oireachtas may have imposed on persons seeking the equivalent interlocutory relief in separate plenary proceedings. In this case, were Mr. Crosbie to seek interlocutory or interim relief against NAMA or NALM in the second proceedings, the Court would be statutorily required to have regard to the public interest in determining that application, under s. 192(1) of the NAMA Act.

33. Against the background of those factors, it seems to me appropriate next to consider the second application now before the Court – that is, the application by NAMA and NALM to strike out the second proceedings – before expressing a concluded view on Mr. Crosbie's application for a stay.

The arguments for an order striking out the plenary proceedings

34. NAMA and NALM submit that Mr. Crosbie's plenary proceedings are flawed and constitute an abuse of process as a result of his failure to address the provisions of s. 182 in instituting them. It appears to be common case that Mr. Crosbie is "a debtor" and that the second proceedings relate to Mr. Crosbie's indebtedness arising from personal loan facilities and guarantees. NAMA and NALM contend that those facilities and guarantees, and every other right arising directly or indirectly in connection with them, are "bank assets" within the meaning of the NAMA Act.

35. Mr. Crosbie submits that the assets that are the subject of the agreement for which he contends between himself and NAMA and NALM are not "bank assets" as defined in s. 181(1) of the NAMA Act. Mr. Crosbie bases this submission on the proposition that it is the effect of the agreement for which he contends that the assets referred to in it have been removed from the category of "bank assets" as defined by the NAMA Act, insofar as NAMA and NALM have waived any security they once held, or might otherwise have obtained, over those assets.

36. "Bank asset" is defined under s. 4 of the NAMA Act to include, *inter alia*, "(a) a credit facility, (b) any security relating to a credit facility, [and] (c) every other right arising directly or indirectly in connection with a credit facility…." Section 181(1) of the NAMA Act provides that the provisions of Chapter 2 of Part 10 of the Act (which includes s. 182) "apply in relation to legal proceedings commenced…by a person who is a debtor, associated debtor, guarantor or surety in relation to a bank asset…."

37. I am satisfied that the provisions of s. 182 apply to the second proceedings for several reasons. First, they have been commenced by Mr. Crosbie as a debtor and guarantor in relation to the loans and guarantees that are the subject of the summary judgment granted against him in the first proceedings – each of which falls within the definition of "bank asset." Mr. Crosbie has instituted the second proceedings for the purposes, *inter alia*, of challenging the entitlement of either NAMA or NALM to enforce that indebtedness by litigation in general or bankruptcy proceedings in particular; and of challenging the status of the part of that indebtedness related to the Bord Gáis Energy Theatre as being within any of the "classes of eligible bank asset" that NAMA was entitled to acquire. Second, as the definition of "bank asset" includes "any security relating to a credit facility", proceedings brought by Mr. Crosbie, as a debtor, challenging the status of any such security as a bank asset are, in my view, captured by s. 181(1) and, therefore, subject to the provisions of s. 182 on that basis also. In either case, the fact that the proceedings at issue seek to challenge the status of the assets concerned (or of some part of those assets) as bank assets cannot operate to take the proceedings outside the scope of s. 181(1) since, unless and until that challenge succeeds, the status of those assets does not change.

38. On behalf of Mr. Crosbie, it was submitted that, should the Court find that s. 182 does apply to the second proceedings, then it should treat the present application to strike out those proceedings as, instead, a "telescoped" hearing both of Mr. Crosbie's application for leave to apply for an order that he may apply for certain reliefs outside the scope of s. 182(1) and of his application for that order, pursuant to the terms of both s.182(2) and s.182(3) of the NAMA Act.

39. That course of action was commended to the Court by Mr. Crosbie as a pragmatic procedural shortcut, likely to effect some saving of time and cost without causing any procedural or substantive unfairness to NAMA or NALM. Indeed, those parties very fairly showed a willingness to meet Mr. Crosbie's case on that basis, if necessary. However, there is an obvious difficulty in that regard to which I will return shortly.

40. The position is somewhat complicated by the production on behalf of Mr. Crosbie at the hearing of the present application of a draft undated Statement of Claim in the second proceedings that has not yet been delivered to the other side, in deference – Mr. Crosbie says - to the existence of their application to strike out his plenary summons. In that proposed pleading, Mr. Crosbie significantly alters the relief that he is seeking. While that relief still includes a declaration that the terms of the McCabe letter constitute a binding, enforceable and effective agreement between the parties, the second declaration that is now to be sought is one that the agreement concerned prevents NAMA or NALM from enforcing Mr. Crosbie's debt to them in a manner that infringes the agreement alleged rather than, as previously pleaded, in any manner whatsoever. The next two declarations that were originally sought concerning the status and enforceability of the debt secured on the Bord Gáis Energy Theatre are to be dropped and replaced by a claim for damages "arising from the wrongful transfer of the …Bord Gáis Energy Theatre." A declaration is now to be sought that "the reliance of [NAMA and NALM] on s. 182 of the NAMA Act" is contrary to, and in breach of, Mr. Crosbie's constitutional rights. A further declaration is to be sought, if necessary, that the provisions of s. 182 of the NAMA Act are unconstitutional. A still further declaration is to be sought that the failure by NAMA and NALM to recognise the rights that Mr. Crosbie claims under the agreement that he asserts also amounts to a breach of Mr. Crosbie's constitutional rights. Mr. Crosbie's claim for damages is to be expanded from

one in respect of "misfeasance in public office" to include, in addition, damages for breach of duty, breach of statutory duty and breach of constitutional rights. Finally, the existing claim for an injunction preventing NAMA or NALM from enforcing, by litigation or bankruptcy procedures, the plaintiff's indebtedness, is to be dropped.

41. If Mr. Crosbie had properly complied with the requirements of s. 182 in respect of the reliefs that he has sought at paragraphs 1 to 5 inclusive of the General Indorsement of Claim in the plenary summons issued on his behalf, he would first have had to apply for leave to apply for an order allowing him to do so. In order to obtain that leave pursuant to s. 182(3) of the NAMA Act, it would have been necessary for him to satisfy the court under s. 182(4) both that his application raises a serious issue for the Court's determination and that either he is within the applicable time limit (under s. 184(4)(a)) or that there are substantial reasons to explain why he is not and that it is just and equitable to grant such leave having regard to the interest of any affected person (under s. 184(4)(b)).

42. Were he to overcome that hurdle, Mr. Crosbie would next have to apply on notice to NAMA for an order, pursuant to s. 182(2), allowing him to seek each of those reliefs. Under s. 182(6), the Court can only make such an order if it is satisfied that, if Mr. Crosbie's claim is established, damages would not be an adequate remedy.

43. Were I to accept Mr. Crosbie's invitation to treat NAMA and NALM's application for an order striking out his proceeding in whole or in part as though it were instead a telescoped application by Mr. Crosbie both for leave to seek an order and for an order allowing him to pursue a remedy other than those described in s. 182(1) of the NAMA Act, then the tests set out in the two preceding paragraphs of this judgment are the ones that I would have to consider. In order to do so fairly and properly, I would require appropriate submissions from both parties. As the judgment of Peart J. in *Daly v. NAMA*, unreported, 12 September 2011, clearly demonstrates, complex issues may very well arise in respect of some or all of the various aspects of those tests.

44. However, as I have flagged earlier in this judgment, I cannot accept that invitation. The rule that a claim to which Chapter 2 of Part 10 of the NAMA Act applies can only give rise to a remedy - other than one of those described in s. 182(1) of the NAMA Act - by order of the Court made on foot of a successful application brought by leave of the Court is a statutory rule. It is not merely a rule of court, non-compliance with which might be dealt with as the Court sees fit.

Conclusion

45. In respect of Mr. Crosbie's application in the first set of proceedings for a stay on the enforcement or execution of the summary judgment against him in certain specified ways, I have come to the following conclusions:

(a) The Court has a broad discretion to grant a stay on judgment where it is necessary to minimise the risk of injustice.

(b) I express no view on whether there is a real issue to be tried (or some reality to the claim) in the second proceedings because that issue may shortly arise (and, in my view, can only properly arise) in the context of an appropriate application in those proceedings. I am prepared to assume, solely for the purpose of the present application, that such an issue does exist.

(c) I express no view on whether damages may be an adequate remedy for Mr. Crosbie in the second proceedings for the same reason. I will therefore assume, without reaching any concluded view on the matter, that they may not be. I have certainly come to the view that damages may not be an adequate remedy for NAMA or NALM because of the significant risk that Mr. Crosbie would be unable to satisfy any such award.

(d) It is therefore necessary to consider the balance of convenience or, differently put, the course necessary to minimise the risk of injustice.

(e) For the reasons set out at paragraphs 30-32 *supra*, I have come to the conclusion that the greater risk of injustice lies in granting the stay that is being sought.

(f) In summary, I am satisfied that to grant such a stay would be inimical to the appropriate aim of speedy justice under both the summary summons procedure and the rules of the Commercial Court. I am further satisfied that only in exceptional circumstances (of no application here) should the Court consider granting a stay on judgment in one set of proceedings by reference to an appraisal of the issues in another set of proceedings (in which equivalent relief ought more properly to be sought). I am also satisfied that, *a fortiori*, a party should not be permitted to seek a suspensory order such as a stay in one set of proceedings to await the outcome of another set of proceedings in which equivalent relief should more properly be sought, but in which such relief is only available by reference to the application of a more stringent statutory test.

46. I therefore refuse the application for a stay in the first proceedings.

47. In respect of the application by NAMA and NALM for an order striking out the second proceedings, I have come to the following conclusions:

(a) The remedies sought at paragraphs 1 to 5 inclusive of the General Indorsement of Claim in the originating plenary summons are subject to the requirements of s. 182 of the NAMA Act.

(b) In the absence of an order under s. 182(2) that he may apply for any such relief, Mr. Crosbie is not entitled to maintain a claim for any such remedy

(c) The Court is not entitled to disregard the express requirements of s. 182 of the NAMA Act by treating NAMA and NALM's application for an order striking out the second proceeding in whole or in part as though it were instead a telescoped application by Mr. Crosbie both for leave to seek an order and for an order allowing him to pursue a remedy other than those described in s. 182(1) of the NAMA Act.

48. I will therefore make an order striking out Mr. Crosbie's claim for the reliefs sought at paragraphs 1 to 5 inclusive of the General Indorsement of Claim in the originating plenary summons in the second proceedings.

49. As the interlocutory application in the second proceedings is now concluded, I will hear the parties in relation to the appropriate order as to costs in respect of that application, and as to the levels of those costs for the purpose of measuring them, pursuant to the provisions of s. 189 of the NAMA Act.