THE HIGH COURT

[2012 No. 426 COS]

IN THE MATTER OF SECTION 212 OF THE COMPANIES ACT 2014 (FORMERLY SECTION 205 OF THE COMPANIES ACT 1963) AND

IN THE MATTER OF EMERALD ISLE ASSURANCES AND INVESTMENTS LIMITED

AND

IN THE MATTER OF A PETITION BY

JAMES MOREY

PETITIONER

AND

EMERALD ISLE ASSURANCES AND INVESTMENTS LIMITED

AND

TIMOTHY MAVERLEY

RESPONDENTS

Ruling of Mr. Justice Richard Humphreys delivered on the 9th day of February, 2017

1. This ruling deals with a jurisdictional issue in relation to a motion which was returnable for the 6th February, 2017, on behalf of the petitioner Mr. Morey, seeking the following reliefs:

> (i) liberty for Mr. Morey to take decisions on behalf of the company as may be necessary to conduct a hearing in the High Court in relation to the assessment of damages due to the company in proceedings against the company's former solicitors, and in any other matter including such further or other court hearings and appearances as may arise in those proceedings; and
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> (ii) secondly, in the event that Mr. Morey agrees a provisional settlement of the company's claims in the proceedings against the solicitors, an order granting him liberty to bring an application on notice to Mr. Maverley for approval of the proposed settlement and for the discontinuance of the company's claim in the proceedings.

2. The papers as originally presented by the petitioner omitted a great deal of necessary material relating to the previous proceedings and the matter was adjourned to enable that material to be obtained; but obviously it would have been better to have had that material as part of the petitioner's application originally. Mr. Arthur Cunningham B.L. on behalf of the petitioner Mr. Morey submits that the court has jurisdiction to entertain the motion on foot of a liberty to apply that was granted by Murphy J. when granting relief under the s. 205 petition originally. That was a decision set out in a written judgment delivered on the 12th February, 2013, in which reliefs were granted to Mr. Morey along the lines set out in the petition under s. 205 that was before the court at that point.

3. The petition sought four substantive reliefs as follows (as well as further and other relief and costs):

> (i) an order granting the petitioner liberty to take all such decisions as may be necessary to enter into negotiation on behalf of the company in proceedings entitled *Emerald Isle Assurances and Investments Limited, Timothy Maverley and James Morey v. Dorgan and Others Practising Under the Style of Coakley Moloney Solicitors* [Record No. 2010 6640 P] ("the *Coakley Moloney* proceedings");
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> (ii) an order granting Mr. Morey liberty to take all such decisions as may be necessary to continue the appeal to the Court of Appeal that was then pending in the *Coakley Moloney* proceedings;
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> (iii) in the event that Mr. Morey successfully agrees settlement of the company's claim in the *Coakley Moloney* proceedings, an order granting him liberty to apply on notice for a ruling of the settlement; and
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> (iv) an order that Mr. Maverley be restricted from disclosing certain information.

4. The liberty to apply in the order of Murphy J. has to be read in the context of the matters to which the petition related and the reliefs that were sought and indeed granted at that point; and I emphasis that it was only a liberty to apply and not a liberty to re-enter.

5. In *In Re Emerald Isle Assurances & Investments Ltd*. (*ex tempore*, Court of Appeal, 16th November, 2016) *per* Peart J. (Irvine and Sheehan JJ. concurring), Mr. Maverley's appeal against the order of Murphy J. was struck out as moot. Irvine J. in her concurring remarks did suggest that the parties might consider seeking some agreement to utilise what she referred to as the liberty to re-enter provision that is in the order.

6. What the order of Murphy J. says in fact is that it grants liberty to apply in the event that the settlement negotiations are unsuccessful. It seems to me that there is a very clear distinction between liberty to apply and liberty to re-enter, as has been emphasised in Supreme Court jurisprudence, particularly the judgment of McGuinness J. in *McMullen v. Clancy (No. 2)* [2005] 2 I.R. 445. The order in this case very clearly provides only for liberty to apply and not liberty to re-enter.

7. It seems that the liberty to apply is not some sort of free-standing ground of jurisdiction that allows new claims to be made. I think that is implicitly acknowledged in Irvine J.'s formulation of seeking *agreement* to use it. The liberty to apply has to be read in the context of the underlying proceedings which are the s. 205 proceedings and which are limited to the particular matters to which I have referred. I think it is for that reason that both Peart and Irvine JJ., in the judgments given on the 16th November, 2016, referred to the probable need for a fresh s. 205 petition. Peart J. says, at para. 10, that *"[i]n all likelihood a fresh s. 205 petition would have to be presented for the conduct of the assessment of damages if no agreement is possible as to extending the life of the existing s. 205 order*" and Irvine J. says "*I think it's regrettable that that order does not cover the assessment of damages which is due to*

take place in the High Court and that it is necessary therefore for the petitioner to perhaps make a further application under s. 205 based on oppression". Then she goes on to refer to the liberty to apply provision but as I have already mentioned, that was is in the context of there being agreement. Without in any way taking away from what the Court of Appeal have said about the desirability of agreement, with which of course I would respectfully associate myself, it seems to me that it follows from the nature of the underlying proceedings, the nature of the order of Murphy J., the liberty to apply rather than re-enter, the judgment of Peart J. and the judgment of Irvine J. that Mr. Morey is confined to matters within his existing s. 205 proceedings and cannot use the liberty to apply to essentially extend the remit of the proceedings in terms of some quite new reliefs.

8. There is a second fundamental difficulty with the application and that is the posture of Mr. Morey in the Court of Appeal. Mr. Maverley has been deprived of the opportunity to challenge on the merits the decision of Murphy J. that there was oppression because his appeal on that issue has been struck out as moot. That came about on foot of a specific application by Mr. Morey by way of a notice of motion dated the 1stApril, 2016, seeking a number of reliefs but relief No. 2 was an order striking out the notice of appeal of the second named respondent Mr. Maverley dated the 15th April, 2013 against the judgment and orders of Murphy J. of the 19th February, 2013. That application is grounded on an affidavit of Mr. Morey filed on the 15th April, 2016, and at para. 13 of that affidavit he swears that *"the running of this appeal, in the absence of settling the Coakley Moloney Proceedings, was the purpose of the s. 205 petition. Therefore Mr. Maverley's appeal against the Orders of 19th February, 2013, is also very clearly moot".*

9. It is simply unfair and oppressive conduct by Mr. Morey towards Mr. Maverley to adopt the posture that he has; that is to tell the Court of Appeal that the s. 205 proceedings have come and gone and therefore the appeal against the order in those proceedings is moot, but then subsequently to tell me that the s. 205 proceedings are full of life and are a continuing valid process, and to seek the extended orders in those proceedings which they are now seeking. If I were to accede to that completely contradictory position I would be doing an injustice to Mr. Maverley, who as I say has been deprived of the opportunity to challenge the ruling of Murphy J. on its merits because of his appeal having been struck out as moot at the urging of Mr. Morey.

10. So for either or both of those reasons which are independent of each other, but obviously are mutually reinforcing, I will dismiss the application.