

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS 7106

THE FUTURES GROUP, INC. and  
GEOFF G. CRAMER,

Plaintiffs,

v.

DENIS BROSNAN,

Defendant.

**ORDER ON DEFENDANT'S  
MOTION TO DISMISS, AND, IN THE  
ALTERNATIVE, PARTIAL MOTION  
TO STAY FOR FORUM NON  
CONVENIENS  
AND  
DEFENDANT'S MOTION TO SEVER**

I. INTRODUCTION

1. THIS MATTER is before the Court on Defendant Denis Brosnan's Motions to Dismiss, and, in the alternative, Partial Motion to Stay for Forum *Non Conveniens* (the "Partial Motion to Stay"), (ECF No. 8), as well as his Motion to Sever, (ECF No. 27). The Motion to Dismiss was mooted by Plaintiffs' First Amended Complaint, (ECF No 13). Therefore, the Court considers only Defendant's Partial Motion to Stay and his Motion to Sever.

2. Having considered the parties' written submissions, arguments at the hearing, and the relevant record, for the reasons stated herein and in the exercise of the Court's discretion, Defendant's motion is GRANTED in part and DENIED in part as specified below.

II. FINDINGS OF FACT

3. The Court finds the following facts, which are undisputed in the pleadings or are otherwise stated in the documents integral to the pleadings.

4. The Futures Group, Inc. (“Futures”) is a Delaware Corporation authorized to do business in North Carolina. (First Am. Compl. ¶ 1.) Geoff Cramer (“Cramer”) is the Chief Executive Officer and majority shareholder of Futures. (First Am. Compl. ¶ 2.)

5. Defendant Denis Brosnan (“Defendant”) is a resident of Ireland. (First Am. Compl. ¶ 3.) Prior to this action, Defendant was Chair of Futures’ Board of Directors (“Futures’ Board”). (First Am. Compl. ¶ 8.)

6. Defendant’s daughter, Aimee Brosnan (“Aimee”), was formerly Futures’ corporate secretary. (First Am. Compl. ¶ 8.) Aimee and Cramer were married but are now engaged in divorce proceedings. (*See e.g.*, First Am. Compl. ¶ 8.)

7. On 23 May 2021, Defendant was removed as Chair and Aimee was removed as corporate secretary of the Futures’ Board. (First Am. Compl. ¶ 8.)

A. Brosnan’s Guarantees of AIB Loans to Cramer

8. Between 2007 and 2018, Cramer borrowed money from the Allied Irish Bank (“AIB” or “the Bank”) in Dublin, Ireland, under several loan agreements. (First Am. Compl. ¶ 13, Ex. C; Denis Brosnan Aff. Ex. E at 17–20, 29–31, 36–37, 45–49, 337–339, 344–347, 354–359<sup>1</sup> [hereinafter “AIB Loan Agreements”].) Defendant signed guarantees for the loans. (First Am. Compl. ¶ 16; Denis Brosnan Aff. Ex. E at 21–28, 32–35, 38–42, 333–336, 340–343, 348–353, 360–365 [hereinafter “AIB Loan Guarantees”].)

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<sup>1</sup> The Court cites to the page numbers of the PDF when citing to Exhibit E because this Exhibit does not have consistent page numbers throughout.

9. Defendant made payments to AIB under the terms of the AIB Loan Guarantees. As a result, Defendant contends that Cramer owes him €485,075.89. (First Am. Compl. ¶ 13.)

10. Cramer's loan agreements with AIB were subject to AIB's general terms and conditions, including a choice of law provision specifying that "[f]acilities will be governed and construed in accordance with the laws of Ireland." (AIB Loan Agreements; *see also* Denis Brosnan Aff. Ex. E at 395.) Additionally, beginning in 2017 and again in 2018, the guarantees signed by Defendant on behalf of Cramer included both a choice of law and a choice of forum clause:

Governing law and jurisdiction: This Guarantee, and any non-contractual obligations arising out of or in relation to it, shall be governed by and construed in accordance with the laws of Ireland and the parties submit to the jurisdiction of the courts of Ireland in relation to any dispute arising out of or in connection with this Guarantee (including any dispute relating to its existence, validity or termination or any non-contractual obligations arising out of or in connection with it).

(AIB Loan Guarantees at 352, 364.)

11. Defendant contends that Irish common law applies to the indemnity obligation that results from Defendant's performance on the AIB Loan Guarantees (the "AIB Loan Guarantee Obligation").

12. While the parties dispute which country is the most convenient with respect to the location of the evidence regarding the totality of the debts between and among them, the Bank's witnesses and originals of the financial documents relating to these particular loan transactions are in Dublin, Ireland.

13. As guarantor, Defendant seeks indemnification from Cramer for the AIB Loan Guarantee Obligation. On 7 May 2021 he sent Cramer a letter demanding repayment. (First Am. Compl. ¶ 13.) When Cramer did not make the demanded payment, Defendant brought suit against him in the High Court of Ireland. (First Am. Compl. ¶ 15.)

B. Brosnan's Loans to Futures

14. In addition to the loans to Cramer from AIB that were guaranteed by Defendant, Defendant loaned Futures money to help finance its operations. In connection with these loans, on 23 April 2021 Defendant demanded that Futures repay \$3,230,808.67 and issue him 65,948,436 shares of its Class A common stock. (First Am. Compl. Ex. A.)

C. The Alleged "Overlap" of the Loans

15. The Parties disagree regarding who is responsible for reimbursing Defendant for repaying the AIB loans. Defendant argues that he guaranteed the loans for Cramer as the borrower, and that Cramer, alone, is responsible for reimbursing him. (Answer to First Am. Compl. and Countercls. at ¶¶ 174–97.) Plaintiffs contend that Cramer borrowed the money for Futures' use, that Defendant was aware of this fact, and that there was a further agreement among the parties that shifted the repayment obligation onto Futures. Plaintiffs argue, therefore, that the loans Defendant made to Cramer and the loans Defendant made to Futures "overlap," and, consequently, liability for all of the debt should be decided in the same

lawsuit. (Compl. ¶ 13–16.)<sup>2</sup> In any event, the fact that Defendant paid significant amounts on the AIB loans taken out by Cramer has not been controverted.

D. The Proceeding in the High Court of Ireland

16. Defendant sought leave to initiate legal proceedings against Cramer in the High Court of Ireland on 4 June 2021. The High Court granted leave, and Cramer was served on 24 June 2021. (First Am. Compl. ¶ 15; Denis Brosnan Aff. Exs. A, C, ECF Nos. 11.1, 11.3.) The parties agree that litigation in Ireland on the AIB Loan Guarantee Obligation is proceeding.

E. The Case Before this Court

17. Plaintiffs filed this action on 24 May 2021, (Compl., ECF No. 3), seeking, among other things, a declaration of the parties' responsibility for the debts that resulted from Defendant's relationship with Cramer and Futures. The debts fall into two broad categories: (1) monies owed as a result of Defendant's performance on the guarantees he executed on behalf of Cramer for the AIB loans (the AIB Loan Guarantee Obligation); and (2) monies loaned by Defendant directly to Futures.

18. Plaintiffs argue that, regardless of their genesis, as a result of agreements between and among the parties, all of the debts—if owed—are owed by Futures, and no portion is owed by Cramer alone. Therefore, Plaintiffs say, there is nothing to be gained from severing or staying a determination of the AIB Loan

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<sup>2</sup> Both parties present emails and other evidence that they claim support their respective positions regarding responsibility for the loans. (Geoffrey Cramer Aff. Exs. 1–2, ECF Nos. 23.1–2; Geoffrey Cramer Second Aff. Exs. 1–10. ECF Nos. 33.1–11; Def. Brosnan's Suppl. Brief Supp. Mot. Stay Forum *Non-Conveniens*, Ex. A, ECF No. 26.1.) However, the motions before the Court do not require a determination of that issue today, and it is an issue better left for review following discovery and development of the evidence.

Guarantee Obligation issues from the remainder of the case. (*See* Pls.’ Responsive Br. Def.’s Purported Mot. Sever 2–9, ECF No. 32.)

19. Defendant denies Plaintiffs’ characterization of the parties’ responsibility for the debts and contends that Cramer, personally, is liable to indemnify him for the AIB Loan Guarantee Obligation. Further, Defendant argues that the High Court of Ireland is the appropriate judicial body to determine Cramer’s liability to him for this debt and that Plaintiffs’ “race to the courthouse” to file an action encompassing all the debts in this Court before the action was filed in Ireland amounts to “procedural gamesmanship.” (Def.’s Suppl. Br. Supp. Mot. Stay Forum *Non Conveniens*, ECF No. 26.)

20. The Court held a hearing on Defendant’s Partial Motion to Stay on 16 November 2021. As a result of arguments during the hearing, the Court permitted the parties to file supplemental briefing addressing whether North Carolina Rule of Civil Procedure 42 (“Rule 42”) applies with respect to the procedural relief sought. (ECF No. 24.) Defendant filed a supplemental brief, as well as his Motion to Sever on 3 December 2021. (ECF No. 27.) Plaintiffs filed both a supplemental brief on 10 December 2021, (ECF No. 29), and their response brief to Defendant’s Motion to Sever on 22 December 2021, (ECF No. 32). Defendant’s reply brief followed on 12 January 2022. (ECF No. 38.)

### III. CONCLUSIONS OF LAW

#### A. Standard of Review

21. “The paramount duty of the trial judge is to supervise and control the course of trial so as to prevent injustice.” *In re Will of Hester*, 320 N.C. 738, 741 (1987). “In discharging this duty, the court possesses broad discretionary powers sufficient to meet the circumstances of each case.” *Id.* (citations omitted). “This supervisory power encompasses the authority to structure the trial logically and set the order of proof.” *Id.* at 741–42 (citations omitted). “Absent an abuse of discretion, the trial judge’s decisions in these matters will not be disturbed on appeal.” *Id.* at 742 (citation omitted).

#### B. Rule 42

22. Rule 42(b)(1) provides that “[t]he Court may in furtherance of convenience or to avoid prejudice . . . order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims counterclaims, third-party claims, or issues.” N.C. R. Civ. P. 42(b)(1). Through Rule 42, “[t]he North Carolina Rules of Civil Procedure expressly preserve these inherent supervisory powers [of the Court] with regard to severance and bifurcation.” *In re Will of Hester*, 320 N.C. at 742.

23. Rule 42(b)(1) permits bifurcation of issues for trial before different juries or within a single trial before the same jury. The latter is preferable. *See* G. Gray Wilson, 2 North Carolina Civil Procedure § 42-3 (4th ed. 2021). Bifurcation is used when application of different laws with respect to the issues would be confusing to a

jury. *Id.* (citing *Kearns v. Horsley*, 144 N.C. App. 200 (2001)). Bifurcation is also used when a finding as to one issue may eliminate a claim. *Id.* (citing *Muteff v. Invacare Corp.*, 281 N.C. App. 558 (2012)).

24. “Whether or not there should be a severance rests in the sound discretion of the trial judge.” *Aetna Ins. Co. v. Carroll’s Transfer, Inc.*, 14 N.C. App. 481, 484 (1972). *See also Vance Trucking Co. v. Phillips*, 66 N.C. App. 269, 274 (1984), *cert. denied*, 311 N.C. 309 (1984) (“The trial judge has discretion under G.S. 1A-1, Rule 42(b) to sever issues for trial in order to further convenience or avoid prejudice.”); *Wallace v. Evans*, 60 N.C. App. 145 (1982).

25. North Carolina’s rule is identical to its federal counterpart. Thus, reference to federal law is appropriate. *In re Will of Hester*, 320 N.C. at 742 (citation omitted). As with North Carolina law, “[f]ederal case law indicates that Rule 42(b) confers not only the authority to sever issues for independent trial before separate juries, but also the authority to sever issues within a single trial or proceeding for separate submission to the same jury.” *Id.* (citing *Emerick v. U.S. Suzuki Motor Corp.*, 750 F. 2d 19 (3d Cir. 1984); *In re Beverly Hill Fire Litigation*, 695 F. 2d 207 (6th Cir. 1982), *cert. denied*, 461 U.S. 929 (1983)).

26. Likewise, “[t]he decision to grant or deny a stay rests within the discretion of the trial court, and review of that decision is for abuse of that discretion.” *Sloan Fin. Grp., Inc. v. Beckett*, 159 N.C. App. 470, 485 (2003) (citing *American Recovery v. Computerized Thermal Imaging*, 96 F.3d. 88, 96–97 (4th Cir. 1996)).

27. Thus, a court has discretion both to bifurcate claims or issues “in furtherance of judicial expedition and economy,” and then to stay a determination of those issues or claims pending resolution of parallel litigation that involves the same claims or issues. *See e.g., Masimo Corp. v. Mindray DS. USA Inc.*, 2015 U.S. Dist. LEXIS 116673, at \*20 (D.N.J. Sept. 1, 2015) (severing and staying claims pending their resolution in a parallel California action “in furtherance of judicial expedition and economy”); *cf. Brown Thomas v. Hynie*, 2019 U.S. Dist. LEXIS 34559 (D.S.C. Mar. 5, 2019) (partial stay ordered when a decision from another court “could up-end any summary judgment or trial proceedings conducted by the court”).

28. This Court has also bifurcated claims and stayed issues in the exercise of its inherent authority to manage matters before it efficiently. For example, in *Porter v. Ford*, this Court, pursuant to Rule 42(b)(1), “sever[ed] the issue of whether the parties reached a settlement agreement from the merits of the underlying dispute,” in order to “conduct a separate trial that [was] limited to the issue of whether the parties entered into a binding settlement agreement.” *Porter v. Ford*, 2015 NCBC LEXIS 96, at \*15–16 (N.C. Super. Ct. Oct. 14, 2015). The Court then stayed discovery and other proceedings on the underlying merits pending completion of this initial trial. *Id.* at \*16.

### C. Defendant’s Motions to Sever and Stay

29. Defendant’s Partial Motion to Stay requests that the Court issue a stay with respect to Plaintiffs’ First Claim for Relief.<sup>3</sup> That claim seeks a declaratory

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<sup>3</sup> To the extent Defendant’s Motion under N.C.G.S. § 1-75.12(a) requests a *transfer* of any part of the case or a stay of the *entirety* of this action, that relief is denied. Consequently, the

judgment regarding, among other things, whether Defendant is entitled to recover from “Futures or Cramer, or either of them” the sum of €485,075.89, money allegedly owed him as a result of Defendant’s performance on the AIB loan guarantee.<sup>4</sup>

30. Defendant argues that this portion of the overall debt he is owed as a result of his relationships with Cramer and Futures results from a loan taken personally by Cramer in Ireland; that Defendant guaranteed and subsequently paid the loan; that Cramer alone is responsible to him for the money under the terms of the written guarantee; that the AIB Loan Guarantee Obligation issues can be decided more efficiently in the case already proceeding in the High Court of Ireland; that it would create a hardship for him to litigate the same issues here; and that it would be confusing and prejudicial to him to mix Cramer’s AIB Loan Guarantee Obligation together with Futures’ obligations to Defendant at this stage of the case. Therefore, pursuant to North Carolina Rule of Civil Procedure 42, Defendant moves to sever the AIB Loan Guarantee Obligation issues so that determinations regarding those issues can be decided separately before determining whether to combine the debts.

31. Plaintiffs, on the other hand, argue that that a Motion to Stay for Forum *Non Conveniens* pursuant to N.C.G.S. § 1-75.12(a) has no application here.

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parties’ protestations regarding whom among them is the proper plaintiff and whether or not there was procedural maneuvering do not require the Court’s further review. Instead, the Court evaluates this matter under Rule 42 and determines that bifurcation of the issues and a temporary stay with respect to some of them will preserve the parties’ respective positions at this stage of the proceedings and allow for a more orderly and efficient administration of the case.

<sup>4</sup> Defendants’ Eleventh counterclaim, pleaded in the alternative, also seeks a determination with respect to the AIB Loan Guarantee Obligation and is subject to bifurcation and stay.

Additionally, they contend that regardless of the language of the guarantees, all of the debts at issue are liabilities of Futures so there is no basis to sever the claims because the facts will eventually show that the parties later agreed that all of the debts at issue are the responsibility of Futures. Plaintiffs further argue that because the AIB Loan Guarantee Obligation ultimately became the responsibility of Futures, which is located in the United States, more evidence relevant to the debts overall is located in North Carolina than is located in Ireland.

32. The Court observes that the amounts at issue are calculable and, therefore, distinguishable. While they ultimately may or may not be combined, it preserves the parties' relative positions at this stage of the case not to combine the debts—which originated at different times and in different ways—pending further development of the evidence.

33. The Court further recognizes that it has no authority to dictate to the High Court of Ireland how it manages the case before it, and regardless of what a trier of fact decides in the case before this Court, the case in Ireland will run its natural course. Determinations from that case may well bear on the issues in this case creating the potential for contradictory or confusing outcomes if this Court proceeds without appropriate consideration for the Irish action.

34. Therefore, the Court concludes that Defendant has shown good cause to warrant bifurcating and staying a determination of the AIB Loan Guarantee Obligation issues, and that such a procedural ordering of the issues is reasonable

under the circumstances. The Court further concludes that bifurcation of the issues and a stay is appropriate to avoid prejudice to Defendant.

35. Additionally, the Court is persuaded by the fact that Plaintiffs have not shown that they will be prejudiced as a result of bifurcation and a stay of the AIB Loan Guarantee Obligation issues.<sup>5</sup> The case will remain, in its entirety, in this Court, and during the period of the stay, Plaintiffs may proceed with discovery on the AIB Loan Guarantee Obligation issues and continue to pursue a determination of their remaining issues.

36. Finally, considerations of judicial economy and efficiency counsel for bifurcation and a stay of the AIB Loan Guarantee Obligation issues. Application of Irish common law is better left to the resources of the High Court of Ireland. “While American courts can and do apply foreign law, they regularly hold that [foreign] courts are better equipped to apply [foreign] law.” *Cardioventis Ag. v. IQVIA, Ltd.*, 2018 NCBC LEXIS 243, at \*21 (N.C. Super. Ct. Dec. 31, 2018) (citing *Rabbi Jacob Joseph Sch. v. Allied Irish Banks, P.L.C.*, 2012 U.S. Dist. LEXIS 121438, at \*13–14 (E.D.N.Y. Aug. 27, 2012); *Denmark v. Tzimas*, 871 F. Supp. 261, 271 (E.D. La. 1994)). “Moreover, applying and proving foreign law can impose significant costs on parties in terms of time and money and can also increase the administrative burden on the court.” *Id.* (citing *Yavuz v. 61 MM, Ltd.*, 576 F.3d 1166, 1181 (10th Cir. 2009); *In re Banco Santander Sec.-Optimal Litig.*, 732 F. Supp. 2d 1305, 1339 (S.D. Fla. 2010);

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<sup>5</sup> Cramer’s arguments regarding convenience are particularly unavailing. Among other facts, Cramer chose to take the loan from an Irish bank, and it is undisputed that the original bank documents and bank witnesses are in Ireland. Plaintiff also chose an Irish citizen to act as guarantor and relied upon his financial standing with the Irish bank.

*Stroitelstvo Bulg., Ltd. v. Bulgarian-Am. Enter. Fund*, 598 F. Supp. 2d 875, 889 (N.D. Ill. 2009)).

37. In summary, bifurcation of the AIB Loan Guarantee Obligation issues both furthers convenience and avoids prejudice to the parties. The case will be better and more efficiently managed if the AIB Loan Guarantee Obligation issues—regardless of whether they are brought by Plaintiffs in their request for declaratory judgment or by Defendant in his counterclaim—are bifurcated from the remaining issues and decided at a later stage of the case with due regard to the proceedings in Ireland.

38. In addition, in its discretion and to promote judicial economy, avoid inefficiency and unnecessary cost, preserve the parties' positions, and avoid the potential for conflicting rulings, the Court stays motion practice and a determination of the AIB Loan Guarantee Obligation issues pending further order of the Court.

#### IV. CONCLUSION

39. WHEREFORE, for the reasons stated herein and in the exercise of its discretion, the Court GRANTS Defendant's motion to BIFURCATE the issues and SEVER the AIB Loan Guarantee Obligation issues (First Am. Compl, First Claim for Relief, "Alternative Alleged Debt" issues; and Answer to First Am. Compl. and Countercls., Eleventh Alternative Claim for Relief, "Action on Guarantees under Irish Law against Cramer") from the other issues in this case.

40. Motion practice and a determination of the AIB Loan Guarantee Obligation issues is hereby STAYED pending further order of the Court.

41. The parties are directed to provide the Court with monthly joint status reports regarding the proceedings in Ireland. The status reports are due on the first working day of each month and may be forwarded to the Court via email to its clerk at Darby.M.Festa@nccourts.org with a copy to the Court Coordinator at William.D.Moore@nccourts.org.

42. The Court will schedule a status conference to discuss discovery and other case management issues by separate order.

IT IS SO ORDERED, this the 23rd day of March, 2022.

*/s/ Julianna Theall Earp*

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Julianna Theall Earp  
Special Superior Court Judge  
for Complex Business Cases