JUDGMENT : Mr. Justice Teare : Commercial Court. 20th February 2008

1. The Court has before it an application by the Defendant to stay the determination of some of the issues in this action pending the completion of certain proceedings in Italy. The stay is sought, not on the basis of the Judgments Regulation, but on case management grounds. There is no dispute that a stay can be exercised on such grounds. Guidance as to how this discretion to stay should be exercised is to be found in the decision of this Court and of the Court of Appeal in ***Reichold v Goldman Sachs*** [1999] 2 Lloyd's Rep.567

The London Action

2. The Claimants in this action are two persons who sold the shares in Stasys Limited ("Stasys") to the Defendant, a UK company, pursuant to the terms of an agreement dated 10 December 2004 and which was completed on 28 February 2005. The claim is for the sum of £2m., being the final tranche of the sale price. The Defendant resists that claim on the basis that it has given notice of a General Warranty Claim which entitles it to withhold the final tranche. It counterclaims for damages for breach of several warranties. The Defendant alleges that the Claimants, in breach of warranty, failed to disclose the existence and terms of all contracts relating to a project named PUBCYS which had been entered into by Stasys (which I shall refer to as the "*material contracts warranty*") and/or failed to make fair disclosure of allegations of breach of obligation relating to PUBCYS and/or failed to disclose threats of legal proceedings against Stasys in respect of PUBCYS (which I shall refer to as the "litigation warranty"). PUBCYS was a proposed publishing refuse certification system. The idea underlying PUBCYS was to track magazine and newspaper stocks for the publishing industry.

3. The PUBCYS project involved at least two contracts. The first was a contract dated 19 September 2002 known as the Exploitation Agreement. The second was a contract dated 16 October 2001 known as the Development Agreement. The Claimants admit that they did not disclose the Exploitation Agreement or the annexes to the Development Agreement to the Defendant. They say that they were not obliged to because those contracts were not "*material contracts*" as defined in the share sale agreement. Material contracts were defined as contracts and agreements to which Stasys was party and in respect of which its obligations had at the date of the share sale agreement not been completely fulfilled. They further say that the Development Agreement had been completed by no later than 23 July 2004 and that Stasys had discharged its obligations under that agreement. The Claimants rely in particular on a statement by the EC (which was a party to the Development Agreement and had funded the PUBCYS project) that the Development Agreement had been completed. As to the Exploitation Agreement the Claimants say that that was "*nothing more than a revocable indication of willingness to form a corporate vehicle upon the Development Agreement producing 'expected results'*". They further say that Stasys did not indicate that it wished to proceed with PUBCYS after the completion of the Development Agreement and so had no obligations under the Exploitation Agreement. Thus neither the Development Agreement nor the Exploitation Agreement was a material contract.

The Turin Action

4. Before the proceedings in the London action were commenced on 5 June 2007 proceedings had been commenced in the Turin Civil Court on 19 July 2006 against Stasys and others by Antonio Pacile in relation to the PUBCYS project. He claims damages of over 36m. Euros. The other defendants have filed third party claims against Stasys claiming damages of over 80m. Euros.

5. The basis of Mr. Pacile's claim in Turin is not clear, at least to English lawyers. It has been summarised by the Defendant as follows. Mr. Pacile alleges that he created the PUBCYS project and that he reached an agreement with Stasys and other companies through which he entrusted them with the development of the project. His case is that they agreed to provide services in exchange for a share of the profits. He refers to contracts dated 20 December 2001 and 3 September 2002 which are neither the Development Agreement nor the Exploitation Agreement. However, it is common ground between the parties to the English action that Mr. Pacile's claim is based on the premise that PUBCYS should have been developed in accordance with the Development Agreement. It is also common ground that the other companies who have brought third party proceedings against Stasys allege breaches by Stasys of the Development Agreement. The Defendant says that the other companies also allege breaches of the Exploitation Agreement. The Claimants put the Defendant to proof of this allegation.

6. Stasys denies that is has any liability either to Mr. Pacile or to the other companies. So far as Mr. Pacile is concerned Stasys says, firstly, that Mr. Pacile was not party to the Development Agreement or to the Exploitation Agreement and therefore has no claim and, secondly, that the Development Agreement has been performed, relying upon the same statement by the EC as the Claimants in the London action rely upon. So far as the Exploitation Agreement is concerned Stasys says that it did not bind Stasys to undertake exploitation of the PUBCYS project. This appears to mirror what the Claimant says about that agreement in the London action.

The application for a stay

7. The Defendant's application is for a stay of the issue concerning the material contracts warranty. The key point relied upon is that there is an issue which is common to both the London and Turin actions, namely, whether the Development Agreement and Exploitation Agreement had been performed by Stasys. That issue is raised in the London action because a material contract is one which has not been completely fulfilled. It is raised in the Turin action because Mr. Pacile and/or the other companies allege that Stasys was in breach of the Development Agreement and/or of the Exploitation Agreement. There is therefore a risk of inconsistent decisions between the London and Turin Courts. This Court might hold that the Development Agreement and Exploitation Agreement had been completely fulfilled and the Turin Court might later hold that they had not been. The Defendant said this

would be an injustice. For this reason it was said that the determination of the material contracts issue should be stayed pending the decision in the Turin action to which all those who entered into the two agreements are party. All other issues in the London action (save perhaps the quantification of damages on the counterclaim) could be heard.

8. It was said on behalf of the Claimants that the Turin Court might dismiss Mr. Pacile's claims on the basis that he was not a party either to the Development Agreement or to the Exploitation Agreement and that therefore the Turin Court might not determine whether or not those contracts were breached. It is no doubt possible that Mr. Pacile's claim may be dismissed on the grounds that he was not a party to those agreements but it would appear that the question whether the Development Agreement and, possibly, the Exploitation Agreement were breached, even if not answered in Mr. Pacile's claim, will have to be answered by the Turin Court in the third party claim.

9. It therefore appears that there is, as suggested by the Defendant, a risk of inconsistent decisions.

10. A related point relied upon by the Defendant is that it would be forced to adopt contrary positions if the two actions proceeded at the same time. In London the Defendant would be saying that the agreements had not been completely fulfilled and in Turin Stasys, now owned by the Defendant, would be saying that they had been completely fulfilled.

The relevant principles

11. As already indicated I take these from the decision of this Court and of the Court of Appeal in ***Reichold v Goldman Sachs*** [1999] 2 Lloyd's Rep. 567. The Court has an interest in deciding the order in which related proceedings should be tried *"not only because the existence of concurrent proceedings may give rise to undesirable consequences in the form of inconsistent decisions, but also because the outcome of one set of proceedings may have an important effect on the conduct of the other*" (per Moore-Bick J. at p.571).

12. For that reason the court may manage the order in which the proceedings are heard. It is clear from the decision in that case that such case management is appropriate even where the proceedings are taking place between different parties in different jurisdictions.

13. However, before an action which has been properly commenced here is stayed pending the outcome of proceedings between different persons in another jurisdiction is granted, the defendant must show *"very strong reasons for doing so and the benefits which are likely to result from doing so clearly outweigh any disadvantage to the plaintiff"* (per Moore-Bick J. at p.572).

14. Although there is "*very real burden*" on the defendant *"to satisfy the Court that the ends of justice would be better served by granting a stay"* it is not greater than that which would arise on an application on the grounds of *forum non conveniens* (at p.574).

15. In the Court of Appeal Lord Bingham CJ. upheld the decision and reasoning of Moore-Bick J. (at p.582). He noted that counsel had accepted *"that the grant of stays such as this would be a rarity, account always being taken of the legitimate interests of plaintiffs and the requirement that there should be no prejudice to plaintiffs beyond that which the interest of justice were thought to justify*" (at p.581).

16. Whilst the stay sought in ***Reichold v Goldman Sachs*** was of the entire action and the stay sought in the present case is only of certain issues the same principles must apply. But the more limited nature of the stay is of course one of the factors to be taken into account.

The relevant factors

17. The risk of inconsistent decisions between the London and Turin Courts is a matter which is capable of amounting to a "*very strong reason*" for granting the stay which is sought. The undesirability of inconsistent decisions was expressly mentioned by Moore-Bick J. in ***Reichold v Goldman Sachs*** and has long been recognised in applications for a stay based upon an exclusive jurisdiction clause as capable of amounting to strong cause or good reason for not granting a stay; see ***The El Amria*** [1981] 2 Lloyd's Rep.119 at p.128 per Brandon LJ ("a potential disaster from a legal point of view") and ***Donohue v Armco*** [2002] 1 Lloyd's Rep. 425 at pp.433-5 per Lord Bingham. I was therefore not attracted by the submission made on behalf of the Claimants that *"inconsistency of findings would simply be a fact of life"*. It was further submitted that there would be no or no material injustice were this Court to hold that the Development Agreement and Exploitation Agreement had been completely fulfilled and the Turin Court were later to reach the opposite conclusion because the Defendant and Stasys were distinct corporate entities. It is of course true that they are distinct corporate entities but that is not sufficient to dispel the injustice relied upon by the Defendant. The warranty alleged to have been broken, which was for the benefit of the Defendant, concerned, in effect, potential liabilities of Stasys, the shares in which the Defendant was purchasing. Were the London and Turin Courts to reach inconsistent decisions as to whether there were any such liabilities the Defendant would have, in my judgment, a real sense of injustice notwithstanding that it is not party to the Turin proceedings. Furthermore, looking at the matter objectively "the ends of justice" are not served by inconsistent decisions.

18. However, the assumption underlying the Defendant's application for a stay is that it will avoid the risk of inconsistent decisions. In cases where a stay is granted because of the risk of inconsistent decisions and the stay is to all intents final the stay will have the effect of avoiding the risk of inconsistent decisions. But in the present case the stay will not be final. It will only last until the Turin proceedings have been completed. If Stasys is found by the Turin Court to have breached the terms of the Development Agreement or the terms of the Exploitation

Agreement the Claimants will have to decide whether to accept that finding or not. I am told by Counsel that they will not accept it. There is however no evidence to that effect and one would expect any such decision to be taken only after the judgment in Turin has been carefully studied. But the Claimants will not be bound by the decision of the Turin Court, it will create no estoppel and it will not be an abuse of process to seek a finding inconsistent with it. The Claimants will be free to seek a finding that Stasys was not in breach of the agreements and that the agreements are not therefore "*material contracts*." Thus the stay will not remove the risk of inconsistent decisions.

19. Counsel for the Defendant said that it would be "*unthinkable*" that this Court would reach a decision inconsistent with that of the Turin Court where those who were party to the agreements in question had litigated the question of breach. I accept that in some respects the decision of the Turin Court might impact on the decision in this Court. The Exploitation Agreement is governed by Italian law. To the extent that the Turin states the applicable Italian law this court would be likely to follow such statement rather than permit expert evidence of Italian law to be given on the very issue which an Italian Court has decided. To the extent that evidence of fact is given in the Turin Court bearing upon the "material contract" point such evidence is likely to be admissible in the London action. Moreover, a reasoned decision of the Italian Court is likely to be studied closely by the Claimants' advisors and in the absence of some fundamental error is likely to influence the Claimants and their advisors to accept some or all of its findings. But if the decision of the Turin Court is not accepted the Claimants cannot be prevented from seeking findings inconsistent with it. This Court will of course be mindful of the undesirability of inconsistent decisions but there will remain a risk of inconsistent decisions. Thus the stay which is sought by the Defendant will not prevent a risk of inconsistent decisions. I accept however that the risk of inconsistent decisions will be reduced if a stay is granted because of the impact that the decision of the Turin Court might have on the course of the London action.

20. As for the related point (that the Defendant and Stasys would be forced to adopt contrary positions if the two actions proceeded at the same time) I am not persuaded that this is a point to which any or any significant weight can be attached. Stasys served Points of Defence in the Turin action in November 2006 saying that it had not acted in breach of the Agreements. The Defendant served Points of Defence in the London action in August 2007. It chose to adopt a contrary position to that adopted by Stasys in Turin. Whilst that is understandable it was the Defendant's choice. I do not consider that a difficulty created by the Defendant's own choice can amount to a good reason for granting a stay.

21. It is now necessary to consider the legitimate interests of the Claimants. The Defendant's Application Notice suggests that the Turin proceedings will not be concluded for 2-3 years. The trial in London, with an expected length of 3-4 days, can presently be expected to be heard in the Commercial Court in June 2008 if the parties were ready. If a longer trial is required it could still be heard this year. Thus the stay, if granted, may seriously prejudice the Claimants because the resolution of their claim against the Defendant may have to await the outcome of the Turin proceedings.

22. The degree of such prejudice is tempered by the Defendant's acceptance that a trial can and should take place in London without delay of all issues save (i) those concerning the question whether the Development Agreement and the Exploitation Agreement were "material contracts" and (ii) the quantification of damages on the counterclaim (in the event that the Court accepts the Defendant's submission as to the proper measure of damage). All issues concerning the litigation warranty and all issues concerning fair disclosure (including those which affect the Development Agreement and the Exploitation Agreement) would be determined. Such a trial covers rather more ground than is contemplated in the Application Notice but the Defendant's revised position is clearly set out in the Defendant's Skeleton Argument at paragraphs 15-19.

23. Nevertheless, if the Claimants successfully resist the argument that the litigation warranty was breached they will still have to await the outcome of the Turin proceedings before they will be able to address this Court on the material contracts warranty. They have no control over the proceedings in Turin (which involve three other companies in addition to Mr. Pacile and Stasys and include third party proceedings in addition to Mr. Pacile's claim). It is unlikely that either Stasys or the Defendant (as the owner of Stasys) will have any incentive to ensure that the proceedings are completed without delay.

24. If the Claimants ultimately recover the final tranche of the purchase price they will be entitled to interest to compensate them for the delay in payment. But there is evidence that this might not compensate them for the loss of the opportunity to invest the final tranche. Their present investments provide returns in excess of bank interest rates. The Defendant has offered to discuss providing the Claimants with alternative security for the final tranche but their offer was not taken up. However, it is speculative whether some alternative arrangement is in fact available which would satisfactorily meet the prejudice of being kept of out of those funds to which the Claimants say they are entitled.

25. I conclude therefore that the possible significant delay to the resolution of the Claimants' claim is a prejudice to them. Furthermore, the ends of justice are not usually served by delay.

Conclusion

26. The reason for granting a stay is that there is a risk of inconsistent decisions and resulting injustice to the Defendant. However, the force of that factor is weakened by the consideration that a stay will not eliminate that risk though it might reduce it. Against that factor is the risk of significant delay to the resolution of the London claim and resulting injustice to the Claimants. The force of that factor is weakened by the trial of other issues

which can take place without delay and by the award of interest to compensate for delay. But the prejudice caused by delay is not eliminated thereby.

27. In such circumstances can it be said (adopting the language of Moore-Bick J.) that there are very strong reasons for granting a stay or that the benefits which are likely to result from a stay clearly outweigh any disadvantage to the Claimants ? Having given this matter careful consideration I do not think that can be said. The scales seem evenly balanced. The benefits of a stay do not clearly outweigh the consequential disadvantage to the Claimants. Can it be said (adopting the language of Lord Bingham) that the grant of a stay would cause no more prejudice to the Claimants than the interests of justice justify ? I do not consider that can be said. In circumstances where there is a risk of inconsistent decisions whether a stay is granted or not, albeit a reduced risk if a stay is granted, I consider that the prejudice of significant delay in the resolution of the Claimants' claim is more than the interests of justice justify.

28. For the reasons which I have endeavoured to express the application for a stay must be refused.

Catherine Newman QC and Gregory Banner (instructed by Kerman and Co.) for the Claimants
Michael Brindle QC and Rebecca Sabben-Clare (instructed by Allen &Overy) for the Defendant