THE HIGH COURT

COMMERCIAL

[2022] IEHC 432

[Record No. 2021/268 COS]

IN THE MATTER OF MANDERS TERRACE LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT 2014

AND

IN THE MATTER OF SECTION 212 OF THE COMPANIES ACT 2014

BETWEEN

GRAIGUEARIDDA LIMITED

APPLICANT

AND

MANDERS TERRACE LIMITED, PROTO ROTO LIMITED

AND

PATRICK COSGRAVE

RESPONDENTS

JUDGMENT of Mr. Justice Mark Sanfey delivered on the 13th day of July 2022.

Introduction

1. This ruling relates to an application for discovery by the applicant against the respondents. The applicant is a member of Manders Terrace Limited ('the company' or

'the first named respondent'), and contends that the affairs of that company are being conducted and/or the powers of the directors are being exercised (a) in a manner which is oppressive to the applicant and the other minority member of the company, and (b) in disregard of the interests of the applicant and the other minority member of the company, Lazvisax Limited ('Lazvisax'). The company was incorporated on 16th November, 2012, and is a private company limited by shares. The second named respondent, 'Proto Roto' holds 81.03% of the issued share capital of the company; the applicant holds 11.97%; and Lazvisax holds 7%.

2. The company is the ultimate owner of a number of entities, including Connected Intelligence Limited, which owns and operates the highly successful International Technology Conference 'Web Summit', together with various other technology related conferences. Mr. Patrick Cosgrave, the third named respondent, is the sole member of Proto Roto and the Chief Executive Officer of Web Summit. Accordingly, the third named respondent is the beneficial shareholder of approximately 81% of the issued share capital of the company. Mr. David Kelly is the sole member of the applicant and accordingly the beneficial shareholder of just under 12% of the company. Mr. Daire Hickey is the sole member of Lazvisax and the beneficial shareholder of 7% of the company.

3. There is much litigation in relation to the affairs of the company, involving suit and counter-suit. I do not propose to say anything about the background to the suite of litigation, other than that both minority shareholders have initiated proceedings pursuant to s.212 of the Companies Act 2014. There were a number of motions for discovery arising from litigation conducted by and against the company, and the discovery was the source of extensive correspondence, affidavits and written legal submissions. With the encouragement of the court, the parties collaborated to achieve

as much agreement as possible in relation to these motions, such that the parties have agreed categories as between themselves in all of the motions save the motion in the present proceedings.

4. The purpose of this ruling is simply to communicate my decision in relation to the categories in dispute. By and large, the parties were in agreement in relation to the principles of law to be applied in deciding the appropriateness of categories, although how those principles were to be applied to some of the categories was on occasion a matter of dispute. There was an intense level of dispute between the parties in relation to some categories at the hearing, which lasted two days.

5. The parties tabulated the areas of disagreement between them in the form of a chart, which formed the basis of argument between the parties at the hearing. This provided a summary from which the court and the parties could work, and it is primarily to this document that I make reference in the paragraphs below.

Category 8

6. This was the sole paragraph in respect of which written submissions were not made, due to the fact that there was substantial affidavit evidence in relation to the sub-categories in dispute which set out the arguments for and against discovery. The parties commenced their submissions with category 8, and accordingly I will set out my conclusions in relation to this category first.

7. Category 8 has sixteen sub-categories, only four of which have been agreed. The sub-categories sought by the applicant relate to financial information regarding the value of the applicant's shares in the company, and the amounts owing under a profit share agreement, to which reference is made at para. 75 *et seq.* of the points of claim.

8. An affidavit was sworn by Michael Neary, a partner in corporate finance in Grant Thornton, who has been engaged to provide an opinion as to the fair valuation of

the company and the applicant's shareholding therein, and also in relation to sums which may be due and owing under the profit share agreement. The categories of documents are sought by Mr. Neary for those purposes, and his affidavit of 28th April, 2022 sets out his view in relation to the response to that date in correspondence of the respondents. Mr. Simon McAllister, a partner in EY who is engaged by the respondents to advise on the valuation of the applicant's shareholding, swore a replying affidavit on 10th May, 2022, in response to which Mr. Neary swore a supplemental affidavit on 13th June, 2022. Mr. McAllister swore a brief supplemental affidavit on 16th June, 2022. Ms. Elizabeth Burke, a partner in Clark Hill, Solicitors for the respondents, also swore two affidavits of 9th May, 2022 and 26th May, 2022 which dealt *inter alia* with the mechanics of what is likely to be an extremely large and expensive discovery process.

9. Counsel for the applicant made the point at the outset that the court cannot at this stage be expected to give definitive decisions on whether documentation sought by the applicant's expert is relevant and necessary. Mr. Neary has expressed a view as to the documentation he requires to carry out his allotted function. The applicant submits that the court cannot decide that documentation which Mr. Neary says he needs is unnecessary if Mr. Neary considers it to be necessary, as his task is essentially an investigative one in which he will determine during the course of that investigation exactly what documentation or information is germane to his enquiries.

10. In fact, counsel for the respondent does not in principle disagree with this stance, but urges that the court strike a balance between the approach advocated by Mr. Neary, who is unfamiliar with the books and records of the company, and Mr. McAllister, who has that familiarity, so that weight should be given to Mr. McAllister's sworn evidence as to what documentation exists, how it is organised, and how relevant it is. Counsel for the respondents also emphasised the willingness of the respondents and Mr.

McAllister to be of assistance to Mr. Neary and to guide him to relevant documentation, rather than his having to sift through large amounts of irrelevant documentation.

11. The court is conscious that, in advance of the hearing of this case and the other cases in this suite of litigation, there will be extensive engagements between experts, whether voluntarily or in response to the directions of the court pursuant to its power under O.63A of the Rules of the Superior Courts. While I will make orders in relation to each of the disputed categories, I would expect the liaison between the respective solicitors and the experts to continue in a way that ensures that both sides are basing their positions on appropriate documents and information, so that there is compliance with the court's orders, but in a mutually focused and cost-effective way.

Categories 8.1 and 8.2

12. Category 8.1 was agreed in advance of the hearing, and I was assured by counsel that, contrary to what is stated in the chart, category 8.2 is also agreed. I was also informed that categories 8.4 and 8.15 are agreed.

Category 8.3

13. The applicant seeks briefing papers provided to the Board of Directors along with the monthly management accounts agreed in category 8.1. The respondents suggest that what is sought are the "financial packs" that are apparently contained in the briefing papers, and that discovery should be limited to those packs. It seems to me that the briefing papers may well be relevant to the context in which the monthly management accounts are furnished, and contain certain references to them. Accordingly, I will order discovery of this sub-category as sought by the applicant.

Category 8.5

14. This category comprises "details of (a) directors' compensation and (b) salary levels across the Company for the Historical Period [defined as the fiscal years ending

31st December, 2018, 31st December, 2019, 31st December, 2020 and 31st December, 2021] and (b) salary levels across the Company for the Historical Period". The chart indicates that (a) is "agreed up to 22 March 2021"; (b) is refused.

15. In the reasons offered by Mr. Neary for his request, he refers to having been advised that the company "has in recent times expanded from the role of being primarily a company that stages technology conferences to one which is also engaged in other commercial ventures, including the sphere of developing software (referred to by the Respondents as Summit Engine) for event management and event management companies". Specifically in relation to part (b) above, Mr. Neary avers that the documents are "…required to understand the resources committed by the Company to events versus commercial ventures other than technology conferences (such as the development of Summit Engine)".

16. Counsel for the respondent makes the point that "…what is actually…needed is a targeted breakdown of salaries by reference to functions". I think that is correct. Mr. Neary wants to factor into his valuation the cost of resources expended on non-core activities, and also – as he neutrally and tactfully puts it – "surplus or discretionary costs". Rather than requiring the very general and overly broad category of "salary levels across the company", his requirements might be addressed as follows:

> "Documents sufficient to establish the allocation of all employees to specific projects and their salary levels for the historical period."

17. In ordering discovery in these terms, it is not my intention that every document which could conceivably come within this category should be discovered; rather, that in the case of each employee Mr. Neary receives documentation which verifies what project duties the employee was engaged upon for the historical period, and how much he or she was paid. I am satisfied that Mr. Neary's requirement of documentation for

the historical period, rather than the somewhat arbitrary date of Mr. Kelly's resignation, is justified. I will therefore order, in respect of sub-category 8.5, discovery of:

> "Documents which establish levels of director's compensation and which are sufficient to establish the allocation of all employees to specific projects and their salary levels for the historical period."

Category 8.6

18. This sub-category is "[r]ationalisation of headcount expenses and Directors' view on any roles or costs surplus to current earnings requirements". The required "rationalisation" has been refused by the respondents, although they agree to supply the "director's views" sought. Part of the difficulty with this category, as with sub-category 8.5, is that it is expressed as a task to be carried out rather than documentation to be supplied. The rationalisation of headcount expenses was initially refused by the respondents' solicitors as being "vague, broad, unnecessary and irrelevant".

19. I accept that an analysis of expenses attributable to employees and projects is relevant and necessary to the valuation of the company, and in particular the identification of the real cost and resources allocated to individual projects. However, as with sub-category 8.5, what is required is a breakdown of those expenses rather than every document which conceivably comes within this category.

20. I propose to order discovery of the following:

> "Documentation establishing expenses or costs incurred by or allocated to employees during the historical period, and any documentation establishing or evidencing the views of directors on any roles or costs surplus to current earnings requirements."

21. As with sub-category 8.5, I expect the respective experts to liaise with a view to satisfying Mr. Neary's requirements while minimising the cost and range of discovery of this category.

Category 8.7

22. The sub-category sought is "[a]nnotated revenue and pipeline for current and any potential new events". This is a strangely worded category in that it does not refer to any actual documentation, and appears to require completion of a task - annotation - rather than provision of documents. Mr. Neary avers that it "is required in order to understand the current development prospects for the Web Summit Group…and likely financial benefit of the current pipeline". Mr. McAllister avers that the detail in this request would be included in the "financial model", *i.e.,* the latest comprehensive financial plan, which the respondents are prepared to disclose. In his second affidavit, Mr. Neary expresses doubt as to whether the financial model would have the level of detail he requires.

23. I propose to order discovery of "documentation evidencing or establishing revenue and sales pipeline for any current or potential or anticipated new events". However, I expect the experts to liaise as to Mr. Neary's requirements. If the financial model is sufficient for his requirements, so much the better. If not, it may be that documentation can be supplied in a focused manner on a consensual basis which will obviate the need for extensive discovery.

Category 8.8/8.9

24. These sub-categories are, respectively, "copies of any bid models received from host cities and/or Heads of Terms in respect of any potential new events"; and "copies of any draft or final commercial agreements and any potential new events".

25. Mr. McAllister states that bid models do not exist for all cities. It is also asserted generally that the financial model will contain the detail required in these sub-categories. Mr. Neary is concerned that the financial model will not contain the level of detail he requires, or will omit matters which subtend the assumptions or conclusions in the financial model.

26. I am satisfied that these documents are relevant and necessary for the fair disposal of the issues between the parties, and will order discovery in the terms sought. However, as with previous categories, I expect the experts to liaise in relation to Mr. Neary's requirements in a practical and cost-effective way.

Category 8.10

27. This category comprises "historical EBITDA performance (2013-2021) of each Web Summit event on an individualised basis to include (a) Web Summit (b) Collision and (c) RISE", [(b) and (c) referring to other technology-related conferences conducted by the company].

28. At para. 13 of his first affidavit, Mr. McAllister avers that "the business does not measure events in this way", and to provide such documentation would require the carrying out of a bespoke exercise. Counsel for the respondents confirmed that "…the document that Mr. Neary is looking for doesn't exist because the company deals with conferences on a global basis…". [Transcript, Day 2, p. 23, lines 17 to 20]. Counsel indicated that the respondents have no objection to this sub-category, but indicated that there would be an averment on behalf of the respondents that such documentation does not exist. In case even this acknowledgement would be of some small benefit to the applicant, and given that the respondents have indicated no objection to my doing so, I will order discovery of this category.

Category 8.11

29. This sub-category is "[d]etails of costs by employee for 2021 and their role in the organisation". Although this category was initially refused, counsel for the respondent accepts that, in essence, it seeks the same documentation as is sought in categories 8.5(b) and 8.6. Given the way I have reformulated these categories above, it does not seem to me that discovery in the terms set out in sub-category 8.11 is necessary; however, if I am mistaken in that conclusion, my remarks in relation to liaison between the respective experts apply equally to this sub-category.

Category 8.12

30. This sub-category relates to the costs and revenue associated with any commercial venture other than a technology conference for each relevant fiscal year. Counsel for the respondents maintains that all of this information is contained in the "financial model" which the respondents intend to furnish to the applicant, and would in any event already be contained in category 8.4, which is agreed. Mr. McAllister in his first affidavit states his understanding that this sub-category "will be included in the historic management accounts", presumably those agreed to be provided under sub-category 8.1. It would appear that provision of the financial model and the historic management accounts would address this sub-category adequately, so that discovery in the terms of sub-category 8.12 is not necessary. Accordingly, I do not propose to order discovery of this sub-category.

Category 8.13

31. This sub-category is "[d]ocuments relating to the preparation of any management current financial model for the Web Summit Group (*i.e.* the company, all subsidiaries and related companies) including any assumptions employed in such preparation in relation to the historical period to date". Mr. McAllister asserts in his

first affidavit that the request is "too broadly defined", although "…disclosing key supporting documents which underpin the model is reasonable". Counsel for the applicant agrees that such "key supporting documents" should be supplied; of course the experts may differ on what is comprised in this term. Mr. McAllister also avers that older versions of the model have been superceded "and are no longer relevant".

32. I agree that the category as drafted is overly broad, and potentially comprises an enormous amount of irrelevant documentation. I propose to order discovery of "the current financial model and key supporting documentation which underpins the model or provides inputs to it, together with documentation containing or evidencing any assumptions employed in such preparation". However, I stress that Mr. Neary should be accommodated in as far as possible with the provision of documentation or information which he considers necessary for the task of valuing the company, and in the event of a significant dispute in this regard as to what is relevant, will not be shut out from applying to the court for such documentation by reason of the present application.

Category 8.14

33. This sub-category is "[d]etails of any financial commitments entered into by the Group as at 31 December 2021 to extent not recorded in the Group's financial statements". Mr. McAllister in his first affidavit makes the point that any such commitments are required to be recorded in the financial statements, duly audited and signed by the directors. The accounts to 31st December, 2021 have in fact been prepared, and I was informed that they have been filed on 15th June, 2022. Mr. Neary had not seen these accounts on the date of swearing of his second affidavit on 13th June, 2022.

34. I think that the sub-category is speculative, and discovery in those terms is not warranted at present. Of course, if Mr. Neary were to form a considered view that there were financial commitments not recorded in these latest financial statements, he would be most likely entitled to details and documentation in relation to same.

Category 8.16

35. This sub-category is "[d]etails of all investments/commitments made by the company to any non-majority-owed company or VC fund and investment/commitment and current book value". Similarly to sub-category 8.14, Mr. McAllister is of the view that any such investments/commitments will be fully addressed "in the audited accounts". The comments I make above in relation to category 8.14 are applicable here; as the sub-category is speculative, I will not order discovery, although if there are such investments/commitments not fully addressed in the audited accounts, it seems to me Mr. Neary would be entitled at least to the key supporting documentation for same.

The other categories

36. At the hearing the parties then proceeded to deal with the remaining categories. There were full written and oral submissions in relation to these categories.

Category 7

37. This sub-category related to "[a]ll documents relating to the profit share agreement entered into in 2010 between Mr Kelly and Mr Cosgrave". During the course of the hearing, counsel for the applicant and the respondents agreed that discovery could be made in those terms, given the willingness of both parties to agree to a protocol which has been agreed in other litigation between the parties. I was given a copy of a proposed protocol in litigation in which the company is the plaintiff and Mr. Kelly is the defendant. The protocol comprises a methodology for dealing with discovery documents which, *inter alia*, authorises the identification of custodians of documents

which will deal with various aspects of the discovery and, in a manner agreed between the parties, limit the amount of discovery necessary. As the parties accept that such a protocol requires to be agreed in relation to the present litigation, they have now agreed that category 7 is appropriate.

Category 9

38. This sub-category is as follows: -

> "All documents evidencing or establishing communications between
>
> (i) Mr Kelly and Mr Cosgrave during the period from 6 October 2010 [the commencement of Web Summit] to the date of commencement of these proceedings, and
>
> (ii) Mr Cosgrave and any third party in relation to the Applicant and/or Mr Kelly in respect of the Company and/or Web Summit between the date of incorporation of the Company and the commencement of these proceedings."

39. In his affidavit grounding the motion, Mr. John O'Riordan, a partner in the firm of Dillon Eustace LLP representing the applicant, refers to allegations of "oppressive, aggressive, coercive (including attempted blackmail) and toxic conduct of Mr Cosgrave towards Mr Kelly" set out at paras. 23 to 32 of the points of claim, and to further allegations made at paras 41 and 48, and to the various denials of those matters set out by the respondents in the points of defence.

40. The case is made by the applicant that the relationship between Mr. Kelly and Mr. Cosgrave involved oppressive and discreditable conduct on the part of Mr. Cosgrave from the commencement of the company's activities in 2010. Counsel considers that all such documentation is relevant to the issues set out in the foregoing paragraphs.

41. The respondent did offer a refined category in response to this request in the correspondence, but this was not acceptable.

42. It seems to me that documentation evidencing the working relationship between Mr. Kelly and Mr. Cosgrave is relevant to the disputes. Counsel correctly makes the point that the case law establishes that relevance alone will not render documents subject to discovery. However, in circumstances where there is complete conflict between the parties in relation to the nature and quality of the working relationship, communications between the parties are in my view both relevant and necessary for the fair disposal of the issues. While many of the communications may not relate to or be indicative of the sort of conduct at issue between the parties, such communications are likely to be relevant and necessary to show the absence of conflict and the extent to which the working relationship was fruitful and productive, or may well be relevant and necessary to establish the context in which disputes occurred.

43. In the circumstances, I consider that category 9(i), although broadly expressed, is relevant and necessary for the fair disposal of the issues, and I will order discovery of that sub-category accordingly.

44. As regards category 9(ii), the applicant accepts that discovery of this category should be limited to documents generated between 1st January, 2019 and 14th April, 2021. The category relates primarily to the events described at para. 27 *et seq.* of the points of claim, which took place in 2019. The respondents however reject the category, other than in the terms suggested in correspondence.

45. Counsel for the applicant accepts that category 9(ii) is directed towards communications of which the applicant is not aware, and which may or may not exist. He submits however that there is a jurisdiction to make discovery of material not directly identifiable by matters set out in the pleadings and refers to dicta by Clarke J

(as he then was) in *National Educational Welfare Board v. Ryan* [2008] 2 IR 816 at para. 4.7: -

> "…Where, however, a party, in its pleadings, specifies, in sufficient, albeit general, terms, the nature of the fraud contended together with specifying the alleged consequences thereof, and establishes a *prima facie* case to that effect, then such a party should not be required, prior to defence and thus prior to being able to rely on discovery and interrogatories, to narrow his claim in an unreasonable way by reference to his then state of knowledge. Once he passes the threshold of having alleged fraud in a sufficient manner to give the defendant a reasonable picture as to the fraud contended for, and establishes a *prima facie* case to that effect, the defendant should be required to put in his defence, submit to whatever discovery and interrogatories may be appropriate on the facts of the case, and then pursue more detailed particulars prior to trial."

46. It is submitted that this "balancing test" was extended beyond cases of fraud by Barniville J in *Nolan v. Dildar* [2020] IEHC 244, and permits the balancing test to be used, not just in cases of fraud, but where a party alleges "some form of clandestine activity". The applicant alleges that the incidences of oppressive conduct set out in the points of claim are not intended to be exhaustive, and suggests that it is entitled to documentation of which it is presently unaware which may establish further incidences of oppression conducted by Mr. Cosgrave in a clandestine or covert manner.

47. Counsel for the respondents submits that "the classic case of shareholder oppression is overt activity, not covert activity…covert activity is not in the DNA of shareholder oppression…". It was suggested that the applicant had not pleaded that concealed or covert activity on the part of the respondent had taken place. Very specific allegations of overt oppressive actions had been made by the applicant, and it was on

these allegations that the case for oppression was made out. Counsel contended that what the applicant wanted was to be given "…a roving ability to look to sweep up additional complaints or causes of action in circumstances where, on [the applicant's own pleadings, 'the applicant'] doesn't assert that he considers there are any" [Transcript, Day 2, p. 94, lines 11-14].

48. There is no doubt that oppression of a shareholder will usually manifest itself in some obvious way, such as exclusion from participation in the decision-making process or unilateral dilution of the value of one's shares. However, oppression can often be effected in a clandestine manner, such as where majority shareholders conspire to isolate a minority shareholder or to act in concert against it. While the net effect of such actions may be manifest, the exact steps taken towards such a result and the degree of complicity of those involved may be unknown or unclear.

49. In the present case, the applicant has made very specific allegations against Mr. Cosgrave which he alleges constitute oppressive acts. In particular, the applicant concludes at para. 31 of the points of claim that "it was now apparent that Mr. Cosgrave was making up falsehoods about [Mr. Kelly] in order to damage his character". Counsel for the applicant refers to paras. 110, 112, and 119 of the points of claim, in which it is alleged that Mr. Cosgrave consulted him with a view to procuring Mr. Kelly's assistance in acting against the interests of Mr. Hickey, the principal of Lazvisax. It was suggested that such clandestine activity against that individual implied that it was likely that Mr. Cosgrave had similarly consulted third parties with a view to advancing the alleged oppressive acts against Mr. Kelly, and that documents evidencing or establishing such communications were relevant and necessary for the fair disposal of this issue.

50. It does seem to me, in applying the balancing test advocated by Clarke J in *National Educational Welfare Board v. Ryan*, that the applicant has given a "reasonable picture" of the oppressive acts on which it relies. It must be emphasised that the respondents dispute utterly that any oppressive conduct took place. If however the allegations are in substance true, it is not unlikely that the assistance of a third party was sought in a clandestine manner, or that there are communications with a third party which would substantiate the allegations. Indeed, it may be that discovery of this category would show that there was no such activity, or assist in disproving the applicant's allegations.

51. While one must always be wary of a category which may be speculative or a "fishing expedition", I consider that category 9(ii) is focused and grounded in the pleadings. Accordingly, I will order discovery of the category, subject to the temporal limitations suggested by the applicant.

Category 11

52. This sub-category is

> "All documents evidencing and/or establishing the complaint made by an employee of Web Summit about Mr Hickey in 2016 and any and all investigations arising from same which for the avoidance of doubt includes any investigation conducted into the alleged management or mismanagement by Mr. Kelly of the complaint at issue."

53. The issue in relation to this category is whether there should be discovery, not just of documents relating to any investigation of the alleged mismanagement by Mr. Kelly of a complaint made by an employee about another executive in 2016, but whether documents in relation to the original complaint, which was resolved, should be discovered.

54. It seems to me that the allegation of oppression relates to what Mr. Kelly alleges is an unfounded allegation by Mr. Cosgrave that Mr. Kelly was under investigation for the alleged mismanagement of the employee's complaint in 2016. At para. 48 of the points of claim, Mr. Kelly alleges that he established from the Chief Financial Officer and the Chief People Officer that this allegation was "entirely false". The issue between the parties is therefore whether Mr. Cosgrave oppressed Graiguearidda/Mr. Kelly by circulating a false rumour in relation to the management of the complaint. It does not seem to me that documentation in relation to the complaint itself, which was subsequently resolved, is necessary for the fair disposal of this issue.

55. I will therefore make discovery in the terms suggested by the respondents:

> "All documents evidencing and/or establishing any investigation conducted into the management or mismanagement by Mr. Kelly of the complaint made by an employee of Web Summit about Mr. Hickey in 2016."

Category 12

56. This category is as follows: -

> "All documents evidencing or establishing communications by the Respondents or any of them with any third party subsequent to 18 March 2021 in relation to the venture capital activities of Mr Kelly and/or Mr Murphy limited to documents generated between [22] March 2021 and the date of commencement of the proceedings".

57. The reference to "Mr. Murphy" is to Mr. Patrick Murphy, a Venture Capital Manager who in May 2018 together with Web Summit and Mr. Kelly formed a general partner entity to manage a venture capital fund named Amaranthine Fund I, LP. Subsequently, Mr. Kelly and Mr. Murphy took steps to establish a further fund ('Fund II']. In the course of 2021, there were a number of interactions between Mr. Cosgrave

and Mr. Kelly in relation to the proposed interest structure of Fund II. At paras. 55 to 62 of the points of claim, the applicant sets out a number of emails from Mr. Cosgrave and approaches from people associated by Mr. Kelly with Mr. Cosgrave. The applicant characterises Mr. Cosgrave's activities in this regard at para. 55 as "Mr Cosgrave's effort to inflict serious commercial damage on the ongoing business interests of Mr Murphy and Mr Kelly…", and summarises the applicant's allegations as follows: -

> "62. The approaches that Mr Kelly received from Mr O'Malley, Mr Hunt and Mr Kirwan all formed part of a concerted campaign of pressure and intimidation by Mr Cosgrave (i) to break up Mr Kelly's commercial relationship with Mr Murphy, (ii) to inflict damage on that relationship if Mr Kelly was not willing to break it up, and (iii) to coerce Mr Kelly into selling his beneficial shareholding in the Company for a small fraction of what it is worth."

58. The applicant makes the point at para. 63 that

> "Based on a valuation of the company during the course of 2020 by a potential outside investor, Inflexion, Mr Kelly's beneficial shareholding in the Company is worth at least ten times the amount that Mr Cosgrave sought to compel Mr. Kelly to sell it for."

59. Counsel for the respondents submits that allegations of attempts to damage the business interests of Mr. Murphy and Mr. Kelly are uncoupled from the essential allegation of oppression, *i.e.* that there was "…a concerted campaign of pressure and intimidation by Mr. Cosgrave…to coerce Mr. Kelly into selling his beneficial shareholding in the company for a small fraction of what it is worth". I do not agree. The activity of which the applicant complains at paras. 55 to 62 of the points of claim all took place within the space of a week; it allegedly culminated in a reiteration by Mr. Patrick Kirwan of Mr. Cosgrave's offer to buy Mr. Kelly's shareholding in the

company. It does not seem to me to be too much of a stretch to infer that these activities, if they can be proved – and I stress that the matters in these paragraphs are very much denied or put in issue in the points of defence – relate to what the applicant maintains is a "concerted campaign of pressure and intimidation" by Mr. Cosgrave which contributes to the alleged oppressive conduct of attempting to force Mr. Kelly to sell his shareholding at what he says is a gross undervalue.

60. Accordingly, I consider the categories sought to be relevant and necessary for the fair disposal of the issues concerned. I emphasise that it is a matter ultimately for the trial judge to decide where the truth of the allegations lie, and I consider that discovery of this category will assist in proving or disproving these allegations.

Category 13

61. Category 13 is "[a]ll documents evidencing or establishing any and all attempts made by Mr Cosgrave and/or Proto Roto Limited in May 2021 to acquire the shareholding of the applicant (the beneficial shareholding of Mr Kelly) in the Company". The respondent offers "[a]ll documents evidencing or establishing the approaches from Sam Hunt on 14 May, 2021 and Patrick Kirwan on 25 May, 2021 to acquire the shareholding of the Applicant in the Company together with any instructions from Mr Cosgrave in connection therewith".

62. Counsel for the respondent argues that Mr. Kelly is aware of any attempts to acquire his shareholding, as they would have been communicated to him, and approaches by Mr. Hunt and Mr. Kirwan are referenced at paras. 59 and 60 of the points of claim. Counsel for the applicant however speculates that there could have been email traffic with persons other than Mr. Hunt or Mr. Kirwan which are supportive of the allegation that there was a coercive campaign to acquire Mr. Kelly's shareholding. I do not think that this suggestion is unreasonable; if there is substance in the applicant's

allegation of a "concerted campaign of pressure and intimidation" culminating in an attempt to coerce Mr. Kelly into selling his shareholding at an undervalue, I do not think that discovery in this latter regard should be limited to the approaches from Mr. Hunt and Mr. Kirwan. I will therefore order discovery in the terms sought by the applicant.

Category 14

63. Category 14 is

> "All documents evidencing or establishing statements and/or communications from current or former Senior Management of Web Summit (the identities of 'Senior Management' to be agreed with the Respondents) to the effect that there is no separation in place between the interests of Mr Cosgrave and the Company as required by company law."

64. There is a complaint of lack of "meaningful corporate governance" of the company set out at paras. 68 to 74 of the points of claim. The essence of this complaint is contained in the statement in para. 72 "…in essence, Mr Cosgrave has run the company akin to a personal fiefdom". While this is clearly Mr. Kelly's interpretation of events, and no doubt evidence will be adduced at the hearing to suggest that this amounted to oppression of the applicant, I think that the expressed views in this regard of other persons in management is not probative of the truth or otherwise of the allegation. The request is speculative, and in my view not necessary for the fair disposal of this issue. Accordingly, I will refuse discovery of this category.

Category 15

65. This category contains a series of numbered paragraphs relating to acts of oppression allegedly visited upon Lazvisax, the entity owning 7% of the shares of the company, which is owned by Mr. Daire Hickey. The sub-categories are agreed, save that the respondent seeks a limitation on the temporal aspect of the discovery; sub-

categories (1) and (2) should be subject to a date limit of 24th February, 2021, whereas the applicant seeks discovery until the commencement of the proceedings.

66. The date of 24th February, 2021 stems from a specific allegation at para. 119 of the points of claim, in which it is alleged that, on that date, Mr. Cosgrave requested Mr. Kelly to send him any report relating to a complaint against Mr. Hickey made in 2016. The applicant alleges that Mr. Cosgrave had on 20th February, 2021 indicated his intention to disseminate details of the complaint, and stated on 23rd February, 2021 that he would put together a "full dossier" for this purpose, which would likely take three months.

67. Essentially, the applicant wants discovery to the date of commencement of the proceedings on 3rd November, 2021 to see what steps were or were not taken by Mr. Cosgrave on foot of his alleged intention. This seems to me to be an entirely reasonable request, and to arise directly out of the pleadings. I will therefore order discovery in terms of all of the sub-categories of category 15 sought by the applicant and set out in the chart.

Category 18

68. This category sets out a number of sub-categories relating to allegations that Mr. Cosgrave used resources or funds of the company for a range of purposes other than those legitimately connected with the company. There was some confusion whereby the chart indicated that no response had been delivered to two of the six sub-categories. Counsel did not envisage a difficulty in agreeing the wording of those sub-categories with counsel for the applicant, and the parties agreed to mention the matter to the court on 20th July, 2022, on which date it is anticipated that orders will be made in the various motions for discovery in the suite of litigation.

69. The sub-categories are broadly agreed, save for one caveat. The category seeking documents in relation to the Web Summit funds prefaces the various sub-categories by stating that the discovery sought "includes but is not limited to" the documents in the listed sub-categories. Counsel for the respondents objects to this, and submits that discovery should not extend beyond the listed categories sought.

70. I am inclined to agree with this submission. The sub-categories are quite wide-ranging, and cover specific known purposes for which Mr. Cosgrave expended money – be it the company's money or otherwise – and more general sub-categories such as possible expenditure on legal advice or for the benefit of Mr. Cosgrave's household. I do not think a general trawl beyond these categories is relevant or necessary to prove or disprove the allegations made. It may be that, if a further sub-category of use of company funds emerged, an application for discovery of documentation in that regard might be made in the light of new information. However, in view of the particular and lengthy pleas at paras. 125 to 173 of the points of claim regarding use by Mr. Cosgrave of the company's resources, I think that this category should remain within the bounds of those pleadings.

Categories 20 and 21

71. Category 20 seeks documentation in relation to "the establishment, financing and the activities of Health Reform Ireland" between 1 May, 2020 and commencement of the proceedings. The respondents offer documents regarding the financing and establishment of Health Reform Ireland – not the "activities" – and seeks to limit the category to the dates pleaded at paras. 150 and 153 of the points of claim, rather than 1 May, 2020 and the date of commencement of the pleadings as sought by the applicant.

72. The applicant makes the point that the term "activities" may embrace the use of Web Summit resources not included in "establishment" or "financing". I think that this

is somewhat speculative. The essential allegation of oppression is that resources of Web Summit were diverted by Mr. Cosgrave into a health reform "think-tank" which had no connection to Web Summit. The applicant is certainly entitled to such documents, but not a general trawl of the activities of Health Reform Ireland in order to see whether any other oppressive acts exist. The probative value of such documentation would be minimal in my view. I also consider the dates suggested by the respondent to be more appropriate, as they are linked to the specific allegations in the points of claim.

73. As regards category 21, similar considerations apply. I consider that the category as formulated by the respondent is more appropriate. It was suggested by the applicant that "activities" should be included as a specific employee of Web Summit, Mr. Eoin McNeill, is identified as being involved with Ditch Media Limited. I do not think that the involvement of this individual - which is known to the applicant – warrants discovery of "all documents evidencing" the activities of Ditch Media Limited.

Category 22

74. This category was "[a]ll documentation relating to the donation of €1,000,000.00 by Web Summit to ChangeX in or around March 2020 limited to documents generated between the period 1 March 2020 to the date of commencement of these proceedings".

75. At the hearing, it was accepted that, similarly to category 7, this category would be accepted subject to being administered pursuant to a protocol of procedure similar to those governing other proceedings. It is not therefore necessary for me to consider it further.

Category 23

76. During the hearing, counsel for the applicant proffered a revised form of this category as it appeared in the chart as follows: -

> "All documents evidencing or establishing communications which evidence or establish tensions in the relationship between the IDA and/or Enterprise Ireland (i) from, and (ii) current or former senior management of Web Summit (the identities of senior management to be agreed with the respondents) between 1 April 2018 and the date of commencement of these proceedings."

77. Counsel for the respondents said that there were only two difficulties in relation to this formulation; the use of the word "tensions", and the end date, which the respondents suggest should be 31 January, 2019, given that the last date pleaded in relation to this allegation was 10 January, 2019.

78. Counsel for the respondents suggested "all documents establishing insulting or pejorative communications, or communications which otherwise tended to undermine the relationship between Web Summit and the IDA". As this formulation is more precise, and would in any event encompass communications which showed "tensions" between the parties, I propose to incorporate it in the order. Given the allegation of damage to the working relationship between Web Summit and the IDA, I do not think it would be excessive to order discovery of documentation in that regard up to the date of commencement of the proceedings. Discovery might show that the relationship had been repaired as of that date, if indeed it had been damaged as alleged.

Conclusion

79. I have listed this application for mention along with the other applications for discovery before this Court on 20th July, 2022. I would ask the parties to collaborate on the agreement of the terms of an order incorporating my conclusions as set out above. If there are any difficulties in this regard, I will address them on the adjourned date,

although no revisiting of any conclusions set out above in relation to the categories will be permitted.