THE HIGH COURT

COMMERCIAL

Record No. 2023/2255P

[2024] IEHC 44

BETWEEN

MONETIZEAD D.O.O.

PLAINTIFF

AND

TECHADS MEDIA LIMITED

AND

SCUGNIZERRIA CONSULTING LIMITED

DEFENDANTS

JUDGEMENT of Mr Justice Twomey delivered on the 1st day of February, 2024

INTRODUCTION

1. Under EU law, the general rule is that a company must be sued in the courts of the country where it is incorporated/domiciled (see Article 4 of Regulation (EU) Number 1215/2012 ('**Brussels Recast Regulation**' or **'Regulation'**).

2. However, EU law also specifically provides that a company can derogate from this general rule by agreeing to the jurisdiction of the courts of *another EU State* (Article 25 of the Regulation). Article 25 is silent regarding the effect of an exclusive jurisdiction clause in favour of a *non-EU State.*

3. It follows that a company which is incorporated in Ireland must be sued in Ireland. However, if that company has agreed an exclusive jurisdiction clause in favour of the courts of an EU State, such as Italy, then there is no doubt that the Italian courts have jurisdiction.

4. What if an Irish incorporated company agreed an exclusive jurisdiction clause in favour of the courts of a non-EU State, such as Bosnia and Herzegovina? Does this amount to a derogation from the general rule or does EU law preferentially treat EU States, such that the derogation from the general rule only applies where *another EU State* will have jurisdiction to hear the dispute involving that EU domiciled company? That is the question in this case.

5. The second defendant ("**SCL**") says that this issue has not been determined by the Irish courts to date. In particular, it says that while the *Gama* case (referenced below) did concern an exclusive jurisdiction clause in favour of a non-EU State, it was limited to the grant of exclusive jurisdiction by *employees* (who are subject to special rules under the Regulation). On this basis, it says that *Gama* does not govern the grant of exclusive jurisdiction by an Irish incorporated company and another commercial entity, as in this case. It says that the principle, of the autonomy of commercial entities to choose whatever jurisdiction they want, takes precedence over the general rule that companies are sued in the country of their domicile.

BACKGROUND

6. The issue arose in these proceedings because the first defendant ('**Techads')** and SCL are challenging the jurisdiction of the Irish courts to hear the claims by the plaintiff ('**Monetizead**') against both those companies, relating to two separate agreements. The first

agreement is between Monetizead and Techads and the second agreement is between Monetizead and SCL and both deal with the provision of services, which involve directing website traffic to Techads' partners.

7. Monetizead is incorporated in Bosnia and Herzegovina ("**Bosnia**"). However, both Techads and SCL are Irish registered companiesand it is not disputed that the parties being sued are '*domiciled'* in Ireland for the purposes of Article 4 of the Brussels Recast Regulation. In this regard, Article 4(1) is very clear in its terms, as it states:

> "*Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State*."

8. However, both Techads and SCL claim that Montizead is not entitled to sue them in Ireland as they say that they both are subject to separate exclusive jurisdiction clauses, in each of their agreements, with Monetizead, which they say under Article 25 of that Regulation (set out below) take precedence over Article 4.

9. In the case of Techads, it says that in its agreement with Monetizead, the parties agreed that the courts of Italy would have exclusive jurisdiction to hear any disputes. In the case of SCL, it says that, in its agreement with Monetizead, the parties agreed that the courts of Bosnia would have exclusive jurisdiction to hear any disputes.

10. In reply, Monetizead claims that the exclusive jurisdiction clause with SCL relates to a non-member state of the EU. On this basis, it claims that it does not amount to a derogation from the general rule in Article 4, as Article 25 refers only to agreements granting exclusive jurisdiction to courts of member states of the EU. On this basis, it says that Article 4 continues to apply to grant jurisdiction to the Irish courts to hear its dispute with SCL.

11. In relation to Techad's challenge, Monetizead appears to accept that its exclusive jurisdiction clause with Techads, in favour of Italy, would *prima facie* take precedence over the general rule in Article 4. However, Monetizead claims that its agreement with SCL operated

to *amend* Monetizead's agreement with Techads. As a result, Monetizead claims that this converted Techad's exclusive jurisdiction clause, in favour of the Italian courts, to an exclusive jurisdiction clause, in favour of the Bosnian courts. On this basis, Monetizead claims that Article 4 also continues to apply to its dispute with Techads and so the Irish courts have jurisdiction to hear that dispute.

Agreement between Techads and Monetizead

12. The first agreement to considers is the one between Techads and Monetizead. This is to a 'Marketing Agent Agreement' ('**MAA**') dated 21 October 2021 (but which was effective from 1 February 2021), pursuant to which, Monetizead agreed to drive website traffic to websites belonging to Techad's partners.

13. It is relevant to note that Mr Carlo Petito ("**Mr Petitio**"), who is resident in Spain, signed the MAA on behalf of Techads. He was at the relevant time the sole director of Techads. He is also the sole director and shareholder of SCL, which as noted below, he has described as his '*personal company'*.

14. In separate proceedings, referred to below, Mr. Petito is being sued by Techads in Ireland for breach of his fiduciary duties as a director of that company in relation to his dealings with Monetizead.

15. Techads terminated the MAA with Monetizead on 11th July 2022 as it alleged that bad website traffic had been sent to Techad's partners in breach of the terms of the MAA. Accordingly, Techads has refused to pay Monetizead for the provision of this web traffic. Thereafter, on 16th January 2023, Monetizead issued these proceedings against Techads (and SCL), which both defendants say should *not* be heard by the Irish courts.

16. In these proceedings, Monetizead denies that the website traffic was bad and claims that the termination of the MAA amounts to a breach of contract. Monetizead also claims that

if there was any bad website traffic it was caused by SCL, to whom it had subcontracted certain of its obligations (under the MAA) to provide website traffic.

Agreement between SCL and Monetizead

17. Monetizead subcontracted/outsourced these obligations to SCL pursuant to an Insertion Order agreement ("**IO**") dated 10 January 2022, which was signed by both parties. It is relevant to note that Mr. Petito signed the IO on behalf of SCL. Thus, Mr. Peitio signed (on behalf of Techads) the MAA with Montizead, and he also signed (on behalf of SCL) the IO with Monetizead.

18. In these proceedings Monetizead is seeking $3,843,584.07 from Techads in respect of unpaid invoices. While Monetizead denys that any bad website traffic was sent to Techad's partners, in the Statement of Claim, Monetizead does claim that, in the event that bad website traffic was sent to Techad's partners, SCL is responsible for same. In this regard, Monetizead claims €467,248.73 from SCL for payments made to it by Monetizead for providing website traffic to Techad's partners. Monetizead also seeks damages for negligence against SCL in allegedly failing to take reasonable care as to the website traffic it was sending to Techad's partners. Monetizead also makes a claim in unjust enrichment against Techads and SCL.

ANALYSIS

19. It is proposed to deal firstly with Techad's challenge, to the proceedings against it, which have been brought in the Irish courts, and then SCL's challenge to the same proceedings. As already noted, there is an overlap in the factual basis for the two challenges.

20.

Can Irish Courts Hear Techad's Dispute With Monetizead

21. Techads challenges the jurisdiction of the Irish courts to hear the proceedings as it says it has a written agreement with Monetizead that the courts of Italy will hear any disputes

between them relating to the MAA. The exclusive jurisdiction clause relied upon by Techads is found at Clause 11.7 of the MAA. It reads:

> "Governing Law and Venue. This Agreement will be deemed to have been made in, and will be construed pursuant to, the laws of Italy without regard to conflicts of laws provisions thereof. **Any suit or proceeding arising out of or relating to this Agreement will be commenced in an Italian court,** and each party irrevocably submits to the exclusive jurisdiction and venue of these courts." (Emphasis added)

22. While Article 4 of the Regulation dictates that Techads should be sued in the Irish courts (as it is incorporated/domiciled in Ireland), Techads contends that Clause 11.7 of MAA falls squarely within the derogation from Article 4, which is contained in Article 25 of the Brussels Recast Regulation. Article 25 states:

> "1. If the parties, **regardless of their domicile**, have agreed that a court or **the courts of a Member State are to have jurisdiction** to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, **that court or those courts shall have jurisdiction**, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:
>
> (a) in writing or evidenced in writing
>
> (b) in a form which accords with practices which the parties have established between themselves; or
>
> (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by,

parties to contracts of the type involved in the particular trade or commerce concerned." (Emphasis added)

23. It is not disputed that the MAA satisfies the relevant conditions in (a) to (c) of Article 25, nor is it claimed that the MAA is null and void. On this basis, Techads says that it is clear that there is a valid exclusive jurisdiction clause for the purposes of Article 25 and so the courts of Italy govern the claim brought by Monetizead against it. This is because Article 25 derogates from Article 4, which otherwise would grant jurisdiction to the Irish courts. Techads says that this is patently clear from the language of the Regulation. Indeed, in its written submissions at para 12, Monetizead states that it:

> "does not dispute that the MAA contained an exclusive jurisdiction clause in favour of the Italian courts which **remained effective** *until the IO was entered into*." (Emphasis added)

24. Thus, prior to the execution of the IO, it is not disputed that there was a clear consensus between Monetizead and Techads that the Italian courts were to have exclusive jurisdiction. This is the starting point of this Court's analysis, since if matters rested there, it is clear that the Italian courts would have jurisdiction, and this does not appear to be disputed by Monetizead. This is because Italy is a member state of the EU and, in very broad terms, clauses granting exclusive jurisdiction to the courts of a Member State of the EU take precedence over the domicile of a defendant, in determining which State's court has jurisdiction.

Does the IO agreement amend the MAA agreement?

25. However, as is clear from Monetizead's written submissions, it claims that this exclusive jurisdiction clause, between Monetizead *and Techads*, which was entered into on 21 October 2021, was superseded by an exclusive jurisdiction clause in the IO entered into on 10

January 2022 between Monetizead *and SCL*, whereby Monetizead outsourced certain of its functions under the MAA to SCL.

26. This exclusive jurisdiction clause in the IO is also at Clause 11.7 of that agreement and it reads:

> "Governing Law and Venue. This Agreement will be deemed to have been made in, and will be construed pursuant to, the laws of Bosnia and Herzegovina without regard to conflicts of laws provisions thereof. **Any suit or proceeding arising out of or relating to this Agreement will be commenced in a Bosnian court**, and each party irrevocably submits to the exclusive jurisdiction and venue of these courts." (Emphasis added)

27. It can be seen that Clause 11.7 in the IO agreement is identical to Clause 11.7 in the MAA agreement, save for the insertion of the words "*Bosnia and Herzegovina*" instead of the word *"Italy"* and the insertion of the word "*Bosnian"* instead of the word "*Italian"*. This clause also provides that that Bosnian law is the governing law of the IO.

28. The signature block in the IO makes clear that Mr. Petito signed the IO on behalf of SCL in his capacity as a director of SCL. However, Monetizead point out that Mr. Petito was also a director of Techads and it claims that the IO operated to bind Techads. In Monetizead's written legal submissions (at para. [13]), it claims that the effect of the execution of the IO *between SCL and Monetizead* was that the provision of website traffic under the MAA *between Techads and Monetizead*, was thereafter to be '*regulated in accordance with the terms of the IO, not the MAA'*. On behalf of Monetizead, Mr. Ajdin/Aydin Brokvic's avers at para 64 of his affidavit that:

> "[Monetizead's] case in this application is that Mr Petito had authority, actual or implied, **to act on behalf of [Techads]** and SCL **at the time the IO was signed**."

It is relevant however to noted that he goes on to say that:

"At times after the IO signed, I did question whether Mr Petito was acting in a manner which was inconsistent with the best interests of Techads and it appeared that some junior employees of [Techads] were not aware of his involvement. My view was that issues between Mr Petito and other members of staff was essentially a matter of internal to Techads and it was not my place to intervene."

29. In this regard, Mr. Andrew Considine swore an affidavit on behalf of Techads. He referred to the separate proceedings issued by Techads against SCL and Mr. Petito (High Court Record No. 2023/145P). In these proceedings, Techads alleges, *inter alia*, that during the period November 2021 to September 2022, Mr Petito caused SCL to secretly commence its own business with Techad's third party suppliers (such as Monetizead), with a view to SCL purchasing online traffic and reselling it indirectly to Techads at a markup, in breach of fiduciary duty.

30. In its oral submissions, Techads characterises what happened as Mr. Petito going *'rogue'* and saying to Monetizead that he would provide it with website traffic through his own personal company, in order to take 100% of the revenue (which was coming from Techads, where Mr. Petito was also a director) for providing that traffic.

31. To support this contention, evidence was provided of Skype messages between Mr. Carlo Petito and, *inter alia*, Mr.Aydin/Ajdin Brkovic, CEO of Monetizead. The first message begins, it seems, on 21 December 2021 (as that message immediately precedes the messages dated 22 December 2021), and it states:

> "Carlo: "Hey Aydin, please meet Emily. She will be in charge of **sending some traffic to your feed from my personal company**. Let us know what are the steps to get the URLs and see reports. We can start with Ask and CBS feeds that we are familiar already, then we can also test your Yahoo feed. […]
>
> Wednesday December 22, 2021

Aydin: Hey guys, just added Muiris who would be AM for activity. @Amar would prepare IO & Accounts stuffs and we can get into this today.

Muris: Hi, nice to e-meet you!

Aydin: @Carlo, @Emily – **Just let us have company name so we can update it on IO**. Add your emails please.

Carlo: **Scugnizziera Consulting LTD** – emmypadiha@gmail.com.

[Amar]: Hey Carlo, here is the IO. [there is an icon indicating that a MS word document entitled Insertion Order is attached to this message]

Carlo: **Thanks Amar, I'll sign tomorrow**. In the meantime if you can prepare for us ASK and CBS links we will start asap." (Emphasis added)

32. Montizead claims that when *SCL signed the IO with Monetizead*, this amended the jurisdiction clause in the *MAA between Monetizead and Techads*. However, it is important to note that:

- Techads, which is party to the MAA, is not a party to the IO.
- There is no reference to the MAA in the IO.
- There is no reference to Techads in the IO.
- When signing the IO, Mr. Petito, makes clear *via* skype messaging that he is signing it on behalf of his personal company. This is important evidence as it is contemporaneous evidence, and not evidence that is provided retrospectively or a retrospective interpretation of a previous act.
- SCL is not a subsidiary of, or holding company for, Techads or in the same group of companies, but is a completely separate. Their 'connection' is that Mr. Petito happens to be a director of both companies, something which is a common occurrence is modern business.

- Immediately after Mr. Petito made it clear that he would be signing the IO on behalf of his personal company, Monetizead prepared the IO for signature. Thus, it is a contract that was drafted by Monetizead and, as so drafted, it clearly states that the counterparty is SCL (although Monetizead is now claiming that the document, that it drafted, amended a separate agreement, the MAA, that it had with Techads).
- The IO was duly sent by Monetizead to Mr. Petito and then signed on behalf of SCL, by Mr. Petito, in his capacity as a director of SCL.
- Mr Petito in his affidavit evidence to this Court rejects the suggestion that the intention of the IO was to amend the MAA, as claimed by Monetizead. In his affidavit dated 11th October 2023, he avers that:

> "10. However, I note that at paragraphs 50 to 75 of [Mr Ajdin] Brkovic TechAds Affidavit, Mr Brkovic attempts to suggest that the Insertion Order, created on or about 10 January 2022, amounted to a variation of the Marketing Agent Agreement created on or about 21 October 2021 (but having effect from 1 February 2021) (the '**MAA**').
>
> 11. The assertion made by Mr Brkovic is not an accurate reflection of the contractual relationships at issue and **I believe that it represents a contrived attempt on the part of MonetizeAd to avoid the effects of the exclusive jurisdiction provision contained at Clause 11.7 of the MAA**.
>
> 12. While extensive points of dispute continue to exist as between TechAds, of the one part, and SCL and me, of the other, I am in agreement with the response provided by Mr Considine to this issue in his affidavit. **Put simply the MAA and the Insertion Order comprised separate contractual arrangements for different purposes involving different parties**.

13. **It was never the intention of any of the parties to these proceedings that those contractual arrangements should somehow be conflated**, nor indeed that '*the bilateral relationship [between MonetizeAd and TechAds] now became a trilateral relationship [between MonetizeAd, TechAds and SCL]*.

14. **The true position is that MonetizeAds signed up to separate contractual arrangements with separate parties, each containing an exclusive jurisdiction clause which MonetizeAds now seeks to avoid**.

15. In this regard, with specific reference to the Insertion Order, I believe and am advised that it is not correct for Mr Brkovic to suggest (as he does at paragraphs 5 and 6 of the Brkovic SCL Affidavit) that the High Court is entitled to assume jurisdiction purely on the basis that SCLwas incorporated in Ireland. This proposition will be addressed in further detail at the hearing of this application." (Emphasis added)

- The only other signatory to the IO was Mr. Amar Tanovic, who signed on behalf of Monetizead. However, Mr. Tanovic provides no evidence regarding the intention of the parties who executed the document. Accordingly, the only evidence, that this Court has, of the intention of the parties that signed it, is the evidence of Mr. Petitio, denying that it amended the MAA.
- There is no evidence of any conversation or correspondence or other documents between Techads and Monetizead referring to Techad's desire or intention to amend Clause 11.7 of the MAA
- Clause 11.12 of the MAA states, in relation to its amendment, that:

  "Complete Agreement, Waiver, and Modification. The parties agree that this Agreement and the attached exhibits, which are incorporated into this Agreement by this reference, **constitute the complete and exclusive statement**

> **of the mutual understanding of the parties**, and supersede and cancel all previous
>
> written and oral agreements and communications relating to the subject matter of this Agreement. For the avoidance of doubt, no terms of use/service, terms and conditions, privacy policy or other policies or guidelines (collectively hereinafter, the "Agent Standard Terms") made available by Agent to TechAdsMedia before or after the Effective Date shall be applicable. **No waiver, modification or amendment of any provision of this Agreement will be binding against a party unless it is in writing and signed by a duly authorized representative of such party**. No such waiver of a breach hereof will be deemed to constitute a waiver of any other breach, whether of a similar or dissimilar nature." (Emphasis added)

33. Undoubtedly it would have been an easy matter for Monetizead and Techads, if they had reached agreement to amend Clause 11.7 of the MAA, as claimed by Monetizead, to change their exclusive jurisdiction clause in writing, as required by Clause 11.12. For example, this was the approach taken in relation to the amendment of Clause 1.4 of the MAA. This clause of the MAA was amended by the Addendum dated 21 October 2021, which was executed on behalf of Techads by Mr. Petito. It is also relevant to note that this Addendum states that "*no other changes are applied to the original contract, for clarity, the contract stays 'as is'*". However, there is no equivalent written amendment done in the name of Techads in relation to the alleged amendment of Clause 11.7 of the MAA – just the IO which, as noted, is not signed by Techads and makes no reference to the MAA.

34. Despite all of this, it is said on behalf of Monetizead that the written agreement between Monetizead and Techads (the MAA) has been amended by a written agreement between Monetizead and SCL (the IO), such that Clause 11.7 in the MAA was replaced by Clause 11.7

of the IO, or more precisely that the words '*Italy*' and *'Italian'* in Clause 11.7 of the MAA were replaced by the words '*Bosnia and Herzegovina'*, and '*Bosnian'*.

35. To put it another way, it is claimed by Monetizead that the consensus, that was clearly reached between Monetizead and Techads in the MAA agreement, granting exclusive jurisdiction to the Italian courts of any dispute between them, was amended by the IO.

36. However, an analysis of the evidence, and in particular the important contemporaneous evidence provided by the skype messages, shows that it was being spelt out to Monetizead that Mr. Petito wanted the IO agreement for his personal company. Indeed, Mr. Brkovic accepts that he had misgivings about this since he had concerns about Mr. Petito, as a director of Techads, putting his own personal company forward as the provider of the website traffic and whether this could constitute Mr. Petito acting in Techad's best interests. Yet, Mr. Brkovic is now seeking to claim that this Court should regard Mr. Petito, when he was entering the IO agreement for his own personal company, as somehow also acting on behalf of Techads and that he thereby amended the jurisdiction clause of Techad's MMA agreement with Monetizead.

37. It is worth observing that if Monetizead is correct and the IO amended the MAA, such that, to quote their written legal submissions (at para 13), the provision of *web traffic under the MAA* was to be '*regulated in accordance with the terms of the IO, not the MAA',* it would mean that Techads was agreeing to *Bosnian law* applying to determine any dispute relating to the MAA, and on Monetizead's case, any such dispute would be heard in the *Irish courts*. (This is because it is Monetizead's case that an exclusive jurisdiction clause in favour of the courts of a non-EU State does not derogate from the general rule in Article 4, that a company is sued in the country where it is domiciled). Although not determinative of the issues in this case, it would be a surprise if this is what was intended by Techads, when its common director (with SCL) signed the IO in SCL's name.

38. Monetizead claims (at para 12 *et seq* of its submissions) that Mr. Petitio was wearing two hats (as a director of SCL and Techads) and that the

> '*IO was expressly permitted by persons acting on behalf of Techads both of whom were agents and directors of [Techads] at the relevant time'* [The reference to persons is primarily to Mr. Petito, but also to Mr. Franco Simion who was another director of Techads].

However, the evidence to support this claim, that there was a variation in the terms of the MAA, is tenuous.

39. For example, Monetizead relies on the fact that Mr. Petito sent invoices *regarding SCL's* services from his *Techads* email address (at para. [43] of its submissions). These invoices are clearly in SCL's name. Accordingly, these invoices are simply evidence of the fact that SCL invoices were sent from a Techad's email address. This is not evidence of the fact that Techads agreed to a clause in its MAA (Clause 11.7) being amended by virtue of SCL's execution of the IO.

40. Similarly, Monetizead relies on the fact (as evidenced by skype messages) that despite Clause 11.12 of the MAA providing for amendments to the MAA to be made in writing, Mr. Petito had, on behalf of Techads, orally amended its revenue entitlement under the MAA, from 70% to 80%, thus indicating the informal manner in which the MAA was amended, on at least one occasion.

41. However, this is simply evidence of the fact that Mr. Petito, *in his capacity as a director of Techads,* amended the MAA agreement. It is not evidence of the fact that, when Mr. Petito, *qua* director of SCL, executed the IO for his personal company, that he was amending the MAA, *qua* director of Techads.

42. In addition, Monetizead relies on the fact that the signature block for Mr Petito in a Confidentiality Letter (between Montizead and Techads) dated 6 October 2021, which was

signed by Mr. Brkovic on behalf of Monetizead, did not specifically state that it was being signed by him on behalf of Techads. It seems to be suggested that in some way this indicates some informality regarding which company Mr. Petitio is binding, when he signs a document.

43. However, this ignores firstly the fact that there is no uncertainty regarding for whom Mr. Petito is signing, when he executes the IO in SCL's name. Secondly, it ignores the fact that this Confidentiality Letter is on the letterhead of Techads and therefore when it is signed by Mr. Petito, it is clearly signed by him on behalf of Techads (and not say, SCL). Similarly, the very first paragraph of that letter makes it clear that it is an agreement between Techads and Monetizead.

44. Montizead also points to the fact that there are skype messages in which Mr. Petito accepts that there was an amendment to the MAA, in the sense that there was an outsourcing, by Monetizead to SCL, of the provision of web traffic to Techad's partners (which under the MAA was an obligation of Monetizead). These skype messages are dated 14th March, 2022 and refer to *'sub-syndication'*, which appears, and this was not disputed, to be a reference to the outsourcing to SCL of Monetizead's obligation to drive website traffic to Techad's partners.

45. However, this is simply evidence that Mr. Petito, who was a director of SCL, who had signed the IO, confirms his understanding of it, namely that it means that Monetizead had outsourced the web traffic obligation, it had under the MAA, to SCL. It is not evidence that Mr. Petito, *qua* director of Techads, was amending the exclusive jurisdiction clause of Techad's MAA agreement with Monetizead or that the driving of website traffic under the MAA by Techads was to be done in accordance with the terms of the IO signed by SCL.

46. None of the evidence provided by Monetizead comes close to satisfying this Court that the IO executed by SCL somehow bound Techads, particulary in light of the evidence which supports the contrary proposition.

47. For all these reasons, this Court rejects the claim that the exclusive jurisdiction clause in the MAA clause, which binds Monetizead and Techads, was amended by the IO which was signed by Monetizead and SCL.

48. Similarly, this Court finds unsustainable Monetizead's alternative argument that Techads *consented,* through Mr. Petito, to the jurisdiction of the Bosnian courts, which had been agreed between Monetizead and SCL, applying to the MAA agreement. This claim was made by Monetizead in reliance on the principle that a third party, such as Techads, can be bound by a jurisdiction clause to which it is not party, if it has consented to that clause applying to it – see *C-387/98 Coreck Maritime GmbH v Handelsveem BV and Others* and *C-543/10 Refcomp SpA v Axa Corporate Solutions Assurance SA and Others*) This is because, just as this Court finds no evidence of an agreement, on behalf of Techads (as distinct from SCL), to the terms of the IO, this Court finds no evidence of Techads consenting, as a third party, to be bound by the jurisdiction clause in the IO.

49. Accordingly, this Court concludes that Techads and Monetizead are bound by their agreement in Clause 11.7 of the MAA to grant exclusive jurisdiction to the Italian courts of any disputes that arises out of, or relates to, the MAA.

50. Under the terms of the Brussels Recast Regulation, Clause 4 (granting jurisdiction to the court of the Member State in which the defendant is domiciled) is mandatory, save where it is displaced by another term of the Regulation. In this instance, Article 25 displaces Article 4 since Article 25 applies '*regardless of domicile'*. It provides that if parties have agreed that if the courts of a Member State of the EU have exclusive jurisdiction, then those courts '*shall have jurisdiction'*. Since Italy is a member of the EU, this Court must therefore refuse jurisdiction, to hear these proceedings against Techads, in favour of the courts of Italy.

Are all Monetizead's claims subject to the exclusive jurisdiction clause?

51. In the event of this Court determining, as it has now done, that Clause 11.7 of the MAA applies, such that the Italian courts have jurisdiction and Italian law is the governing law, Monetizead makes two claims.

52. First, Monetizead argues that, even if Clause 11.7 of the MAA applies, certain of Monetizead's claims against Techads are outside the terms of that clause and so fall to be governed by the Irish courts.

53. In particular, whileMonitizead accepts that the contractual claims are subject to the jurisdiction of the Italian courts claims (since they arise out of, or relate to, the MAA), it claims that its non-contractual claims of unjust enrichment fall outside the exclusive jurisdiction clause and so these claims are subject to the jurisdiction of the Irish courts.

54. However, in considering this point, it is relevant to note that Clause 11.7 is very broad in its terms. In particular it provides that "*any suit or proceeding arising out of or relating to"* the MAA are subject to the jurisdiction of the Italian courts and so it does not make any distinction between contractual or noncontractual claims.

55. More particularly, it is very difficult for this Court to see how the noncontractual claims in this case do not *arise out of or relate* to the MAA. The MAA is the basis of the relationship between the parties and if it were not for the MAA, it is difficult to see how Moneitzead would have any claim against Techads. Simply because restitution/unjust enrichment is a claim in equity does not, in this Court's view, mean that it is not a claim arising out of or related to the MAA. This conclusion is consistent with the approach of the Supreme Court in *Leo Laboratories v Crompton BV* [2005] 2 IR 225. In that case, a similar claim was made to Monetizead's claim, namely that a claim in tort was not subject to an exclusive jurisdiction clause in that case which clause referred to disputes relating to a contract. At p 239, Fennelly J. stated that:

"It is my view that the plaintiff's claim in tort clearly falls within the scope of clause 36 of the terms and conditions. It is impossible to consider that claim independently of the contractual relationship between the parties. The clause applies to disputes "arising out of or on account of a contract". Paragraph 3 of the statement of claim commences the narrative by pleading the "purchase order" placed by the plaintiff with the defendant in December, 1998. The affidavit of Mr Peter Young speaks of the parties having had "a trading relationship for many years". It says that they "traded under standard terms and conditions". All of this relates to a contractual relationship. One then poses the question: what is the dispute about? It is about the alleged delivery by the defendant of defective product. How did that product come to be delivered? Answer: it arose out of a contract. **If we are to understand words in a common sense and ordinary meaning** rather than some meaning contrived for the purpose of avoiding the obvious, **the dispute arises out of a contrac**t" (Emphasis added)

56. Similarly in this case, the MMA is pleaded at para. [8] of the Statement of Claim as the basis of all the claims against Techads that follow. It is clear that, if, as in *Leo Laboratories*, one is to understand words in a common sense meaning, rather than some contrived meaning, this dispute also *arose of a contract*, namely the MAA.

<u>The term '*arising out of, or related to*' an agreement to be given a practical meaning</u>

57. Furthermore, it is also clear from *Leo Laboratories* at p.238, that expressions such as *'arising out of'* or *'related to'* in exclusive jurisdiction clauses are given a broad and practical interpretation. Fennelly J quotes from the judgment of Steyn L.J. in *Continental Bank v Aeokos SA* [1994] 1 WLR 588 at 592:

"What disputes does it cover? The answer is not to be found in the niceties of the language of clause 21.02. It is found **in a common sense view** of the purpose of the

clause. We are emboldened to adopt this approach by the observation of Lord Diplock in ***Antaois Comania S.A. v Salen A.B***. **[1985] A.C. 191** at p 201:

> 'if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business common sense, **it must be made to yield to business common sense**.'

[…]

Moreover, if [counsel for the defendants] is right, it would mean that a claim for damages for negligent misrepresentation inducing the contract (a tort) would be outside clause 21.02, but a claim seeking rescission of the contract on the ground of the same misrepresentation (a contractual claim) would be covered by it. If the defendant's contention is accepted, it follows that the two claims might have to be tried in different jurisdictions. **That would be a forensic nightmare**" (Emphasis added).

58. Fennelly J then adds:

"The reference in that passage to the interpretation of arbitration clauses echoes the remarks of Geoghegan J in *Gulliver v. Brady* (unreported, Supreme Court, 19 December, 2003). In that case, the relevant clause was, "arising out of or in relation to this agreement". The court gave it a **broad, purposeful and practical interpretation**." (Emphasis added)

59. The term '*practical'* in the context of interpreting an exclusive jurisdiction clause means, in this Court's view, that, for good practical reasons, parties are presumed (in the absence of wording indicating a contrary intention) to want to resolve all their disputes in one forum. Thus, in this instance, the parties are presumed *not* to want to have the completely impractical situation, whereby the contractual claims of their dispute are resolved in the Italian courts and the noncontractual claims of the *same dispute* are resolved in the Irish courts. This is because it seems unlikely that commercial entities would intend that disputes arising out of

their business relationship would be determined in different jurisdictions, in the absence of clear language to that effect. As noted by Creedon J. in *Leinster Stone Supplies Limited v OMAG SpA* [2018] IEHC 190 at para [21], it would be '*wholly unsatisfactory to permit a situation whereby different aspects of a claim would need to be determined in different jurisdictions'.*

60. In addition, the wording, or more accurately the absence of wording, in Clause 11.7 also supports this conclusion. For example, if this clause had stated the type of legal claims (e.g. tort, contractual, equitable etc) that were included or were not included, then an argument might be made that the noncontractual claims were not covered. However, Clause 11.7 does not restrict itself to contractual claims (so as to arguably exclude claims in equity, such as restitution). Instead, to fall within the terms of Clause 11.7, there simply has to be a claim which is brought in '*any suit or proceedings'*, and so including a suit in equity, provided that it '*arises out of'*, or '*relates to'*, the agreement (which expressions, as already noted, the Supreme Court has held must be given a broad meaning).

The question of whether claims are within Clause 11.7 is a matter of Italian law?

61. The second point made by Monetizead, in the event of this Court finding that Clause 11.7 applies, such the Italian courts have jurisdiction under the MAA, is that Clause 11.7 also states that the governing law is Italian law. For this reason, MOnetizead claims that the question of whether an equitable claim for unjust enrichment is *'[a]ny suit or proceeding arising out of or relating to'* the MAA, so as to be within Clause 11.7, is a matter to be determined by Italian law and not Irish law.

62. However, in light of the emphasis of the Supreme Court in *Leo Laboratories* on the *'common sense view of the purpose of the clause',* it seems to this Court that, when one is dealing with a clause that is as wide as the one in this case, a common sense view of the purpose of the clause is a factor in determining whether this Court needs evidence on Italian law, before

it can conclude that a claim for unjust enrichment falls within the terms of Clause 11.7. In this instance, the very wide language of Clause 11.7 leads this Court to conclude that the common sense view of the purpose of that clause is to capture all possible disputes between the parties. Accordingly, this Court does not need evidence of Italian law, before concluding that a claim for unjust enrichment falls within the terms of that clause.

63. Support for this view is to be found in the approach of the Irish courts to date when faced with this issue. For example, in the Court of Appeal decision of *Bushell Interiors Limited v Leicht Kuchen AG* [2015] IECA 211, it was claimed that an exclusive jurisdiction in favour of the German courts did not prevent proceedings being issued in Ireland**.** The exclusive jurisdiction clause concerned '*all disputes arising from business relations'* and it provided that German law was exclusively valid for '*all legally founded relations'*. It was argued that the proceedings could be heard in Ireland on the basis that they concerned the '*particular legal relationship'* of principal and agent. However, it is to be noted that the Court of Appeal did not need evidence of German law in order to reach its decision that the entire dispute should be heard in the German courts. Similarly, this Court does not need evidence of Italian law to conclude that a claim of unjust enrichment is within the terms of the exclusive jurisdiction clause in this case.

64. Further support for this view is to be found in the fact that this Court is not being asked to deal with a *foreign legal claim* which is being made in *a foreign court* (such that it needs evidence on that foreign law to understand the nature of the claim and to understand how that claim is dealt with in those foreign courts). Instead, this Court is simply being asked whether *a claim which is made under Irish law* and so well known to the Irish courts (i.e. an unjust enrichment claim), which may or may not have an equivalent under Italian law, which *has been brought in Irish proceedings*, falls within the terms of a very widely drafted exclusive jurisdiction clause, *albeit* one that is governed by Italian law.

65. For all these reasons, this Court concludes, without further evidence, that all Monetizead's claims, including unjust enrichment, are within the terms of Clause 11.7.

66. This Court concludes therefore that the Irish courts do not have jurisdiction to deal with any of Monetizead's claims against Techads.

Can Irish Courts Hear SCL's Dispute With Monetizead

67. The exclusive jurisdiction clause relating to SCL is Clause 11.7 of the IO which is set out above. As previously noted, this clause provides that the Bosnian courts will have jurisdiction to deal with any proceedings which are issued by Monetizead arising out of, or relating to, the IO.

68. Monetizead claims that, despite Clause 11.7 in the IO, the Irish courts have jurisdiction. It points out that SCL is incorporated in, and so domiciled in, Ireland. It points out that under Article 4 of the Brussels Recast Regulation, a defendant is sued in its country of domicile, save for the caveat in that article, i.e. '[S]ubject to this Regulation'.

69. This saver is important because, as already noted, the Regulation does provide for the courts of a defendant's country of domicile not to have jurisdiction in certain situations. As already noted, Article 25 of that Regulation provides that exclusive jurisdiction clauses take precedence over Article 4. However, Article 25 *only applies* where courts of Member States of the EU are granted exclusive jurisdiction. Since Bosnia is not a member of the EU, Article 25 therefore does not operate as a derogation from Article 4 in this instance. Instead, Article 4 continues to apply, i.e. the Irish courts have jurisdiction.

70. This is because it is clear that from the wording of Article 4 that it the grant of jurisdiction, to the courts of the country where the defendant is domiciled, is mandatory ('*shall…be sued'*). Indeed in *C 281/02 Owusu v NB Jackson t/a 'Villa Holidays Bal-Inn Villas' & Ors*, at para. [37], the CJEU stated that the general rule, now found in Article 4:

"is mandatory in nature and that, according to its terms, there can be no derogation from the principle it lays down except in the case is expressly provided for by the Convention [i.e. the Brussels Convention, the predecessor of the Brussels Recast Regulation]

71. SCL, for its part, argues that such a finding runs contrary to the autonomy of the parties to determine which courts determine their disputes. This principle of autonomy, SCL says is clear from Recital 19 of the Regulation, which states:

"**The autonomy of the parties to a contract**, other than an insurance, consumer or employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, **should be respected** subject to the exclusive grounds of jurisdiction laid down in this Regulation." (Emphasis added)

72. However, firstly it is important to note that Recital 19 is a recital and not part of the operative sections of the Regulation. Secondly, as has been noted, the operative part of the Regulation, Article 4, provides that it is mandatory that a person is sued in the Member State where she is domiciled (in this case, Ireland). Furthermore, Article 25 which provides for the derogation from the general rule in Article 4, by its express provisions, only applies to exclusive jurisdiction clauses in favour of the courts of an EU State.

73. Thus, on these principles of interpretation, it seems clear to this Court that the derogation from Article 4, to be found in Article 25, does not apply in SCL's case and so it is bound by Article 4 and must be sued in the country where it is domiciled (Ireland).

74. This Court does not therefore need to go any further and in particular it does not need to consider SCL's claim that the finding by Dunne J. in the High Court case of *Melvut Abama & Ors v Gama Construction Ireland Limited v Gama Endustri Tesisleri Imalat ve Montaj AS* [2011] IEHC 308 at p 32, which was upheld by the Court of Appeal ([2015] IECA 179) at para [37], is *obiter,* (insofar as it suggests that in all cases where there is an exclusive jurisdiction

clause in favour of the courts of a non-EU State, Article 4 takes precedence, rather than confining itself to exclusive jurisdiction clauses in an employment situation).

75. In that case, the plaintiff employees were domiciled in Turkey and had entered into a choice of jurisdiction clause with one of the corporate defendants conferring exclusive jurisdiction on the courts of a non-member state of the EU, ie. Turkey.

76. A similar issue arose in that case as arises here, since that corporate defendant was domiciled in Ireland. Thus, the question arose as to whether the plaintiffs were entitled to sue that defendant in Ireland, pursuant to the equivalent of Article 4, or whether the exclusive jurisdiction clause in favour of a court of a non-member of EU took precedence. Dunne J relied on *Owusu* to hold that the domicile of that defendant in Ireland meant that the Irish courts had jurisdiction over that defendant, despite the exclusive jurisdiction clause in favour of the courts a non-EU State. She stated at p 32:

> "It is my view that *Owusu* is equally binding to deprive a national court of the common law jurisdiction in relation to the exercise of discretion in the context of a choice of jurisdiction clause subject, of course, to the provisions of the Regulation in relation to choice of jurisdiction clauses."

77. It was suggested by SCL that this statement should be departed from, insofar as it suggests that in non-employment situations, this Court cannot decline jurisdiction in Ireland conferred on it by Article 4 the Regulation, where the parties designate the courts of a non-EU member state. Thus, it was claimed by SCL that Dunne J.'s judgment is confined to employment law cases, in particular because exclusive jurisdiction clauses in employment situations are governed by different considerations under the Regulation - as illustrated by the exclusion of *'employment'* from Recital 19 regarding the importance of respecting the autonomy of the parties' choice of jurisdiction.

78. It is relevant however to note that Dunne J's judgment was considered by the Court of Appeal (Peart, Irvine and Mahon JJ.). While the Court did not consider whether Dunne J.'s statement extends beyond employment situations, the judgment of the Court nonetheless did approve, without reservation, her reasoning, since at para. [40] it is stated:

> "I am satisfied that the reason stated by Dunne J for the conclusion that the plaintiff is entitled to rely on the provisions of the regulation is forming the basis of jurisdiction, and therefore that the discretionary application made by the defendants for a stay in these proceedings is precluded by virtue of the application of the regulation having regard to the decision in *Owusu* are correct."

Legal certainty favours a finding that Irish courts have jurisdiction

79. In any event, this Court does see merit in a finding that in non-employment situations, this Court is bound by the mandatory provisions of Article 4, even where the parties have granted exclusive jurisdiction to the courts of a non-EU State.

80. This is because it appears to this Court that legal certainty favours a conclusion that Article 4 means what is says, i.e. that a defendant that is domiciled in a Member State must be sued in that Member State. The fact that the Brussels Recast Regulation does not provide an exception for parties who give exclusive jurisdiction to the courts of a non-EU State (but only where they do so in favour of the courts of EU States), should not, in this Court's view, take away that certainty.

81. Another way to look at this issue, from a legal certainty perspective, is to consider the situation if SCL had consulted its lawyers before agreeing to the clause granting exclusive jurisdiction to a court of a non-EU state (Bosnia). It would have been told that, as it is domiciled in Ireland, SCL is subject to the *mandatory* requirement that it be sued in Ireland and that on a plain reading of the Regulation this *can only be* derogated from, by choosing the courts of another EU state. SCL chose not to do so, but instead it chose the courts of Bosnia.

82. Indeed, if one goes further back in time to when Mr Petito, who is resident in Spain, chose to incorporate SCL in Ireland, if he had sought legal advice at that time as to the consequences of that choice, he would have been told that incorporating in Ireland, a Member State of the EU, comes with it, the mandatory requirement that if SCL is sued, it has to be sued in the Irish courts.

83. The statement of Briggs, in *Agreements on Jurisdiction and Choice of Law* (OUP, 2008) at paras [7.98] was relied upon by SCL to suggest that exclusive jurisdiction clauses should be upheld. However, it seems to this Court that the following statements are equally, if not more, relevant to the terms of Article 4 and Article 25 (insofar as the latter does not refer to non EU States) being upheld:

> "[O]ne of the most basic principles for which the Regulation stands: **that a well-informed party should be able to predict where he is liable to be sued as a defendant or entitled to bring proceedings as a claimant.** The proposition that a jurisdiction agreement should be afforded something less than its full weight and intended effect can only be at the expense of legal certainty, and there is accordingly no reason to doubt the efficacy of such agreements, even where jurisdiction over the Defendant would otherwise be governed by the Regulation .

At para 7.99, Briggs states:

> "There are several ways in which the decision in *Owusu* can be defended, including the proposition that the claimant, who has read the Convention or the Regulation, especially Article 2, [i.e. Article 4 of the Brussels Recast Regulation] **is entitled to proceed with the assurance that the court which is given jurisdiction over his intended defendant will exercise it, and will not relinquish for a reason not to be found written anywhere in the text of the convention.** The claimant is entitled to be **not taken by surprise**: the court has taken to referring to this as the principle of legal

certainty. But if the claimant has made a contractual agreement to litigate only in a particular court, he plainly cannot be heard to say that he was taken by surprise when he was held to his contract, or that he had a legitimate expectation of being able to invoke and retain the jurisdiction of the court out of the very jurisdiction of which he had contracted." (Emphasis added)

84. The final sentence is a reference to exclusive jurisdiction clauses, but it is clear that this is predicated on there being a reference to those clauses being '*written anywhere in the text of the convention'*. An exclusive jurisdiction clause referring to the courts of a non-member state of the EU is however outside the ambit of Article 25, and so is not a reference to something '*written anywhere in the Regulation*'. Thus, in a case such as this one, the import of this extract from Briggs is that if SCL had read the Regulation, it should have proceeded on the basis that an Irish court '*is given jurisdiction'* under Article 4 and '*will exercise it'*. Thus, there should be '*no surprise',* but rather legal certainty, when this occurs and when an Irish court refuses to allow a derogation from Article 4, where the parties granted jurisdiction to the courts of a non-EU State. This is because, as noted by Briggs, a well-informed party should be able to predict with as much certainty as possible, where it is liable to be sued as a defendant or entitled to bring proceedings as a plaintiff. To put the matter another way, it is clear that Article 4 may be displaced by exclusive jurisdiction being granted to the courts of an EU State. The corollary is also clear, namely that Article 4, which is mandatory in its terms, may not be displaced by the parties agreeing that exclusive jurisdiction is granted to the courts of a non-EU state.

85. In addition to the legal certainty point, it is to be noted that there is no injustice to SCL in being sued in the Irish courts, since this is what SCL signed up to, i.e. that by incorporating in Ireland it could not avoid being sued in Ireland by choosing to submit to the jurisdiction of the courts of a non-EU State, whether Bosnia or any other country in the world.

86. More generally, it is to be noted that all EU States give precedence, by their compliance with the Brussels Recast Regulation, to the courts of EU States (over courts of non-EU States). If proceedings issue against an EU domiciled company, then it must be heard in the EU State in which it is domiciled, unless that company has agreed to grant another EU State exclusive jurisdiction. As a matter of policy, there is nothing unusual in the EU States agreeing to grant other EU States this kind of preferential treatment, which does not extend to non-EU States.

87. For all these reasons, this Court rejects SCL's claim that the courts of Bosnia have jurisdiction to hear these proceedings against an Irish incorporated company, SCL. Instead, it finds that the Irish courts have jurisdiction to hear these proceedings. In this sense, under EU law, the courts of Ireland are given precedence over the courts of a non-EU State (Bosnia), in relation to which courts can hear proceedings against a party domiciled in an EU State (Ireland).

Putting a stay on case against SCL until issues against Techads are finalised in Italy?

88. SCL made it clear that if this Court finds that the Irish courts have jurisdiction to deal with the claim against it, which this Court has now done, SCL would be looking for a stay of these proceedings before the Irish courts, until the claims against Techads are finalised. This Court has already held that those claims against Techads, if they are to be pursued, must be pursued in Italy. In its motion, SCL puts this aspect of its application in the following terms:

> "Strictly in the alternative to the relief sought at paragraph (a) and (b) above, an order pursuant to the inherent jurisdiction of the High Court placing a stay on the proceedings pending the final determination of the claim of [Monetizead] as against [Techads], whether in Ireland or in any other jurisdiction"

Case against SCL should be stayed as it is subsidiary to case against Techads?

89. Firstly, it is relevant to note what Monetizead is actually claiming against SCL. In para 64 and 65 of its Statement of Claim, Monetizead states:

"64. Pursuant to the terms of the Insertion Order, [Monetizead] paid the following sums to [SCL] concerning advertising activity:

Invoice 044: dated 5 January 2022:	US $11,937.38.
Invoice 052: dated 3 February 2022	US $113,917.48
Invoice 054: dated 11 March 2022:	US $128,579.46.
Invoice 060: dated 7 April 2022:	US $212,592.15.
Invoice 065: dated 4 May 2022:	US $222,257.05

65. In the event, which is denied, that bad web traffic was in fact sent to Techad's Media's Partner sites, [SCL] is responsible for same."

In seeking the stay, SCL emphasises the *'subsidiary'* nature of the claim made against it and the fact that Monetizead denies that the website traffic directed by SCL was bad, *albeit* that, as is clear from para 65, Monetizead has an alternative claim against SCL, if the website traffic is found to be bad.

90. SCL therefore claims that, if Monetizead succeeds in establishing that the website traffic was *not* bad, and so in recovering $3,843,584.07 from Techads in unpaid invoices, Monetizead will not need to pursue SCL for the figure of $689, 283.52 set out at para 64 of the Statement of Claim (or indeed any other amount), which it says it paid SCL to direct website traffic to Techad's partners.

91. Of course, it is true that it may turn out to be the case that the website traffic was not bad, and so Monetizead has no case against SCL, or indeed that Monetizead recovers the $3,843,584.07 from Techads and has no reason to pursue SCL. However, that is all speculation.

92. It could equally turn out to be the case that Monetizead recovers nothing from Techads and that the website traffic was bad. Thus, with no certainty regarding the outcome against Techads, Monetizead has decided to sue SCL, as it is entitled to do.

93. Indeed, there is nothing unusual about a plaintiff choosing to sue two defendants, even though it has a stronger case against the first defendant and if it succeeds against that defendant, it may have no case, or no loss, to pursue against the second defendant. However, the fact that the claim against the second defendant is *'subsidiary'* to the claim against the first defendant, or that Monetizead may be more likely to succeed against the other defendant (Techads) or is not a reason for Monetizead's claim against SCL to be stayed.

94. This is because a plaintiff is entitled to cover all its options by suing whoever it wishes, even those who, it believes, may not be primarily at fault, e.g. in order to cover the situation where the first defendant does not have the funds or has a defence, which is not available to the second defendant *etc.* Thus, this is not a reason to stay the proceedings against SCL.

Case against SCL stayed, even where no parallel proceedings?

95. The second reason why this Court will not grant the stay is because there are no parallel proceedings in issue, which would justify a stay. This is because this Court has determined that the proceedings in Ireland against Techads must be struck out. Accordingly, as things stand, there are no proceedings by Monetizead against Techads in any jurisdiction. In effect, therefore, SCL is looking for an indefinite stay to be placed on the claim against it, since no proceedings have been issued in Italy by Montizead against Techads.

96. Indeed, there is no guarantee that proceedings will be issued there, as there may be legal and/or tactical reasons that determine if, and when, any such proceedings will issue. The 'if 'and 'when' of issuing proceedings is solely a matter for Monetizead.

97. In effect therefore, SCL is seeking an *indefinite stay* on proceedings brought against it by a plaintiff, on the basis of the likelihood of proceedings being issued by the plaintiff against an *intended* co-defendant (since Techads is now, no longer a defendant in these proceedings). This is not a strong reason to grant a stay.

98. Thirdly, considering that these proceedings were entered into the Commercial Court, which has as its aim the resolution of commercial disputes in a manner that is *'expeditious and likely to minimise the costs of the proceedings'* (Order 63A, rule 14(7)), it would be contrary to the aims of this Court to grant an indefinite stay in all these circumstances.

99. Fourthly, SCL's application for what is, in effect, an indefinite stay ignores the fact that Monetizead is entitled to have access to a hearing in a timely manner. An indefinite stay would completely undermine this entitlement.

100. In seeking its stay, SCL relies on the English High Court case of *Hulley Enterprises Limited & Ors v Russian Federation* [2021] EWHC 894. However. it is clear from para 66 of Henshaw J.'s judgment what was at issue in that case:

> "A case management stay may be justified where there are **related parallel proceedings in a foreign jurisdiction**: see e.g. *Unwired Planet International Ltd v. Huawei Technologies (UK) Ltf* [2020] Bus LR 2422, para 99, per Lord Reed PSC" (Emphasis added)

101. The *Hulley* case therefore is of limited application, since in the present case, there are no parallel proceedings in existence.

102. Indeed, while there are proceedings in existence in relation to the subject matter of these proceedings (which subject matter could be described as a dispute involving Monetizead, Techads, SCL and Mr. Petito), those proceedings are in fact the High Court proceedings *issued by Techads*, against SCL and Mr. Petito. Reference has already been made to these proceedings, which have *not* been admitted to the Commercial List, and so will be heard in the Chancery List.

103. Thus, insofar as there is an argument that there might be a more '*expeditious'* way (or that it would be a more efficient use of court time) for the dispute, the subject matter of these proceedings *issued by Monetizead* to be dealt with, it seems to this Court that it might be for

these proceedings issued by Monetizead in the Commercial List, and those other proceedings issued by Techads in the Chancery List, to be heard together (although this is a matter upon which this Court expresses no view). However, the efficient use of court time argument would not support an indefinite stay in the Commercial Court on these proceedings issued by Monetizead.

CONCLUSION

104. This Court finds that the exclusive jurisdiction clause in the MAA agreed by Techads with Monetizead in favour of the courts of an EU state (Italy) amounts to a derogation from the normal rule under Article 4 of the Brussels Recast Regulation (that a corporate defendant must be sued in the courts of the country where it is incorporated/domiciled).

105. Accordingly, even though Techads is incorporated, and so domiciled, in Ireland, this Court refuses jurisdiction over the proceedings, which were issued in Ireland by Monetizead against Techad, in favour of the Italian courts.

106. In particular, this Court rejects the claim that the IO agreement, to which Techads was not party, had the effect of amending (in favour of the Bosnian courts) the exclusive jurisdiction clause which clause Techads had agreed with Monetizead in the MAA (in favour of the Italian courts).

107. This Court also finds that the exclusive jurisdiction clause in the IO agreement agreed between Monetizead and SCL in favour of the courts of a non-EU state (Bosnia) does not amount to a derogation from the normal rule under Article 4. Accordingly, as SCL is incorporated, and so domiciled, in Ireland, this Court accepts jurisdiction, pursuant to Article 4, over the proceedings issued by Monetizead against SCL.

108. In relation to the proceedings against SCL, which this Court has accepted, this Court refuses SCL's application to put a stay on those proceedings, until the dispute between

Monetizead and Techads is resolved. This is because, *inter alia*, while this Court has held that the Italian courts have exclusive jurisdiction to deal with the dispute between Monetizead and Techads, it is a matter for Montizead, as to *whether and when* it might institute such proceedings in Italy. Accordingly, there are no parallel proceedings in another State, subject to whose resolution, these proceedings might be stayed.

109. Finally, this Court orders the parties to engage with each other to see if agreement can be reach regarding the format of final orders and any other outstanding matters without the need for further court time, with the terms of any draft court order to be provided to the Registrar. In case it is necessary for this Court to deal with final orders, this case will be provisionally put in for mention a week from the delivery of this judgment at 10.45 am (with liberty to the parties to notify the Registrar, in the expectation that such a listing will be unnecessary).