



THE HIGH COURT

COMMERCIAL

[2024] IEHC 214

2021 No. 268 COS

IN THE MATTER OF MANDERS TERRACE LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT 2014

AND

IN THE MATTER OF AN APPLICATION UNDER SECTION 212 OF THE

COMPANIES ACT 2014

BETWEEN

GRAIGUEARIDDA LIMITED

APPLICANT

AND

MANDERS TERRACE LIMITED, PROTO ROTO LIMITED and PATRICK

COSGRAVE

RESPONDENTS

JUDGMENT of Ms. Justice Eileen Roberts delivered on 19 April 2024

Introduction

1. In these proceedings the applicant claims that the respondents have, over a period of several years, oppressed it and acted in disregard of its interests as a minority shareholder in the first named respondent (the “**Company**”). The applicant holds 11.97 % of the shares in the Company. The sole shareholder in the applicant is Mr David Kelly, who is also a director of the applicant. Mr Kelly remained a director of the Company until 18 March 2021 and was also an employee from its incorporation until 30 April 2021.
2. This judgment relates to a discovery application by the applicant against the respondents seeking nine categories of documentation. This is the second discovery motion issued by the applicant. It arises in the context of amendments made to the pleadings by order of this Court dated 20 December 2023 regarding a series of posts concerning the State of Israel (the “**Posts**”) made by the third named respondent (“**Mr Cosgrave**”) on his Twitter account using the platform provided to him by the Company. The Posts commenced on 7 October 2023 and contained comments by Mr Cosgrave relating to the terrorist attacks conducted by Hamas in southern Israel. The amendments also relate to similar posts made by the Ditch website about Israel and its response to the Hamas attacks from 7 October 2023 onwards (the “**Ditch Posts**”).
3. These proceedings mirror proceedings taken by Lazvisax Limited (“**Lazvisax**”) against the respondents in which Lazvisax, as the other minority shareholder in the Company, alleges oppression of its interests on similar grounds and in similar circumstances to those alleged by the applicant. Both the present proceedings and the proceedings involving Lazvisax have therefore been listed and case managed together in the interests of efficiency. The present discovery application was heard by this court on 20 March 2024 at the same time as the Lazvisax discovery motion. The

applicant seeks two additional categories of discovery beyond those sought by Lazvisax. Because seven categories of discovery are common to the applicant and to Lazvisax this judgment deals only with those two additional categories sought by the applicant. The court makes the same order in favour of the applicant in this case in respect of the seven categories of discovery as it did in its judgment in the Lazvisax proceedings- being proceedings 2012/280 COS (the “**Lazvisax Proceedings**”) which is issued contemporaneously with this judgment. While there are some minor differences in pleadings, those differences are not material to the outcome of this discovery application relevant to those seven categories. All of the submissions advanced by Lazvisax were adopted by counsel for the applicant at the hearing of this application. I do not propose to repeat the admitted facts or discovery principles which I have set out in some detail in the contemporaneous Lazvisax judgment. Those matters apply equally to this application as though they had been set out in detail in this judgment.

The additional two categories of discovery sought by the applicant

4. The discovery sought at categories 1A to 6A are identical to those sought by Lazvisax save that the paragraph numbers refer to those in the applicant’s proceedings. Category 7A sought by Lazvisax is identical to category 9A sought by the applicant. Accordingly, the two additional categories sought by the applicant are categories 7A and 8A of its notice of motion dated 14 February 2024.
5. Categories 7A and 8A arise in the context of amendments made to the applicant’s proceedings in relation to the impact of Mr Cosgrave’s actions on Web Summit Ventures (“**WSV**”). Those amendments were not made in the Lazvisax Proceedings.

Specifically, the following amendments were made to the applicant's points of claim on this aspect:

“188H. Further, the said conduct on the part of Mr Cosgrave has been directly prejudicial to Web Summit Ventures (“WSV”), an investment fund which Web Summit commenced plans to establish in late March 2021 and which was launched in or about 2022, and therefore to the Company’s business.

188I. In or about the beginning of October 2023, WSV invested in an Israeli cybersecurity start-up, Lasso Security (“Lasso”). On or about 13 October 2023, Elad Schulman, co-founder and CEO of Lasso, contacted Chris Murphy of WSV to indicate that following certain of the Posts Lasso could no longer work with WSV.

188J. On or about four days later, after some correspondence between the legal representatives of WSV and Lasso, Lasso sent WSV legal documents approved by both WSV and Lasso that would enable the WSV’s investment to be returned.

188K. While WSV has, despite regular messages from Lasso urging them to sign and end their relationship, yet to respond to Lasso with signed legal documents, Lasso’s seed round funding is now closed, and Lasso has another investor lined up to backfill and replace WSV’s stake as soon as the documents are signed by WSV and the money returned from Lasso to WSV.

188L. Another tech start-up in which WSV had invested, Ask-AI, has also attempted to return the monies invested to WSV.

188M. The conduct on the part of Mr Cosgrave pleaded above constituted oppression and/or occurred in disregard of the interests of the Applicant and Lazvisax and has caused real and substantial damage to the business of the Company and the Applicant’s interest therein.

.....

188O. The Applicant reserves the right to seek further discovery regarding(ii) the identity of the investors and/or prospective investors in WSV and/or the start-up entities invested in by WSV and/or in which WSV intended to invest who have taken steps in response to Mr Cosgrave's said conduct and the nature of those steps and/or regarding the effect of Mr Cosgrave's said conduct on the value of WSV and/or the Company."

6. The respondents, in their amended points of defence at para 69(h) plead that:

"Save that it is denied that the conduct on the part of Mr Cosgrave has been directly prejudicial to WSV for the reasons alleged at Paragraphs 188I to 188L, the matters alleged at Paragraphs 188I to 188L of the Amended Points of Claim are admitted."
7. The respondents denied paragraph 188M of the amended points of claim and said *"..it is not clear whether the Posts caused any short-term damage to the business of the Company or the interest of the Applicant"*.
8. **Category 7A - All documents evidencing communications between investors and/or potential investors in Web Summit Ventures ("WSV"), and/or start up-entities invested in and/or that may potentially be invested in and/or that potentially have been invested in by WSV and/or partners and/or contractors and/or other stakeholders of WSV and the Respondents, their servants or agents (including the Company's current and former executive team and current and former directors), referring to or touching upon Mr Cosgrave's and/or The Ditch's statements in respect of the state of Israel pleaded at paragraphs 188A and 188F of the Amended Points of Claim, limited to documents created on or after 7 October 2023.**
9. The Respondents have refused this category of discovery, save to contend that what is relevant in respect of it will be captured in Category 8 of the Discovery Order of Mr

Justice Sanfey dated 29 July 2022 – which essentially equates to category 3 of the First Discovery Order in the Lazvisax Proceedings.

10. The respondents say in general terms that the applicant is seeking discovery beyond what it needs in order to prove the facts alleged and beyond what is required to establish oppression. Specifically in relation to this category the respondents argue that in circumstances where the pleaded facts on foot of which this category of discovery is advanced are admitted, the applicant has its means of proof.
11. The applicant points out that the respondents have denied that the conduct on the part of Mr Cosgrave has been directly prejudicial to WSV, and therefore to the Company's business. The applicant has pleaded damage to "*the Web Summit brand business (including [WSV])*".
12. The applicant says that only the respondents, and not the applicant, know the identity of the investors and/or prospective investors in WSV and/or the start-up entities invested in by WSV and/or in which WSV intended to invest who have taken steps in response to Mr Cosgrave's conduct and the nature of those steps and/or regarding the effect of Mr Cosgrave's said conduct on the value of WSV and/or the Company.
13. In my view the impact of the Posts and the Ditch Posts on WSV is relevant to the overall assessment of loss and damage to the Company (which is denied by the respondents, as indeed is any prejudicial effect on WSV). The applicant is entitled to discovery that allows it to test the assertion of no loss. While the instances of certain investor reactions have been admitted, it is not known what was the full extent of the engagement or the impact on WSV as a result of the reactions of investors or potential investors to the Posts and/or the Ditch Posts. The applicant should also be entitled to discovery to ascertain that information which is solely within the knowledge of the respondents. Category 8 of the First Discovery Order in these proceedings does not

reference WSV at all. For the reasons set out in the Lazvisax judgment I am not in any event minded to direct that this category 7A should be deemed covered by the First Discovery Order and it should have a standalone category to avoid any further confusion.

14. I propose to order discovery of this category regarding WSV but not in the precise terms requested as I believe the category is too broadly drafted and captures an imprecise and overly wide range of potential investors. I will therefore direct discovery of an amended category 7A in the following terms:

Category 7A - All documents evidencing communications between investors and/or potential investors in Web Summit Ventures (“WSV”), and/or start up-entities invested in by WSV and/or partners and/or contractors and/or other stakeholders of WSV and the Respondents, their servants or agents (including the Company's current and former executive team and current and former directors), relating to Mr Cosgrave's and/or The Ditch's statements in respect of the state of Israel pleaded at paragraphs 188A and 188F of the Amended Points of Claim, limited to documents created on or after 7 October 2023.

15. The final category is category 8A which is in the following terms:

Category 8A -All documents evidencing any complaints, boycotts, refunds, withdrawals of investment, objections, cancellations, contract terminations, resignations and/or refusals of investment communicated by investors and/or potential investors in WSV and/or start up-entities invested in and/or that may potentially be invested in and/or that potentially have been invested in by WSV and/or partners and/or contractors and/or other stakeholders of WSV, limited to documents created on or after 7 October 2023.

- 16.** I refuse this category of discovery as unnecessary in light of the discovery ordered at category 7A above. I believe that documents evidencing communications will provide the necessary information to the applicant to meet the plea regarding WSV. Furthermore, category 8A in its terms is not limited to the establishment of any nexus to the Posts or the Ditch Posts and in my view is simply too broadly drafted to meet the threshold for discovery to be ordered.

The discovery order to be made

- 17.** Discovery is directed to be made by the respondents to the applicant in the following terms for the reasons set out in this judgment and in the judgment in the Lazvisax Proceedings which is delivered contemporaneously with this judgment:

“Category 1A: All documents evidencing communications between speakers and/or venture capitalists and/or sponsors and/or partners and/or advertisers and/or state entities and/or staff and/or customers and/or partners and/or contractors and/or other stakeholders and the Respondents, their servants or agents (including the Company's current and former executive team and current and former directors), in relation to Mr Cosgrave's and/or The Ditch's statements in respect of the state of Israel pleaded at paragraphs 188A and 188F of the Amended Points of Claim, limited to documents created on or after 7 October 2023.

Category 3A: All documents evidencing communications between current or former directors or members of the Company's executive team referring to the Posts as defined in paragraph 188A of the Amended Points of Claim, limited to documents created on or after 7 October 2023.

Category 4A: All documents referring to any steps taken or to be taken by the Respondents, their servants or agents (including the Company's current and former

executive team and current and former directors), to mitigate the impact of any damage on the business and reputation of Web Summit by Mr Cosgrave's and/or The Ditch's statements in respect of the state of Israel pleaded at paragraphs 188A and 188F of the Amended Points of Claim (including all documents which relate to the manner in which the respondents engaged with the proposals made by the Applicant in respect of the Web Summit business), limited to documents created after 7 October 2023. For the avoidance of doubt this category does not require discovery of personal or confidential information relating to third party candidates involved in the recruitment process for the replacement of Mr Cosgrave as CEO of the Company in 2023.

Category 5A: All documents referring to Mr Cosgrave's resignation as CEO and from the board of the Company and subsidiaries (including the reasons for his resignation), limited to documents created on or after 7 October 2023.

Category 7A - All documents evidencing communications between investors and/or potential investors in Web Summit Ventures (“WSV”), and/or start up- entities invested in by WSV and/or partners and/or contractors and/or other stakeholders of WSV and the Respondents, their servants or agents (including the Company's current and former executive team and current and former directors), relating to Mr Cosgrave's and/or The Ditch’s statements in respect of the state of Israel pleaded at paragraphs 188A and 188F of the Amended Points of Claim, limited to documents created on or after 7 October 2023.

Category 9A: All documents evidencing or referring to the financial impact on the Company's business of the conduct and events described at paragraphs 188A to 188G of the Amended Points of Claim, limited to documents created on or after 7 October 2023.”

18. I will list this matter for mention on **Thursday 25 April at 10.30am** when the parties can address the court on the appropriate timeline within which discovery should be made and confirm the identity of the deponent(s) on behalf of the respondents. The court will also hear any requests for further directions should same be required and will hear any submissions on legal costs.

Eden Roberts