THE HIGH COURT

COMMERCIAL

[2024] IEHC 213

2021 No. 280 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

LAZVISAX 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 ("**Lazvisax**") claims that the respondents have, over a period of several years, oppressed Lazvisax and acted in disregard of its interests as a minority shareholder in the first named respondent (the "**Company**"). Lazvisax holds 7% of the shares in the Company and is owned and controlled by Mr Daire Hickey.

2. This judgment relates to a discovery application by Lazvisax against the respondents seeking seven categories of documentation. This is the second discovery motion issued by Lazvisax. 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.

3. It is admitted that the Posts led to negative media publicity for the Company throughout the world and resulted in the withdrawal of a number of clients, partners and speakers for the Web Summit technology conference ("**Web Summit**") in Lisbon scheduled for November 2023. The Company is the holding company for entities which own and operate Web Summit and related events.

4. It is admitted that Mr Cosgrave resigned as CEO of the Company with immediate effect on 21 October 2023 and that Mr Cosgrave also resigned as a director of the Company.

5. It is also accepted that Ditch Media Limited and a related podcast and website known as the Ditch was funded by the Company who had publicly committed €1million to that entity over a proposed 5-year period. It is admitted that on and after 7 October 2023, the Ditch website also published multiple statements about Israel and its response to the

Hamas attacks (the "**Ditch Posts"**). It is admitted that on 7 November 2023 the Company publicly announced that it would no longer be funding the Ditch.

6. The Applicant and another minority shareholder, Graiguearidda Limited, requisitioned an Extraordinary General Meeting of the Company which took place on 4 January 2024 (the "**EGM")** at which several resolutions were proposed. Those resolutions were voted down by the respondents.

7. The requested categories of discovery and the reasons specified for each will be considered in some detail in light of the amendments made to the pleadings concerning the Posts and the Ditch Posts. Before doing so I will set out the principles I propose to apply in dealing with this application, although I do not propose to set out in any detail the well-known and accepted law on discovery save where it is necessary to do so by reference to the facts of the present application.

The discovery principles to be applied in this case

8. Discovery helps to ensure that the case presented by parties is not inconsistent with the documentation they hold. In that way discovery improves the chances of the court being able to get at the truth where facts are contested. However, discovery should not be used tactically to gain a litigious advantage rather than to achieve this objective of fairness in resolving proceedings (see *Tobin v Minister for Defence* [2019] IESC 57).

9. The court's decision on each of the disputed categories of discovery will require a consideration of the claims advanced by the parties against each other and the defences raised by them to such claims. This is because discovery of any documentation should only be ordered where same is relevant to the matters at issue in the proceedings and where the discovery of that documentation is necessary for fairly disposing of the matter

or for saving costs (O.31, rules 12(1), 2(a) and (5) of the Rules of the Superior Courts, 1981).

10. The relevance of documentation must be assessed by reference to the pleadings (see *Hannon v The Commissioners of Public Works* [2001] IEHC 59 at para 9). Documentation is relevant where it is reasonable to suppose that it contains information which may- not must- either directly or indirectly, enable the party requiring discovery either to advance its own case or to damage the case of its opponent. This includes documents which "*may fairly lead .. to a train of inquiry*" (see *Compagnie Financiere Du Pacifique v. Peruvian Guano Co.* (1882) 11 QBD 55).

11. A court dealing with a discovery application must be satisfied, on the basis of the pleadings as exchanged, and the reasons offered for seeking discovery, that the documentation sought is **both** relevant and necessary for the fair determination of the proceedings or for saving costs.

12. On a discovery application the court is not determining any issues of fact or assessing the merits or otherwise of the claims advanced by the parties. This remains a matter for the trial judge. However as noted by Costello J in *SMBC Aviation Capital Limited v v Lloyds Insurance Company S.A.* [2023] IECA 273 at para 90.". .. *the court should satisfy itself that the argument advanced is statable and that it has some prospect of success in the sense that it is not bound to fail. Once that bar is met then the court ought not to engage in weighing the relevant merits of the arguments on the issue*".

13. On a discovery application, the court is not determining relevance in the same sense as it determines relevance for the purposes of admissibility of evidence at trial.

14. Courts are required, even where relevance and necessity is established, to consider the proportionality of the discovery sought. This requires the court to consider the extent to which the documents sought are likely to advance the case of an applicant or to damage

the case of their opponent and to consider the likely scale and cost of the proposed discovery in light of the complexity and the value of the case. Of itself, confidentiality does not relieve a party from making discovery of relevant documents, but in an appropriate case it can be considered in the balance when assessing whether the discovery sought is proportionate. A court can consider the extent to which a party who objected to making discovery on the grounds that it was excessively burdensome, had contributed to that situation by the manner in which they pleaded their case. (see *Tobin v Minister for Defence* [2019] IESC 57)

15. Proportionality should be measured not just by reference to the likely volume of material that will ultimately be discovered but, perhaps more significantly, by reference to the likely volume of material that will potentially be responsive to the discovery request as drafted. All such responsive material will then have to be reviewed, reduced or otherwise refined before it is determined whether or not it requires to be discovered. The time and costs involved in this filtering exercise of now commonly vast amounts of initially responsive electronic material emphasises the imperative of clear and concise drafting of categories. Categories of discovery sought should be confined to what is genuinely necessary to adjudicate fairly on the litigation. The best drafted categories will look for specific documents and/or for documents over a clearly defined period and/or between specific parties. Unfortunately, in practice, discovery categories tend to be drafted in far more unwieldly terms, seeking for example "*all document*s" without time or other limitations and/or seeking documents by reference to a vague connection with an issue, rather than those which, for example, "*refer to*" or "*relate to*" those issues. To compound these difficulties, discovery requests often contain duplication of categories. It is often not possible to easily find (for example by way of word search) or even identify exactly what documents are being sought or are responsive to a particular category. While it is

understandable that an applicant will wish to ensure that they do not "miss" any documents the other party may hold, that fear or curiosity does not justify overly broad requests or "fishing expeditions". If documents are discovered which themselves indicate a need for targeted further and better discovery that is far more efficient and cost effective than widely drafted categories aimed at securing discovery of every tangentially relevant document. As Fennelly J. stated in *Ryanair v. Aer Rianta* CPT [2003] 4 IR 264 "*the public interest in the proper administration of justice is not confined to the relentless search for perfect truth*". The court should have a clear view of the litigious benefit to the party seeking discovery, having regard to the burden and cost of the discovery sought.

16. It is not necessary for an applicant to establish that they have exhausted all other procedures available to establish relevant facts before discovery can be sought. This may of course be relevant to legal costs. Generally, however parties should attempt to refine discovery requests through the use of targeted and precise notices for particulars or interrogatories. A court may decide not to order discovery if there is an alternative means of proof more readily available to obtain the information requested.

17. If admissions are made on the pleadings this should ordinarily limit or perhaps avoid the necessity for discovery on those pleas. However, if there are limited or caveated admissions made, this is unlikely to dispense entirely with the need for discovery – such as where a party admits a fact but not its financial consequences.

18. I propose to apply these principles to the discovery requests made by Lazvisax in this case. In particular, the respondents argue that the discovery sought, while relevant, is not necessary in light of admissions made by them regarding the Posts and the Ditch Posts. Arguments are also raised regarding the burdensome nature of the discovery sought and the fact that there are previously agreed categories of discovery which would encompass much of the documentation now sought in this request.

The requested categories of discovery

19. 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), referring to or touching upon Mr Cosgrave's and/or The Ditch's statements in respect of the state of Israel pleaded at paragraphs 31A and 31F of the Amended Points of Claim, limited to documents created on or after 7 October 2023.

20. The reasons set out in the request for voluntary discovery dated 8 March 2023 are that in the amended points of claim dated 20 December 2023 Lazvisax pleads at paras 31A and 31B that the Posts were inflammatory and that they offended and/or alienated a significant number of influential persons and/or entities in the technology sector. At paragraph 31E of the amended points of claim, Lazvisax identifies certain such individuals and entities who it is alleged announced that they would not attend, speak at, or support the Web Summit technology conference as a result of the Posts. Lazvisax further pleads at paragraph 31H that this conduct constitutes oppression and/or occurred in disregard of the interests of Lazvisax and caused real and substantial damage to the business of the Company and to Lazvisax's interest therein.

21. At paragraph 64A of the re-amended points of defence, the respondents have not admitted that the posts were inflammatory. While the respondents have admitted that the Posts "*did cause offence and alienate a number of persons and entities*", Lazvisax says that the respondents have failed to admit that the Posts offended and/or alienated a *significant number* of *influential* persons and/or entities in the technology sector. The respondents deny that the Posts were oppressive of the interests of Lazvisax and plead at para 64A(h)

that "*it is not clear whether the Posts caused any short term damage to the business of the Company or to the interest of [Lazvisax]*". The respondents take issue with some of what is pleaded regarding the identity of persons or entities who withdrew support, though the identity of certain other persons who withdrew support is admitted. The respondents plead at para 64A(f) that it is "*not clear*" whether the Ditch Posts "*were directly prejudicial to the Company's business and reputation*". While they admit that Mr Cosgrave has publicly linked the Company with the Ditch on multiple occasions, the respondents plead that they are strangers to the matters alleged as against the Ditch. Lazvisax says that there is a conflict of fact between the parties as to the identity of those entities who ceased their engagement with the Company or the Web Summit, the reasons for same and the impact of such disengagement on the Company or Web Summit's business. Lazvisax says that discovery of this category of documents will enable Lazvisax to understand the impact of the Posts and the Ditch Posts on the value of the Company, and thus on their own minority interest in it.

22. The respondents by letter dated 1 February 2024, say that there is no necessity for this category of discovery because the respondents have admitted that the Posts did cause offence and alienated a number of persons and entities. The respondents say the reasons for any decisions made by those entities for the cessation or alteration of their relationship with the Company is unnecessary in light of the admissions made. They say the only issue is the identity of the parties who so withdrew their support and that has been admitted. Insofar as there were six examples itemised by the respondents which proffered different reasons why certain entities dropped out (for example it is pleaded that certain parties were never booked in the first place), it is suggested by the respondents that interrogatories would be a more efficient manner to deal with these issues of fact.

23. A limited counterproposal for discovery in respect of this category was made by the respondents in respect of complaints received by the respondents in connection with the Ditch Posts. In that regard, the respondents agreed to make discovery "*of all documents evidencing any complaints made by the 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 on or after 7 October 2023 which reference the Ditch*".

24. Accordingly, the dispute between the parties on category 1A is that the respondents have offered to disclose "*all documents evidencing any complaints*" they received from third parties referencing the Ditch and not, as requested, "*all documents evidencing communications*" received by the respondents or their servants/agents, from those third parties regarding either the Posts or the Ditch Posts. Counsel for Lazvisax was clear that the reasons for seeking this documentation included the need to understand not just the nature and tone of the communications received but also to ascertain how the respondents dealt with the communications – these matters being relevant to the establishment of both loss and oppression. Counsel for Lazvisax submits that what has been offered is a radically reduced form of discovery for this category.

25. The respondents' position is that discovery beyond what has been offered is unnecessary in circumstances where it will not be probative of oppression (which is denied) and clearly constitutes a 'fishing' exercise. The respondents also argue that whether or not real and substantial damage has been caused to the business of the Company (whether short-term or otherwise) are matters that are purely financial matters and that discovery of same is already covered by Category 3 of the Discovery Order of Mr Justice Sanfey (agreed on consent of the parties) dated 29 July 2022 (the **"First Discovery Order**"). As

this is an answer also made in respect of other categories of discovery sought by Lazvisax in this application I will now deal with that aspect.

26. Category 3 of the First Discovery Order is in the following terms:

"*All documents necessary to determine the value of the Applicant's shares in the Company and including the following:*

(a) All management accounts for the Company and its subsidiaries for the fiscal years ended 31 December 2018, 31 December 2019, 31 December 2020 and 31 December 2021 respectively;

(b) All financial statements for the Company and its subsidiaries for the fiscal years ended 31 December 2018, 31 December 2019, 31 December 2020 and 31 December 2021 respectively; (c) Reconciliations from management accounts to audited financial statements (or draft audited financial statements) for the fiscal years ended 31 December 2018, 31 December 2019, 31 December 2020 and 31 December 2021 respectively;

(d) Copies of any briefing papers provided to the Board of Directors along with the monthly management accounts referenced at (a) above;

(e) Details of exceptional items and non-recurring items of revenue and expenditure for the fiscal years ended 31 December 2018, 31 December 2019, 31 December 2020 and 31 December 2021 respectively and any documentation establishing or evidencing the views of directors on any roles or costs surplus to current earnings requirements;

(f) Documents which establish levels of directors' compensation and which are sufficient to establish the allocation of all employees to specific projects and their salary levels for the fiscal years ended 31 December 2018, 31 December 2019, 31 December 2020 and 31 December 2021 respectively;

(g) All valuations undertaken in respect of the Company and its subsidiaries or any shares in the Company and its subsidiaries between the incorporation of the Company to date;

(h) All presentations made to and by prospective investors in the Company and its subsidiaries from 2018 to date;

(i) Details of any offers received for debt financing, equity financing, or the outright purchase of the Company, its subsidiaries, or any of the businesses contained therein (other than by Ascential or Inflexion);

(j) All communications in which Mr Cosgrave has referred to and/or expressed a view on the value of the Company and its subsidiaries;

(k) 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 the preparation of such;

(l) Copies of any bid models received from host cities and/or Heads of Terms in respect of any potential new events;

(m) Copies of any draft or final commercial agreements and any potential new events;

(n) Quarterly VC fund valuations for Amaranthine I fund at relevant valuation dates;

(o) Details of any significant assets not recorded in the balance sheets such as brand, proprietary technology, patents, copyrights, databases, licenses, franchise agreements and domain names between 2018 and today;

(p) Documentation evidencing or establishing revenue and sales pipeline for any current or potential or anticipated new events;

(q) Historical EBITDA performance (2013 to 2021) of each Web Summit event on an individualised basis to include (a) Web Summit (b) Collision and (c) RISE;

(r) All distributions from Web Summit to Paddy Cosgrave or associated companies including salary, loans and any exceptional items.

In providing the documents above, the Applicant's expert should be accommodated in as far as possible with the provision of any further documentation or information which he considers necessary for the task of valuing the Company. In the event of a material dispute in this regard as to what is relevant to this task, the Applicant shall have liberty to apply for further and better discovery."

27. Category 3 is drafted broadly and requires extensive discovery to be made by the respondents. In fact, the respondents have not yet completed discovery in relation to it and that process is still ongoing, almost 21 months later. At its heart, Category 3 is aimed at enabling Lazvisax to determine the value of its shares in the Company – the focus of that category is on share value and financial information rather than correspondence relevant to damage or oppression caused by the Posts or the Ditch Posts. While the extent of any damage to share value may be evidenced by comparing share values before and after the Posts and the Ditch Posts, that purely financial information (even if it were to be provided for periods post those set out in Category 3) does not entirely address the overall pleaded adverse impact to Lazvisax's interests or the acts of oppression it alleges. Lazvisax does not agree that there is an overlap between category 3 and category 1A of the nature contended for by the respondents. Even if there is some overlap, Lazvisax argues that if category 1A documents are, as the respondents say, already discoverable by the terms of the First Discovery Order (assuming an ongoing obligation to update discovery), then no material additional burden is placed on the respondents by requiring this documentation to be discovered under category 1A. Lazvisax also points to what it says has been the wholly unsatisfactory manner in which the respondents have to date made discovery on foot of the First Discovery Order where the respondents are still

addressing various further and better discovery issues. For that reason, Lazvisax believes it is entirely appropriate that the documentation sought in this request should form part of a stand-alone category concerning which there can be no dispute as to its terms.

28. The respondents say their obligations under category 3 will fully address any damage to the interests of Lazvisax and that in practice these discovery obligations under category 3 will extend beyond 31 December 2021. They say they have admitted the Posts and the Ditch Posts were made and that they caused offence and alienated a number of persons and entities. They say that no discovery beyond what has been offered could be necessary in circumstances where the admissions are sufficient, and the facts alleged can be read as proven.

29. I am not satisfied that there is a material overlap between category 3 and category 1A or at least it is sufficiently unclear what is the extent of any overlap. Category 3 has already posed significant practical issues for the parties and I see no benefit in adding to those difficulties by deeming that this category 3 should encompass the later discovery requests sought in this application. I believe it is far preferable to have clarity about any additional discovery categories by reference to their own separate category rather than grafting additional discovery requirements onto an already complicated category. A pragmatic practical approach should ensure that discovery of the same documents will not have to be made twice by the respondents.

30. The applicant has pleaded that the respondents have repeatedly engaged in conduct which undermined the Company's brand and business. The particulars of such conduct pleaded included — at para 31(b) of the Points of Claim: "*Using the Company's Twitter account and/or the platform provided to Mr Cosgrave's Twitter account by his position with the Company to promote controversial political messages*." It is clear that the pleadings were amended specifically to allow Lazvisax to plead that the Posts and the actions of Mr

Cosgrave in linking the Company with the Ditch (and, as a result the Ditch Posts), constituted further acts of oppression and a disregard of the interests of Lazvisax as a minority shareholder in the Company as a result of which conduct Lazvisax claims it has suffered and may continue to suffer significant damage into the future.

31. Specific pleas are made regarding the steps taken by six of the persons and entities identified at para 31E of the points of claim. As the respondents are pleading a different version of events regarding those persons, in my view Lazvisax is entitled to discovery which tests the respondents' different version of events.

32. Furthermore, it is not clear whether the publicly available list of entities identified by Lazvisax and admitted by the respondents is a complete list of those entities or persons who withdrew their support for the Company and/or Web Summit as a consequence of the Posts and/or the Ditch Posts. While the respondents have admitted the entities publicly identified (save for the six entities referred to previously), the respondents have not pleaded or admitted that these entities represent the entirety of all parties who withdrew their support. The respondents alone have this information. Without this information Lazvisax will be unable to fully interrogate the actual or potential consequences of the pleaded acts of oppression set out in the amended pleadings.

33. Indeed, regardless of whether or not the identified entities or persons are, in fact, the only entities who withdrew their support as a consequence of the Posts and/or the Ditch Posts, Lazvisax will still need to identify the resultant financial and other consequences for the Web Summit, the Company and, in turn, the minority shareholding of Lazvisax. Merely admitting the identity of the parties will not provide that information – and particularly so in circumstances where the respondents plead that it is unclear if indeed any loss at all has arisen. Lazvisax is entitled to discovery that allows it to test the assertion of no loss and to quantify any loss that is shown to have, in fact, been incurred. I accept (without deciding

the matter) that it is possible that any loss incurred may extend beyond pure financial loss and could include reputational damage (both short and longer term) which may only be evidenced and understood by examining the nature of the third-party reactions and commentary concerning the Posts and the Ditch Posts.

34. Furthermore, Lazvisax argue that the admissions provide no information whatsoever on the manner in which the respondents dealt with the reactions to the Posts and/or the Ditch Posts. Lazvisax says that the respondents' reactions comprise highly relevant and necessary evidence which should be available to it and the court regarding the oppression pleaded by Lazvisax in respect of the Posts.

35. I am not persuaded that discovery of this category would be necessary solely to deal with the fact that the respondents have not admitted that a "*significant number*" of "*influential*" persons or entities withdrew their support for Web Summit or that the Posts were "*inflammatory*". However, for the reasons I have set out above and noting that the respondents have denied both damage and oppression caused by the Posts and/or the Ditch Posts, I direct that the respondents should make discovery within the terms of category 1A as sought by Lazvisax save that I will delete the phrase "*referring to or touching upon*" and replace it with the phrase "*relating to*" in the category as originally drafted, as I believe this will clarify the category wording. I am satisfied that given the relatively limited time period covered by the category, discovery in the terms requested should not be unduly burdensome or oppressive.

36. Category 2A: All documents evidencing any complaints, boycotts, refunds, deferrals, credits, discounts, withdrawals, objections, cancellations, contract terminations, resignations and/or refusals of invitations communicated by 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 contractors and/or other stakeholders in

respect of any of Web Summit's events, limited to documents created on after 7 October 2023.

37. The reasons set out in the applicant's request for voluntary discovery dated 8 March 2023 largely mirror those reasons identified for category 1A. The respondents argue that this category is unnecessary. Lazvisax says that the documents sought in this category go to the present valuation of the Company, which is a matter in dispute.

38. A compromise category has been proposed by the respondents in the following terms: "*All documents evidencing any complaints or boycotts made by scheduled speakers and/or participating venture capitalists and/or participating sponsors and/or participating partners over and above but not including those identified in paragraph 31E of the Amended Points of Claim and in connection with Web Summit Lisbon, 2023, limited to documents created on or after 7 October, 2023 until 14 November*."

39. Lazvisax says that the limitations proposed are not in any way justified on the pleadings. The pleas advanced are not limited to participating or scheduled speakers. The pleas are not in any way limited or tied to Web Summit Lisbon, 2023. Lazvisax says that the damage caused by the Posts is likely to last well after 14 November 2023.

40. The respondents argue that category 2A has only limited relevance and necessity because of the near total absence of a nexus in the category between the documents sought and the Posts, which are the cause of the introduction of the amended pleadings. They say that to the extent that it is intended that category 2A refer to the Posts and/or the Ditch Posts, then it is inevitable that the vast majority of the discovery sought will be accounted for in Category 1A. The respondents argue that internal documents are not probative and do not assist in establishing the reason why companies withdrew from Web Summit. They also argue that if there is any impact on share value then this can be considered by reference to revenue which is discoverable per the terms of category 3 of the First Discovery Order.

41. I am not prepared to make an order for discovery in the terms of category 2A as sought. It is worded in terms that are overly broad, failing even to require that the documents relate in any way to the Posts or the Ditch Posts. I also believe that category 1A as reworded will encapsulate the bulk of the relevant and necessary documents concerning the complaints received and the response of the respondents. Category 1A is not limited in its terms only to scheduled speakers. It will encompass any documents which evidence communications with a broad range of third parties relating to the Posts or the Ditch Posts and will thus enable Lazvisax to understand the reactions and responses of the respondents in each case. The revised category of discovery suggested by the respondents was offered in the context of offering limited discovery in the terms requested in category 1A. Now that this court has directed discovery in the terms of category 1A, there is no necessity in my view for discovery to be made in the terms of category 2A either as requested or as proposed by the respondents. I therefore refuse discovery of category 2A as it largely duplicates the documentation covered by category 1A as granted insofar as it relates to necessary documentation. Any other documents are not necessary and will result in no costs saving.

42. Category 3A: **All documents evidencing communications between current or former directors or members of the Company's executive team referring to or touching upon the Posts as defined in paragraph 31A of the Amended Points of Claim, limited to documents created on or after 7 October 2023.**

43. A counterproposal to this category has been proposed by the respondents in the following terms: "*All documents evidencing communications between members of the Company's board and Mr Cosgrave between 7 October, 2023 and 21 October, 2023 concerning Mr Cosgrave's position as CEO of the Company*."

44. The reasons set out in the applicant's request for voluntary discovery dated 8 March 2023 include reasons also advanced for the previous categories. Furthermore, at paragraph 31D of the amended points of claim Lazvisax pleads that Mr Cosgrave resigned as CEO of the Company on 21 October 2023, as his position had become untenable due to his conduct. Lazvisax further pleads at paragraph 31H that this conduct constitutes oppression and/or occurred in disregard of its interests. The respondents have denied that Mr Cosgrave's position as CEO had become untenable — whether by his conduct or otherwise — at the date of his resignation.

45. The applicant says that the category as sought goes to the impact of the Posts on Web Summit's business as assessed by board members. They say that in circumstances where the question of damage is squarely in issue on the pleadings, the relevance of such assessments is obvious. Lazvisax notes that the respondents have denied at para 64A(c) of the amended points of defence that the Posts created a potential catastrophe for the Company. Counsel says that plea can be fully tested by reference to the category sought. Lazvisax says there is also no reason to limit the discovery to communications between members of the board and Mr Cosgrave. Communications between members of the board to which Mr Cosgrave was not privy will likely be even more probative. Given that Mr Cosgrave was the author of the Posts, other executives may well have given a more honest and objective assessment of the effect of the Posts on the Company's business in communications to which he was not privy.

46. The respondents say that discovery beyond what has been offered for this category is unnecessary. They say that on the pleadings there is no reference to current or former directors or members of the Company's executive team referring to the Posts and that no allegation has been made in that regard. They say Mr Cosgrave has admitted he resigned, albeit that he has denied that his position was untenable. Rather he pleads that his

resignation was in the best interests of the Company. The respondents say that the facts alleged are substantially admitted and that these documents are not necessary to prove oppression.

47. I believe there is some force in the argument that communications between directors or members of the Company's executive team relating to the Posts (rather than only those to which Mr Cosgrave was expressly a party) are likely to paint a more complete picture of the impact of the Posts and/or the Ditch Posts on the Company and the Web Summit. It also appears to me that these documents are relevant to the plea that Mr Cosgrave resigned as his position as CEO had become untenable and the plea that the brand and business of the Company have been undermined by Mr Cosgrave's action. These pleas are expressly denied by Mr Cosgrave. The respondents also deny that the impact of the Posts was potentially catastrophic for the Company as pleaded by Lazvisax. Discovery of these documents will enable Lazvisax to test those denials.

48. Accordingly, I propose to direct that the respondents make discovery in the terms of category 3A as sought save that in the interests of clarity and to reduce the burden of discovery, I will delete the phrase "*or touching upon*". Given the time limitation and required nexus to the Posts I do not believe that discovery of this category would be disproportionate.

49. Category 4A: All documents evidencing any steps 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 damage done to 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 31A and 31F of the Amended Points of Claim (including documents evidencing the process whereby a new CEO

and directors were identified, recruited and appointed), limited to documents created on or after 7 October 2023.

50. The respondents have proposed a reduced offer of discovery for this category in the following terms :"*All documents evidencing the engagement by the Third Named Respondent, its servants or agents, with the proposals made by the Applicant in respect of the Web Summit business, limited to documents created between 7 October 2023 and 4 January 2024*."

51. The reasons set out in the applicant's request for voluntary discovery dated 8 March 2023 are that in the points of claim, Lazvisax pleads at paragraph 22, that the respondents have failed and/or refused, and continue to fail and/or refuse, to observe any or any adequate corporate governance norms in respect of the Company's affairs. Lazvisax further pleads at paragraph 22(a) of the points of claim that Mr Cosgrave has consistently made, and continues to make, important strategic and financial decisions on behalf of the Company on his own, with no input from the other directors and no board authority, whether formal or otherwise. Lazvisax reserved the right to rely on such further or other particulars of failure to observe corporate governance norms as may arise and/or comes to light at or prior to the trial. In the amended points of claim, Lazvisax pleads at paragraph 31D that Mr Cosgrave resigned as CEO of the Company with immediate effect on 21 October 2023, his position having become untenable due to his conduct. Lazvisax pleads at paragraph 31H that this conduct giving rise to Mr Cosgrave's resignation constitutes oppression and/or occurred in disregard of its interests. Lazvisax further pleads that the respondents have to date failed or refused to engage with proposals made on behalf of Lazvisax and other minority shareholders with a view to mitigating the effect of Mr Cosgrave's conduct on the value of their shareholding. One of those proposals relates to

the composition of the board of directors. The Respondents have denied that Mr Cosgrave's position as CEO had become untenable at the date of his resignation.

52. The respondents say that category 4A is overly broad. They say that mitigation of damage is not, in any general way, referenced in the pleadings and that the only mitigation referenced in the pleadings relates to the proposals made by the shareholder for the EGM. The respondents accept that there is a difference of opinion on the issue as to whether the respondents engaged with the minority shareholders' proposals. They say that their proposed category wording will address this issue.

53. Lazvisax says that it has specifically pleaded the damage caused by the respondents' conduct, and that an obligation to mitigate such damage necessarily flows from a finding that the damage occurred. Lazvisax also says that it has pleaded at paragraph 31I that Web Summit has to date failed or refused to engage with proposals made on behalf of the minority shareholders with a view to mitigating the effect of Mr Cosgrave's conduct on the value of their shareholding. Lazvisax says that whether or not damage has been mitigated is critical to establishing the effect of the respondents' conduct on members interests.

54. The respondents have denied damage caused to the Company although they have admitted that the Posts offended certain entities and caused them to withdraw from the Web Summit. There is no express plea of failure to mitigate other than in respect of the failure to engage with the minority shareholder proposals tabled for the EGM. However, there is also a dispute regarding the loss/damage caused by the Posts, the circumstances in which Mr Cosgrave came to resign and whether the Posts and the consequences for the Company constituted oppression of the minority shareholders.

55. In those circumstances I propose a variation of this category as sought. It should, as the respondents suggest, refer to the engagement with the minority shareholder proposals. I

also believe that detailed discovery of the recruitment process for the replacement CEO is not necessary. It is sufficient that this step was taken by the respondents and that Lazvisax can test why it was taken. The specific arrangements with the new CEO do not however appear either relevant or necessary to discover in light of the pleadings as exchanged.

56. I therefore propose a revised category of discovery in the following terms:

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 31A and 31F 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.

57. 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.

58. The reasons set out in the applicant’s request for voluntary discovery dated 8 March 2023 are that in the amended points of claim, Lazvisax pleads at paragraph 31D that Mr Cosgrave resigned as CEO of the Company with immediate effect on 21 October 2023, his position having become untenable due to his conduct. Lazvisax further pleads at paragraph 31H that this conduct giving rise to Mr Cosgrave's resignation constitutes

oppression and/or occurred in disregard of the interests of Lazvisax. The respondents have denied that Mr Cosgrave's position as CEO had become untenable — whether by his conduct or otherwise — at the date of his resignation. While the fact of Mr Cosgrave's resignation has been admitted, the respondents plead by way of special plea that Mr Cosgrave "*made the decision to resign because he felt that at the material time that this course of action was in the best interests of the Company*". The difference between the parties is whether - by reason of the matters which are admitted - Mr Cosgrave's position was rendered untenable. The respondents say this difference does not give rise to any entitlement for discovery. Lazvisax disagrees and argues that this is a significant point of difference as the special plea on this point appears to suggest that Mr Cosgrave did nothing wrong and made the decision himself to resign for altruistic reasons. Lazvisax says that the respondents could simply have admitted the plea advanced but did not do so and instead sought to raise an alternative special plea proffering a different reason for Mr Cosgrave's resignation.

59. In my view the reasons for the resignation of Mr Cosgrave are important – they will enable both sides to advance the pleas they make and to test the version of events pleaded by the other side. There is a difference between the pleaded position of the parties on this point. In circumstances where the alleged acts of oppression and where loss and damage to the Company are hotly in dispute, documents which establish the circumstances of Mr Cosgrave's resignation as CEO are in my view both relevant and necessary to discover. The Posts and alleged oppression were exercised through the vehicle of Mr Cosgrave being the CEO and/or a director of the Company. I appreciate that there may be an element of overlap between some documents responsive to this category and those potentially responsive to categories 3A and 4A. However, documents need only be discovered once, even if responsive to more than 1 category.

60. Category 6A: All documents evidencing the Company's decision to cease the funding of the Ditch as referred to in paragraph 31G of the amended Points of Claim, and/or the reasons for that decision, limited to documents created on or after 7 October 2023.

61. The reasons set out in the applicant's request for voluntary discovery dated 8 March 2023 are that in the amended points of claim, Lazvisax pleads at paragraph 31F that the Ditch — being a media organisation intimately linked with Web Summit by Mr Cosgrave — published certain materials which were prejudicial to the Company's business and reputation. At paragraph 31G, Lazvisax pleads that, on 7 November 2023, the Web Summit released two statements suggesting that it was ceasing its funding of the Ditch, which was contrary to a commitment previously given by Mr Cosgrave that Web Summit was to provide €1 million of funding to the Ditch over five years. The respondents have pleaded that it is not clear whether the Ditch Posts were directly prejudicial to the Company's business and reputation. Lazvisax say that the materials sought will shed light on whether the decision to terminate funding of The Ditch was made on the basis that the statements at issue were prejudicial to the Company's business and reputation.

62. The respondents say that discovery of this category is sought in the teeth of substantial admissions by the respondents where the plea at paragraph 31G of the amended points of claim are admitted in full and it is admitted that the Ditch has been publicly linked with the Company by Mr Cosgrave on multiple occasions.

63. In light of the unqualified admissions made I do not believe that there is a need for discovery to be ordered in the terms of this standalone category. Furthermore, I am satisfied that relevant documentation will be captured by the terms of categories 1A and 4A insofar as they refer to the Ditch Posts and the mitigation steps taken by the

respondents in relation to them. For that reason, I refuse to direct discovery in the terms of category 6A.

64. Category 7A: All documents evidencing or referring to the financial impact on the Company's business of the conduct and events described at paragraphs 31A to 31G of the Amended Points of Claim, limited to documents created on or after 7 October 2023.

65. The reasons set out in the applicant's request for voluntary discovery dated 8 March 2023 are that in the amended points of claim, Lazvisax pleads that the Posts constituted oppression and/or occurred in disregard of the interests of Lazvisax and caused real and substantial damage to the business of the Company. In the amended points of claim, Lazvisax pleads at paragraph 31F that the Ditch — being a media organisation intimately linked with Web Summit by Mr Cosgrave — published certain materials which were prejudicial to the Company's business and reputation. The respondents have pleaded that it is not clear whether the statements made by the Ditch were directly prejudicial to the Company's business and reputation. Accordingly, there is a clear dispute in relation to the financial impact of the matters pleaded on the Company's business.

66. The respondents say that this category should be refused because the discovery already falls within category 3 of the First Discovery Order. Lazvisax responds that it requires this category of documents on a stand-alone basis as it is not clear that the documents sought at Category 7A would be captured by Category 3 of the First Discovery Order. Furthermore, Lazvisax says that there can be no prejudice or hardship to the respondents in being required to make discovery of category 7A if their position is that they are already obliged to make discovery of all such documents within category 3 of the First Discovery Order.

67. The respondents say that category 3 of the First Discovery Order will clearly account for any financial impact that occurs as a result of the issues introduced by way of the amended pleadings and that it is not an answer for Laxvisax to complain about discovery already made. The respondents say that the suggestion that it would not cause hardship for the respondents to have to make double discovery – i.e. under the original order and a new one pursuant to this application – is not sound. They say this would place an additional burden on the respondents which they should not have to bear and would lead to further undesirable delay in the proceedings.

68. I do not agree with the respondents' arguments on this category. Clearly some discovery on the question of loss is both relevant and necessary as there is no admission that loss has occurred at all. Any loss might persist beyond immediate loss to the Lisbon Web Summit, or it might not. This is what discovery will help to establish.

69. I have already set out my concerns regarding adding further to the terms of category 3 of the First Discovery Order which was agreed long before the Posts or the Ditch Posts occurred. In the interests of clarity, I believe it is preferable to have a standalone category which deals with the loss alleged to have arisen after these specific statements were made. For the avoidance of doubt and to prevent any unnecessary burden on the respondents, I direct that the respondents will not be required to discover the same material twice but can disclose material responsive to this category 7A by reference to that category alone. I do not believe that this will in any way increase the costs or delay the proceedings – but it should simplify and ringfence the financial disclosure required in respect of the Posts and the Ditch Posts.

The Order to be made

70. Discovery is directed to be made by the respondents to the applicant in the following terms for the reasons set out in 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 31A and 31F 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 31A 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 31A and 31F 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 or referring to the financial impact on the Company's business of the conduct and events described at paragraphs 31A to 31G of the Amended Points of Claim, limited to documents created on or after 7 October 2023**.**

71. 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.