

APPROVED

[2024] IEHC 140



THE HIGH COURT

2021 1110 P

BETWEEN

DECLAN GANLEY
RIVADA NETWORKS LTD

PLAINTIFFS

AND

CABLE NEWS NETWORK, INC.
CABLE NEWS INTERNATIONAL LTD
TURNER BROADCASTING SYSTEM EUROPE LTD

DEFENDANTS

JUDGMENT of Mr. Justice Garrett Simons delivered on 22 March 2024

INTRODUCTION

1. This judgment is delivered in respect of an application to stay the within proceedings by reference to the principle of *forum non conveniens*. The proceedings take the form of an action for defamation. The defendants contend that the events, the subject-matter of the alleged defamation, are all connected to the United States of America. It is said, therefore, that any claim for defamation should have been pursued before a court in that country. It has been suggested,

NO REDACTION REQUIRED

variously, that a claim for defamation could have been brought before the federal courts in Washington, District of Columbia; Atlanta, Georgia; or New York.

2. The plaintiffs oppose the application on a number of grounds. In particular, it is contended that any claim for defamation in the USA would now be statute barred and that, in any event, the rules in relation to defamation are less favourable to a plaintiff than those under domestic law.

THE CLAIM FOR DEFAMATION

3. The claim for defamation relates to a news story published on various platforms by CNN in October 2020. The news story was published by way of a broadcast on the CNN news channel and as an article on the CNN website. There is a dispute between the parties as to which entity within the CNN group bears responsibility for publication and distribution. This is the subject of a separate motion between the parties whereby it is sought to have the proceedings struck out as against the second and third defendants.
4. The meaning and effect of the news story will, ultimately, be a matter for the court of trial in whichever jurisdiction has seisin of the claim for defamation. For present purposes, it is sufficient to summarise the broad gist of the news story as follows. It is alleged that the Department of Defence in the USA came under pressure from the Trump White House to award a lease of mid-band spectrum to an entity described in the news story as "*Rivada*". The parties are in disagreement as to whom this description refers. The defendants submit that it refers to a US registered company known as Rivada Networks Inc; the plaintiffs submit, conversely, that it refers to a wider group of companies including the second plaintiff which is an Irish registered company. It is also

contended on behalf of the plaintiffs that the companies are identified with the first plaintiff, Mr. Declan Ganley. Mr. Ganley is an Irish citizen and asserts that he is habitually resident in the Irish State. The question of whether the Irish company and Mr. Ganley can be “*identified*” as the parties defamed is, again, a matter for the court of trial.

5. It is pleaded in the statement of claim, which has been delivered in these proceedings, that the news story bears the following defamatory meanings:

- “i. The Plaintiffs had engaged in a corrupt or improper process to obtain a lucrative contract to lease the US Department of Defense’s mid-band spectrum;
- ii. The Plaintiffs had intended to secure a no-bid contract and preclude a competitive bidding process for this opportunity;
- iii. The Plaintiffs’ actions were corrupt, or that they had corrupt intent;
- iv. The Plaintiffs lied and were hypocritical in their denials of the unfounded allegations;
- v. The Plaintiffs had sought to improperly influence the US government and the US President in respect of a public contract;
- vi. The Plaintiffs lied and were hypocritical in the denials of the unfounded allegations”

6. Counsel for the plaintiffs has submitted that the claim in these proceedings is confined to a claim for damages for loss of reputation within Ireland by reason of an (alleged) defamation published in Ireland. Put otherwise, these

proceedings are not intended as an omnibus worldwide claim which would extend to loss of reputation in the USA.

7. The defendants have indicated that they will defend any claim for defamation on the basis that the news story is, in substance, true, and relates to a matter of public interest. It is asserted, in general terms, that defences along these lines are available under the (Irish) Defamation Act 2009 and under US law, respectively.

FORUM NON CONVENIENS: EVIDENTIAL DEFICITS

8. Save where the allocation of jurisdiction is governed by Regulation (EU) No 1215/2012 (Brussels I recast), the Irish Courts have an inherent jurisdiction to stay proceedings on the grounds of *forum non conveniens*. The criteria informing the exercise of that inherent jurisdiction have been authoritatively stated by the Supreme Court in *Irish Bank Resolution Corporation v. Quinn* [2016] IESC 50, [2016] 3 I.R. 197. In brief, the court must assess whether there is an alternative forum, which is clearly or distinctly more appropriate than Ireland, before which the claim should be pursued. This assessment requires consideration of practical factors such as those affecting convenience, expense, applicable law and the location or place of business of the parties.
9. At the risk of stating the obvious, it is a condition precedent to the carrying out of such an assessment that the moving party must nominate an alternative forum. The assessment cannot be carried out in the abstract. The moving party must be able to nominate an alternative forum and adduce evidence which establishes that the named forum would have jurisdiction to entertain the claim which it has been sought to litigate before the Irish Courts. It should be emphasised that this

requires the identification of a court or tribunal: it is not sufficient simply to point to another *country* and say that the claim has a stronger connection with that country. The principle of *forum non conveniens* requires an assessment of, and comparison with, an alternative forum. It is not enough to say, for example, that most of the witnesses relevant to litigation, which has been brought before the Irish Courts, reside in the foreign country unless it is first established that the courts of that country would have jurisdiction to entertain the type of claim which the plaintiff is pursuing before the Irish Courts.

10. To date, neither side in the present proceedings has adduced any direct expert evidence in respect of the jurisdiction of any court or tribunal within the USA to entertain a claim, at the suit of an Irish citizen or an Irish domiciled company, arising out of the publication, within the Irish State, of an allegedly defamatory statement. This court cannot simply assume that such a claim would be entertained. Whereas it might be legitimate to take judicial notice of the fact that a tort of defamation is recognised under the federal law of the United States of America, this court has no direct knowledge of the detail of such a tort. It would not be fanciful to anticipate that there *might* be procedural and jurisdictional niceties which would present difficulties for foreign domiciles maintaining such a claim in respect of publication outside the USA.
11. More broadly, the plaintiffs contend that any proceedings in the USA would now be statute barred. It was suggested in submission that there is a one year limitation period on such proceedings and that this has long since expired. The plaintiffs also contend that the (supposedly) broad sweep of the defences open to a defendant under US law are such that a claim for defamation before a US federal court would not vindicate the first plaintiff's constitutional right to a good

name under the Constitution of Ireland. Again, no direct expert evidence in relation to US law has been adduced.

12. On the current state of the evidence, it is simply not possible for this court to carry out the requisite assessment of, and comparison with, an alternative forum. In the circumstances, the interests of justice dictate that each party should now be given an opportunity to file such evidence in respect of foreign law as they wish. The alternative approach, which would entail refusing the motion outright for lack of evidence, would be unfair and disproportionate. Whereas it is correct to say that the *legal burden* of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay on the grounds of *forum non conveniens*, the *evidential burden* rests on the party who seeks to establish the existence of matters which will assist him in persuading the court to exercise its discretion in his favour (*Irish Bank Resolution Corporation v. Quinn*).
13. Here, a centrepiece of the plaintiffs' submissions is the supposed shortcomings in the remedies available for defamation under US federal law. Emphasis was placed, in particular, on the limitation period and the broad sweep of the defences open. These are all matters which will have to be addressed by this court as part of its adjudication upon the application to stay the proceedings, and are matters in respect of which the evidential burden lies with the plaintiffs.
14. Put bluntly, there are shortcomings in the evidence adduced by both sides in relation to the foreign law. The interests of justice dictate that each side should be given the opportunity to mend their hand so as to ensure that the court can make a fully informed decision on the question of *forum non conveniens*.

CONCLUSION AND PROPOSED FORM OF ORDER

15. On the current state of the evidence, it is simply not possible for this court to carry out the requisite assessment of, and comparison with, an alternative forum. In the circumstances, the interests of justice dictate that each party should now be given an opportunity to file such evidence in respect of foreign law as they wish.
16. The defendants, as the moving party, should file their evidence within six weeks, with the plaintiffs to follow within six weeks thereafter. These timelines would run from 16 April 2024. As to the costs of the motion to date, my *provisional* view is that these should be reserved until the motion has been fully heard and determined.
17. If either party wishes to contend for a different timeline for the filing of evidence or for a different costs order, they may make submissions on 16 April 2024 at 10.30 am.

Appearances

Mark Harty SC and Alannah McGurk for the plaintiffs instructed by WP Tweed & Co
Eoin McCullough SC and Hugh McDowell for the defendants instructed by Dentons Ireland LLP