THE HIGH COURT

[2024] IEHC 616

Record no. 2023/3453 P

Between:

MOHAMMAD TAHBOUB

Plaintiff

and

THE JOINT ARAB-IRISH CHAMBER OF COMMERCE CLG

Defendant

JUDGMENT of Ms Justice Nessa Cahill delivered on 31 October 2024

Introduction

1. By this motion, the Defendant seeks an order under Order 29, Rule 1 of the Rules of the Superior Courts, requiring the Plaintiff to provide security for the costs of the proceedings.

2. There are two criteria that must be satisfied for an order under that provision: first, the party against whom security is sought must be resident outside the jurisdiction of the Court, the EU and the Lugano Convention contracting states; and, second, the defendant must demonstrate a *prima facie* defence on the merits to the claim. If the defendant discharges this burden, the plaintiff then bears the onus in relation to any special circumstances which are asserted to warrant a refusal of the order sought.

3. In this matter, it is common case that the first criterion is satisfied, the Plaintiff being resident in Jordan. The primary issue between the parties is whether the Defendant has demonstrated a *prima facie* defence to the Plaintiff's claim. This in turn raises questions regarding the scope of the obligation of the Defendant to put its cards on the table and whether that obligation was sufficiently complied with here.

4. The Plaintiff also relies on certain "*special circumstances*" which he submits justify the refusal of the security for costs' order. This includes the unique character of the Defendant and the Plaintiff's largely uncontradicted evidence that he is a man of significant means; has ties to Ireland, through his involvement with the Defendant and otherwise; and that there are reasons why he would honour his legal obligations.

5. The Plaintiff also relies on an allegation of delay as a "*special circumstance*". In this respect, there is a difference between the parties as to how delay should be calculated when an order under Order 29 is sought.

Background

6. The Plaintiff is a businessman who resides in Jordan.

7. The Defendant is a company limited by guarantee which was incorporated in Ireland in 1984 for the stated purpose of promoting commercial, industrial, tourist and financial

relations between "*the Arab Countries*" and Ireland. The Defendant was established under the General Union of Chambers of Commerce, Industry and Agriculture ("***the General Union***").

8. The board of directors ("***the Board***") of the Defendant is typically made up of 12 Irish directors and 12 directors from Arab countries It is usual – and required by the articles of association (articles 39 and 40) – that the board members are nominated by the chamber of commerce of their home state and that each Arab State has one representative on the board of directors. It is common case that there is not strict adherence to these requirements. It is also common case that one Arab State has two members on the Board.

9. The process of nomination is that the home Chamber of Commerce sends the proposed nomination to the General Union for approval and the General Union then submits this nomination to the Board.

10. Article 41 of the Articles of Association of the Defendant limits the term of appointment to six years and requires each director to retire by rotation, but there has not been strict adherence to, or enforcement of, this requirement.

11. The Plaintiff was a member of the Board of the defendant since 2014, having been nominated to that office by Jordan, and was appointed as vice chairman of the Board in or about 2018.

12. Separately and distinctly from this, each '*qualified association*' has the power to nominate a '*representative member'* of the Defendant and the Plaintiff was nominated by Jordan as its representative member.

13. The plaintiff was not re-elected by the Jordan Chamber of Commerce at the annual election of that body in 2018.

Events of June – October 2022

14. The Defendant asserts that, on 29 June 2022, the General Union nominated two individuals to the Board on behalf of the Jordan Chamber of Commerce, the Plaintiff

and Mr Al-Refai. The Defendant did not exhibit any documentation related to this nomination in this Motion.

15. The Plaintiff's case is that this was a "*re-confirmation*" of his nomination and was prompted by a wrongful communication from the Defendant to the General Union that the Plaintiff's term as director and/or representative member had ended. There is likely to be some dispute as to what did transpire, which it is neither necessary nor appropriate to address or seek to resolve in this Motion.

16. It is the Plaintiff's case that he continued to discharge his duties as director and vice-chairman of the Defendant after 29 June 2022, including raising management and governance concerns. He asserts that it was only after, and because of, this that the Defendant then decided not to accept his nomination. This is disputed by the Defendant.

17. On 29 September 2022, an email was sent to the Plaintiff by a Mr Corneille indicating that the Defendant was treating the nomination of 29 June 2022 as a valid nomination of Mr Al-Refai and not of the Plaintiff. In that email, the Plaintiff was asked to step down as director and vice-chairman.

18. The email of 29 September 2022 is important and is set out below in full for this reason:

> *"Subject: Jordian Board Nomination*
>
> *Dear Mohammad*
>
> *I do hope you are well.*
>
> *A situation has arisen that I wish to discuss with you, but I thought it appropriate to first set out the details in writing in advance.*
> *On 29 June, the Security General of the General Union, Dr Khalid Hanify, wrote to the Chamber confirming the General Union had received a letter from the Chairman of the Jordian Chamber of Commerce nominating Mr Jamal Al-Rifai and yourself to the Board of the AICC. As you may be aware, Mr Al-Rifai is a Board member and Vice Chairman of the Jordian Chamber*

of Commerce however I note that you are no longer a member of their Board.

This poses an issue for the Chamber as there is only one Board position available and this should go to Mr Al-Rifai, being the most senior, given that he is not only a Board member of the Jordian Chamber of Commerce but also the Vice Chairman.

In this regard we have no option but to put Mr Al-Rifai nomination to the AICC board for confirmation at the next Board meeting and to ask you to step down from the Board and relinquish the position of Vice Chairman, however you would remain a member of the Chamber representing the Jordian Business Council.

This is a very regrettable situation, but we must, as a Chamber, at all times observe the rules around Board composition and nomination.

I will set up a Zoom/Teams call for early next week to discuss the situation with you, but I want to take this opportunity to thank you sincerely for you contribution to the Board and the Executive Board of the Chamber since joining in 2014, and to wish you success and best wishes for the future.

Yours sincerely

Enda."

19. The Plaintiff was subsequently invited to attend a remote executive committee meeting on 5 October 2022 but did not attend.

20. On 9 October 2022, Mr Al-Refai informed the Defendant (in an email which he signed as vice-chairman of the Jordan Chamber of Commerce) that he was withdrawing his nomination. This email is also important:

> "*<u>Our understanding in Jordan Chamber of Commerce (JOCC) is that we are eligible to have 2 Board Members, on board AICC</u>. Please note that based on the recent developments, I hereby inform you that I have no intent to join AICC in replacement of Mr Tahboub; <u>this is a formal request from my side to withdraw my nomination to join AICC Board of Directors</u>*"

(emphasis as in the original document).

The email is signed "*Jamal Refai Vice Chairman of the Board, JOCC*."

21. The Plaintiff asserts that, on 11 October 2022, there was a board meeting and a "*General Assembly"* meeting, of which the Plaintiff had no notice and at which he was removed from the Board of the Defendant. The Defendant disputes that he was removed and asserts that it was a situation of retirement. The Defendant has presented no affidavit or documentary evidence regarding these meetings.

22. There has been no representative of Jordan on the Board since 11 October 2022.

The Proceedings

23. The proceedings were issued by the Plaintiff on 13 July 2023 seeking an order re-appointing him as director and vice-chairman of the Defendant, among other reliefs, including a declaration that all proceedings, decisions and resolutions of the Defendant since May 2022 are invalid and of no legal effect. In the context of this Motion the Plaintiff confirmed that the primary relief sought is reinstatement.

24. The statement of claim was delivered on 28 July 2023 and pleads, among other things, that the Plaintiff has been excluded from the communications of the Defendant since May 2022 and excluded from board and general meetings since 14 September 2022. It is pleaded that there as a deliberate omission to provide notice of the general and board meetings on 11 October 2022 and that he was unlawfully and invalidly removed as a director, vice-chairman and representative member on that date. There are also claims related to the making of allegedly false statements concerning the Plaintiff. Particulars of loss and damage are set out.

25. While there are several claims and reliefs sought in the Plaintiff's pleadings, the primary case that was advanced for the purpose of this Motion was that the Plaintiff is entitled to be a member of the board of directors, having been validly nominated for appointment in 29 June 2022 or, in the alternative, that he was automatically re-appointed on the expiry of his first tenure as director (if there was a requirement to retire by rotation). The Plaintiff also relies on his position and rights as a representative member of the Defendant.

26. By the Defence delivered on 15 March 2024, the Defendant makes certain preliminary objections, challenging the Plaintiff's standing, asserting that the claim in defamation is statute-barred and objecting that there was a failure to particularise certain claims made. The Defendant pleads that the Plaintiff lost his position on the Jordan Chamber of Commerce; that his term automatically expired in November 2020; and that he was not validly nominated by the General Union. The Defendant denies the claims made.

27. The primary defence relied upon by the Defendant at the hearing of this Motion is that the communication of 29 June 2022 was not a valid nomination of the Plaintiff, because it named two individuals rather than one and there was therefore no valid nomination by the General Union. The Defendant also claims that the Plaintiff retired and was not removed from office. This is the defence that must be assessed for the purpose of this motion.

28. The steps that have been taken in these proceedings to date may be summarised as follows:

    13 July 2023: Proceedings issued,

    18 July 2023: Appearance entered,

    28 July 2023: Statement of Claim delivered,

    23 October 2023: Eight week period (ex August) expired,

    27 October 2023: Warning Letter seeking defence,

    8 November 2023: Letter seeking security for costs,

    16 November 2023: Response letter requesting breakdown of costs,

    24 November 2023: 28 day period expired,

    28 November 2023: Judgment default of defence motion issued,

    5 December 2023: Notice for particulars,

    5 December 2023: Further letter seeking security for costs,

    15 January 2024: Default of defence motion returnable (adjourned as Central Office misplaced papers),

17 January 2024: Motion seeking security for costs issued,

18 January 2024: Motion seeking particulars issued,

22 January 2024: Unless order for delivery of defence (8 weeks),

12 February 2024: Motion for security for costs returnable,

19 February 2024: Motion seeking particulars returnable,

26 February 2024: Relies to particulars delivered,

15 March 2024: Defence delivered.

The Motion

29. This Motion was issued on 17 January 2024, grounded on the affidavit of Mr Jamie Sherry, solicitor acting for the Defendant, which was sworn on 12 January. An affidavit titled "*affidavit of verification*" was sworn by Ahmad Younis, a director and chairman of the Defendant, on 7 February 2024.

30. The replying affidavit of the Plaintiff was sworn on 8 April 2024. An affidavit titled "*grounding affidavit*" was sworn by Ahmad Younis in April 2024 (undated), and filed on 25 April 2024. A second replying affidavit was sworn by the Plaintiff on 3 June 2024.

31. The motion was heard before me on 11 October 2024.

APPLICABLE LEGAL PRINCIPLES

32. Order 29 provides in material part as follows:

> "*1. When a party shall require security for costs from another party, he shall be at liberty to apply by notice to the party for such security; and in case the latter shall not, within forty-eight hours after service thereof, undertake by notice to comply therewith, the party requiring the security shall be at liberty to apply to the Court for an order that the said party do furnish such security.*
>
> ...

3. No defendant shall be entitled to an order for security for costs by reason of any plaintiff being resident out of the jurisdiction of the Court, unless upon a satisfactory affidavit that such defendant has a defence upon the merits."

33. The criteria for the grant of an order under this provision are that the plaintiff is resident out of the jurisdiction of the EU and the Lugano Convention Court and there is a good defence on the merits to the plaintiff's case. Once these criteria are met, the decision whether to grant an order for security for costs is squarely within the discretion of the Court. As a general matter, the order should typically be granted unless special circumstances require a different outcome. This involves an exercise in balancing the justice of the matter as between the competing rights and interests of the two parties.

34. There being no dispute about the Plaintiff's residence being out of the jurisdiction, the criterion focussed on here is whether there is a *prima facie* defence.

35. What the obligation to make out a *prima facie* defence requires is well established and not in dispute. The relevant principles may be summarised as follows:

    (a) The onus is on the party seeking security for costs to demonstrate to a *prima facie* standard the existence of a *bona fide* defence on the merits to the claim made (*Goode Concrete v CRH plc* [2012] IEHC 116, Cooke J, [41]*)***;**

    (b) The defence must be set out "*in sufficient detail to enable the Court (and, indeed, the plaintiff) to scrutinise the extent to which a bona fide defence has truly been established" (Quinn Insurance Ltd v Pricewaterhouse Coopers (a Firm*) [2021] 2 IR 70 ("*Quinn*"), Clarke J, [2021] 1 ILRM 253).

    (c) If the defendant is seeking to rely on facts to demonstrate the existence of a *bona fide* defence, he *"must objectively demonstrate the existence of evidence upon which he will rely to establish these facts. Mere assertions will not suffice…." (Tribune Newspapers v Associated Newspapers Ireland* (Unreported, 25th March 2011), Finlay Geoghegan J, see *Webprint Concepts Ltd. v. Thomas Crosbie Printers Ltd.* [2013] IEHC 359 [9] ("Tribune Newspapers")).

(d) If the facts are demonstrated to the requisite threshold, the defendant must then "*establish an arguable legal basis for the inferences or conclusions which it submits the Court may arrive at based upon such evidence*" (*Tribune Newspapers)*

(e) *"it is not sufficient for a Defendant merely to assert a defence" (Pagnell Ltd (trading as Snap Printing) v OCE Ireland Ltd* [2015] IECA 40*, Hogan J)*

(f) The Court "*should carefully interrogate the contention of the defendant applying for security that there is a bona fide defence to the full claim"* (*Quinn* [115] per Clarke CJ).

(g) The threshold is higher than the requirement to show an "*arguable*" defence to resist an application for summary judgment **(***Pagnell Ltd (trading as Snap Printing) v OCE Ireland Ltd*[2015] IECA 40**, [16]**)**);**

(h) It is not for the Court to seek to predict or prejudge the outcome of the case, or to evaluate the comparative strengths and weaknesses of the claims made or the defences being asserted **(***Goode Concrete v CRH plc* [2012] IEHC 116, [41], *Bula v. Tara Mines* [1987] I.R. 494*,* 501*, Comhlucht Paipéar Ríomhaireachta Teo. V. Úadarás na Gaeltachta* [1990] 1 I.R. 320, at 331, 332**).**

(i) The fact that a *bona fide* defence is made out to the requisite threshold does not confer an absolute right to security for costs, but only a *prima facie* one: the Court must exercise a discretion in the circumstances of the particular case (*Proetta v Neil* [1996] 1 ILRM 457).

36. From the foregoing summary, it can be seen that the obligation imposed on a defendant when seeking an order for security for costs may be an onerous one, and requires the early disclosure of the intended defence and the evidence to be relied upon in some detail. This is the price of the application.

37. Clarke CJ in *Quinn* ([126]) addressed this point:

> "*I appreciate that there may be reasons why parties may not wish to disclose certain matters such as insurance cover but, as I have indicated, a party who*

> *wishes to obtain the benefit of a very significant order in the shape of a requirement that its opponent put up security for costs, has to put its cards on the table. If it is not prepared to do so, then it must accept the consequences*."

38. This was echoed by O'Donnell J ([164]):

> *"Finally, I also agree fully with the Chief Justice that, while it is desirable that applications for security for costs should not become mini trials, it is important that neither the defendant seeking such security, nor the plaintiff seeking to avoid it, should be allowed make their case on the basis of bare and unsubstantiated averments. It is, for example, understandable that, for practical reasons, defendants will be reluctant to commit themselves to an account of the circumstances giving rise to the proceedings at an early stage of the case and which may prove to be a tool for cross-examination by the plaintiff at the trial. However, the establishing to the satisfaction of the Court that there is a prima facie defence to the claim must rest upon evidence, and a court should not accept bare assertions crafted by the parties' lawyers in the light of the case law. If a defendant does not wish to commit itself to the grounds in its defence, it need not seek security for costs."*

39. If the threshold of a *prima facie* defence is met, the onus then shifts to the plaintiff to demonstrate any special circumstances which would warrant a refusal of the order sought. This is a matter of the Court's discretion and brings in a consideration of the balance of justice as between the parties' competing interests. O'Donnell J described this exercise as follows in *Quinn* ([149]):

> *"… the issue on an application for security for costs is a question to be determined by reference to the balance of injustice. That is because there is a possible injustice whatever order the court makes."*

40. There is no exhaustive list of what special circumstances may be relied upon to refuse to make an order for security for costs: "*The list of such circumstances is not closed*" (O'Donnell J in *Quinn* [141]).

REQUIREMENT TO SHOW A PRIMA FACIE DEFENCE

The Parties' Positions

41. The Plaintiff's claim has a number of different components, but the main one advanced in the course of this Motion is the Plaintiff's claim to be reinstated as a director of the Defendant. This case was primarily based on the nomination of 29 June 2022 (read in light of the email of 9 October 2022) being a valid nomination of the Plaintiff as a director of the Defendant.

42. The Defendant in turn confirmed that the *prima facie* defence relied on hinges on the invalidity of the nomination of 29 June 2022.

43. The invalidity is alleged to arise from the fact that the communication received from the General Union on that date named two individuals as the nominees of the Jordan Chamber of Commerce to the Board, rather than one, and the Defendant's articles of association only permit one representative of each Arab country on its Board.

44. There are other aspects of the Defendant's case that were addressed in the course of the motion, but these are more in the nature of secondary matters, none of which could suffice to make out a *prima facie* defence, independently of the primary defence of the invalidity of the nomination.

45. Put simply, if the defence based on the alleged invalidity of the nomination does not meet the requirements of Order 29 on the basis of the evidence presented in this Motion, the criteria of that provision are not met.

46. For the purposes of assessing this defence, it must first be noted there was no dispute but that the Articles of Association of the Defendant do provide for each Arab country to have one nominee on the board (Article 39(c)) (although it is also common case that one Arab country has more than one member).

47. The question is how this impacts on the communication which the Defendant received from the General Union on 29 June 2022.

48. The Defendant's position is that the nomination of two individuals rendered the entire nomination invalid from the outset.

49. The Defendant made the further submission at the hearing of the Motion that there could have been a valid nomination of the Plaintiff if (a) he was the sole nominee (b) the nomination stated that, in the event there could not be two nominees, the Plaintiff was to be treated as the sole nominee or (c) the Jordan Chamber of Commerce subsequently confirmed in writing that the Plaintiff rather than Mr Al-Refai was its chosen nominee.

50. The Defendant placed some emphasis on (c) and contended that, if the Jordan Chamber of Commerce intended that the Plaintiff should be the sole nominee (following the withdrawal of Mr Al-Refai), the Plaintiff could and should have adduced something in writing from the Jordan Chamber of Commerce to this effect. The Defendant submitted at the hearing that there was no such communication and pointed to the asserted failure of the Plaintiff to produce such a document.

51. The Defendant also made the point that the Plaintiff may have had a good basis to challenge its decision if the Defendant had proceeded to appoint Mr Al-Refai.

52. The Plaintiff's position was that he was automatically re-appointed following the expiry of his six-year term, but his primary case in the context of this motion was that the nomination was a valid one. The point was made that the Defendant was willing to treat the nomination as a valid nomination of Mr Al-Refai and that, following the email of 9 October 2022, even if the Defendant's case was taken at its height, this was a communication from Mr Al-Refai indicating his withdrawal as a nominee and was signed in his capacity as vice-chairman of the Jordan Chamber of Commerce. The Plaintiff asserts that this fulfils the requirement alleged by the Defendant. It was said that this constituted notice of the chosen nominee, and that nominee was the Plaintiff.

53. The Plaintiff was critical of the case presented by the Defendant on this Motion and asserted that the Defendant had failed to put all the "*cards on the table*". The Defendant in turn disputed the existence of such an obligation and drew a distinction between an

application under Order 29 and an *ex parte* application in which an obligation of utmost good faith arises.

Assessment of the Evidence Relied On

54. The Defendant bears the onus of objectively demonstrating the existence of evidence upon which it will rely to establish the necessary facts for its defence to the claim (applying the decision in *Tribune Newspapers (In Receivership) v. Associated Newspapers Ireland* (Unreported, High Court, 25th March, 2011).

55. The affidavit grounding the Motion was sworn by Mr Jamie Sherry, the Defendant's solicitor. Mr Sherry avers that "*the defendant has been advised by their solicitors that they have a prima facie defence on the merits to the plaintiff's claim*" (paragraph 18). This is a bare assertion by the Defendant's solicitor that the defendant was advised by "*their solicitors*" that they have a *prima facie* case.

56. In the Verifying Affidavit, Mr Younis avers that the assertions, allegations, information in Mr Sherry's affidavit "*which are within my knowledge are true*" and that he honestly believes those which were not within his knowledge.

57. In his second affidavit, Mr Younis states "*I am advised by the defendant's solicitor that the defendant has at least a prima facie defence to the plaintiff's claim"* (paragraph 3).

58. It must be noted that there is no averment by a person with means of knowledge of the relevant facts that there is a *prima facie* or *bona fide* defence.

59. The basic requirement stated in Order 29, Rule 3 is that there must be a *"satisfactory affidavit that [the Defendant] has a defence upon the merits".*

60. The averments proffered by the Defendant point only to the Defendant's solicitor having a view that there is a *prima facie* defence. The Plaintiff did not emphasise this specific deficiency, and the Defendants did not address it, so I do not rely on this as a technical point in deciding this motion.

61. Nonetheless, the onus is on the Defendant to show a *prima facie* defence and the absence of an averment by a deponent from within the Defendant with knowledge of the relevant facts that he or she believes there is a *prima facie* defence (as opposed to having been advised by their solicitor there is one) is a substantive weakness in the Defendant's application.

62. There is also a notable failure by the Defendant to exhibit documentary evidence about certain potentially important matters, including the nomination of 29 June 2022 itself; or the meetings which the Plaintiff asserts took place on 11 October 2022.

63. It is a significant omission the Defendant did not address the email of 9 October 2022 in any of the affidavits sworn on its behalf, including the affidavit of Mr Younis replying to the Plaintiff's affidavit in which significant reliance is placed on that email.

64. It is said in oral submissions on behalf of the Defendant that the email was not a silver bullet and there was no document from the Jordan Chamber of Commerce stating that the Plaintiff was the correct nominee. However, in the absence of any evidence from the Defendant, the email must be read on the basis of its plain text, as explained by the Plaintiff in his replying affidavit. Read in this manner, the email does set out a formal request from Mr Al-Refai on behalf of his "*side*" and signed in his capacity as Vice-Chairman of the Jordan Chamber of Commerce, to withdraw his nomination. The legal basis for the imposition of a strict requirement of such a further communication is moreover not explained or grounded in fact by the Defendant.

65. The Defendant asks this Court to find there is a *prima facie* defence on the basis that there needed to be a specific communication in writing from the Jordan Chamber of Commerce confirming that the Plaintiff was the chosen nominee following the withdrawal of the nomination of Mr Al-Refai. The terms of the original nomination, the form in which it was sent, the person(s) who authored it, may all be relevant to assessing the need for such a further communication, and the adequacy of the communication of 9 October 2022. The decision of the Defendant not to put contemporaneous documentation about the nomination before the Court and to provide no comment in evidence on the 9 October 2022 email (following its exhibition to the replying affidavit

of the Plaintiff) leaves the Defendant in the position of relying on little more than bare assertion about what occurred and what the Defendant asserts should have taken place.

66. It may well be that more comprehensive evidence will be available at trial, and no attempt is made here to prejudge the merits of the substantive case of either party. However, the material which has been presented for the purpose of this Motion falls short of what is required to obtain an order for security for costs under Order 29.

67. The Defendant also asks this Court to form a view that there is a *prima facie* basis to believe that the nomination of 29 June 2022 was invalid, based on specific assertions about what that specific document did and did not say, without providing the Court with a copy of the document, or even extracts from it. Further, no communications with the Jordan Chamber of Commerce or the General Union have been exhibited to enable me to understand the context in which the nomination was made and what if any correspondence there was between those bodies afterwards.

68. Another *lacuna* in the evidence relied on by the Defendant in this Motion concerns the apparent decision to choose one of the two nominees whose names were put forward by the Jordan Chamber of Commerce. No document recording this decision or confirming when or by whom it was made has been furnished by the Defendant and no legal basis for it has been asserted. The only document which records this decision is an email dated 29 September 2022 to the Plaintiff, stating the Defendant had "*no option*" but to put Mr Al-Refai's name to the board for confirmation. There is no affidavit sworn by the author of that email (Mr Enda Corneille) and no further evidence has been put forward by the Defendant regarding the email or the decision it refers to (other than a reference in an email of the same date from Mr Corneille to three other individuals referring to a "*discussion*").

69. This leaves an important evidential and legal gap in the defence being relied on to ground this Motion.

70. A further area where there is a lack of relevant evidence concerns the meetings on 11 October 2022. The Plaintiff asserts that he was removed from office at a general meeting and board meeting on that date, but there is no averment from any person who was in

attendance at either of the meetings on 11 October 2022 regarding the discussions held or decisions made at those meetings and no minutes of any meetings, agenda or other documents have been provided.

71. All there is on this point from the Defendant is a solicitor's letter dated 28 October 2022 which states that the board took a unanimous decision not to appoint the Plaintiff and that "*they do not need to give a reason for this*."

72. Given the evidential deficits in this case, there is a lack of contemporaneous material or explanations by anyone with means of knowledge within the Defendant about the decisions and steps taken by the Defendant between May 2022 and October 2022. The Defendant alone could have supplied such evidence and material for the purpose of this Motion but did not to do so.

73. The requirement is clearly established: a decision as to whether there is a *prima facie* defence must be based on evidence, not bare assertion. The obligation to put forward that evidence is a price that must be paid by an applicant for security for costs.

74. When, as here, the Defendant has chosen not to present potentially relevant evidence, the result is that there is not a sufficient evidential premise on which to decide whether there is a *prima facie* defence. The onus is on the defendant and is not discharged when there is such a deficiency.

75. The Defendant contests the scope of this duty and argues there is no obligation of disclosure akin to that which arises in an *ex parte* obligation. However, the comparison with an *ex parte* application is an imperfect one and obscures the true question on an application for security for costs. The issue is not whether a defendant is acting in good faith in making such an application or has made "*full disclosure to the court of all matters relevant to the exercise of the court's discretion*" (*Bambrick v. Cobley* [2005] IEHC 43, [2006] 1 ILRM 81, Clarke J). The issue is whether the defendant has adduced enough evidence, put enough of its cards facing up on the table, to allow a court to decide whether the defendant discharged the onus of showing that there is a *prima facie* evidential and legal basis to determine a *bona fide* defence to exist. The point is not that a defendant is required to disclose even potentially prejudicial material (as arises in an

ex parte application), but rather that a defendant should disclose sufficiently the material and law which the defendant believes will lead it to prevail over the plaintiff at trial (as confirmed in *IEGP Management Company Limited by Guarantee v Denise Cosgrave* [2023] IECA 128 at [66]). A defendant may prefer to keep those cards hidden, but if the result is that he does not give the court enough of a reason in fact and in law to form the view at this early preliminary stage that the defendant appears to have a genuine defence, it is a choice which may deprive him of the order for security for costs that he seeks.

Discussion and Decision on the Question of a Prima Facie Defence

76. Even if the evidential deficits just discussed did not exist, there are other issues with the defence as presented by the Defendant for the purpose of this Motion. It is not for this Court to weigh the merits and prospects of either party's position, but the following matters raise initial doubts that the defence as presented is "*reasonably sustainable*" (to borrow the formulation used by Charleton J in *Oltech Systems Ltd. v. Olivetti UK Ltd.* [2012] 3 IR 396).

77. First, the Defendant challenges the nomination of 29 June 2022 as wholly invalid on the very clear ground that it named two individuals, which was asserted to be impermissible and to render the purported nomination invalid from its inception. The Defendant then proceeded to accept it as a valid nomination of Mr Al-Refai. There is no statement of the legal basis for this and no objective factual evidence to explain it. This will undoubtedly be further explored in evidence and submissions at trial, but for the purposes of this Motion and on the basis of the evidence as presented, this does not support the existence of a *bona fide, prima facie* basis to defend the Plaintiff's claim.

78. Second, the Defendant accepted during the Motion that it does not have a role in selecting nominees for appointment to the Board and that this is an internal matter for the Jordan Chamber of Commerce, but then purported to select Mr Al-Refai as the appropriate nominee rather than the Plaintiff, without stating the legal power to do so. Indeed, the Defendant conceded at the hearing of the motion that, if Mr Al-Refai had in fact been appointed, the Plaintiff may have had a good cause of action to challenge that decision. This creates a doubt about the decision-making undertaken by the Defendant

following the receipt of the 29 June 2022 nomination, and the legal basis that can be relied on to ground it (one which of course cannot be resolved in this Motion).

79. Third, the Defendant contended in oral submissions that the Plaintiff was not removed from the Board and that the true position was that his role as director was terminated by the operation of the Articles of Association which required retirement by rotation. The email of 29 September 2022 is the only contemporaneous evidence available to me. There is no affidavit sworn by its author, Mr Corneille, and Mr Younis makes no reference to this email in his affidavits, despite having been copied on same. The Plaintiff pointed out in oral submissions that the email of 29 September 2022 calls for the Plaintiff to *"step down from the Board."* The grounding affidavit of Mr Sherry also references a requirement that the plaintiff *"step down from his position"* (paragraph 14).

80. There is some ambiguity about what occurred and it is not possible – or appropriate – to seek to make a final determination on this point. The situation is not assisted by the decision of the Defendant not to present any evidence, averments or exhibits regarding either of the meetings of the 11 October 2022 at which the Plaintiff asserts he was removed from office. This dispute may fall to be assessed at trial with the benefit of evidence and more detailed submissions. However, insofar as the Defendant's *prima facie* defence is premised on the Plaintiff having retired, the available admissible evidence that the Defendant relies upon for this proposition cannot be said to support a case that the Plaintiff retired rather than being removed from office.

81. In light of the foregoing factors and strictly on the basis of the limited facts and information made available for the purposes of this Motion, it cannot be accepted that the Defendant has demonstrated a *prima facie* defence to the Plaintiff's claims. The basis on which the Defendant defends the primary claim by the Plaintiff is simply not sufficiently set out or evidenced in fact or grounded in legal principle to justify a finding that there is a *prima facie* defence.

82. The Defendant here failed in this respect and in particular failed to put forward evidence of and regarding key communications and events which would be necessary to decide there was a reasonably sustainable basis for the defence asserted. There is simply no evidence from the Defendant regarding certain significant factual matters, not even bare

assertions. In light of the evidential deficits, and certain inconsistencies and unexplained issues on the evidence and legal principles relied upon for the purpose of this motion, I find that the Defendant failed to discharge the onus of demonstrating the existence of a prime defence to the Plaintiff's claim. This does not in any way assess or prejudge the case that may be made at trial when full evidence and argument will be available.

Plaintiff's Claims as a Representative Member

83. Throughout this Motion, the main focus was on the Plaintiff's role as a director of the Defendant. However, the Plaintiff also claims that he was wrongly deprived of notice of general meetings in his capacity as a representative member (as distinct from his role as a director) and excluded from the Defendant's affairs and communications. It was confirmed in oral submissions that these claims pertain to the position of the Plaintiff as a representative member as well as his contested role as a board member, and no specific defence to those claims was pleaded or addressed in submissions.

84. The email sent on behalf of the Defendant on 29 September 2022 confirms that the Plaintiff's role as a representative member is not affected by the issues that gave rise to these proceedings. In the Defence (paragraph 12) it is pleaded that the Plaintiff's position as representative member remained undisturbed, but there is no specific defence pleaded to the claims of breach of his rights in that capacity. There is a generalised traverse, which appears to be the only defence pleaded to these claims.

85. For the purposes of this Motion, the Defendant does not substantively address this claim and has advanced no material, facts, or evidence to indicate what (if any) defence the Defendant intends to advance to meet it.

86. The Plaintiff asserts that this failure to address this issue for the purposes of this Motion, amounts to a failure by the Defendant to attempt to show a *prima facie* defence to same.

87. It is difficult to dispute the proposition that the Defendant has not shown a *prima facie* defence to the claims of breach of the Plaintiff's rights as a representative member.

88. On this net ground, it could be concluded that there is no *prima facie* defence to that part of the Plaintiff's claim and that the Motion should fail on that basis alone.

89. In *Quinn* Clarke CJ (as he then was) observed that

> "*a court faced with an application for security for costs should carefully interrogate the contention of the defendant applying for security that there is a bona fide defence to the full claim*" ([115]).

90. Referencing these words, Phelan J in *Aventis Solutions Limited v. Credebt Exchange Limited* [2024] IEHC 573 at [53] noted that "*care must be taken to establish that there is a bona fide defence to the full claim and not just parts of the claim*". If that was extended to require that a *prima facie* defence be shown to every matter and claim pleaded, including more subsidiary or secondary claims, a defendant may conceivably be refused security for costs for failing to adequately demonstrate a defence to minor claims, while meeting the criteria of Order 29 in respect of the main planks of the case.

91. In such a situation, a defendant may well ultimately be entitled to recover costs, and, consequently, he would still be in need of, and arguably should be entitled to, the protection that a security for costs order is designed to afford.

92. This raises a potential question as to whether an application for security should be defeated by a failure to show a defence to a subsidiary claim, while a good *prima facie* defence has been shown to the full, primary, substantive claims made.

93. I do not, however, need to decide this point for the purpose of this Motion, as the defence to the "*primary issues*" in this case has been found not to meet the requirements of Order 29. I do not therefore propose to engage further in an analysis of this question, which may come into sharper focus in another case and then be more appropriately and necessarily scrutinised.

Other Issues in the Proceedings

94. It is for the moving party in an application of this nature to show and demonstrate that the defence(s) relied on is sufficient for the purposes of Order 29. One of the defences

the Defendant here does rely on, is the preliminary objection to the standing of the Plaintiff. This is pleaded at paragraph II of the Preliminary Objections in the Defence and specifically challenges the standing of the Plaintiff to seek to overturn decisions taken by the Defendant (with particular reference to two of the twelve reliefs listed in the plenary summons and statement of claim). It is pleaded as an objection to those claims for declarations that the Defendant's decisions, proceedings and resolutions are invalid and of no legal effect.

95. This objection was the subject of submission at the hearing of the Motion. However, it is an objection which, as pleaded, is focussed on specific reliefs and which would not provide any answer to other claims in the proceedings. Indeed, it does not answer what the Plaintiff characterises in the written submissions as the "*primary relief*" of re-appointment and/or confirmation as director and member of the board of management of the Defendant. In *Charles Kelly Ltd. v. Ulster Bank Ireland Limited* [2020] IECA 8, [2022] 2 IR 734, the Court of Appeal held that

> *"[t]he defence relied upon by a defendant who seeks an order for security for costs, and asserts that it has an arguable defence to the plaintiff's claim, must be that pleaded in the defence and the replies to particulars (if any).*"

The preliminary objection on standing is as pleaded in the defence and is directed only to certain reliefs.

96. The Plaintiff points out – correctly insofar as it goes – that if an injunction was to be sought to enjoin his removal, it would unequivocally be the Plaintiff himself in his individual capacity who would apply for same.

97. In these circumstances, and regardless of its merit, to a *prima facie* threshold or otherwise, the objection as to standing cannot be a sufficient defence for the purpose of Order 29. It would be inadvisable to venture into assessing the merits of this preliminary issue, if it is one which cannot provide a defence to the primary claims made (as so characterised by the Plaintiff).

98. The same applies to certain other inconsistencies and disputes between the parties as regards, for example, whether there as an obligation to retire by rotation and, related to

this, whether there was a binding resolution not to require such retirement by the representatives of the Arab countries; whether the Plaintiff was automatically re-elected; whether there was a need or reason for a new nomination; what role he had as of the 11 October 2022; and what motives the Defendant may or may not have had in rejecting the nomination of the Plaintiff and calling for him to step down. These points do not need to be, and should not be, addressed here.

99. There may well be a more extensive discussion, based on more fulsome evidence, at the trial of the action in relation to these and other aspects of the matter, including the correct interpretation of provisions of the Defendant's Articles of Association. It is not for this Court to engage in any unnecessary discussion of the merits of the parties' positions – or possible positions – as to the points identified above.

SPECIAL CIRCUMSTANCES

100. The second stage of an Order 29 application is the assessment of whether the party opposing the order has demonstrated the existence of special circumstances. While the finding that there is no demonstration of *a prima facie* defence constitutes a sufficient standalone reason to refuse the relief sought, the parties did make submissions on the additional special circumstances relied upon by the Plaintiff, and there is asserted to be some legal uncertainty in respect of some of the questions raised, which are accordingly addressed here.

Nature of the Defendant / Ability to Recover Costs

101. The first special circumstance relied upon by the Plaintiff was the nature, composition and purpose of the Defendant. The Plaintiff asserts that, given the composition of the Defendant's membership and Board, it is not appropriate to rely on the Plaintiff's foreign residence as a reason to seek security for costs and it would give rise to differing treatment of Irish and non-Irish directors.

102. The objective of an order for the provision of security for costs is to protect a defendant with a genuine and ostensibly meritorious defence against the risk of being unable to enforce an award of costs in their favour. As Ferriter J noted in *Atin Investments Limited v Remcoll Capital Limited* [2022] IEHC 357, [58]

> "*The whole rationale behind security for costs is that a defendant who is successful in his defence of an action should be protected from a position where, notwithstanding his success, he cannot recover costs from the plaintiff*".

103. The fact that the Board includes Irish-resident and non-Irish-resident directors does not alter the need to have regard to the specific circumstances and facts of an individual application, or the entitlement of the Defendant to seek protection against the risk of bearing costs unfairly if sued by one of those individuals (if the criteria of Order 29 are otherwise met). Further, the claim is made personally by the Plaintiff and is not a derivative action, a point emphasised by the Defendant by way of preliminary issue.

104. The fact that the company was formed for the purpose of fostering commercial relations with Jordan and is required to have an equal number of directors from Ireland and from the Arab countries does not provide an answer of itself to the motion or constitute a "*special circumstance*" which would justify the refusal of the order sought.

105. An additional, and related, point made by the Plaintiff is that he is a man of significant means and has strong ties to Ireland, including through the Defendant, as a result of which he would honour his legal and commercial obligations, or face a risk of significant harm (including reputational harm) if he did not.

106. Before considering this point, it is important to be mindful of the distinction between s. 52 of the Companies Act 2014 and Order 29, particularly the absence of a pre-condition in Order 29 that the plaintiff must be shown to be unable to pay costs. The question under Order 29 is not ability to pay. Instead, the premise of Order 29 is that a defendant is entitled to be protected against the risk of successfully defending the proceedings, but nonetheless being unable to recover – or facing difficulty or obstacles in recovering - the costs incurred, owing to the plaintiff residing beyond the reach of the Irish courts. The applicant for security for costs does not have to show an inability to pay or that the recovery of any costs would be difficult or impossible.

107. In this case, the Plaintiff refers in his replying affidavit to being a "*man of significant means with business interests in both Ireland and Jordan*" and to having "*deep*

business ties to Ireland"; he cites his ongoing connections and responsibilities within the Defendant, and his involvement with the Amman and Jordan Chambers of Commerce, which are both under the governance umbrella of the General Union of Chambers of Commerce, Industry and Agriculture for the Arab Countries, a body with which the Defendant is also associated. He refers to being accountable "*through the governance umbrella*" of the General Union. The Plaintiff is also chairman of the Jordan Irish Business Association and of the Jordan Young Scientists Association (which represents the Irish BT Young Scientists in Jordan) and does business with Irish companies.

108. The letter sent by his solicitors on his behalf on 18 November 2024 states that the Plaintiff "*is offended by the suggestion that he cannot meet an Order for costs or that he would attempt to avoid same*."

109. In reply, the Defendant points to a failure to provide information or details about the Plaintiff's assets or net worth, and notes that the Plaintiff does not have assets or property in this jurisdiction. This latter assertion about the want of assets in the jurisdiction has not been specifically disputed by the Plaintiff and there is no evidence before the Court of the existence of assets or property in this jurisdiction.

110. There is no other specific averment on behalf of the Defendant, or reply in correspondence on its behalf, disputing any of the Plaintiff's averments about his means or stating a belief that the Plaintiff would not discharge any order of costs that may be made in this matter or that it would be difficult or costly to recover costs (other than the reference to the Plaintiff not have assets in the jurisdiction). Indeed, the Defendant relies in its written submissions on the proposition that the Plaintiff "*can apparently meet an order for security for costs*".

111. It seems somewhat unusual that there is no evidence of a specific risk that the Plaintiff here could not or would not in fact discharge a costs' order. When the plaintiff has set out on affidavit averments that he could, and reasons why he would, honour legal obligations, it may have been expected that the Defendant would respond to such averments and put forward a good factual basis to apprehend that costs would not in fact be recoverable, or that it would be difficult and costly to recover them.

112. However, there is no obligation to do so and this does not appear to me to constitute a sufficient "*special circumstance*" to justify a refusal of the order sought. I do not discount the possibility that, if the Plaintiff had advanced more concrete evidence of means and a specific proposal to give comfort that he would pay any costs order, this may be a relevant factor in the exercise of the Court's discretion under Order 29. That threshold is not met here. Order 29 is designed to ensure successful defendants do not face jurisdictional obstacles in enforcing costs' orders and, unless there is evidence that demonstrates such a risk not to exist, it would seem contrary to the objectives of Order 29 to refuse the order on the ground of averments such as those made here.

113. Indeed, a related issue is that the Plaintiff has not stated on affidavit that the grant of the relief sought will impede or prevent the pursuit of these proceedings. At hearing, counsel for the Plaintiff did make reference to the possibility that the order "*may*" prevent the Plaintiff proceeding, but there was no evidence before me that the order sought would in fact restrict the Plaintiff's ability to pursue these proceedings. Given the Plaintiff's averments as to his substantial means, this is not surprising (a point made by the Defendant in its written submissions).

114. O'Donnell J noted in *Quinn* ([148]) that the consensus that the Plaintiff's claim would not be stifled by ordering the provision of security for costs was the "*single most significant aspect*" of the case before him. This was further explained as follows ([150]):

> "*When a plaintiff has access to resources, and can provide security for costs, then there may be inconvenience and some cost in being deprived of the use of those funds for the duration of the case, but the potential injustice to such a plaintiff is not of the same level as that which a defendant runs when faced by a corporate plaintiff that will be unable to pay costs*."

116. That was premised on there being a demonstrated inability to pay, as required by s. 52 of the Companies Act 2014. It may be equally applied to the risk of not being able to enforce a costs' order in the context of Order 29. Viewed in this way, it is difficult to identify a real, substantiated, concrete risk of prejudice to the Plaintiff by the grant of the relief sought by this Motion (if the criteria of Order 29 were otherwise met).

Delay

117. The Plaintiff asserts that there has been delay by the Defendant such as to justify the refusal of the order sought. This is disputed by the Defendant. The parties are largely in agreement about the applicable legal authorities, but differ as to the interpretation of them.

118. In *Beauross Limited v Kennedy* (unreported, Morris P, 18 October 1995) ("***Beauross***"), there was an application for security for costs under the predecessor to s. 52 of the Act of 2014 (s. 390 of the Companies Act 1963). The Court refused the order sought on the basis that the Plaintiff made out a *prima facie* case that the inability to pay the Defendant's costs arose from a wrong allegedly committed by the applicant for security. This was a special circumstance which warranted a refusal of the order sought. While this was the basis of the decision, Morris P did also address the allegation of delay which was made by the Plaintiff. The principle that was applied was that,

> "*if the party seeking security has delayed to such an extent as to commit the other party to an amount and a level of costs which it would never have become committed to had it known that it was to be required to provide security for costs and thereby altered its position to its detriment then the court will not make the order*" (page 8).

119. In determining the allegation of delay in that case Morris P referred to the fact that the proceedings were issued on the 15th of February 1994. The demand for security for costs was sent by letter on the 14th of November 1994 and there was a prompt reply to that letter. On the 27th of February 1995 the notice of motion seeking security for costs was served.

120. Morris P considered the defendant's allegation of delay and held,

> "*it is clear that each case must be decided on its own separate facts and the court must exercise its discretion having regard to those particular facts. It is*

my view that the time lapse between mid November 1994 and the 27th of February 1995 (being the date of the demand and refusal for security for costs and the service of the notice of motion) is short. The element of significance is the fact that comprehensive legal costs had been incurred in this short period of time by the attendance before the Master and the cross examination of the defendant."

On this ground also Morris P concluded that there should not be an order for security for costs in that case.

121. This judgment was applied by Laffoy J in *Frank McGrath Construction Limited v One Pery Square Hotel Limited* [2010] IEHC 524 ([3.3]) where the Court noted that "*Morris J. stressed that each case must be decided on its own separate facts and the Court must exercise its discretion having regard to those particular facts*." Laffoy J also referenced the judgment of Fennelly J in *Hidden Ireland Heritage Holidays v. Indigo Services Ltd. & Ors.* [2005] IESC 38, [2005] 2 IR 115:

> "*A review of the authorities shows that delay in applying for security may, depending on the circumstances, be a ground for refusing security. The Court will look at the facts of the particular case, the impact of the delay, other surrounding circumstances, and, in the end, will seek a fair balance*."

122. *In Re Pasrm Limited* [2023] IEHC 149 ("***Re Pasrm***") (one of the authorities relied upon by both parties) Sanfey J considered an application for security for costs that was made pursuant to Order 29, Rule 1. There was an allegation of delay in the bringing of the application. The applicant for security contended that they had indicated that they would be bringing a motion for security for costs from an early stage of the proceedings and, while certain steps were taken in the proceedings in the intervening period, this did not warrant the refusal of the relief sought.

123. Sanfey J found as follows:

> "*It is certainly the case that the point at which a security for costs application is brought is relevant to the court's discretion in deciding whether or not to*

> *make a security for costs order. The intention to bring the application should ideally be brought to the notice of the applicant as early as possible, so that the applicant is apprised of the risk he is incurring in relation to costs before substantial costs have accumulated. However, it seems to me that this is what the respondents did in the present case. They made it clear from the outset that they would apply for security for costs, and in filing affidavits in the substantive proceedings, were doing no more than complying with the orders of the court."*

124. In that case, there was approximately one month between the issue of proceedings and the first letter requesting security for costs. The substantive proceedings were listed in Court a few days later and directions were then made for the delivery of affidavits in the substantive proceedings and the defendant was also directed to issue the security for costs' motion within three weeks. So, while steps were taken in the proceedings, this was done to comply with Court directions and both sides were aware that security was going to be sought.

125. In *Beauross,* the delay from the issue of the first notice of the intention to seek security and the issue of the motion was deemed to be sufficient to disentitle the defendant to the relief sought, but this was against a background of nine months' delay between the issue of proceedings and the issue of that notice. In *Re Pasrm*, the delay was found not to be sufficient, including because the intention to seek security was brought promptly to the attention of the plaintiff and the steps taken in the substantive proceedings were taken on foot of court orders.

126. Counsel for the Defendant sought to identify a clash between the approach taken in these two cases (*Beauross* and *Re Pasrm*), but it is not apparent to me that there is a divergence in approach. Both judgments evidence a careful consideration of the facts of each case, it being abundantly clear that allegations of delay can only ever be decided on the facts of an individual case.

127. In *Beauross,* Morris P emphasized that the facts of each individual case must be assessed. So, while the decision in *Beauross* specifically addressed the period of three months before the issue of the motion, both cases are wholly consistent with the imperative that, if a party to proceedings intends to seek security for costs, they are

obliged to promptly notify the party against whom security is sought, and any further delay thereafter may – depending on the particular facts – also be relevant to assessing whether the refusal of the relief sought is warranted. Neither judgment seeks to prescribe what periods or types of delay can be taken into account. Each decision hinges on the facts of each particular case and the prejudice to the party against whom security is sought.

128. The correct approach to adopt is neatly summarized in the judgment of Simons J in *Nobil Food Limited v Campion Insurance Limited* [2021] IEHC 664 ([18]):

> "*…the court must consider, first, whether there has been culpable delay on the part of a defendant in seeking security for costs; and, secondly, in the event of such delay, it is then necessary to consider whether, during the period of culpable delay, the plaintiff altered its position to its detriment*."

129. The question of whether there has been delay by the Defendant and whether this delay has caused prejudice and should disentitle the Defendant to the order sought is to be assessed in light of all of the facts of this particular case.

The Parties' Positions on Delay

130. The submission that is made by the Plaintiff is that the case of *Beauross* demonstrates a delay of 3 months being sufficient to preclude an order for security for costs. It is asserted that the limited steps taken during that 3-month period in that case are commensurate with the delay and steps in this case. The Plaintiff contended that the entire period of time from the issue of proceedings should be reckoned (the Defendant having been aware at all times that the Plaintiff was resident outside the jurisdiction).

131. The Plaintiff's position is that the Defendant chose not to issue this motion sooner and that is culpable delay.

132. The Plaintiff also relies on the fact that his motion for judgement in default of defence was issued and was returnable before the motion for security for costs issued and has been heard and determined in the Plaintiff's favour since then.

133. The Defendant asserts that the key question is whether there was a failure to bring the intention to seek security for costs to the attention of the Plaintiff at the earliest possible date, and that after the delivery of the statement of claim is the appropriate point in time to do so, which the Defendant did.

134. The Defendant asserts that the Plaintiff is responsible for his own decision to press ahead seeking judgment in default of defence and that any additional cost incurred by the Plaintiff was owing to Plaintiff's own decisions. The Defendant also notes that the Plaintiff bears no liability in costs for that motion, a costs order having been made in favour of the Plaintiff.

135. A final point on delay is the Defendant's blame of the Plaintiff for delays in the progress of the motion. The Defendant contends that this delay is relevant and should be weighed in the balance against the Plaintiff.

136. The Plaintiff disputes the relevance of delay after the issue of the motion, noting that the costs are the same.

Decision on Delay

137. The relevant chronology was set out above and shows that the proceedings issued on 13 July 2023; the letter seeking security was sent on 8 November 2023 (almost four months later); and the motion for security for costs issued on 17 January 2024 (over two months later, although inclusive of the Christmas period).

138. The overall period from the issue of proceedings to the issue of the motion (six months) may be considered to constitute delay in some cases, and could, depending on all of the circumstances, justify a refusal of security for costs.

139. If this is broken down further, the period from the issue of proceedings to the letter indicating the intention to seek security is a period of four months, which could be regarded as a period of delay. However, the only steps taken during that time was the delivery of the statement of claim and the issue of a letter seeking delivery of the defence. While it is plain from *Re Pasrm* and *Beauross* that there is an onus on a

defendant to indicate the intention to seek security at an early stage of proceedings, and there was a lapse of time here before it occurred, there is no indication that significant costs were incurred during that time or that there was reliance on an assumption that no security would be sought.

140.The next period is a shorter one of some two months up to the issue of this Motion. I do not regard this as a period of delay and, moreover, during that time, the primary step taken in the proceedings was the issue of a motion for judgment in default of defence in which an order for costs has ultimately been made in the Plaintiff's favour. While the Plaintiff relies heavily on an analogy with *Beauross* to characterise this period as one of culpable delay, the decision in *Beauross* was based on the facts of that case, in which more than a year lapse before the issue of the motion for security for costs and the Court found that "*comprehensive legal costs had been incurred*" in the final three months of that period. The facts here are different and the delay here can only be assessed on the basis of the facts before me.

141.I do not consider the overall lapse of time or the individual periods of time addressed above to be sufficient to disentitle the Defendant to the relief sought, particularly in light of the limited steps taken by the Plaintiff during that time. It is also relevant that the Plaintiff does not assert that he would have done anything differently if he knew the Defendant was intent on pursuing this Motion. This makes it difficult to see how the Plaintiff can assert relevant prejudice based on delay.

142.Insofar as the Defendant sought to rely on delay by the Plaintiff in the delivery of affidavits in this Motion, I do not believe there is any basis or imperative of justice to have regard to the timing of such steps for the purpose of this motion and do not have regard to same.

143.In summary, there must be a wholly fact-specific analysis conducted when an allegation of delay is made. Having conducted that analysis here, there is no delay such as could constitute a special circumstance to justify the refusal of the relief sought.

CONCLUSIONS

144. The Defendant has failed to present sufficient objective evidence to demonstrate the existence of a *prima facie* defence to the Plaintiff's claim and has further failed to present an arguable legal basis (to a *prima facie* standard) for the inferences or conclusions which the Defendant submits the Court may derive from the evidence that was presented. For this reason, the order under Order 29, Rule 1 requiring the Plaintiff to provide security for costs is refused.

145. If the criteria of Order 29, Rule 1 had been satisfied, there are certain unusual features of this case which the Plaintiff relies on, including the nature of the Defendant and the largely uncontradicted averments by the Plaintiff that he has significant assets and connections to Ireland, including through the Defendant, and there are reasons why he would honour his legal commitments. However, the factors and evidence presented would not be sufficient to outweigh the risk faced by the Defendant, which Order 29 aims to guard against. These considerations would not therefore amount to special circumstances such as to justify a decision to refuse the relief sought (if the Defendant had made out a *prima facie* defence).

146. The Plaintiff's contention that delay is a special circumstance which warrants the refusal of the relief sought is rejected. While there has been some delay, there was not sufficient delay or prejudice in the particular circumstances of this case to justify refusal of the relief sought (if the requirements for granting such relief were otherwise met).

147. My provisional view on the question of the costs, subject to hearing any submissions to the contrary, is that the Defendant should be liable for the costs of this application, having failed to obtain the reliefs applied for.

148. Should either party wish to contend for a different costs order, I can hear submissions at 10.30am on 20 November 2024. The parties have liberty to notify the Registrar in the event that this is not necessary.