

NO REDACTIONS NEEDED

APPROVED JUDGMENT

THE HIGH COURT

[2024] IEHC 304

[Record No. 2023/46 COS]

IN THE MATTER OF GLENMAN CORPORATION LIMITED

AND

IN THE MATTER OF SECTION 212 OF THE COMPANIES ACT 2014

BETWEEN

MICHEÁL CONNEALLY

APPLICANT

AND

ALBERT CONNEALLY

RESPONDENT

AND

GLENMAN CORPORATION LIMITED

NOTICE PARTY

JUDGMENT of Mr. Justice Cregan delivered on the 8th day of April, 2024

Introduction

1. Mr. Micheál Conneally has brought oppression proceedings against his brother, Mr. Albert Conneally. Mr. Albert Conneally wants these proceedings heard *in camera*; Mr.

Micheál Conneally does not. The issue in this application is whether the entirety of these proceedings should be heard in open court or *in camera*.

The company

2. The company was incorporated on 2nd December 1993. The Applicant and the Respondent are the only directors of the company. Mr. Albert Conneally owns 60% of the shares in the company and Mr. Micheál Conneally owns 40%.
3. The company operates as a building, contracting and civil engineering business in Ireland and in the UK. When the company commenced business in December 1993, it worked on small projects, such as upgrading pubs, restaurants and churches. The company then moved on to developing housing projects, including affordable and social housing, and County Council work. The company was also one of the leading builders of schools in the late 1990s and early 2000s.
4. The company's clients included Galway City Council, Dublin City Council, South Dublin County Council, Fingal County Council, the Department of Education, Limerick I.T. College and Athlone I.T. College.
5. The most recent financial statements of the company, approved by the Board of Directors on 17th June, 2021 (for the financial year ended 30th June, 2021), disclosed that the company had a turnover of approximately €30m in the year to 30th June, 2021 with a gross profit of €1.6m approximately.
6. It appears that up until 2012, the Applicant and the Respondent were on good terms and the company grew profitably and successfully. However, according to the Applicant, issues began to arise when he claimed that some of the decisions made by the Respondent took the company in, what he believed, was the wrong direction.
7. There are numerous allegations in the oppression proceedings brought by the Applicant against the Respondent. It is unnecessary for the purposes of this application to set

them out in any detail. Suffice it to say, that the Applicant claims that the Respondent's conduct of the company amounts to oppression of his interest as a minority shareholder within the meaning of s. 212 of the Companies Act 2014. The Respondent, for his part, in his replying affidavits, has set out in detail why he believes the allegations are without foundation.

8. However, it is common case that it is no function of the Court at this stage to try to adjudicate upon these competing issues of fact. These are matters for the trial of the s. 212 proceedings.

The Respondent's application for an *in camera* hearing

9. The current application for an *in camera* hearing has been brought by the Respondent. He avers in his affidavit that it is his:-

“firm belief that the hearing of these proceedings will involve the disclosure of information, the publication of which will be seriously prejudicial to the legitimate interests of the company. I further believe that the hearing in public of the proceedings would fall short of doing justice (although in the latter respect I am advised that it is a matter for submission to what extent any such criterion requires to be fulfilled in the light of recent decisions of the courts). Accordingly, I believe and I am advised that this is an appropriate case for the Honourable Court to make an order directing that the within proceedings be heard in camera.”

10. The Respondent makes a number of points in his affidavits as follows:-

- (1) that the Applicant is a director of the company and, as such, has unfettered access to a significant body of highly sensitive information concerning the affairs of the company;
- (2) that this material would, in the ordinary of course of business, not be made available outside the company except when it was necessary for banking or

other commercial purposes, - all of which would carry an obligation of confidentiality;

- (3) that he believes that commercially sensitive information will inevitably be revealed about the company, and its affairs, in the course of further affidavits, interrogatories, witness statements, examination in chief and cross-examination at the trial;
- (4) that the company operates in the public procurement construction sector which is often reported on in the media and also attracts political and other controversy and that the company has been “*the victim of this in the past*”.

11. On 24th April, 2023, the High Court made an interim order that the proceedings be held *in camera* – pending this formal application.

The applicable legal principles

12. Article 34.1 of the Constitution provides:-

“Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and save in such special and limited cases as may be prescribed by law, shall be administered in public.”

13. Section 212(1)(d) of the Companies Act 2014 provides that:-

“Any member of a company who complains that the affairs of the company are being conducted or that the powers of the directors of the company are being exercised—

(a) in a manner oppressive to him...

(b) in disregard of his or her or their interests as members,

may apply to the court for an order under this section.”

14. Section 212(9) of the Companies Act 2014 (which replaces s. 205(7) of the Companies Act 1963) provides as follows:-

“If, in the opinion of the court, the hearing of proceedings under this section would involve the disclosure of information the publication of which would be seriously prejudicial to the legitimate interests of the company, the court may order that the hearing of the proceedings or any part of them shall be in camera.”

15. The Supreme Court in *Re R. Ltd.* [1989] IR 126 (per Finlay C.J.) held that this statutory section should be “*strictly construed*”.

In Re R. Ltd [1989] IR 126

16. The leading case on this issue is the Supreme Court decision in *Re R. Ltd.* In that case, the Applicant, who was a substantial shareholder of the respondent company, alleged that he had been unfairly dismissed from his position as chief executive. He also petitioned the High Court for relief pursuant to section 205 of the Companies Act, 1963. His petition and grounding affidavit set out sensitive commercial information relating to the company, including its detailed accounts, its five year business plan and the terms of a commercial transaction. The Respondents (being the company and one of its directors) obtained an ex parte order in the High Court that the proceedings should be heard *in camera* pursuant to s. 205(7) of the 1963 Act. The Applicant appealed to the Supreme Court. The Supreme Court (in a majority decision) allowed the appeal and directed that the proceedings should be heard in public.

17. Walsh J. delivering the judgment of the majority stated at page 135:-

“This fundamental principle [namely the administration of justice in public] in the administration of justice was made part of the fundamental law of the State by Article 34 of the Constitution in 1937.”

18. Walsh J. then noted that s. 45(1) of the Courts (Supplemental Provision) Act, 1961 permitted certain cases (including matrimonial cases, matters involving minors, and proceedings involving disclosure of a secret manufacturing process) to be heard in private.

19. Walsh J. stated as follows at p. 136:-

“The statutory provision which arises for consideration in this case, namely s. 205, sub-s. 7 of the Companies Act, 1963, confers a discretionary power upon the High Court. But the discretion cannot be exercised unless the court is of opinion that the hearing of proceedings under the section would involve the disclosure of information the publication of which would be seriously prejudicial to the legitimate interests of the company. That is a condition precedent to the exercise of a discretion but, in my view, it is not the only condition regulating the exercise of the discretion.”

20. Walsh J. continued:-

“In seeking to avail of the protection apparently offered by the sub-section, the party seeking it must be able to satisfy the court that not only would the disclosure of information be seriously prejudicial to the legitimate interests of the company, but it must also be shown that a public hearing of the whole or of that part of the proceedings which it is sought to have heard other than in a public court would fall short of the doing of justice.”

21. Thus, the Supreme Court, in its majority judgment, set out a two-step test in relation to this matter as follows:-

1. *Whether the disclosure of information would be seriously prejudicial to the interests of the company, (i.e. the condition precedent) and, if so,*
2. *Whether a public hearing of the whole (or part) of the proceedings “would prevent justice being done” (in the formulation of Griffin J.).*

22. It is also clear from the Supreme Court decision that mere difficulty about case management of the evidence does not prevent justice being done. It simply requires the parties and the trial judge to put in place measures to ensure that parts of the evidence be heard in private if that is deemed appropriate at the trial of the action.

Irish Press v. Ingersoll

23. The second decision of the Supreme Court in which this matter was considered is *Irish Press Plc v. Ingersoll Irish Publications Ltd* [1994] 1 IR 176. In this case, the Respondent sought an order directing that the proceedings should be heard in private on the grounds that the interests of the company would be prejudiced by the revelation of the serious financial position of the companies, the animosity between the parties and the future plans for the companies. It was argued that this might deter any outside investor without whom the companies would be unlikely to survive. The application was opposed by the Petitioner on the grounds that such matters were already in the public domain as a result of extensive media coverage. The High Court directed that the entire proceedings be heard *in camera*. However this decision was overturned on appeal by the Supreme Court which directed that the proceedings should be heard in public.

24. Finlay C.J. in his decision stated as follows at p. 194:

“From that decision[In Re R Ltd] the following propositions can, it seems to me, be deduced as principles applicable to the determination of the issues arising in relation to an application under s. 205, sub-s. 7:—

1. *The court cannot even commence to exercise a discretion under s. 205, sub-s. 7 unless it is of opinion that the hearing of the proceedings or of some particular part of the proceedings would involve the disclosure of information the publication of which would be seriously prejudicial to the legitimate interests of the company.*
2. *If it is of opinion that such a situation exists, the court may then enter upon an investigation as to whether it should exercise its discretion under s. 205, sub-s. 7 to hold the case in camera. In so doing, it will, however, be involved in considering a fundamental constitutional right vested in the public, namely,*

the administration of justice in public, and it cannot, therefore, make an order under s. 205, sub-s. 7 merely on the consent of all the parties concerned in the petition before it.

3. *The additional matter which a court would have to be satisfied of in order to direct a hearing of the whole or part of the petition otherwise than in public would be that a public hearing of the whole or of that part of the proceedings would prevent justice being done.”*

25. Finlay C.J. also stated at para. (4) of his judgment that s. 205(7) is confined to “*special and limited cases*”. He also stated at paras. (5)(a) and (b) that, in order for a court to direct an in camera hearing, the petitioner or respondent would have to show that by reason of the publication of the proceedings the court would be incapable of rendering “*a just remedy*” to a wronged petitioner or respondent.

Gilchrist v. Sunday Newspapers Ltd and Others

26. Counsel for the Respondent submitted that the test *In Re R.* should be read in light of the *Gilchrist* decision [2017] 2 IR 284, that *Gilchrist* represented a significant departure from *In Re R. Ltd*, and that a proper reading of *Gilchrist* meant that the second limb of the test set out in *Re R Ltd* (i.e., that it would prevent justice being done) is no longer applicable.

27. However, I do not agree that this is a correct reading of *Gilchrist* and I am of the view that I am bound by the decisions of the Supreme Court *In Re R. Ltd* and in the *Ingersoll* case, until such time as the Supreme Court explicitly decides that *In Re R. Ltd* or *Ingersoll* should be further refined.

28. In *Gilchrist*, the plaintiffs, who were officers of the State’s witness protection programme, brought proceedings against the defendants alleging that articles published by the defendants unlawfully published their identities and contained matters which were defamatory. The notice party (i.e. the Commissioner of An Garda Síochána) brought an

application for the proceedings to be heard *in camera*. The High Court made limited orders in respect of delaying the reporting of the case but did not order full *in camera* hearings. The Court of Appeal however directed that the trial should proceed *in camera*.

29. The Supreme Court agreed with the Court of Appeal and held that the public interest in the functioning of the witness protection programme and the protection of the lives of participants in it justified an exception to the normal rule that justice be administered in public.

30. The Supreme Court directed that the trial should proceed *in camera* and granted liberty to the parties to apply to the trial judge to limit or vary the order.

31. O'Donnell J. (as he then was) giving the judgment on behalf of the court summarised the principles in relation to this matter at paragraph 46 as follows:-

- “(i) The Article 34.1 requirement of administration of justice in public is a fundamental constitutional value of great importance;*
- (ii) Article 34.1 itself recognises however that there may be exceptions to that fundamental rule;*
- (iii) Any such exception to the general rule must be strictly construed, both as to the subject matter, and the manner in which the procedures depart from the standard of a full hearing in public;*
- (iv) Any such exception may be provided for by statute but also under the common law power of the court to regulate its own proceedings;*
- (v) Where an exception from the principle of hearing in public is sought to be justified by reference only to the common law power and in the absence of legislation, then the interests involved must be very clear, and the circumstances pressing; ...*

- (vi) *If it can be shown the justice cannot be done unless a hearing is conducted other than in public, that will plainly justify the exception from the rule established by Article 34.1, but that is not the only criterion.* Where constitutional interests and values of considerable weight may be damaged or destroyed by a hearing in public, it may be appropriate for the legislature to provide for the possibility of the hearing other than in public, (as it has done) and for the court to exercise that power in a particular case if satisfied that it is a case which presents those features which justify a hearing other than in public; (emphasis added).
- (vii) *The requirement of strict construction of any exception to the principle of trial in public means that a court must be satisfied that each departure from that general rule is no more than is required to protect the countervailing interest. It also means that court must be resolutely sceptical of any claim to depart from any aspect of a full hearing in public. Litigation is a robust business. The presence of the public is not just unavoidable, but is necessary and welcome. In particular this will mean that even after concluding that a case warrants a departure from that constitutional standard, the court must consider if any lesser steps are possible such as providing for witnesses not to be identified by name, or otherwise identified or for the provision of a redacted transcript for any portion of the hearing conducted in camera.”*

32. O'Donnell J. also stated at para. 23 of his decision:-

“In Re R. Limited effected a very significant and for the most part beneficial correction in the practice of courts in relation to in camera hearings. However, even at the time it was arguable that it was something of an overcorrection. In subsequent years, in order for a hearing to proceed in camera, it would be necessary first to

demonstrate a post-1937 statutory provision permitting such a course but in any event it would be necessary to show in the context of the particular case that it was not possible to achieve the administration of justice in the particular case if it or any part of it was heard in public. While the effect on the administration of justice is a thread running through the development of the law in most jurisdictions on hearings in camera, it had not generally been interpreted as narrowly as it was in Re R. Limited or indeed as the sole and exclusive criterion.” (emphasis added).

33. O’Donnell J. then referred to Article 6.1 of the European Convention of Human Rights and states that:-

“The formulation in the ECHR makes it clear that while interference with the administration of justice is a ground for permitting a hearing other than in public, it is not the sole ground. There are other areas where it can be said that the exclusion of the public is justified normally because publicity for proceedings or even access to them would offend important values, many of which are also protected by the ECHR and the Constitution.”

34. O’Donnell J. then gave examples such as family relationships, the affairs of children, persons under a disability, national security and, in *Gilchrist*, the societal interest in the proper functioning of a witness protection programme.

35. Having considered the submission of the Respondent, I am of the view that the statements of O’Donnell J., set out in paragraph 23 and paragraph 46 of his decision mean that the prevention of justice being done is not the only matter to be considered in the second limb of the test in *Re R. Ltd.* and that the second limb of the test could also encompass whether there are any other important constitutional rights of the parties which should be considered by the court in assessing whether a case should be heard in public. If I am correct in this interpretation then the Respondent’s argument that the *Gilchrist* decision has abolished

the second limb in *Re R. Ltd.* is not correct. In fact what the Supreme Court did in *Gilchrist* was to expand the second limb set out in *Re R. Ltd.* to include a consideration of not only (i) whether justice would be prevented from being done but also (ii), whether there are other constitutional rights which should be weighed in the balance to justify an *in camera* hearing.

36. In other words, *In Re R. Ltd.* was an “over-correction” in that it was too narrow in only considering, in the second limb, the question of whether justice would be prevented from being done, whereas the proper test should also include a consideration of whether other constitutional rights would be infringed by a public hearing.

Preliminary observations

37. Before considering the affidavit evidence, I would make a few preliminary observations about this application. First, a limited liability company is afforded a significant privilege in our financial system. The liability of its members is limited. If it cannot pay its debts, then the company can be wound up, without recourse to the shareholders. As Bingham M.R. put it in *Bradford v. Freeway Classics Ltd* [1994] 1 BCLC 445, those who are owed money “*must go empty away if the corporate cupboard is bare. The assets of the directors and shareholders are not at risk.*” It means that lenders (or other persons doing business with companies) must be vigilant to ensure that loans are repaid, or contracts are honoured. If a loan is not repaid, it could cause enormous damage to a lender; if a contract is not honoured, that could cause enormous damage to a counterparty.

38. Secondly, it is also of significance that all other company law matters before the courts are conducted in public, including, for example, petitions to wind-up a company. Clearly, such petitions could endanger the future viability of the company and, yet there has never been any suggestion that such applications should be heard *in camera*. Section 212(9) is a striking exception and must be strictly construed.

39. Thirdly, a company is a juristic person, not a natural person. It has no feelings which can be hurt; it only has commercial interests which could be damaged. The rights to dignity and/or privacy justify why, for example, matrimonial proceedings should be heard *in camera*. Such considerations do not apply in the case of a company.

40. Fourthly, I am of the view that a person seeking an *in camera* hearing in section 212 applications would have to provide specific evidence as to the information which might be disclosed which could cause serious prejudice to the company. In my view, no such specific evidence was provided in this case.

41. Fifthly, the Respondent submits that the Applicant has retained forensic accountants which he says “*is an attempt at intimidation and to scandalise the company and entirely unnecessary*”. In my view, this submission is over-stated. A forensic accountant is almost certainly a necessary witness in s. 212 proceedings to provide expert evidence to the Court. It could not be regarded as an attempt at intimidation.

42. Sixthly, the Respondent submits that the Applicant wishes to oppose the application for an *in camera* hearing in order to bring about a situation where the threat of a public hearing will cause the Respondent to accept a lower price for his shares and, as such, his opposition is not for a proper purpose. However, the converse argument is also true: the Respondent may wish to have an *in camera* hearing because he feels it will afford him a tactical advantage. I do not accept this submission in the present case.

43. Finally, the Respondent also submitted that the “*very fact that the directors of the company are in dispute is itself damaging to the company*” because “*conducting these proceedings in public would reveal that one of the directors was questioning the commercial judgment of the company*”. However, in my view, the mere fact that the directors are in dispute is not a matter – on its own – that would justify an *in camera* hearing. It is almost always the case in oppression proceedings that one party is questioning the commercial

judgment of the company. It does not rise to the level of damage required to justify such a draconian step.

The first test - will the disclosure of information be seriously prejudicial to the interests of the company?

(i) Banks and financial institutions

44. The Respondent submitted that if these proceedings were heard in public, “*it would certainly cause financial institutions to pause before offering finance for any future projects or before offering the bonding required by the company for future contracts, and/or, even if offered, “the terms could be more costly than might otherwise be the case”.*”

45. However, in my view, this argument is not sufficient to justify an *in camera* hearing in the present case. A company is a creature of statute; it has statutory reporting and disclosure obligations. Banks and financial institutions rely on a company’s financial statements. Financial institutions are also aware that any creditor can petition for the winding up of a company if it cannot pay its debts. These petitions are advertised and are heard in public. What the Respondent is seeking is an *in camera* hearing which would have the effect of concealing relevant information from financial institutions, which, on his own admission, is relevant to lending decisions as to whether to lend at all or if so, on what terms. In these circumstances, the effect of an *in camera* hearing could bring about a situation where the true situation of a company was being concealed from financial institutions. That, in my view, is a serious argument against directing an *in camera* hearing, particularly in circumstances where lenders have no recourse to the directors and shareholders.

46. Thus, just as in *Re R. Ltd*, where the detailed accounts, the five year business plan and the terms of a commercial transaction were not sufficient in themselves to justify an *in camera* hearing, here also the fact that certain financial information might come into evidence

in a public hearing is not sufficient to justify an *in camera* hearing. I am not satisfied that any such disclosure would be prejudicial to the legitimate interests of the company.

(ii) Bonding

47. The Respondent also submits that these proceedings, if heard in public, would have a significant effect on the company's ability to secure bonding for further projects. He says "*Bonding in the construction industry is akin to an insurance contract taken by the contractor for the benefit of the ultimate client and can be called on by the client to mitigate losses for the client should the construction company fail to perform the contract*".

48. However, again, in my view, this is not a sufficient reason to justify an *in camera* hearing. First, a bonding contract is akin to an insurance contract and therefore the company would have an obligation to disclose to the financial institution providing the bond that the only two directors and shareholders are in litigation; secondly, the requirement to seek an *in camera* hearing is, in substance, an attempt by the Respondent to seek to prevent the true commercial reality of the company being revealed to a bonding institution which could then be left without redress if the company fails and the bond is called in. The courts should be very slow to allow *in camera* hearings in such circumstances. I am not satisfied that any such disclosure would be prejudicial to the legitimate interests of the company.

(iii) Further tendering for future work

49. The Respondent also submits that its main source of work is "*social housing, housing associations and housing trusts, many of which are voluntary and depend on government for funding*". He submits that companies who undertake such work are "*heavily scrutinised*" and "*preference is given to tenderers who are free from litigation as they are considered to have a lower risk profile*". He avers that the current proceedings, if held in public, would have an "*impact in the company's current work stream,*" and "*would result in the elimination of the company from being awarded future contracts in this sector*".

50. In my view, this submission is also, in substance, a plea that the true nature of the dispute between the only two shareholders and directors should be held *in camera* so that it can escape scrutiny. This is, in my view, an untenable submission. The company is engaged in important housing work. It builds houses for vulnerable sections of society. The government and local councils finance such building works. They understandably want to scrutinize tendering companies to ensure they are fit for purpose and can complete the work. Yet here there is a company riven with dissension between its two founders, its only two directors and its only two shareholders - and one of them wants to hide this dispute from the world and seek to set aside a key constitutional principle that justice be administered in public. In my view, this argument does not support an *in camera* hearing. Just as in *Irish Press v. Ingersoll* where the revelations of the serious financial position of the companies and the future plans for the companies were not sufficient to justify an *in camera* hearing (even though it might deter an outside investor who might save the company), here also the information which might come into the public domain is not sufficient to justify an *in camera* hearing. I am not satisfied that any such disclosure would be prejudicial to the legitimate interests of the company.

(iv) Customers and suppliers

51. The Respondent also avers that these disclosures (i.e. that the directors are in dispute and that there are questions about the commercial judgment of the company) “*would be likely to discourage customers and suppliers from dealing with the company in the future*”. Again, in my view, this submission does not rise to the level of damage required to justify an *in camera* hearing.

(v) Staffing issues

52. The Respondent also avers that publication of certain information is “*likely to give rise to further human resources issues or to damage staff morale*” and that “*there is a*

significant risk that company personnel will lose confidence in the company's directors". He also avers that "*As a general proposition, staff do not enjoy working in an environment where there is hostility between the directors*" and that "*Public awareness of these proceedings is likely to lead, I believe, to an immediate exodus of key personnel*".

53. However, in my view, this reason is without any real substance and does not even remotely rise to the level of damage to the company required to justify an *in camera* hearing. First, it is the case – as the Applicant avers – that the staff in the company are fully aware of the hostility between the directors and have been for years; secondly, I do not believe that the fact that a public hearing could cause difficulty for the staff of a company is a strong enough reason to justify the abandonment of a key constitutional principle that justice must be administered in public. Indeed, the Applicant says that the Respondent is "*strikingly vague*" on this issue and that the staff have been dealing with these disputes between the two directors for "*approximately seven years*".

(vi) Highly sensitive information

54. The Respondent also refers to other "*highly sensitive information*" which might emerge in a public hearing. The company is a building and construction company. It is not a pharmaceutical or medical devices company; it does not hold any patents or secret formulas. The Respondent fails to identify what that "highly sensitive information" is.

55. Moreover, the Applicant avers (in his first replying affidavit at para. 15), that "*I do not have access to highly sensitive information concerning the company*" but also avers that even assuming he gets it, this does not require that the proceedings be heard *in camera*. I agree with this submission. At this stage, it is not clear to me what is the nature of this highly sensitive information. In any event, the handling of this can be left to the discretion of the trial judge and he/she can consider any applications to redact such information at that stage.

(vii) Damage to other settlement negotiations in other disputes

56. The Respondent also avers that the company is in mediation or conciliation with opponents in respect of six separate school and other projects located across Ireland. He says that these are at a delicate stage and that any public hearing of these proceedings will prejudice the company's ability to achieve the best outcome possible. However, I am of the view that the fact that the company is involved in legal disputes with third parties and that these proceedings could affect such settlements, is not sufficient to justify an in camera hearing of the whole proceedings. It may well be, that at the hearing of the action, the Respondent could make an application for redaction of certain evidence. That would then be a matter for the trial judge to consider.

(viii) Significant damage to the company has already occurred and is in the public domain.

57. Moreover it is clear that significant change has already occurred to the company and it is in the public domain. As Mr. Micheál Conneally stated in his affidavit that *"It is very clear that the reputational damage which concerns [Mr. Albert Conneally] has already occurred"*.

58. In one case it appears from the judgment delivered by the High Court (Twomey J.) in *Glenman Corporation Limited v. Galway City Council* [2023] IEHC 336 on 20th June, 2023, that the company was engaged under a contract with Galway City Council dated 20th December, 2019 to build 58 housing units. However, Galway County Council ("GCC") terminated that contract on 21st June, 2022 because of delays with the works which GCC claimed were caused by the company. It appears that only 20% of the works on the social housing were completed between 2020 and 2022. As a result, GCC terminated the contract. GCC then sent a new contract out to tender but refused to allow the company to tender for the remaining 80% of the works.

59. The company delayed in bringing judicial review proceedings and then brought a judicial review application seeking an extension of time. The High Court (Twomey J.) refused this application.

60. Twomey J., in his judgment, referred to the fact that the Company disputed that GCC was entitled to terminate the previous contract, that the matter was referred to conciliation and that, on 20th December, 2022, the Conciliator upheld the decision of GCC to terminate the previous contract. The contract was for the completion of social housing units which were intended to house 245 people in Ballybane More in Galway, where there is a ten-year waiting period for social housing.

61. It is clear from all of the above that the company has suffered a major blow to its reputation as a result of the decision by GCC to terminate its contract with the company, the Council's decision to put the remaining 80% of the works out to a new tender and its decision to not permit the company to tender for this 80%. Moreover, this damage to the company's reputation was a matter which was fully aired in public both in the High Court and in the newspapers.

62. Moreover internal emails confirm that these and other matters inflicted significant damage on the company.

63. As Mr. Albert Conneally stated in his affidavit of 2nd November, 2023 (at para. 4):-
“These proceedings being heard publicly, including the details of the ongoing dispute with Galway City Council, and in particular the applicant's view of those proceedings as co-director being inconsistent with the company's position, will unquestionably result in the company encountering significant difficulties in obtaining sufficient bonding for the company in respect of new tenders, which I believe would be devastating to its business.”

64. Thus, it is clear that the dispute between the company and GCC has already been made public to quite a significant degree. Whilst the Respondent maintains that there are other aspects of its dispute with GCC which have not to date come into the public domain

(although he does not provide any details of what these are), it is clear that the most fundamental issues of the company's dispute with GCC have come into the public domain.

65. In addition, the Respondent, in his affidavit of the 2nd November, exhibits an email from the Applicant (which is one of a chain of emails between the Respondent and Michael Baldwin of Gateley Vindey (one of the company's bonding agents)).

66. Mr. Michael Baldwin, in his email to Albert Conneally and Micheál Conneally dated 29th August, 2023, stated as follows:-

"Dear Sirs,

We have now received correspondence from Galway CC advising that a replacement contractor has been appointed for the works and potential losses and costs to be incurred by them to complete the works."

67. Mr. Micheál Conneally in his reply to the Respondent stated:-

"A.,

I don't know fully what went wrong with this project in Ballybane as I've no time to look into it right now...

It's majorly embarrassing that we were kicked of [sic] the job and that Rhattigans are in doing the job.

The damage is done now with Glenman's reputation but if the bond company is affected then this will be the nail in the coffin for Glenman both sides of the water."

68. Mr. Micheál Conneally, in his replying affidavit, states at para. 2:-

"The key issue in that affidavit is that the damage suffered by the company's reputation by reason of the acts of the first respondent is known to the public."

69. He also states at para. 3:-

"For example in an article in the Irish Times of Monday 17th April, 2023 it was confirmed that Galway City Council had excluded the company from bidding in a

tender to complete the housing scheme in question in circumstances where the company's performance caused the initial contract to be terminated. Further the application brought by the company to challenge the new tender process was refused by the High Court in proceedings which were not held in camera. The judgment of the High Court (Twomey J.) refusing the company's application is a matter of public knowledge, including for example in an article in the Irish Independent dated Friday 23rd June, 2023."

70. Mr. Micheál Conneally also refers to other unfavourable media coverage of the company in the Leinster Leader.

71. He also states, at para. 5 of his affidavit, that he was aware that the company had gained a very unfavourable reputation in the industry when he obtained a copy of an email dated 15th February, 2017 sent to the Respondent from a former senior managing surveyor in the company in which the said surveyor was informed by a potential client that "*Glenman's reputation out in the industry is dreadful. I think I told you before that BAM and Glenman are associated with toxicity...*".

72. In these circumstances, I am of the view that where such major damage has already been done to the company's reputation, this company is in a similar position to the Irish Press in the *Ingorsoll* case in that a significant amount of information about the company is already in the public domain and no useful purpose can be served by directing an *in camera* hearing.

The second limb of the test

73. I am also satisfied on the evidence before me that there is nothing to suggest that a public hearing of these proceedings would prevent justice being done. It may well be that matters might emerge in evidence which are embarrassing for either party; it might well be that allegations are made against the Respondent which might ultimately be untrue, and cause him reputational damage. That unfortunately is the nature of such proceedings. As O'Donnell

C.J. has said, “Litigation is a robust business.” But that falls well short of a finding that a public hearing would prevent justice being done.

The common law constitutional power to hear proceedings otherwise than in public

74. The Respondent submitted, in the alternative, that the court also had an inherent jurisdiction to direct that these proceedings could be held *in camera*, under the normal common law power of the courts to regulate their own proceedings.

75. However, in this case, as O’Donnell J. stated in *Gilchrist* at para. 46(v):-

“Where an exception from the principle of hearing in public is sought to be justified by reference only to the common law power and in the absence of legislation, then the interests involved must be very clear and the circumstances pressing...”

76. In this case, there is specific legislation governing this matter and I am of the view that on the facts of this case the Respondent has not made out any case that the interests involved are very clear or that the circumstances are pressing.

77. The only circumstances in which I could envisage an application such as that made by the Respondent in the present case being unsuccessful under s. 212(9) and yet successful under the court’s inherent jurisdiction, would be if there was a constitutional right of one of the parties, other than the Company, which was being affected of such gravity that it could outweigh the constitutional requirement that justice be administered in public. This however, is not the case here.

78. In the circumstances, I am of the view that the Respondent’s application that these proceedings be heard *in camera* pursuant to the inherent jurisdiction of the court should also be rejected.

Possible redactions

79. I have also considered whether any lesser steps are possible such as the redaction of the names of the Applicant, Respondent and the company and I am satisfied that redaction of their identities would not be appropriate in this case. However, if there are certain matters in respect of which a specific argument can be made that evidence should be heard *in camera* (or should be subject to redaction), then this is a matter for the trial judge. For example, if the company has entered into a settlement agreement with another party and if that agreement is subject to a confidentiality clause, then it may be that such an agreement can be entered into in evidence, subject to certain redactions. That however will be a matter for the trial judge to consider in the overall running of the case. I do not believe however, that the matters which have been brought to the court's attention in this application, are of themselves, sufficiently weighty to justify the application that the entire proceedings should be heard *in camera*.

Was company authorisation ever given to institute proceedings?

80. It appears to be the case that a decision to institute legal proceedings (and indeed to pursue an appeal) is a decision for the Board of Directors. However it does not appear that there was ever a formal directors' meeting to discuss these matters and/or to approve a resolution authorising the company to institute proceedings or indeed to prosecute an appeal. This is a matter of some concern to the Court – especially as the Company is involved in a number of different proceedings.

81. The Applicant avers, extraordinarily, to the fact that he “*was not aware of any of these proceedings having been taken by the company*” and that he is “*extremely concerned that proceedings were caused to be issued in the company's name which are in fact unauthorised*”. He avers that it is “*very concerning*” that these proceedings were issued without first obtaining approval of the Board.

82. Mr. Albert Conneally, through his counsel, submitted that, historically, it was always the case that Mr. Albert Conneally looked after the company's business and litigation in

Ireland whereas Mr. Micheál Conneally looked after the company's business and litigation in the UK and that each party gave each other free rein to conduct such litigation as they sought fit.

83. However, whilst that might have been the case historically, the question that is of concern to this Court, at this time, is whether the company has issued proceedings against various public bodies (including no less than five sets of judicial review proceedings) without proper authorisation to do so. I adjourned the hearing of the application in order to allow the Respondent to put full details of these five judicial review proceedings on affidavit to see what matters are in the public domain and also to see whether the Applicant, Mr. Micheál Conneally actually agrees or disagrees with the issuing of proceedings in all these five cases.

84. If Mr. Albert Conneally, as one of two directors is in favour of taking such steps, and Mr. Micheál Conneally, as the other director is not, then the company is deadlocked and cannot pass the necessary resolution to issue proceedings or prosecute an appeal.

85. In my view, the Applicant's concerns on these matters appear to be well-founded and I will hear the parties further on this matter.

Conclusion

86. I am satisfied therefore, applying the two-part test in *Re R. Ltd.*:

- (i) that the public hearing of this case would not involve the disclosure of information the publication of which would be seriously prejudicial to the legitimate interests of the company; and
- (ii) that, even if it did, a public hearing of these proceedings would not prevent justice being done.

87. However, if there are specific and limited pieces of evidence which should be heard *in camera* or redacted (e.g. agreements with third parties subject to a confidentiality clause), the

parties are at liberty to make an application to the trial judge that such pieces of evidence should be heard *in camera* and/or be redacted.
