

APPROVED



**AN ARD-CHÚIRT
THE HIGH COURT**

[2024] IEHC 620

Record No. 2022/650P

BETWEEN/

UGUR YASAR

PLAINTIFF

-AND-

**CCC ESSEN DIGITAL GMBH AND FACEBOOK IRELAND LIMITED
DEFENDANTS**

THE HIGH COURT

Record No. 2022/4639P

BETWEEN/

ABUZAR TALIBOV

PLAINTIFF

-AND-

**CCC ESSEN DIGITAL GMBH AND META PLATFORMS IRELAND LIMITED
DEFENDANTS**

THE HIGH COURT

Record No. 2022/170P

BETWEEN/

KYRA SENEN

PLAINTIFF

-AND-

**CCC BARCELONA DIGITAL SERVICES S.L.U. AND FACEBOOK IRELAND
LIMITED
DEFENDANTS**

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 15th day of October 2024

INTRODUCTION

1. In this interlocutory application, the Mr. Yasar (“the Plaintiff”) seeks the disclosure of documentation from the first named Defendant (“CCC Essen”) comprising a contract between CCC Essen with the second named Defendant (“Meta/Facebook”)¹ and associated protocols dealing with the provision of content moderation activities on the Meta/Facebook platform.
2. Specifically, the Plaintiff seeks to confirm, through this discovery application, whether or not CCC Essen enjoys absolute autonomy in its engagement of the Plaintiff as a content moderator in order to facilitate his response to certain matters in CCC Essen’s application for an order pursuant to Order 12, rule 26 of the Rules of the Superior Courts 1986 (as amended) (“RSC 1986”) seeking to set aside service of the notice of the proceedings upon it, on the grounds that this court does not have jurisdiction to hear and determine the Plaintiff’s claim against CCC Essen under the terms of Article 8(1) of Regulation (EU) No. 1215/2012 (12th December 2012) (“Brussels I (recast)”) (“the jurisdiction application/the jurisdiction challenge”).
3. This discovery application arises, therefore, during the course of responding to an interlocutory application brought by CCC Essen to set aside the Plaintiff’s notice of proceedings. Whilst it arises in the context of the jurisdiction challenge, this judgment addresses the discovery application only and does not determine the jurisdiction application, which will be heard on a future occasion.

¹ Also referred to in the correspondence and affidavits as “Meta”.

4. John Gordon SC and Ben Clarke BL appeared for the Plaintiff; Eoin McCullough SC and Hayley O'Donnell BL appeared for CCC Essen.

BACKGROUND

The claim in the Yasar proceedings

5. This judgment addresses the first of three sets of similar proceedings (set out in the title of this judgment), namely, *Yasar v CCC Essen Digital GMBH and Facebook Ireland Limited* (Record No. 2022/650P) (the “Yasar proceedings/case”).
6. By way of background summary, CCC Essen were engaged by Meta/Facebook for the purposes of recruiting and hiring personnel to work as content moderators on its platform. The Plaintiff was employed by CCC Essen, from in or around 9th April 2018, as a ‘Content Moderator’ (and later as a ‘Subject Matter Expert’) on the Meta/Facebook platform which provide web community online services. This entailed the Plaintiff reviewing content to ensure its compliance with Meta/Facebook’s implementation standards.
7. By a Personal Injury Summons dated 17th February 2022 in the Yasar proceedings, the Plaintiff claimed damages arising from serious psychological injuries which he allegedly sustained from reviewing and being exposed to different iterations of extremely disturbing graphic and violent content on the platform.

8. CCC Essen entered a conditional Appearance to the proceedings on 18th October 2022; Facebook initially entered a “*conditional*” Appearance on 6th September 2022, and later entered an “*unconditional*” Appearance on 16th October 2023.
9. From the Plaintiff’s perspective, as Meta/Facebook is a company having its registered office in Ireland and CCC Essen is a German registered company, he issued proceedings against both companies in Ireland, claiming that Meta/Facebook was the anchor defendant for the purposes of Article 8(1) of Brussels I (recast).
10. The Plaintiff’s claim as against CCC Essen is one made in contract and in tort.
11. Insofar as Meta/Facebook is concerned, the Plaintiff alleges that by reason of the unique and comprehensive degree of control which Meta/Facebook exercised over the system of work implemented by CCC Essen, it has a tortious liability to the Plaintiff where there is alleged negligence in respect of the injuries suffered in the course of his work.

The Yasar, Talibov & Senen proceedings

12. Similar claims are made in a number of other cases, in addition to the three referenced in the title of these proceedings, and there are also a number of different issues arising within the following test cases.
13. In the context of the jurisdiction challenge, the Yasar proceedings, and proceedings entitled, *Abuzar Talibov v CCC Essen Digital GMBH and Meta Platforms Ireland Ltd* (Record No. 2022/4639P) (“the Talibov proceedings”) and *Kyra Senen v CCC*

Barcelona Digital Services S.L.U. and Facebook Ireland Limited (Record No. 2022/170P) (“the Senen proceedings”) were agreed between the parties as being representative or test cases, but on the understanding that they were not binding directly on the remaining cases and that the outcome of the test cases would provide some assistance in the resolution of the balance of the cases.

14. Accordingly, in the Yasar, Talibov and Senen proceedings, orders are sought pursuant to O. 12, r. 26 RSC 1986 setting aside the service of the notice of the proceedings on CCC Essen (and CCC Barcelona), on the grounds that this court does not have jurisdiction to hear and determine the Plaintiff’s claims against those defendants under the terms of Article 8(1) of Brussels I (recast), *i.e.*, the jurisdiction challenge.

15. As detailed later in this judgment, whilst initially the jurisdiction challenge was set down for hearing on Wednesday 25th and Thursday 26th September 2024, in the course of replying to that application, in or around July 2024, the Plaintiff considered it was necessary to obtain discovery of two discrete categories of documentation from CCC Essen, comprising: (i) the contract(s) governing relations between CCC Essen and Meta/Facebook, pursuant to which the Plaintiff was engaged to perform content moderation of the Meta/Facebook platform(s); and (ii) any associated policies and procedures governing the provision/performance of content moderation activities by CCC Essen for Meta/Facebook (also referred to in this judgment as “related protocols”). These categories of documents formed the basis of the discovery application heard before me on 25th and 26th September 2024, grounded on a Notice of Motion, date stamped 20th August 2024.

16. In the Yasar case (together with a separate set of proceedings where the plaintiff is a person named Kemal Senovli), personal injury proceedings issued in Ireland against CCC Essen and Meta/Facebook *prior to* declaratory proceedings being issued in the Essen Labour Court in Germany. In these cases, the Essen Labour Court is awaiting the determination on the issue of the jurisdiction before this court and both cases have raised issues regarding Article 8 of Brussels I (recast).

17. In the Talibov case (together with a separate set of proceedings where the plaintiff is a person named Meryem Gokceoglu), declaratory proceedings were issued in Germany before personal injury proceedings were issued in the Irish High Court. The question as to whether the Irish High Court is seised of the proceedings by virtue of the PIAB application arises in these two cases, but not in the Yasar case or the case where Kemal Senovli is the plaintiff. It also contains a slightly more nuanced ground relating to the fact that whilst proceedings were initiated in the Essen Labour Court in Germany in advance of the Irish litigation, the PIAB application in fact predated the initiation of the proceedings in Germany. Insofar as the jurisdiction argument is concerned in the Talibov case, CCC Essen maintains the position that the Irish High Court must apply Article 29 of Brussels I (recast) and decline jurisdiction due to the fact that the German proceedings were initiated *prior to* the Irish proceedings. The current position is that, because the PIAB application predated the issuing of the German proceedings, the Essen Labour Court has stayed its proceedings pending the determination by this court of the jurisdiction challenge. (To recap, in the Talibov case, therefore, Article 8(1) of Brussels I (recast) is in issue but Article 25 of Brussels I (recast) (see Senen case below) does not arise).

18. In the Senen case (together with separate sets of proceedings where the plaintiffs are persons named Naomi Singh and Marco Moreira), the question arises as to whether the Spanish Courts have jurisdiction. The Spanish Contracts of Employment in these cases include *exclusive jurisdiction* clauses and this is raised separately and additional to the Article 8(1) argument, and where it is contended by CCC Essen that the Irish High Court must decline jurisdiction under Article 25 of Brussels I (recast).

THE NATURE & TYPE OF THE JURISDICTIONAL CHALLENGE

19. It is worth restating that, whereas this judgment is *not* dispositive of the jurisdiction challenge under Article 8(1) of Brussels I (recast), *the nature and type* of the jurisdictional challenge does inform the context of the discovery application brought by the Plaintiff.

20. Article 8 of Brussels I (recast) provides as follows:

“A person domiciled in a Member State may also be sued:

(1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

(2) as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of

removing him from the jurisdiction of the court which would be competent in his case;

(3) on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;

(4) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the Member State in which the property is situated.”

21. Article 8 of Brussels I (recast) contains, therefore, the following conditional reference as to domiciliary jurisdiction, namely: “*provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.*”
22. The issue which arises centres on confirming which of two scenarios (which involves Article 8(1) of Brussels I (recast)) best describes, for the purpose of this discovery application, *the nature and type* of the jurisdictional challenge brought by CCC Essen.
23. Arising from the associated jurisprudence on Article 8(1) of Brussels I (recast), it is submitted on behalf of the Plaintiff that there is a *prima facie* case against the anchor defendant, in this case Meta/Facebook, which would facilitate, in principle, a limited form of discovery such the two discrete categories of documentation outlined above.

24. In contrast, it is submitted on behalf of CCC Essen that, whilst in principle a limited form of discovery *could theoretically* arise in certain circumstances where the Article 8(1) jurisdictional issue brought by a defendant centres on a *prima facie* case against an anchor defendant (for example, cases potentially involving some assessment of the evidence and where discovery may be relevant on an exceptional basis), that scenario does *not* arise in the circumstances of this case. Rather, it is submitted that *the nature and type* of the jurisdictional challenge which CCC Essen seeks to make is that the Plaintiff's claims against it and Meta/Facebook do not meet the threshold of being so closely connected that there is a risk of irreconcilable judgments arising if they are not heard together, and that therefore, the question of discovery simply does not arise.

25. This difference in the understanding of *the nature and type* of each of the parties' respective underlying claims in the jurisdictional challenge informs their differential approach to the question of discovery in this application.

26. As set out later in this judgment, for example, the Plaintiff's case is that Article 8(1) of Brussels I (recast) was satisfied because there was a *prima facie* case against the anchor defendant, in this case Meta/Facebook, due the alleged unique and comprehensive degree of control which Meta exercised over the system of work implemented by CCC Essen and its other third-party providers. This contention has informed the approach and is the principal theme in each of the following steps adopted by the Plaintiff in this discovery application: (i) the letter dated 9th July 2024 from Coleman Legal LLP on behalf of the Plaintiff. This letter addressed, *inter alia*, the 'factual Affidavits' of Amanda Mawson, sworn on 26th June 2024, and filed on the 27th June 2024; (ii) the submissions before the High Court (Hyland J.) in the

application made on 25th July 2024 to vacate the hearing dates of 25th and 26th September 2024 (which had been initially set down to deal with the jurisdictional challenge); (iii) the subsequent written request seeking voluntary discovery on behalf of the Plaintiff dated 31st July 2024 from Coleman Legal (which was responded to on behalf of CCC Essen by Arthur Cox on 13th August 2024); (iv) the Affidavit on behalf of the Plaintiff of Ms. Diane Treanor, solicitor with Coleman Legal LLP, sworn on 19th August 2024 grounding the Notice of Motion date stamped 20th August 2024 seeking orders in relation to the two categories of discovery; and (v) the submissions made on behalf of the Plaintiff in the hearing before me.

THE CIRCUMSTANCES OF THE DISCOVERY REQUEST

Letter dated 9th July 2024

27. The immediate context for this application arises in a letter dated 9th July 2024 from Coleman Legal LLP on behalf of the Plaintiff.

28. This letter addressed, *inter alia*, the Affidavits of Amanda Mawson, sworn on 26th June 2024, and filed on 27th June 2024. The letter, under the sub-heading “*The Factual Affidavits*”, stated as follows:

“The Factual Affidavits are, for the most part, sworn in response to those averments in the Affidavits of Diane Treanor in the cases of Ugur Yasar and Kyra Senen, which are in broad terms directed towards the issue of the level of autonomy retained by CCC Essen in or about the performance of its work for and on behalf of Meta.”

By reference to data received from Meta on foot of data subject access requests made on behalf of individuals who conducted content moderation work for Meta, while under the employment of CCC and other similar third party providers, Ms. Treanor observes that such data “provides a useful insight into the nature of the relationship between Meta and the companies which it engages as part of its content moderation activities in Europe.” Having analysed the said data, along with relevant publicly available information including but not limited to reporting on the determination of similar cases in other jurisdictions and the public statements of Facebook/Meta founder, Chairman, CEO and controlling shareholder, Mark Zuckerberg, Ms. Treanor makes a number of important averments including, inter alia:-

i. “While Meta outsources the vast majority of this critical function to third-party vendors – the kind of companies that run customer-service, call centres and back office billing systems, there is no doubt that the policies and systems implemented by such companies are designed, directed and ultimately controlled by Meta. As can be seen from the public statements cited above, and as is evidenced by the data received on foot of the requests made of Meta, the distinction which even Meta itself draws between its employees and its contingent workers/vendors is paper thin.’ (Para 13 Affidavit of Diane Treanor, sworn 15th May 2024, Ugar Yasar).

ii. *“From a practical point of view, without the extensive involvement and oversight exercised by Meta, the third-party companies which it engages would simply not be capable of implementing such a critical and fluid function on behalf of Meta which, at the time of swearing, is the seventh largest company in the world by market cap.*

As is evidenced by the material referred to below, all policies, systems and procedures arising in Meta’s European content moderation activities are dictated by and/or approved from Meta’s European headquarters in Dublin.’ (Paras 14–15, Affidavit of Diane Treanor, sworn 15th May 2024, Ugar Yasar).

iii. *The contention of Mr. Willis and Ms. Mawson that Meta had no role, oversight or input into the execution of content moderation activities by CCC Essen, and the employees engaged by it for Meta, is not sustainable.*

If it were the case that CCC Essen were left by Meta to conduct its content moderation activities with the level of autonomy alleged by Ms. Mawson, that would make CCC an outlier in the entirety of Meta’s global content moderation activities.’ (Paras 28-30, Affidavit of Diane Treanor, sworn 15th May 2024, Ugar Yasar).

Ms. Mawson avers that Ms. Treanor has “offered no evidence to support” her assertions in this regard. Notwithstanding the fact that

this statement is not correct, it is notable that while Ms. Mawson makes extensive factual averments as to the nature and operation of the systems in place at CCC relating to the work carried out by CCC for Meta, there is not a single exhibit to her Affidavit(s) offered in support of CCC's position. This approach is striking in circumstances where CCC is in possession of all relevant contracts, policies, correspondence, etc., which governs its relations with Meta. Importantly, however, Ms. Mawson fleetingly concedes that Meta does in fact have access to certain information in relation to the moderation of its content, although precisely what that information consists of remains unaddressed.

These issues, which have been addressed in significant detail in the Affidavits exchanged thus far, are central not just to the determination of the substantive proceedings, but are essential to the fair disposal of the preliminary issue which falls to be determined on foot of CCC's motion(s) as to jurisdiction. In all the circumstances, it seems to us that the present case might be a rare example of the circumstances in which it would be appropriate for the Court to exercise its jurisdiction to grant discovery in aid of the determination of a preliminary issue.

You might please take instructions and indicate whether your client is at this juncture prepared to furnish the Plaintiff(s) with:

(a) The Contract(s) governing relations between CCC and Meta/Facebook pursuant to which the Plaintiff(s) were engaged

to perform content moderation of the Meta/Facebook platform(s); and,

(b) Any associated policies and procedures governing the provision/performance of content moderation activities by CCC for Meta/Facebook.

It is of course accepted that such documentation may contain confidential and/or commercially sensitive information. For the avoidance of doubt, the Plaintiff(s) accept that it would be necessary and appropriate to permit redaction of such information, subject only to the disclosure of terms that are directly relevant to the issues at hand. Regardless of your response to this request, it is necessary for the Plaintiff(s) to deliver a further Affidavit replying in response to the Factual Affidavit(s). Subject to your response to the provision of documentation, the Plaintiff(s) will make a final decision(s) as to the delivery of a request for voluntary discovery in aid of the preliminary issue.” (Bold emphasis added).

29. The letter then went on to deal with Dr. Brust’s opinions on German Law and observed that the matters raised in the further replying affidavits of Richard Willis appeared largely to be matters for legal submission.

30. The letter stated that as soon as the response was forthcoming to what was described as the “*request for the provision of the narrow categories of documentation set out herein, we will make a final decision as to how best to progress this issue. It might be*

the case that prior to the delivery of a formal Request for Voluntary discovery, it would be appropriate to seek directions from the Court in this regard. As always, no such application will be made without prior engagement with your office". The letter proposed that the hearing dates for 25th and 26th September 2024 be vacated.

31. In response to the letters from Coleman Legal LLP dated 9th (and 16th) July 2024, Arthur Cox responded on behalf of, *inter alia*, CCC Essen and stated that it was opposing any application to vacate the September hearing dates and that it was seeking to retain those dates for the hearing of the jurisdiction challenge.

Judgment & ruling of the High Court on 26th July 2024

32. As canvassed in the correspondence dated 9th July 2024, an application was made before this court (Hyland J.) on Thursday 25th July 2024 (at the call-over) to vacate the September hearing of the "*jurisdiction*" motion in the three test cases.

33. Hyland J. referred to the letter sent on behalf of the Plaintiff dated 9th July 2024 (set out above) where it had been contended (in that correspondence) that the issues in relation to the degree of control of Meta/Facebook over CCC Essen in the context of the Plaintiff's claim that Meta/Facebook was either an employer or had a tortious obligation towards the Plaintiff, was an issue between the parties. The letter contended that the issues in relation to this question of control between the two defendants was central, not just to a determination of the substantive proceedings, but also to the fair disposal of the preliminary issue in relation to jurisdiction.

34. At the call-over before Hyland J., an extended and detailed application was in fact made on behalf of the Plaintiff to vacate the September hearing dates broadly on two grounds: first, it was submitted that the Plaintiff needed to deliver a replying affidavit to one of the supplemental affidavits delivered on behalf of CCC Essen, and second, a motion for discovery would be issued in aid of the determination of the preliminary issue.

35. Hyland J. delivered her ruling the following morning on Friday 26th July 2024. Hyland J. determined that she could not, at that point, conclude that the discovery sought was so manifestly irrelevant and unnecessary to the determination of the issues that it ought to be refused at that juncture. Insofar as the timing of the Plaintiff's application was concerned, Hyland J. observed that the assertion made on behalf of the Plaintiff that he could not have known that he required discovery until Ms. Mawson's Affidavit was received (late in June 2024) was misconceived. Further, Hyland J. observed that once the Plaintiff had received the subject access request material, he was aware that he was going to be making the case that there was a close degree of control by the second named Defendant over the first named Defendant, and therefore the issue of discovery should have been raised at that point. However, in relation to the lateness of the application, Hyland J. held that the Plaintiff's delay was not sufficient to outweigh the balance of justice concerns that would arise if the court prevented the Plaintiff entirely from seeking discovery, at that point in time, and observed that if CCC Essen's jurisdictional motion was successful, the Plaintiff's claim as against CCC Essen would not proceed and that would be an end to the proceedings as against it. The Court then made directions in relation to the discovery

motion making it returnable to 25th September (and the matter was heard before me on 25th and 26th September 2024).

Letter requesting Voluntary Discovery

36. The letter seeking voluntary discovery dated 31st July 2024 sent on the Plaintiff's behalf from Coleman Legal LLP adopts a similar posture and content to the letter dated 9th July 2024 and the submissions which were made before this court (Hyland J.) on 25th July 2024.

37. It is helpful to consider this letter under the following sub-headings.

Overview

38. The letter seeking voluntary discovery (31st July 2024) was issued pursuant to O. 31, r. 12(6)(a) RSC 1986, in relation to both the Yasar proceedings and the Talibov proceedings. It seeks discovery of the contract(s) governing relations between CCC Essen and Meta/Facebook, pursuant to which the Plaintiff was engaged to perform content moderation of the Meta/Facebook platform and, any associated policies and procedures governing the provision/performance of content moderation activities by CCC Essen for Meta/Facebook.

39. Much of the Plaintiff's arguments in the application before me relied on the matters (including extracts of affidavits) which were also summarised in this letter seeking voluntary discovery. For example, the letter places reliance on the statement in the supplemental Affidavit of Amanda Mawson (Vice President of Legal Operations of CCC Essen), sworn on 7th November 2023, that while Meta had access to limited

information in relation to the moderation of its content by virtue of the fact that a review was carried out on the Meta Supernova platform, Meta did not have any role or have any power to take steps on foot of this information in relation to any individual CCC Essen employee, or to request that CCC Essen do so. However, the Plaintiff's position was that the very fact that Meta possessed such data, and the fact that the nature and extent of the data and the type of data which was possessed varied in respect of different workers, demonstrated a level of oversight and/or involvement which was not aligned with the factual position set out in the affidavits of Ms. Mawson and Mr. Willis.

40. In the section of the letter seeking voluntary discovery which addresses the supplemental Factual Affidavit of Ms. Mawson (on behalf of CCC Essen) sworn on 26th June 2024, reference is made to the rationale for the discovery application: first, the letter characterises the matters addressed in Ms. Mawson's Affidavits (particularly her Supplemental Factual Affidavit) as referring to HR and/or IT matters rather than rebutting or contradicting what is described as the core proposition set out in Ms. Treanor's Affidavit; second, – and of direct relevance to this application – the letter seeking voluntary discovery states that in order to properly engage with and fully respond to Ms. Mawson's Supplemental Factual Affidavit, the Plaintiff considered that discovery of the very limited and precise categories of documentation sought should be granted, *i.e.*, the contract(s) governing relations between CCC Essen and Meta/Facebook, pursuant to which the Plaintiff was engaged to perform content moderation of the Meta/Facebook platform and, any associated policies and procedures governing the provision/performance of content moderation activities by CCC Essen for Meta/Facebook. The letter continued that, should a discovery motion

be necessitated, reliance would be placed upon the totality of Ms. Mawson's Supplemental Factual Affidavit (and all other Affidavits delivered in respect of this matter).

41. The letter also addressed the question of delay by stating that the necessity for the documentation sought only crystallised upon the receipt of Ms. Mawson's Supplemental Affidavit and, in particular, her averment rejecting the suggestion that Meta had any role, involvement or oversight of the content moderation activities conducted on its behalf and Ms. Mawson's view that Ms. Treanor had offered no evidence to support her position in that regard.

42. Whilst referable to both the cases of Yasar and Talibov, the letter referred primarily to the exchange of affidavits in the Yasar proceedings. It accepted that some redaction may be required in relation to confidential and/or commercial sensitive information.

43. The letter invoked and referred to Article 8(1) of Brussels I (recast). In relation to the jurisdiction challenge, it stated that the Irish High Court must consider all relevant factors which may support, or indeed contradict, the existence of a connection between the claims as against Meta and CCC Essen which, it submitted, were sufficiently close so as to trigger Article 8(1) of the Brussels I (Recast) and referred to observations made by Hyland J. in the ruling and directions dated 26th July 2024 to the effect that consideration of the jurisdiction challenge would involve a legal and factual analysis by the court.

44. The stated reason for seeking discovery included, *inter alia*, the assertion that the Plaintiffs were working under the ultimate control and direction of Meta and that the question of the level of control, direction and/or supervision exercised by Meta over the activities of CCC Essen was central to the determination of the substantive proceedings herein.

Summary

45. In the discovery request letter (31st July 2024), the following reference was made to the letter dated 9th July 2024 sent by Coleman Legal to Arthur Cox:

“Accordingly, as noted in the letter of 9 July 2024 sent by Coleman Legal to Arthur Cox, the question/issue of the level of autonomy, or the lack thereof, retained by CCC Essen in or about the performance of its work for and on behalf of Meta is central not just to the determination of the substantive proceedings, but is essential to the fair disposal of the preliminary issue which falls to be determined on foot of CCC Essen’s Motion(s) as to jurisdiction.”

46. It stated that the question of relevance must be established having regard to the Affidavits delivered in support of and in response to the jurisdiction motion issued on behalf of CCC Essen.

Affidavit of Richard Willis sworn on 6th November 2023

47. In summary, the letter refers to, *inter alia*, the following matters being asserted by Richard Willis, solicitor in Arthur Cox Solicitors LLP, (on behalf of CCC Essen):

- (i) CCC Essen's jurisdiction challenge was on the basis that there was not a sufficiently close connection between the claims brought by Mr. Yasar against CCC Essen and the claims brought by Mr. Yasar against Meta; CCC Essen did not believe that there was any risk of irreconcilable outcomes as between the claims against CCC Essen, nor was it expedient for the court to hear the claims; the contract of employment confirmed that Mr. Yasar was employed by CCC Essen only and was never a party to a contractual or employment relationship of any kind with Meta. As the Essen Labour Court correctly found, Meta was not the employer of Mr. Yasar at any time. The absence of any employment relationship between Meta and Mr. Yasar was described in the Supplemental Affidavit of Amanda Mawson; Mr. Yasar had no nexus or claim against Meta *qua* employer; in contrast, Mr. Yasar's claim against CCC Essen was manifestly and exclusively a claim based on the (admitted) existence of an express employment relationship between them which should be resolved before the appropriate court in Essen; Mr. Yasar had failed to provide any reason as to why the proceedings should not be determined in Essen; Mr. Willis reiterated his view that there was no risk of irreconcilable judgments resulting from separate proceedings based on different legal and factual relationships and different causes of action as against CCC Essen and Meta; the primary distinction made by Mr. Willis in respect of the *legal bases* for the claims made against Meta and CCC Essen was the possibility that Meta could be found not to be liable to Mr Yasar in Ireland due to the absence of a contractual nexus, relationship or duty of care as a matter of Irish law, but CCC Essen could be found to be liable to Mr. Yasar in Germany under the

German law contract of employment. Mr. Willis stated that the converse was also possible and hence these would not be irreconcilable judgments.

Affidavit of Amanda Mawson sworn on 7th November 2023

48. In summary, the letter referred to *inter alia* the following matters being asserted by Ms. Mawson (on behalf of CCC Essen):

- (i) Ms. Mawson, in broad terms, addressed what was described as the purported autonomy which CCC Essen was alleged to have had in the work conducted on behalf of Meta, including, for example, that the Plaintiff worked as a content moderator between 2018 and 2019 in Essen, Germany under a contract of employment with CCC Essen (to which Meta was not a party), he was not an Irish citizen and at no stage worked or lived in Ireland during his employment with CCC Essen and was providing services in Turkish in respect of content emanating from Turkey.
- (ii) CCC Essen exclusively determined all pay, schedules and working hours of its frontline content moderation employees, administered all payroll and benefits and held all employee records within its own human resources department and the Plaintiff declared Germany as his residence for the entire duration of his employment, CCC Essen remitted from his pay all deductions and benefits payable to the relevant German authorities. CCC Essen provided all training directly to its team members who supported them in the work they were hired to do, with no involvement from Meta. CCC Essen's frontline content moderation employees did not undergo training that was formulated,

coordinated or delivered by Meta. CCC Essen was the body responsible for providing all relevant training and support documents and mechanisms to its employees and for ensuring same were properly applied. CCC Essen exclusively supervised the day-to-day operations of its employees with no involvement from Meta and CCC Essen's frontline content moderation employees had no interaction with Meta. Mr. Yasar never conducted his work for CCC Essen from any of Meta's premises, nor did he ever conduct his work from a location from which Meta operated a content control centre. Further, Mr. Yasar reviewed content for the Turkish market only during the course of his employment.

- (iii) Ms. Mawson asserted that the Plaintiff had no direct involvement whatsoever with Meta during the course of his work as an employee of CCC Essen and was not under the ultimate control and/or direction of Meta at any time during his period of employment. Meta did not exercise control or supervision over the Plaintiff in his daily work, nor did it have any involvement in the hiring/dismissal process and/or interviewing CCC Essen's frontline content moderation employees or the conditions of employment of CCC Essen's frontline content moderation employees, and did not provide any instructions regarding any performance assessment, disciplinary infractions, schedules, vacations, leave or day-to-day supervision of any frontline content moderation employees or of the Plaintiff in particular; these were exclusively within the remit of CCC Essen and there is no direct contact whatsoever between Meta and any frontline content moderation employees of CCC Essen.

49. In response, the letter stated that the fact that influence was not affected by Meta through direct engagement with Mr. Yasar, or any of the other Plaintiffs, did not evidence or support the contention that CCC Essen and/or the systems of work implemented by it operated with autonomy and in isolation from the policies, systems or control of Meta.

Replying Affidavit of Diane Treanor of 15th May 2024

50. The letter then referred to the replying Affidavit on behalf of the Plaintiff from Diane Treanor sworn on 15th May 2024, which *inter alia* referred to the nature of the relationship and systems in operation between Meta, CCC Essen and the other third party service providers who Meta contracted and engaged with in order to conduct content moderation activities and the following matters:

- (i) From the information received in Subject Access Requests to Meta and the relevant third-party employers, Ms. Treanor's Affidavit *inter alia* addressed "*the scale of content moderation globally*", "*the data in the Ireland-only cases*" and "*the data in the Ireland-Essen cases*" in arguing that Meta had access and control of the process of content moderation and "*the contention of Mr Willis and Ms Mawson that Meta had no role, oversight or input into the execution of content moderation activities by CCC Essen and the employees engaged by it for Meta, is not sustainable*" and the level of autonomy suggested by Ms. Mawson would make CCC Essen "*an outlier in the entirety of Meta's global content moderation activities.*"

51. The letter observed that the issues in relation to Article 8 of Brussels I (recast) were primarily a matter for legal submissions and added that, in both Ireland and Germany, Meta (not being the direct employer) could nevertheless have a potential tortious liability (rather than contractual) to a party such as the Plaintiff in respect of injuries suffered in the course of their work. The Plaintiff's claim as against Meta stemmed from the unique and comprehensive degree of control which Meta exercised over the system of work implemented by CCC Essen, and its other third party providers.
52. The letter seeking voluntary discovery then states that if the Plaintiff's claims against Meta and CCC Essen were to proceed separately, there was a real and fundamental risk that conflicting and irreconcilable judgments would be delivered in circumstances where the court hearing each action or aspect of the Plaintiff's claim will be required to establish *inter alia* what, as a matter of fact, the systems of work, policies/procedures/training in place and known/foreseeable risks were, and potentially, the extent to which the Plaintiff adhered to those structures which were in place. It was argued that such issues arose in the context of both a contractual/employment claim and/or a claim of tortious liability.
53. The discovery letter also referred to an Affidavit (including a translated version) as to German law sworn on behalf of CCC Essen by Dr. Dirk Brust on 27th June 2024 (and filed on 5th July 2024). It was stated that as a matter of German law, Meta had a potential tortious liability in respect of any injuries suffered by the Plaintiff in the course of content moderation work carried out under the direct employment of CCC Essen.

54. It was contended that the claims as against Meta and CCC Essen arose from the same work, performed at the same time and place, and under the same systems, policies and procedures, and the Plaintiff's view was that those claims were so closely connected that it was expedient for them to be heard and determined together.

Supplemental Affidavit of Amanda Mawson sworn on 26th June 2024

55. In summary, the letter seeking voluntary discovery referred *inter alia* to the following matters being asserted by Ms. Mawson (on behalf of CCC Essen) in her supplemental Affidavit sworn on 26th June 2024: Ms. Mawson's Affidavit was a response to Ms. Treanor's Affidavit and she *inter alia* stated that Ms. Treanor had offered no evidence that the level of autonomy retained by CCC Essen would make it an outlier in the entirety of Meta's global content moderation activities.

56. The letter asserted that questions raised (by Mr. Willis and referred to by Ms. Mawson) in relation to the status and admissibility of documents which had been exhibited in Ms. Treanor's Affidavit, while a matter for legal submission, arguably rendered the discovery sought in this application more relevant and necessary in determining the jurisdictional challenge brought by CCC Essen.

57. As mentioned earlier, the letter disagreed with Ms. Mawson's reference to the fact of the review being carried out on the Meta Supernova platform as a basis for stating that Meta did not have a role in relation to any individual CCC Essen employee. It contended, rather, that this supported Ms. Treanor's assertion that the data received from Meta clearly demonstrated that Meta controlled and/or processed and analysed

data summarising and rating the work quality of its CCC Essen contingent workers. The letter added that Ms. Mawson had not exhibited any documentation.

Other matters

58. The letter seeking voluntary discovery also referred to a reference made, at the hearing before Hyland J. on 25th July 2024, to the judgment in *Patricia McCabe v Ireland & Ors* [1999] 4 I.R. 151, and referred to the following extract of the judgment where the Supreme Court determined that “*a preliminary issue of law could not be tried in vacuo, but must be tried in the context of established or agreed facts*” and that “*the facts relevant to the trial of a preliminary issue must be agreed or the moving party was required to accept, for the purpose of the trial of the preliminary issue, the facts as alleged by the opposing party*”.
59. The letter stated, *inter alia*, that the Data Subject Access Requests were made in the relevant cases upon receipt of initial instructions from the Plaintiff(s) in the content moderation cases, and pre-dated the issuing of the proceedings or any Appearance on behalf of the Defendants, stating that the date of the Data Subject Access Request(s) had no relevance to the question of any alleged delay.
60. It stated that the absolute earliest point at which it could have even been procedurally possible for the Plaintiff to consider the issue of discovery was upon receipt of the Affidavits grounding the motion brought on behalf of CCC Essen in relation to the jurisdictional challenge. It maintained that the interests of justice required that the Plaintiff be granted discovery of what it described as the limited and focused categories of the documents sought subject to such redaction as may be appropriate.

61. The letter seeking voluntary discovery was responded to on behalf of CCC Essen by Arthur Cox Solicitors on 13th August 2024.

Discovery Motion

62. The Plaintiff's application for discovery set out in its Notice of Motion filed in the High Court Central Office on 20th August 2024 sought an Order directing and requiring CCC Essen to make discovery on oath of the following categories of documentation (to include reproductions of all records held in electronic, photographic, computerised or any other form) within its power, possession or procurement: (i) the Contract(s) governing relations between CCC Essen and Meta/Facebook, pursuant to which the Plaintiff was engaged to perform content moderation of the Meta/Facebook platform(s); and (ii) any associated policies and procedures governing the provision/performance of content moderation activities by CCC Essen for Meta/Facebook.

PRINCIPLES

Seeking discovery during the course of a jurisdiction challenge

63. In general, O. 31, r. 12 RSC 1986 allows for discovery to be ordered any stage, including in a preliminary application.

64. Whilst the curial approach to a request for discovery in aid of a jurisdiction challenge under Article 8(1) of Brussels I (recast), (and both comprising interlocutory

applications) has not been explored by the Superior Courts in this jurisdiction, the following principles can be gleaned from decisions in other jurisdictions.

65. First, as with applications to set aside for an irregularity in service, the following restrictive approach also applies to a “*jurisdiction challenge*” which seeks to set aside a Plaintiff’s notice of proceedings: in *Rome v Punjab National Bank* [1989] 2 All ER 136 at pages 141 and 143, Hirst J. observed that while, as a matter of principle, the court had jurisdiction to make a discovery order, it would “*only exercise its powers under this heading very rarely², and will require the clearest possible demonstration from the parties seeking discovery that it is necessary for the fair disposal of the application.*”³ Hirst J. offered two reasons for this restrictive approach, first, the actual reluctance by a court to place such a burden on a defendant who disputes the basic jurisdiction of the court; second, such applications to set aside for an irregularity in service were common features of the court business (in that case the commercial division of the court).

66. Whilst the reference to the “*fair disposal of the application*” echoes the observations of Fennelly J. in *Ryanair plc v Aer Rianta cpt* [2003] 4 I.R. 264 as to whether discovery was necessary for “*disposing fairly of the cause or matter*”, there is an important qualification to the oft-quoted statement of Brett L.J. in *Compagnie Financière du Pacifique v. Peruvian Guano Company* (1882) 11 Q.B.D. 55, in that the emphasis by Hirst J. in *Rome v Punjab National Bank* to the court exercising its powers *very rarely* and requiring *the clearest possible demonstration* from the parties seeking discovery that it was *necessary for the fair disposal of the application*, is a

² Emphasis added.

³ Emphasis added.

higher standard than the *Peruvian Guano* standard. While necessity and relevance are essentially coterminous in the *Peruvian Guano* standard, the reference to ‘necessary’ in this instance imposes a higher standard on the party seeking discovery. It remains the case that these matters are viewed through the prism of ‘the pleadings’ which in this application is the interlocutory ‘jurisdiction’ application or challenge.

67. Second, jurisdiction challenges pursuant to Article 8(1) of Brussels I (recast) raise similar issues to the test in the UK which applies to summary judgments: for example, the proceedings in *Vedanta Resources Plc & Anor. v Lungowe & Ors* [2019] UK SC 20 arose from alleged toxic emissions from the Nchanga copper mine in the Chingola district of Zambia. The appeal related to the jurisdiction of the courts of England and Wales to determine claims in common law in negligence and breach of statutory duty against both defendants and, for example, as against Vedanta, the claimants relied on Article 4 of Brussels I (recast) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Lord Briggs, citing the decisions of *Spiliada Maritime Corporation v Cansulex Limited* [1987] AC 460 at 465 (Lord Templeman), *VTB Capital Plc v Nutrietek International Corp* [2013] 2 AC 337 (Lord Neuberger), *Cherney v Deripaska* (No. 2) [2010] 2 All ER (Comm) 456 at paragraph 7 (Waller LJ); *Three Rivers District Council v Governor and Company of the Bank of England* (No 3) [2003] 2 AC 1 at paragraphs 94 to 96 (per Lord Hope), observed at paragraph 9 of his judgment, that:

“Issues of this kind are, regardless whether contained within jurisdiction disputes, subject to a similar requirement for proportionality, the avoidance of mini-trials and the exercise of juridical restraint, in particular in complex cases.”

68. Third, in terms of the underlying interlocutory application, these authorities suggest that such matters should be addressed easily, promptly and without being transformed into mini-trials with exchanges of affidavits and a detailed investigation of the facts. In this regard in *Vedanta Resources Plc v Lungowe* [2019] UKSC 20, Lord Briggs observed as follows at paragraph 43 of his judgment:

“Summary judgment disputes arise typically, and real triable issue jurisdiction disputes arise invariably, at a very early stage in the proceedings. In the context of a jurisdiction challenge the court will, typically, have only the claimant’s pleadings. Proportionality effectively prohibits cross-examination and neither party will have had the benefit of disclosure of the opposing party’s documents, albeit that in exceptional circumstances a direction for limited specific disclosure may be given: see Rome v Punjab National Bank (No 1) [1989] 2 All ER 136, per Hirst J, at paragraph 141 and Flatela Vava v Anglo American South Africa Ltd [2012] EWHC 1969 (QB).”

69. Fourth, the exceptional nature of directing discovery in such an application was emphasised in the judgment of the High Court (Mr. Stephen Houseman KC sitting as a deputy judge of the High Court) in *Merrill Lynch International v Citta Metropolitana Di Milano* [2023] EWHC 1015 (Comm) where at paragraph 40, the court observed:

“I take as the litmus test the need for an applicant to demonstrate “exceptional circumstances” to justify even “limited specific disclosure” within a pending jurisdiction challenge. This reflects the

position summarised in Lungowe v Vedanta Resources Plc [2020] AC 1045; [2019] UKSC 20 at [43] by reference Rome v Punjab National Bank [1989] 2 All ER 136 and Vava v Anglo American South Africa Limited [2012] 2 CLC 684; [2012] EWHC 969 (QB). This is not, however, confined to specific disclosure of a ‘killer document’ or ‘smoking gun’ as was suggested on behalf of MLI. It requires exceptional circumstances”.

70. On behalf of the Plaintiff, it is submitted that the question of necessity must be viewed in the context of the court’s evaluation of the factual matrix, as then available to it, and that this can be improved by requiring a party to disclose the documents which the Plaintiffs submit are relevant in the overall context of the litigation. The Plaintiff suggests that it is surprising, if CCC Essen was so confident as to its arguments in relation to autonomy, that it has not exhibited the contracts and documents in question.

71. The Plaintiff points out that in *Merrill Lynch International*, the court directed disclosure. In the “*exceptional circumstances*” of that case, however, the court exercised its powers under CPR 3.1(2)(m) to order disclosure of an unexecuted contract which constituted the “*best available evidence*” regarding matters going back to 2001-2002 where there was a lack of direct witness or contemporary documentary evidence. This does not detract from the underlying principle that a jurisdiction challenge was “*not an opportunity for a detailed or exhaustive factual investigation.*”

72. Fifth, it follows, as a matter of general principle, the less need there is to resolve disputed facts (as in an interlocutory application), the less necessary it is to have documents to clarify those facts, *ergo* the less requirement there is for discovery.

73. In *P. Elliot and Company Ltd v Building and Allied Trades Union* [2006] IEHC 320, the High Court (Clarke J.) addressed an application for an injunction to restrain industrial action in the context of section 19 of the Industrial Relations Act 1990. In summary, this provided that *had* secret ballots had been held in accordance with the rules of a trade union, a court was required not to grant an injunction where the respondent established a fair case by his acting in contemplation of furtherance of a trade dispute. The first question was whether a secret ballot had been held in accordance with the rules of a trade union. The second question for the court was whether a union had established a fair case that it was acting in contemplation of furtherance of a trade dispute. Clarke J. emphasised that a court would have to reach a conclusion and *take a view* on factual matters at the interlocutory stage “*as best it can*” and, in many cases, the issue would not arise again at full trial (whilst, in some cases, not being in a position to reach *a definitive conclusion* as it would at the trial of the action).

74. Similarly, in Case C-375/13, *Kolassa v Barclays Bank Plc* (28th January 2015) ECLI:EU:C:2015:3, one of the questions the referring court made to the CJEU was whether it was necessary, in the context of the determination of international jurisdiction under Regulation No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, to conduct a comprehensive taking of evidence in relation to disputed facts which were of

relevance both for the question of jurisdiction and for the existence of the claim or whether it was, instead, to be considered that the allegations of the applicant in the main proceedings alone were correct for the purposes of the decision on jurisdiction.

75. It was common case that Regulation No. 44/2001 did not explicitly define the extent of the verification of obligations to which national courts were subject in the course of determining their international jurisdiction.

76. The CJEU held that it was *not necessary* for the national court to conduct a comprehensive taking of evidence in relation to disputed facts that were relevant both to the question of jurisdiction and to the existence of the claim but that it could examine its international jurisdiction in the light of all the information available to it (including the Defendant's allegations), observing as follows at paragraphs 64 and 65:

“(64) Although the national court seised is not, therefore, obliged, if the defendant contests the applicant's allegations, to conduct a comprehensive taking of evidence at the stage of determining jurisdiction, it must be pointed out that both the objective of the sound administration of justice, which underlies Regulation No 44/2001, and respect for the independence of the national court in the exercise of its functions require the national court seised to be able to examine its international jurisdiction in the light of all the information available to it, including, where appropriate, the defendant's allegations.

(65) Having regard to the foregoing, the answer to Question 4 is that, in the context of the determination of international jurisdiction under

Regulation No 44/2001, it is not necessary to conduct a comprehensive taking of evidence in relation to disputed facts that are relevant both to the question of jurisdiction and to the existence of the claim. It is, however, permissible for the court seised to examine its international jurisdiction in the light of all the information available to it, including, where appropriate, the allegations made by the defendant.”

77. In *Trafalgar Developments Ltd v Mazepin* [2022] IEHC 167 at paragraph 373, Barniville J. (as he then was) endorsed the approach taken in *Kolassa* in emphasising the importance of ensuring that the determination of a challenge in respect of jurisdiction “*should not be turned into a mini-trial and that the appropriate place to decide the facts is generally at the trial*”.

DISCUSSION & DECISION

78. To recap, the Notice of Motion filed on 20th August 2024 sought discovery of: (i) the contract(s) governing relations between CCC Essen and Meta/Facebook, pursuant to which the Plaintiff was engaged to perform content moderation of the Meta/Facebook platform(s); and (ii) any associated policies and procedures governing the provision/performance of content moderation activities by CCC Essen for Meta/Facebook.

79. For the following reasons (which are inter-related) and, having regard to the applicable legal principles outlined above which mandate a restrictive and careful

approach in the exercise of what the authorities suggest is an exceptional jurisdiction, I consider that the discovery sought by the Plaintiff in this application, at this juncture, is not necessary for the fair disposal of the jurisdictional issue.

80. In Ms. Treanor's Affidavit sworn on 19th August 2024 she sets out the nature of the claim of the Plaintiff against Meta/Facebook as follows:

“However, for the avoidance of any doubt, the Plaintiff does not claim on foot of a duty or obligation which is alleged to be owed automatically by a party such as Meta to a contracted company such as CCC Essen, and/or its employees. Rather the Plaintiff's claim as against Meta stems from the unique and comprehensive degree of control which Meta exercised over the system of work implemented by CCC Essen and its other third-party providers.”

81. It is common case that the Plaintiff's contract of employment was with CCC Essen and that there was no contractual nexus between the Plaintiff and Meta/Facebook. The Plaintiff's claim against Meta/Facebook is based on what it asserts is a unique and comprehensive degree of control which Meta/Facebook allegedly exercises over CCC Essen including, for example, the work of content moderators, the standards that are adhered to, the productivity thresholds of content moderators, *etc.* It is contended that by reason of this alleged unique and comprehensive degree of control which Meta/Facebook exercises over the system of work implemented by CCC Essen, that Meta/Facebook has a tortious liability to the Plaintiff where there is alleged negligence in respect of injuries suffered in the course of his work.

82. In the Yasar proceedings (as with the other test cases) whereas a “*conditional*” Appearance was initially entered on 6th September 2022, an “*unconditional*” Appearance was entered by Facebook Ireland Limited on 16th October 2023.

83. Further, during the hearing before me, much reliance was placed on behalf of the Plaintiff on the Notice of Indemnity and/or Contribution served by Facebook Ireland Limited (the Second Named Defendant) on CCC Essen (the First Named Defendant) dated 24th September 2024, which *inter alia* stated that “[p]ursuant [to] the contract, the Second Named Defendant engaged the First Named Defendant, as reputable independent contractor, to provide content moderation services for it and pursuant to the contract, it was an express and/or implied term thereof, that the First Named Defendant agreed to indemnify the Second Named Defendant in respect of certain claims”.

84. Further on this issue, reliance is placed by both parties on the decision in *Crotty v SAS AB and Swedavia AB* [2021] IEHC 394. In that case, Swedavia AB (the Second Named Defendant) was successful in setting aside the service of the Personal Injury Summons and the proceedings against it were struck out. A question arose as to whether the Plaintiff should be ordered to pay the costs of an application made by Swedavia AB to set aside the service upon it of a personal injury summons, and of the proceedings which had been struck out for want of jurisdiction, even though SAS AB (the First Named Defendant) remained liable to the Plaintiff. The High Court (Butler J.) granted Swedavia AB its application for costs and the issue of recoupment of those costs from SAS AB was reserved to the trial of the action. Butler J. found that nothing

which SAS AB did had any bearing on the Plaintiff improperly suing Swedavia AB in this jurisdiction.

85. I agree with the submission made on behalf of CCC Essen on the limited application of Crotty to the issues raised in this application. The service of the Notice of Indemnity and/or Contribution by Facebook Ireland Limited (the Second Named Defendant) on CCC Essen (the First Named Defendant) means that Facebook Ireland Limited takes the view that it is entitled to an indemnity from CCC Essen but it is not dispositive of any other issue in terms of the application before me. The decision in *Crotty v SAS AB and Swedavia AB* [2021] IEHC 394 confirms that the issue of assessing jurisdiction is addressed in the ordinary way pursuant to Article 8 of Brussels I (recast).

86. If an anchor defendant serves a Notice of Indemnity and/or Contribution on the person disputing jurisdiction – in this case CCC Essen – it does not advance the Plaintiff’s case to be entitled to sue the person disputing jurisdiction. In the event that a court accedes to the jurisdiction challenge, a defendant in the position of CCC Essen is no longer before the court and any Notice of Indemnity and/or Contribution served on that person simply falls. In those circumstances, the anchor defendant – in this case Meta/Facebook – is the sole remaining defendant and if it wishes to join the person who has successfully disputed jurisdiction – in this case CCC Essen – it can seek to do so by the ordinary third party procedure (if it satisfies the applicable legislative requirements and Rules of Court). This, in fact, is the scenario contemplated in the correspondence (referred to by the Plaintiff) from Mason Hayes & Curran dated 24th September 2024, the solicitors for Facebook Ireland Limited (the Second Named

Defendant) referring to the Notice of Indemnity and/or Contribution served on CCC Essen (the First Named Defendant) dated 24th September 2024, where it is *inter alia* stated “[i]f the first Defendant is successful in their application, and your clients decide to maintain the above proceedings against our client, we will issue an application to join the first Defendant as Third Party in each of those proceedings to maintain our clients claim for an indemnity/contribution”.

87. Next, a central feature in this discovery application relates to each of the parties’ understanding of the *nature and type* of the underlying jurisdiction challenge which has been brought by CCC Essen as against the Plaintiff.

The Plaintiff’s interpretation of the nature & type of the jurisdictional challenge

88. The Plaintiff has centred his application for discovery for the purposes of formulating a response to an argument by CCC Essen, in the course of the exchange of affidavits, in that jurisdiction challenge. At the heart of this argument is the Plaintiff’s contention that these documents – a contract and associated protocol type documentation – are required because of the alleged “*unique and comprehensive degree of control*” which Meta/Facebook exercises over the system of work implemented by CCC Essen and its other third-party providers and to that end, it is stated on his behalf that he has established a *prima facie* case in tort against Meta/Facebook as the anchor defendant.

89. This characterisation or understanding of the *nature and type* of CCC Essen’s jurisdiction challenge underlies the Plaintiff’s entire approach to this discovery application, including, the letter dated 9th July 2024 from Coleman Legal LLP (on behalf of the Plaintiff), which referred to the ‘factual Affidavit’ of Amanda Mawson,

sworn on 26th June 2024, the submissions made to this court (Hyland J.) on 25th July 2024, the subsequent seeking of voluntary discovery on behalf of the Plaintiff in the letter dated 31st July 2024 from Coleman Legal and the submissions on behalf of the Plaintiff when this matter was heard before me.

CCC Essen's interpretation of the nature & type of the jurisdictional challenge

90. In contrast to this characterisation submitted on behalf of the Plaintiff, the central point made by CCC Essen is that the question of whether or not a *prima facie* case arises against Meta/Facebook is irrelevant to *this* discovery application when the *nature and type* of the jurisdiction challenge *in this case* relates to whether or not there is a close connection as between the Plaintiff's claims against it (*i.e.*, CCC Essen as the First Named Defendant) and as against Meta/Facebook (as the Second Named Defendant) with a risk of irreconcilable judgments arising, *i.e.*, the discovery application made by the Plaintiff as this juncture relates to an Article 8/jurisdiction argument made by CCC Essen *in this case* which maintains that the Plaintiff's claims against it and against Meta/Facebook are not so closely connected that there is a risk of irreconcilable judgments arising if they are not heard together.

91. The gravamen of the Plaintiff's application for discovery is to require CCC Essen to essentially disclose a contract and protocols for the purpose of confirming whether or not CCC Essen enjoy *absolute autonomy* in their engagement of the Plaintiff. The Plaintiff's case as against Meta/Facebook is one made in tort; its case as against CCC Essen is one made in tort and contract.

92. It is accepted on behalf of the Plaintiff that the issue of discovery of the contractual and associated documentation in this application may ultimately be a ‘red herring’, but it maintains that it cannot take this risk, which is why it is pursuing, as an abundance of caution, an application to discover any contract(s) governing relations between CCC Essen and Meta/Facebook, pursuant to which the Plaintiff was engaged to perform content moderation of the Meta/Facebook platform(s) and any associated policies and procedures governing the provision/performance of content moderation activities by CCC Essen for Meta/Facebook.

93. However, the *nature & type* of the jurisdiction challenge (which underpins this discovery application) brought by CCC Essen is not whether that issue, *i.e.*, the question of autonomy, is supportive or not of the Plaintiff’s *ultimate substantive claim* as against Meta/Facebook, but rather whether it is necessary in order to deal fairly with the preliminary issue raised by it in this case in relation to “*jurisdiction*”, *i.e.*, whether the Article 8/jurisdiction argument made by CCC Essen in this case is that the Plaintiff’s claims against it and Meta/Facebook are, or are not, so closely connected that there is a risk of irreconcilable judgments arising if they are not heard together. The question of establishing a *prima facie* case does not contextualise this discovery application at this point in time in circumstances where the nature and type of the underlying interlocutory application brought by CCC Essen is its contention that the Plaintiff’s claims against it and Meta/Facebook are not so closely connected that there is a risk of irreconcilable judgments arising if they are not heard together.

94. In the ordinary course, discovery is defined by the issues identified by the pleadings. When applied to this application, the ‘pleaded context’ is the interlocutory “*Article 8*

jurisdiction challenge” and the immediate reason for requesting discovery has arisen from responses furnished during the course of the exchange of affidavits and the view taken by the Plaintiff that the documents sought are required to enable a response to be given. Whilst my determination of this discovery application is not a determination of the jurisdiction application, it is important, from a contextual perspective, to understand the nature and type of the jurisdiction challenge at this juncture for the purpose of deciding the discovery application. From the perspective of CCC Essen, the nature and type of the jurisdiction challenge *to be* determined at a later stage is solely whether the Plaintiff’s claim against it and Meta/Facebook are so closely connected that it is expedient to hear and determine them together in order to avoid the risk of irreconcilable judgments arising from separate proceedings, and its position is that the Plaintiff’s claims against it and Meta/Facebook are *not* so closely connected that there is a risk of irreconcilable judgments arising if they are not heard together.

95. Further, having regard to the Affidavits of Ms. Mawson, Ms. Treanor and Mr. Richards, and the evidence which has been put before me in this application, an argument arises as to the maintenance by Meta/Facebook of records relating to the use of the Supernova system, and the dispute between the parties is whether or not these details are, in fact, work details of CCC Essen employees at all.

96. A key difference between the parties is the assertion on behalf of the Plaintiff that CCC Essen is relying on the contract between it and Meta/Facebook in the jurisdiction application. CCC Essen make the point that it is not relying on that contract at all in its jurisdiction challenge. It argues that the material given in the Subject Access Request relates to the access that Essen employees have to the

Supernova system and it relates to their contracts of employment with the CCC Essen entities. That is not a matter which I have to decide on this discovery application, but it is a matter which will require to be addressed in further detail when the jurisdiction application is heard. At this juncture, and for the purpose of deciding this discovery application, it is sufficient for me to have regard to the nature and type of the jurisdiction issue put forward on behalf of CCC Essen which relates to whether the claims as against it and Meta/Facebook are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings and I consider that the discovery sought by the Plaintiff in this application, at this juncture, is not necessary for the fair disposal of the jurisdictional issue as so described.

CONCLUSION

97. The legal principles which inform my assessment of this discovery application in the context of an interlocutory challenge to jurisdiction under Article 8 of Brussels I (recast) at this juncture eschew a detailed or exhaustive factual investigation and suggest, rather, that it is an exceptional jurisdiction which requires me to exercise a restrictive and careful approach.
98. I have determined that the discovery sought by the Plaintiff in this application, at this point in time, is not necessary for the fair disposal of the jurisdiction issue.
99. The contextual parameters and nature and type of the underlying jurisdiction question raised by CCC Essen is one based on Article 8 of Brussels I (recast), *i.e.*, are the

claims against CCC Essen and Meta/Facebook so closely connected that there is a risk of irreconcilable judgments and this description of the context does not involve the resolution of factual issues or of primary facts. I do not, for example, face the challenges outlined by the High Court (Clarke J.) in *P. Elliott & Company Limited v Building & Allied Trades Union*, where the Court was required to “do its best” because in that case it did involve disputed primary facts. That does not arise in this case.

100. Further, the decision of the Supreme Court in *McCabe v Ireland* [1999] IESC 52; [1999] 4 I.R. 151, which upheld the decision of the High Court directing the trial of a preliminary issue of law pursuant to O. 25, r. 1 RSC 1986 (in the context of personal injury proceedings which asked whether the State defendants owed a duty of care at common law to a person who was injured by a person on temporary release from prison) and postponing the making of an order of discovery is not, I believe, of relevance to the matters which I have to address having regard to the applicable legal principles which inform this discovery application. In *McCabe v Ireland*, the Supreme Court determined that a preliminary issue of law within the meaning of O. 25, r. 1 RSC 1986 was required to be addressed in the context of established or agreed (and not disputed) facts (without prejudice to the right to contest the facts if the preliminary issue was not dispositive of the issue) and not *in vacuo*. It is not the case in this discovery application before me (as it was held in *McCabe v Ireland*) that the facts must be agreed or that the moving party (if applied here, CCC Essen) must accept, for the purposes of the trial of the preliminary issue which is raised, the facts as alleged by the opposing party (*i.e.*, the Plaintiff). Further, I am not required to resolve disputed matters of fact.

101. Generally, discovery is sought to assist, advance and demonstrate the nature of a Plaintiff's claim. In his Personal Injuries Summons, the Plaintiff alleges that by reason of the unique and comprehensive degree of control which Meta/Facebook exercised over the system of work implemented by CCC Essen, it has a tortious liability to the Plaintiff where there is alleged negligence in respect of the injuries suffered by him during the course of his work as a content moderator in reviewing and being exposed to extremely disturbing graphic and violent content on its platform. In this regard, and whilst material sought on discovery may inform the disposition and the strength (or weakness) of the Plaintiff's ultimate (substantive) claim as against Meta/Facebook Ireland, and accepting that *in principle* (but not in the context of this particular application) it would be open to a court in exceptional circumstances to order discovery in a preliminary application seeking to raise a jurisdiction point, the discovery application here, in contrast, is in relation to a "*jurisdiction*" challenge whose nature and type is predicated on the question of whether or not the claims against CCC Essen and Meta/Facebook are so closely connected that there is a risk of conflicting or irreconcilable judgments arising. Documentation which may or may not show Meta or Facebook's level of control and which may be relevant to the substantive claim and its ultimate disposal does not assist or progress the argument in relation to the potential irreconcilability of judgments in separate proceedings.

102. Therefore, whilst the question of whether there is a *prima facie* case to be made against Meta/Facebook as an anchor Defendant and its alleged degree of control may or may not engage a discovery process in relation to the Plaintiff's ultimate substantive claim of alleged tort as against Meta/Facebook (and notwithstanding *ex*

hypothesi the acceptance, as a matter of general principle, of discovery in an exceptional jurisdiction challenge), *in this case* the Plaintiff has not demonstrated how the documents sought in the Notice of Motion, *i.e.*, the Meta Contract and additional protocol type documentation, will advance the argument under Article 8 of Brussels I (recast) in relation to whether the claims are so closely connected that it is expedient to hear and determine them together in order to avoid irreconcilable judgments.

103. Accordingly, I consider that the discovery sought by the Plaintiff in this application at this point in time is not necessary for the fair disposal of the jurisdiction issue and I, therefore, refuse the discovery sought.

PROPOSED ORDER

104. I shall therefore refuse the discovery order sought and put the matter in for mention on Wednesday 23rd October 2024 at 10:00 to discuss any ancillary and consequential matters which arise.

CONLETH BRADLEY

15th October 2024