COMMERCIAL COURT

[2026] IEHC 463

RECORD NUMBER 2024/1209 P

THE HIGH COURT

BETWEEN

QPQ LIMITED

PLAINTIFF

AND

GERARDUS HENRICUS MICHEL MARIA SCHUTE (OTHERWISE KNOWN AS GEERT SCHUTE)

DEFENDANT

<u>JUDGMENT of Mr. Justice Twomey delivered on the 14th day of July, 2026</u>

INTRODUCTION

1. In Ireland, we have approximately five times more High Court judges *per capita,* than in England and Wales.[1] We also have more lawyers, relative to our population, than most

[1] *Shannon v Shannon* [2024] IEHC 291, at paras. 3, 15, 16 and 24.

European countries.[2] This would tend to suggest that there is no shortage of lawyers or litigation in Ireland (some of it, very minor in nature[3]). Indeed, the volume of litigation in Ireland is such that the delays, in cases being processed in Ireland, are above the European average.[4]

2. For this reason, there would not seem to be a pressing need for the removal of the current prohibition on third-party funding of litigation in Ireland. Indeed, it seems likely that *if* third-party funding of litigation (known as maintenance and champerty) were to be permitted here, then this *'unjustifiable stirring up of litigation'*[5] will only exacerbate delays for other litigants.

3. This is clear from the Supreme Court decision in *Persona Digital Telephony Ltd and another v The Minister for Public Enterprise Ireland and others* [2022] 2 I.R. 417, [2017] IESC 27. There, the Supreme Court noted that maintenance and champerty were contrary to criminal law as '*offences which evidence a public policy,'*[6] and that one of those public policy reasons was the negative effect that third-party litigation funding would have on other litigants (who did not have third party litigation funding). In the words of

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[2] A 2026 Report by the European Commission for the Efficiency of Justice shows that Ireland ranks 7 out of 27 EU member states in terms of the proportion of lawyers *per capita*: European Commission for the Efficiency of Justice, '*Study on the functioning of judicial systems in the EU Member States – Part 1'* (2026) pg. 1130.

[3] This was most recently illustrated in *Joyce v National Transport Authority* [2025] IECA 290 at para. 9 where Meenan J. in his dissenting judgment noted that a *'challenge to a clamping fee of €125 has no place [in the Judicial Review List of the High Court]*', yet it ended up being heard in the High Court and the Court of Appeal.

[4] The *Justice Indicator's Report 2026* of the Law Society of Ireland Centre for Justice and Law Reform shows Ireland's case clearance rate in civil matters was 71% in 2022, below the Council of Europe average of 101%; Law Society of Ireland Centre for Justice and Law Reform, '*Justice Indicator's Report'* (2026) pg. 78. It should be noted that this applies to all courts and not just the High Court.

[5] As maintenance and champerty have been described, it seems, by the Supreme Court in *Persona*. This is because at pg. 439 Denham C.J. refers to the offence '*common barratry'* which is similar to maintenance and champerty, and which she notes is described as '*the unjustifiable stirring-up of litigation'*, while she also notes that *Persona* claimed that the funding *'did not stir up litigation'*. At pg 454, McKechnie J. (dissenting) states that '*Several factors have been spoken of as constituting the perceived risks of maintenance and champerty, including the stirring up of litigation [..]'*

[6] *Persona Digital Telephony Ltd and another v The Minister for Public Enterprise Ireland and others* [2022] 2 I.R. 417 at pg. 438 per Denham C.J.. In the High Court hearing in *Persona*, a third-party litigation funding agreement was described as being *'diametrically opposed'* to '*public policy'*, see *Persona Digital Telephony Limited v Minister for Public Enterprise* [2015] 1 I.R. 124, [2015] IEHC 457, at pg. 131.

MacMenamin J., an *'unforeseen consequence'* of third-party litigation funding was *'the effect of creating difficulties in already busy court lists'*.[7]

4. This public policy reason for the prohibition of third-party funding of litigation arose in this case, because it is alleged that the plaintiff ("**QPQ**") has engaged in illegal third-party litigation funding (or so-called '*trafficking in litigation*'[8]) to fund its proceedings against the defendant ("**Mr Schute**"). For this reason, Mr. Schute wants this Court to order QPQ to disclose its litigation funding arrangements. In reply, QPQ claims that the High Court does not have a *general* power to order QPQ to disclose its litigation funding arrangements (despite the fact that such an order was made in the *Persona* case).

5. However, this Court concludes that a court does in fact have a general power to order a plaintiff to disclose its litigation funding arrangements. This conclusion is based on the fact that *Kirwan v Connors* [2025] IESC 21 establishes that a court has an inherent jurisdiction to make *any* order which is designed to ensure that the administration of justice operates in an *efficient and effective manner*. Since third party litigation funding is likely to have a negative effect on court lists and so is likely to make them *less efficient and less effective* for litigants, it must follow, in this Court's view, that a court has the power to require a plaintiff to disclose alleged unlawful third-party funding.

6. Having determined that the High Court *has* the inherent jurisdiction to require the disclosure of litigation funding arrangements, the key question is whether there is sufficient evidence to justify the making of an order against QPQ, obliging it to disclose its litigation funding arrangements in this case.

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[7] *Persona Digital Telephony Ltd and another v The Minister for Public Enterprise Ireland and others* [2022] 2 I.R. 417, [2017] IESC 27, MacMenamin J., para. 5.

[8] *Greenclean Waste Management v Leahy* [2014] IEHC 314, para. 20.

BACKGROUND

7. Certain forms of third-party funding of litigation (known as maintenance and champerty) are torts and crimes in Ireland.[9] In this regard, maintenance has been described as the *'giving of assistance, by a third-party, who has no interest in the litigation'*, while in champerty, the third party who is funding the litigation also receives a share of the profits. Ryan P. stated that, '*champerty is a variety of maintenance, in fact a more severe or heinous version'*.[10]
8. In this case, Mr. Schute is claiming that QPQ, an Irish incorporated company, is guilty of the more '*heinous version'* of obtaining third-party funding of its litigation, since he is alleging that QPQ is guilty of champerty, as he claims it has obtained funding from a third-party, in return for a share in the proceeds of the litigation.
9. In his pre-trial application, brought by way of Notice of Motion by Mr. Schute dated 3 February 2026. It was followed by an exchange of affidavits, with replying legal submissions filed by QPQ on 27 April 2026. The application was heard on 19 May 2026.[11]

The disclosure which is being sought

[9] *Persona*, at pg. 438.

[10] In *SPV Optimal Osus Limited v HSBC Institutional Trust Services (Ireland) Limited* [2017] IECA 56, at para. 34.

[11] After the hearing of this application, judgment was delivered on 17 June 2026 in *Howley v Howard; Howley v McClean* [2026] IESC 34 in which the law regarding maintenance/champerty was clarified by the Supreme Court, since it was held, at para 26 of Hogan J.'s judgment, that maintenance/champerty can operate as a defence to proceedings. This Court does not believe that this decision has a direct bearing on whether a third-party funding arrangement should be disclosed. Nonetheless, it gave the parties an opportunity to put in submissions, if they thought otherwise, and both parties declined to do so.

10. In this application, Mr. Schute is seeking an order requiring QPQ to disclose details of the funders and the funding of its litigation against Mr. Schute. The primary relief being sought (at para. 3 of the Notice of Motion) is a disclosure of the:

> '*name and address of each person or entity who has provided funding to [QPQ] in this litigation, together with the dates and extent of such funding in each case*.'

11. In addition, at para. 4 of the Notice of Motion, Mr. Schute seeks certain corporate records and financial statements (from QPQ) relating to its parent company (QPQ AG, which is incorporated in Switzerland) as well as *'a copy of any written agreement in place in relation to the funding of the proceedings herein'.*

12. While the Notice of Motion also sought a declaration from the Court that the funding arrangements contravene the prohibition on champerty and maintenance, and a stay on the proceedings while any such arrangement remains in place, these reliefs are not being pursued by Mr. Schute.

<u>The substantive dispute between the parties</u>

13. The underlying litigation between the parties (the "**Irish litigation**") commenced by plenary summons dated 6 March 2024. It involves a claim by QPQ that Mr. Schute breached a Shareholders' Agreement dated 12 February 2021. QPQ claims that this agreement was breached by Mr. Schute's copying of QPQ's blockchain technology solution, which is known as 1DLT. QPQ also alleges that Mr. Schute used 1DLT to develop a rival product called "Wowen" through a Swiss company called RunTime Machines AG ("**RunTime**") and that Mr. Schute caused employees of QPQ to join RunTime. QPQ also claims that Mr. Schute misrepresented that he would provide further funding to QPQ up to the launch of 1DLT. It is alleged that these actions impeded the development and prevented the commercialisation of 1DLT.

14. QPQ seeks a variety of reliefs against Mr. Schute personally, including a declaration of sole ownership and entitlement to use 1DLT, and damages for intentional interference, conversion, misrepresentation, and disgorgement of profits. Mr. Schute delivered his Defence on 21 June 2024 in which he denies all of QPQ's allegations and he claims that even if the claims were established, there is no recoverable loss, as Wowen failed, and RunTime entered liquidation on 25 August 2023.

15. Separate criminal proceedings ("**Swiss litigation**") are also being brought in Switzerland on foot of a private complaint by QPQ AG against former employees of both QPQ and of QPQ AG. These were commenced on 19 December 2023, when a criminal complaint was filed against these persons. However, Mr. Schute is not a party to those criminal proceedings.

LAW ON DISCLOSURE OF LITIGATION FUNDING ARRANGEMENTS

16. The parties are largely in agreement as to the applicable law, and it is clear from the *Persona* case that champerty is a criminal offence in the State.

17. Both parties place particular reliance on the judgment in *Thema International Fund plc v HSBC Institutional Trust Services (Ireland) Limited* [2011] 3 I.R. 654. It is clear from that judgment that there are three possible scenarios in which a court might order disclosure of details regarding the funding of litigation. At para. 24 Clarke J. (as he then was) stated:

> *'Giving detailed information about funding to an adversary is bound to confer a litigation advantage. Why should such a litigation advantage be facilitated? Three possible arguments arise.* ***First, it might be said that the opposing party to the person who is in receipt of third party funding is entitled to know the true nature of its adversary****. Second, it might be said that it is necessary for the opposing party to know*

the identity of a funder so that applications such as those for security for costs which have been allowed in other jurisdictions, could be brought in a timely fashion. Third, it might be said that information is necessary as an aid to the opposing party invoking the jurisdiction (under Moorview) to seek a third party funder costs order.' (Emphasis added)

18. Mr. Schute relies on the first scenario outlined in this passage, namely his right to know his true adversary, to ground his entitlement to the disclosure order sought.
19. For its part, QPQ relies on Clarke J.'s decision in *Thema* not to order disclosure of the plaintiff's litigation funding arrangements in that case, as he held such disclosure was not necessary for the defendant to know its true adversary. At para. 26, Clarke J. states:

'However, a third party funder who is not guilty of champerty (i.e. ***who has the sort of legitimate interest in the case*** *identified in the champerty jurisprudence) is, in my view, in a different situation. They are, even if only indirectly, already involved in the litigation. Any company which lacks funds always has the possibility* ***that its shareholders (or its creditors) may choose to provide further funding*** *for a whole range of reasons not confined to potential litigation. Commercial judgment will often lead to parties with a direct interest in a particular enterprise investing further sums. There is, therefore, in my view a substantial difference between a party who already has an indirect link to the impecunious party and who has, therefore, already got an indirect interest in the relevant litigation, on the one hand, and a party with no such prior link who simply buys into the litigation on the other hand. A party in the position of the defendant must be aware that shareholders in, or others with an indirect interest in, the plaintiff may well chose (sic) to fund the plaintiff so as to enable it to pursue litigation which is in the plaintiff's interests but which will also, potentially, indirectly benefit them by increasing the value of the shareholding in the plaintiff or permitting*

*the plaintiff to pay its lawful obligations. Getting precise details as to the identity of the funder and the terms of the funding (**provided the funding came from within the group of parties who already have an interest in the matter**) is not, in my view, necessary or proportionate to allow the defendant understand who its true adversary is. Its true adversary is the plaintiff backed up by parties **who have a legitimate interest in the plaintiff's well being**. It is not the same situation as one which might pertain in the United Kingdom **where an entity totally unconnected with a party such as the plaintiff might be providing funding for the purposes of sharing in the proceeds of litigation**. For those reasons I am not satisfied that the argument as to knowing one's adversary has sufficient weight in this jurisdiction (where champerty remains unlawful) to counterbalance the undoubted litigation disadvantage that would be caused by requiring disclosure at this stage.'* (Emphasis added)

20. In this Court's view, this paragraph in *Thema* is authority for the view that *if* funding for litigation comes from a party who already has an interest in the litigation (i.e. a shareholder or creditor of the plaintiff) then it is *not* necessary or proportionate for there to be a disclosure order regarding that funding, in order for the defendant to know its true adversary.

21. Accordingly, *if* QPQ AG (a shareholder in QPQ) is funding the litigation (and is not being used as a conduit or funnel for funds from a third party), then Mr. Schute is *not* entitled to disclosure of details of that funding.

22. It follows that, *if* this Court accepted as true the evidence provided by QPQ that QPQ AG, a shareholder in QPQ, is the sole provider of funding for the litigation, then no disclosure order is required. Indeed, that is what occurred in *Thema*, where no disclosure order was made, since as noted at para. 10 of Clarke J.'s judgment, the plaintiff in that case provided

sworn evidence that there was no funding from unrelated third parties (i.e. apart from Thema's shareholders or creditors):

> '*A denial that any funding from unrelated third parties was available to the plaintiff is included in the relevant affidavit. In that context the defendant did not suggest at the hearing before me that the plaintiff was in receipt of funding which would amount to either maintenance or champerty*'.

23. However, this case is very different. On the one hand, like in *Thema,* there is sworn evidence (from the plaintiff) supporting a claim that funding was provided by the parent company of the plaintiff. However, on the other hand, unlike in Thema, there is also sworn evidence (from the defendant) supporting a claim that funding was provided by a third party, Mr. Paul Thompson ("**Mr. Thompson**"). It is relevant to note that it is not claimed by QPQ that Mr. Thompson has a legitimate interest in the Irish litigation e.g. as a shareholder in QPQ or as a creditor of QPQ.
24. More generally, it seems to this Court that the corollary of Clarke J.'s statement, that getting details of funding is *not* necessary to understand one's adversary, if the funding comes from a party with a legitimate interest in the litigation, must apply. The corollary being that *if* the funding does *not* come from a shareholder (or other party with a legitimate interest in the litigation) then getting precise details of the identity of the funder, and the terms of that funding, *is* a necessary or proportionate step to allow a defendant to understand his or her true adversary.
25. In light of the dispute in the evidence as to the source of the litigation funding, it is necessary to examine that evidence closely.

<u>ANALYSIS</u>

26. It is common case that QPQ does not have the funds to finance this litigation. For its part, QPQ has provided sworn evidence[12] that the funds for this litigation are being provided by QPQ AG, a shareholder in QPQ. In addition, QPQ has given undertakings in similar terms to those which were approved in the judgment of Clarke J. (as he then was) in *Thema International Fund plc v HSBC* [2011] 3 I.R. 654, [2011] IEHC 357, at para. 32. Thus, a director of QPQ, Mr. Gregory Chew ("**Mr. Chew**"), has given the following undertaking:

> *'To whom it may concern*
>
> *I, Mr Gregory Chew, a director of QPQ Limited (the "Plaintiff"), personally undertake that I will ensure:*
>
> *That any person providing or who provides funding to the Plaintiff in relation to the above-captioned proceedings will be informed in general terms of the jurisprudence of the Superior Courts of Ireland to the effect that there is a jurisdiction to make third-party funder costs orders in certain circumstances; and*
>
> *That proper records will be maintained and kept identifying the amount and source of any third-party funding in relation to the above-captioned proceedings.'*

27. In its written submissions at paras. 12 and 19, QPQ summarises its defence to this application in the following terms:

> '*[QPQ] has already gone further than Thema-style undertakings and has repeatedly confirmed, in correspondence and now via sworn evidence, that there is no basis for [Mr. Schute's] speculation regarding its funding. [QPQ] has been transparent that its corporate shareholder, QPQ AG, is funding the litigation and has provided repeated assurances that it is not engaged in abuse of process […].*

[12] See the affidavit of Mr. Chew, paras. 34-36, where Mr. Chew refers to a letter from QPQ's solicitors (dated 24 September 2025 in which these paragraphs are set out and he avers: 'I repeat that this is the position on the part of the Plaintiff'.

[QPQ] has repeatedly confirmed (in correspondence and on affidavit from Mr. Chew and Mr. Thompson) that ***QPQ AG is the sole funder and that, as a shareholder in [QPQ], it has a legitimate interest in supporting its subsidiary's litigation****.'* (Emphasis added)

28. It is not in dispute that a parent company providing funding to a subsidiary does not contravene the rules on champerty and maintenance. Accordingly, QPQ believes that this should be the end of the matter.
29. If this Court were to accept the sworn evidence of Mr. Chew, that the litigation is being funded by QPQ AG, then this Court agrees with QPQ that this *would* be the end of the matter.
30. However, cases are not decided simply on the basis of what *one party* claims, whether under oath or otherwise. There are usually two sides to every case. In this regard, while there is sworn evidence to support QPQ's claim that the only funder of the litigation is QPQ AG, there is also sworn evidence that supports the claim that Mr. Thompson and other third-party investors provided funds for the litigation.
31. It is clear therefore that the key issue in this application is whether there is *sufficient* evidence to suggest that a third party, without a legitimate interest in the litigation, such as Mr. Thompson, *might* be funding the Irish litigation, such as to justify this Court ordering QPQ to disclose to Mr. Schute details of the funding of this litigation.

<u>The evidence of the possible involvement of a third party in funding the litigation</u>

32. Mr. Schute points to discovered documents which, on their face, refer to funding of litigation being provided by a party, other than QPQ AG, namely Mr. Thompson, and other potential investors. On this basis, Mr. Schute claims that QPQ AG is being used to funnel that third-party funding into QPQ for the purposes of the Irish litigation. Thus, the focus of the hearing was on whether the evidence supported a finding that the Irish litigation funding

might have been provided by QPQ AG *qua* parent (as claimed by QPQ), *or* to support a finding that QPQ AG might be operating as a conduit or funnel for funding provided by Mr. Thompson and other investors (as claimed by Mr. Schute).

<u>The discovered documents</u>

33. There are three categories of documents relied upon by Mr. Schute, which he says raise concerns that the funding of the litigation breaches the law of maintenance and champerty, such as to justify the disclosure orders sought.

(i) <u>The email of 30 May 2023</u>

34. The first in time is an email dated 30 May 2023 from Mr. Chew, a director of QPQ, to Mr. Thompson, who was not a director at that time, but who was appointed as a director of QPQ on 2 May 2025. He was also appointed as a director of QPQ AG on 17 April 2024, a month after the proceedings in the Irish litigation were issued.

35. The 30 May 2023 email reads as follows:

> *'I believe that we will* ***recover all of the shares from Geert [Mr. Schute] given his actions*** *so I think the* ***smart move now is to be generous with investors that join us at this stage*** *and use that to ensure we win out. We have enough in treasury to raise again in Q4 and again next year without diluting. In short, cash and interest in our success are king right now, so we'll do any deal that makes sense. As per our call,* ***the funding of litigation would be outside of this*** *(but I have doubled the cost of Benno's involvement in the accounts to facilitate). As stated on the call, I would be happy to* ***agree that 50% of all cash damages recovered from Wowen AG and or Runtime Machines AG would be shared with those that fund the litigation****, the balance going into the QPQ accounts.'* (Emphasis added)

36. It was not disputed by QPQ that the reference to '*Geert'* in this email is to Mr. Schute, the person being sued by QPQ in the Irish litigation. Accordingly, this email appears to be a clear reference to that litigation. The reference to Wowen AG appears to be a reference, not to a company, but to Wowen, which, as previously noted, is the name of the product, which is owned by RunTime, and is the subject of the Irish litigation. On its face, therefore, this email appears to reference a sharing of the proceeds of the Irish litigation (i.e. '*cash damages'*) and in particular those damages being shared with '*those that fund the litigation'*.

37. As previously noted, QPQ's response to this evidence is to rely on the fact that Mr. Chew has provided sworn evidence that QPQ AG has *solely* funded the litigation. However, there are a number of reasons why this Court cannot simply accept Mr. Chew's sworn evidence at face value.

38. The first concerns the credibility of the other claims made on affidavit by Mr. Chew. In particular, Mr. Chew states on affidavit[13] that this email of 30 May 2023 is referring to the Swiss litigation. Thus, on the basis of his sworn evidence, this email is a reference to funding relating to the Swiss litigation. However, the Swiss litigation is a criminal prosecution. Accordingly, the reference to damages, as well as the reference to Mr. Schute (who is not a party to the Swiss litigation) in this email completely undermines this contention. It seems to this Court that this claim lacks credibility for this reason and reduces the credibility which this Court attaches to Mr. Chew's other claims, and in particular his claim that QPQ AG is the sole funder of the Irish litigation.

39. Secondly, Mr. Thompson is the recipient of this email from Mr. Chew and his views on its meaning could therefore be relevant. Indeed, he did swear an affidavit in support of QPQ's

[13] Affidavit of Mr.Gregory Chew, dated 9 March 2026 at para. 38, where he endorses correspondence from QPQ's solicitors stating this.

claim that QPQ AG is the sole funder of the litigation. However, what is most telling about his affidavit is *what it does not say*. It contains just four (very brief) paragraphs of substance. This is striking, considering the importance of Mr. Thompson's alleged role as the provider of the funding, as well as the fact that he is the recipient of this email. It is to be noted that, in contrast to Mr. Chew's claim that this email concerns the Swiss litigation, Mr. Thompson does not attempt to make such a claim. His affidavit simply avers that he has no memory of this email.

40. In the circumstances, it seems to this Court that this is a significant email, since, on its face, it references a sharing of the proceeds of the Irish litigation. Thus, it provides cogent evidence that QPQ *could* have obtained *third-party* funding for the Irish litigation (i.e. from a party other than QPQ AG, *albeit* that it might have been funnelled through QPQ AG).

Disguised method of investing in litigation?

41. Since QPQ claims that the funding is being provided solely by QPQ AG, Mr. Schute's response is that, to the extent that funding is coming via QPQ AG to QPQ, this is because Mr. Thompson is using a disguised method of investing in the Irish litigation, i.e. through the parent company, QPQ AG. In this regard, he relies on the case of *Greenclean Waste Management v Leahy* [2014] IEHC 314, at para. 26. There, Hogan J. considered whether the use of '*After the Event'* legal costs insurance might be:

> *'simply a disguised method of investing in litigation and recovering a share of the proceeds of the action'*.

42. In particular, it was claimed that the use of '*After the Event'* legal costs insurance was unlawful under the prohibition on champerty, and that the alleged third-party funding of litigation was made '*under the guise of a handsome premium'*.

43. While that claim was unsuccessful in the *Greenclean Waste* case, it is clear that if a third party with no legitimate interest in litigation is funding that litigation, under the guise of an

investment by a parent company in that litigation, then this could amount to a breach of the laws prohibiting champerty and maintenance. Thus, if Mr. Thompson's investment in QPQ AG is a disguised investment in the Irish litigation, then it seems clear to this Court that it would amount to unlawful third-party funding.

(ii) <u>The Board document dated 19 June 2023</u>

44. The next discovered document is the least significant of the three, but it is of some relevance. It is dated 19 June 2023, and is entitled '*Minutes & Resolutions for QPQ AG Board'* which is signed by Mr. David O'Reilly ("**Mr. O'Reilly**") (on 22 June 2023). Mr. O'Reilly was a director of QPQ, and it seems that he was also a director of QPQ AG, at that time.[14]

45. This document was sent by email dated 22 June 2023 by Mr. Chew, a director of QPQ, to Mr. Thompson, who was not a director of QPQ or QPQ AG, at that time. The document contains the following passage:

'Litigation to Protect QPQ

> *In the event that litigation to protect QPQ's interest is required, the following principles are offered as a potential route forward:*
>
> 1. ***A 50/50 split** on all damages secured (after legal fees) in Switzerland*
> 2. *This would extend to any sums recovered from any of the RTM individuals*
> 3. ***1% equity interest** with a bonus 1% on successful completion of the process in Switzerland to shut down Wowen and examine all forms of legal redress.*
>
> *Resolution 15:*

[14] See pg. 170 of the Motion Booklet where opposite his name, is the term 'NED', which appears to be a reference to his role as a Non-Executive Director.

Gregory Chew is authorised to explore the terms set out in 1-3 above to those willing to fund litigation to protect QPQ's interests in the event that this is determined to be necessary and viable.' (Emphasis added)

46. This document is dated June 2023 and the proceedings were subsequently issued in Switzerland in December 2023 and then in Ireland in March 2024. It does appear to be referring to the dispute over the Wowen product, which is the basis of the Irish litigation and the Swiss litigation. However, because of the specific reference to damages in Switzerland, it could not be said to be direct evidence of third-party funding of the Irish litigation. For this reason, it is not determinative in this Court's decision. Nonetheless, to the extent, if any, to which it has a more general application, it does provide some evidence of an unusual and possibly disproportionate relationship between an equity investment and the share of damages in litigation (i.e. 1% equity for 50% damages). In this regard, as noted by Murray J. in *McCool Controls and Engineering Ltd v Honeywell Control Systems Ltd* [2024] IESC 5, at para. 22, this type of disproportionate relationship is a factor to be considered in deciding whether an arrangement might be in breach of the laws on champerty and maintenance:

> *'**The holder of 5% of the shares of a company** who takes the assignment of a cause of action of potentially substantial value on the basis that he or she **will retain 100% of the proceeds** has entered the zone of what Legatt LJ in Advanced Technology v. Cray Valley [1993] BCLC 723 at p. 734 described as '**absurdly disproportionate'**. Similarly, in Turner v. Schindler & Co. Court of Appeal 28 June 1991 (recorded by Guest at para. 4-40 and by Smith and Leslie 'The Law of Assignment' (3rd Ed. 2018) at para. 23.66) an assignment was found to be void for maintenance where a right of action of significant worth was assigned to director, shareholder and creditor for £1.00.'* (Emphasis added)

(iii) The WhatsApp messages between March 2023 and June 2024

47. However, of much more relevance is the next discovered document. This contains messages, which on one level, are very significant, in the context of the allegation of unlawful funding of the Irish litigation being pursued by an Irish company. This is because the messages are between people who were directors of that Irish company at the time, i.e. Mr. Peter McNulty ("**Mr. McNulty**"), who remains a director of QPQ, and Mr. O'Reilly (who ceased to be a director of QPQ in July 2023). The messages commence in March 2023, a year before the proceedings are issued in Ireland, and continue thereafter (and so after Mr. O'Reilly ceases to be a director). The relevant messages are as follows:

26 May 2023

'[Peter McNulty 17:24:13]:

"[...] On the suing RTM [RunTime] point that definitely needs board approval. Any idea which entity they are suing from? I am assuming it's Ireland as the AG [QPQ AG] doesn't own anything relevant?"

[Peter McNulty 17:25:44]:

"On a legal issue I am with you. Not getting involved. Geert [Mr Schute] or no Geert. ***There is no money for this unless Paul Thompson is funding*** *and I doubt Greg [Mr Chew] has thought through the consequences although being a brilliant strategist in his words he probably thinks he has everything covered ……..just like he thought he knew ER* [a former QPQ employee being sued in Swiss litigation]*"'*

13 June 2023

'[David O'Reilly 22:43:59]

"[...] Is it not 'mad stuff' - his proposals to convert monies owed at 20m valuation? Someone owed 20k would get 0.1 pct (hardly moves the excitement dial)..

I am certain that I do not want to be part of the Board when it goes after RTM / Geert and x employees, and tries to get hold of Geerts 9pct holding ..

I am not sure there really is a case but I believe if Geert hires the big gun lawyers - ***we will eat into 100k reserve (even if we knew where it came from)*** *very quickly and Greg will find himself counter sued up the wazoo …"'*

<u>30 August 2023</u>

'[David O'Reilly 17:18:28

"[...]Have the games begun with Geert and emanuelle [ER] ye? Have to say….I am relieved to be one step removed."

<u>14 November 2023</u>

'[Peter McNulty 17:41:12]

"Nothing major news wise. Greg trying his utmost to prepare to take Geert to court from what I can see. I'm in Dublin at the end of the month if you are around for a catch up."

[Peter McNulty 17:41:55]

*"**Paul Thompson has funded a bit and he has people lined up to provide more funding and the basis a legal opinion out of Ireland states that QPQ has a case against Geert!!**"'*

<u>10 January 2024</u>

'[David O'Reilly 16:39:52]

"[...] Spoke with Greg [Mr Chew] on way home [..] All his views are still the same on Geert – not for turning…So I just drifted into general chit chat about family and future and everyone being sued by QPQ!!!"

<u>19 June 2024</u>

'*[Peter McNulty 14:07:20]*

"Met with Greg and team last week. ***Court case in Ireland going extremely well as of last Friday.*** *Judge basically told Arthur Cox they were shit and in 100 pages of docs they hadn't provided any Defence. Gave them until tomorrow.* ***Paul Thompson pushing for a settlement where Gerry [Mr Schute] provides all IP from Limited to AG plus costs plus 5m!"***

[David O'Reilly 14:19:04]:

"Wow- that would be quite the result"

[Peter McNulty 14:25:10]:

"Yup!"' (Emphasis added)

48. The most important aspect of these messages is that there is a direct reference to Mr. Thompson having already provided funding. It is also relevant to note that Mr. McNulty, who is a *current* director of QPQ, and the sender/recipient of all of these messages, did *not* provide any evidence to this Court which would support QPQ's defence that QPQ AG was the *sole* funder of the litigation.

49. In particular, he did not provide any evidence to support a finding that the messages do not mean what they appear, at face value, to mean, i.e. that it was Mr. Thompson (and so, it appears, *not* QPQ AG, or not solely QPQ AG) who *'has funded a bit'* of the Irish litigation. Thus, this Court is left with this clear statement between two directors (or a director and a former director) of QPQ that Mr. Thompson has provided funding, which appears to be a clear reference to the Irish litigation.

50. Unlike Mr. McNulty (he did not provide any sworn evidence to explain these messages), as previously noted, Mr. Thompson has provided sworn evidence in support of QPQ's claim that QPQ AG was the sole funder of the litigation. While it is true that he was not party to these messages, they do refer to him. However, it is to be noted, once again, that in his very brief affidavit, he does not provide any evidence which would suggest that these

messages do not mean what they appear to mean, namely that he has provided funding for the Irish litigation.

51. As regards Mr. Chew, the most he can say to undermine the conclusion that these messages mean what they appear to mean, is his averment that they should not be taken seriously since they are:

> *'casual messaging, disconnected from any adopted position, and cannot reasonably be treated as evidence of funding terms'*.

52. However, it is exactly this type of '*casual messaging'*, which is often the most valuable in clarifying parties' true positions. This is because casual messaging is unguarded and so such communication is *not* passed through the filter of legal advice, unlike communication sent in solicitors' letters. Accordingly, it can often amount to a more candid indication of the parties' actual intentions or understanding.

53. Similarly, these messages could not be said to be *'disconnected'*, as claimed by Mr. Chew, since they are straight from the 'horse's mouth', in the sense that they are messages between directors (and some between a director and a former director) who are, in effect, the voice of QPQ. To put it another way, since a company does not (in a literal sense) have a voice, if one wants to know what a company is thinking, saying and doing, one has recourse to what the directors of that company are thinking, saying and doing. These messages therefore appear to illustrate what QPQ is thinking, saying and doing, when it comes to the Irish litigation and should, for present purposes, be taken at face value.

<u>Cogent evidence to support a claim that third-party funding could have been provided?</u>

54. It seems to this Court that these WhatsApp messages, along with the email of 30 May 2023, provide cogent evidence to support a claim that improper third-party litigation funding could have been provided in this case. In particular, there is evidence that a party, other

than QPQ AG (‘*Paul Thompson has funded a bit’*), could have provided funding for the Irish litigation, *albeit* that it could have been provided through QPQ AG.

55. While Mr. Thompson’s funding is said to have already taken place, these messages also indicate that there *could* be other third-party funders of the litigation, since, as of 14 November 2023, Mr. Thompson is said to have *‘people lined up to provide more funding’.*

56. It is also relevant to note that, consistent with someone who has already invested in funding litigation, in these WhatsApp messages, Mr. Thompson is described as acting as if he has a say in whether the litigation settles. This is because the messages also indicate that Mr. Thompson was ‘*pushing for a settlement’,* under which settlement, Mr. Schute was to pay €5 million plus costs.

57. QPQ’s only response of substance to this evidence is simply to insist that all the funding is provided solely by QPQ AG.

58. It is important to note that, unlike in *Thema*, there is cogent evidence from the defendant that a third party (without a legitimate interest in the litigation) may be funding that litigation. This therefore supports a finding that the disclosure order should be made.

<u>Is there a public interest in there being a disclosure?</u>

59. In addition, however, there is also a public interest reason why this Court might grant the disclosure order. This is because there is clearly a public interest in documents being disclosed which may either support or disprove the fact that a criminal offence has been committed.

60. In this regard, it is to be noted that in *Dublin Waterworld Ltd v National Sports Campus Development Authority* [2014] IEHC 518, Barrett J. made an order requiring the plaintiff to disclose the identity of any person who agreed to fund the proceedings in that case, when a claim was made by the defendant of third-party funding. As previously noted, one of the three scenarios, in which a defendant might legitimately be entitled to details of the identity

of funders of litigation, is where the defendant might wish to pursue that funder for costs (see *Thema,* at paras. 28-29). This was clearly the scenario which gave rise to the disclosure order in *Dublin Waterworld.* However, at para. 40 of his judgment, Barrett J. also gave as a justification for the disclosure order the fact that there was a '*public interest'* in making the disclosure. In that case, the public interest arose because the plaintiff was suing a taxpayer-funded State entity. Accordingly, if the plaintiff (or its alleged funders) did not have the funds to pay costs (if it lost), it was the taxpayer who would have to foot the bill. For this reason, Barrett J. observed that there was a public interest which:

> *'includes avoiding a situation in which the cost of the proceedings between DWW [the plaintiff] and the Authority [the defendant] might fall ultimately to the taxpayer'*.

61. Thus, the clear public interest, which was served in *Dublin Waterworld* in granting the disclosure order, was potentially saving the taxpayer money (by entitling the defendant to discover who was funding the litigation for the purposes of security for costs or other costs applications).

62. In this case, there is a different public interest supporting the disclosure order being made, which will be considered next.

Public policy reasons for outlawing third-party funding of litigation

63. In the Supreme Court decision in *Persona*, Clarke J. (as he then was) refers to the '*potential risks inherent in the commoditisation of litigation'* (at pg. 472) *if* third-party litigation funding was not prohibited.

64. Similarly, in *Greenclean Waste Management v Leahy* [2014] IEHC 314, Hogan J. noted the rule against third-party funding is *'really about preventing trafficking in litigation'* (para. 20).

65. In *Fraser v Buckle* [1994] 1 IR 1 at pgs. 13-14, Costello J. (as he then was) cited the observation of Lord Denning in *Re Trepca Mines Limited (No. 2)* [1963] Ch. 199, at pgs.

219-220, that the '*reason why the common law condemns champerty is because of the abuses to which it may give rise.'* In this regard, in the New Zealand High Court case of *Saunders v Houghton* [2010] 3 N.Z.L.R. 331 (cited at pg. 443 of *Persona*), a stay application (which was based on a litigation funding agreement) was *not* granted because it was held that to do so would amount to an abuse of process.

66. More generally, in *Persona*, Denham C.J. referred to the broader public policy of protecting the administration of justice (at pg. 443) as she cited Steyn L.J. who held in *Giles v Thompon* [1993] 3 All E.R. 321, at pg. 332, that the law on champerty is designed to '*protect the integrity of the [...] judicial system'*.

<u>The effect of third-party funding on court lists</u>

67. There is another public policy reason for the prohibition on third-party litigation funding, which has particular relevance to whether this Court should order the disclosure of alleged third-party litigation funding arrangements.

68. That reason is the negative impact which such funding is likely to have on other litigants (without third-party funding) who are waiting for their cases to be heard. In *Persona* (at pg. 480-481), MacMenamin J. referenced this issue, as he noted the unforeseen consequences which might arise, if third-party litigation funding were permitted, and in particular he refers to *'the effect of creating difficulties in already busy court lists'*.

69. This Court agrees with this comment since third-party litigation funding is likely to increase the volume of litigation commenced, and thereby increase waiting lists for those without third-party funding.

70. It is important to remember that any such increase in litigation, caused by third-party litigation funding, would be against a backdrop where there does not appear to be any

problem with the amount, or the growth, of litigation in Ireland at present,[15] notwithstanding the ban on third-party litigation funding.

71. Similarly, there does not appear to be any shortage of lawyers willing to take litigation (since Ireland has more lawyers relative to population than most European countries),[16] which therefore does not suggest that third-party litigation funding is required to encourage people into the legal profession.

72. Indeed, this Court has previously observed that Ireland has approximately five times more High Court judges *per capita* than England & Wales.[17] Despite the much greater number of High Court judges *per capita* in Ireland, the sheer volume of litigation is such that there are backlogs in dealing with the current flow of litigation being heard by the courts in Ireland.[18]

73. In these circumstances, and in particular in light of these backlogs, it seems clear that any increase in litigation caused by unlawful third-party litigation funding is likely to increase the amount of litigation and exacerbate those backlogs.

74. This is therefore a particularly compelling reason why a defendant (and a court) should have clarity regarding whether proceedings have, or have not, been issued with the assistance of *unlawful* third-party funding.

<u>Other ways to address the mischief which third-party funding aims to counter</u>

75. In this regard, it is to be noted that it is clear from *Persona per* McKechnie J. (dissenting) at pg 461, that third-party litigation funding is intended to counter *'contemporary*

[15] The *Courts Service Annual Reports* show that there was a 31% increase in new civil cases added between 2021 and 2024, from 140,365 to 183,787: Courts Service, 'Annual Report' (2024) pg. 62; Courts Service, '*Annual Report*' (2021) pg. 44.
[16] A 2026 Report by the European Commission for the Efficiency of Justice shows that Ireland ranks 7 out of 27 EU member states in terms of the proportion of lawyers *per capita*: European Commission for the Efficiency of Justice, '*Study on the functioning of judicial systems in the EU Member States – Part 1'* (2026) pg. 1130.
[17] *Shannon v Shannon* [2024] IEHC 291 paras. 3, 15, 16 and 24.
[18] The *Justice Indicator's Report 2026* of the Law Society of Ireland Centre for Justice and Law Reform shows Ireland's case clearance rate in civil matters was 71% in 2022, below the Council of Europe average of 101%. Law Society of Ireland Centre for Justice and Law Reform, '*Justice Indicator's Report'* (2026) pg. 78.

difficulties with giving practical effect to the right of access to the courts', which arise from the considerable cost of High Court litigation. However, it is relevant to note that Denham C.J. does refer to a way to deal with the considerable cost of High Court litigation (other than by third-party funding). At pg. 447 she stated:

> *'perhaps an alternative route may be found, whereby the litigation would cost less'.*

76. While this Court would adopt that suggestion by Denham C.J., this is not the first time the judiciary has called for High Court litigation costs to be reduced. It has been doing so for decades.[19] Unfortunately, these calls have been unsuccessful. This is despite the fact that, as a solution to access to justice issues, reducing costs would have one major advantage over third-party funding, namely that it would *not* have the risks inherent in third-party funding, i.e. the resulting commoditisation and trafficking of litigation.

QPQ's defence to the application

77. While the foregoing reasons favour the making of the disclosure order, it is next proposed to consider QPQ's defence to Mr. Schute's application.

The claim that this application is not within the Persona jurisdiction

78. QPQ objects to the disclosure of any written agreement in relation to funding on the basis that it falls outside the jurisdiction of the Court to order such disclosure, which jurisdiction it says is set down in *Persona*. In its written submissions at para. 24, QPQ states:

> *'there is no true precedent to support [Mr. Schute's] request for any written agreement per relief no. 4.3. While the Court in Persona ordered disclosure of a redacted version of the agreement,* ***this order was made in the very specific context where the Plaintiff pre-emptively sought a declaration*** *that its professional funding agreement was consistent with Irish law (which the High Court and the Supreme Court via leapfrog*

[19] As noted in *Beakonford Limited v Stokes* [2025] IEHC 22 at para. 130, for 60 years, various judges have called, without success, for a reduction in legal costs in the High Court

appeal, refused to grant (¶79,99) and the Defendants applied for sight of that agreement under O. 31 r. 15 RSC in the context of that application.' (Emphasis added)

79. It is true that in *Persona*, the funding agreement came to light because the plaintiff brought the fact that it was being funded by another party to the attention of the court. This was because the plaintiff applied for an order from the High Court (Donnelly J.) that its funding arrangements did not contravene the rules on champerty and maintenance (which application was ultimately refused). However, as a result of this application, the defendants sought disclosure of the funding arrangement, and the High Court ordered that a redacted form of the funding arrangement be disclosed to the court and other parties, which order was upheld on appeal to the Supreme Court.

80. However, this Court does not agree with QPQ's contention that the application in this case falls outside the principle to be derived from the *Persona* case.

81. This is because, in this Court's view, it is irrelevant whether a plaintiff discloses that it has a funding arrangement (and the court then orders its disclosure to a defendant) *or* a defendant suspects a plaintiff has a funding arrangement (and it seeks the disclosure of any such arrangement). The key issue is whether or not the funding arrangements *should be disclosed* to the defendant. For this reason, it seems to this Court that the correct interpretation of *Persona* is that it is authority for the proposition that a court *can* order the disclosure of a funding arrangement to a defendant so that a defendant can discover her true adversary, *irrespective* of how the existence of that arrangement comes to the attention of the court. This is because, in this Court's view, there is nothing in the *Persona* judgment to suggest that such disclosure is confined to those situations where the plaintiff discloses the arrangement to the court.

<u>No jurisdiction to order disclosure of a funding arrangement?</u>

82. A related ground for resisting this application, urged on this Court by QPQ in its oral submissions, is its claim that there is, in fact, no jurisdiction on the part of the court to make an order requiring the disclosure of litigation funding arrangements. QPQ relies on the fact that in the High Court in *Persona,* at pg. 147, Donnelly J., when considering her jurisdiction to make a disclosure order, stated:

> '***Insofar as the procedure under O. 31, r. 15*** *of the Rules of the Superior Courts 1986 is concerned, I accept that the decision in Dubai Bank Ltd. v. Galadari (No. 2) [1990] 1 W.L.R. 731 was adopted by the High Court in Lowry v. Mr. Justice Moriarty [2014] IEHC 602, (Unreported, High Court, Costello J., 17th December, 2014). Order 31, r. 15 therefore* ***applies to the interlocutory stages of proceedings. In my view, the funding application is not a truly interlocutory stage of the proceedings*** *as it does not concern the fair disposal of a stage or cause of the matter. While the defendants may be affected by the outcome of the motion, it is not strictly speaking an application concerning the substantive issues. It is an issue truly external to the substantive issue in the case. Therefore, the issues under the rules do not strictly speaking arise.*' (Emphasis added)

83. It is clear that Donnelly J. believed that she did *not* have the jurisdiction *under* Order 31, rule 15 of the Rules of the Superior Courts to make an order to disclose funding arrangements. However, this conclusion by Donnelly J. in that case does not assist QPQ. This is because Donnelly J. *did* make a disclosure order and therefore clearly felt that she had the jurisdiction to do so, *albeit* not under Order 31, rule 15. While she did not specify her jurisdiction, it seems clear that Donnelly J. was relying on the inherent jurisdiction of the court to make such orders.

84. In this regard in the *Dublin Waterworld* case, Barrett J. also made an order requiring the plaintiff to disclose the funding arrangements. Like Donnelly J. in *Persona*, he did not feel

it was necessary to specify the jurisdiction under which the order was being made, presumably as it was not an issue in the case.

85. However, in this case, as QPQ has specifically challenged the jurisdiction of this Court to make an order disclosing the funding arrangements for the Irish litigation, it is appropriate for this Court to clearly set out its jurisdiction to make such an order.

86. In this Court's view, this arises from the inherent jurisdiction of the court to make orders which are necessary to (i) protect the process of the courts from abuse and (ii) ensure that the administration of justice operates in an efficient and effective manner. The fact that a court has such a jurisdiction was recognised by Hogan J. in the Supreme Court's decision in *Kirwan v Connors* [2025] IESC 21 at para. 145 *et seq*. In that case, it was held that a court has an inherent jurisdiction to make any order which:

> *'serves the courts' fundamental duty to preserve and conserve the administration of justice with which they have been vested by Article 34.1. Part of that duty is **to protect the process of the courts from abuse** […]*
>
> *it is necessarily implicit in Article 34.1 that the courts have also a duty to ensure that the administration of justice operates in **an efficient and effective manner**. This in turns means that they must be necessarily clothed with powers designed to make that jurisdiction **effective and to protect the administration of justice against abuse**.'* (Emphasis added)

(i) <u>Power to order disclosure of funding to protect the court's process from abuse?</u>

87. In this case, one is concerned with the disclosure of documents, which may establish whether or not a criminal offence has been committed (i.e. the unlawful third-party funding of litigation). The unlawful funding of litigation could, in this Court's view, be said to amount to an abuse of court process, since as previously noted, in *Saunders v Houghton,*

reliance on an unlawful funding agreement to seek a stay was held to amount to an abuse of process, such that the stay was refused.

88. It follows that ordering the disclosure of (alleged) unlawful funding must be a power which a court has, as part of its inherent jurisdiction to protect the administration of justice against abuse. After all, since some forms of third-party funding of litigation are criminal offences, *if* such unlawful funding exists, it must be seen as an abuse of court process, which should be prevented/discouraged, by means of a court order seeking disclosure of same. Thus, under this heading, the courts also have the jurisdiction to make such disclosure orders.

(ii) Power to make order to ensure that courts operate efficiently and effectively?

89. The power to make the disclosure order in this case could also be grounded in the fact that *Kirwan* makes clear that a court has an inherent jurisdiction to make orders which ensure that the courts operate in an '*efficient and effective'* manner. This is because making an order which potentially discloses the unlawful funding of litigation, before a trial is heard by a court, has the potential to make the courts more efficient and effective.

90. The starting point for this conclusion is that, as previously noted, it could not be said (and it was not alleged) that there is any shortage of lawyers in Ireland or litigation in the Irish courts, so as to justify the need for additional third-party funding of litigation. Moreover, as noted above, although we have approximately five times more High Court judges *per capita* than England & Wales, the sheer volume of litigation in Ireland is such that there are backlogs in dealing with the current flow of litigation being heard by the courts in Ireland.

91. All of this means that *if* there was to be third-party funding of proceedings such as these, despite its criminalisation, it is likely to make the courts operate in a *less efficient and effective manner* for those litigants who do *not* seek unlawful financing from third parties for their litigation.

92. Therefore, it seems to this Court that preventing, discouraging and highlighting allegedly unlawful third-party funding of litigation is something which supports the efficiency and effective operation of the courts. On this basis, it seems to this Court that the power of a court to order disclosure of any third-party funding arrangements is part of the inherent jurisdiction of the courts to make orders in the interests of the efficient and effective operation of the courts.

93. Thus, this Court rejects QPQ's claim that this Court does not have the jurisdiction to make the disclosure orders sought.

Two reliefs in the Notice of Motion were abandoned

94. QPQ also claimed that the disclosure orders should be refused on the ground that the Notice of Motion seeks two reliefs which were abandoned at the hearing (i.e. [i] the declaration that QPQ's funding arrangement for this litigation contravenes the rules on champerty and/or maintenance and [ii] that the proceedings should be stayed while this funding arrangement was in place). In particular, QPQ claims that it was not open to Mr. Schute to abandon this relief in this manner and keep open the possibility that this relief might be pursued at a later stage.

95. However, on a daily basis, parties bring motions before the courts and they will often not pursue, at a hearing, all the reliefs sought in the Notice of Motion. No authority was provided for QPQ's claim that Mr. Schute should, for this reason, not be granted the remaining relief he was pursuing. Accordingly, this argument was not, in this Court's view, a basis for this Court to refuse the relief which he continued to pursue at the hearing.

Delay in Mr Schute seeking the disclosure of litigation funding

96. QPQ also alleges that the application should be denied because of the delay by Mr. Schute in seeking same.

97. However, uncontroverted submissions were made on behalf of Mr. Schute that there was in fact a seven-month delay *by QPQ* in the provision of discovery, which was only supplied in full in June 2025, and that this resulted in motions which were due to be heard in January 2026, but which have since been adjourned.

98. Furthermore, Mr. Schute, quite correctly, sought to obtain information from QPQ after the provision of discovery in full by June 2025, rather than immediately filing a motion.

99. Also relevant is the fact that, while Mr. Schute was seeking to obtain information regarding QPQ's funding in December 2025/January 2026, the solicitors, Fenecas Law LLP, who had been acting for QPQ at that time, were for several weeks '*unable to obtain full or proper instructions from'* QPQ. This is clear from the affidavit filed in January 2026 on behalf of Fenecas Law LLP seeking to come off record.

100. It is difficult in all these circumstances to see any basis for a claim that the application should be denied on the grounds of delay.

<u>Is the failure of Mr. Schute to apply for security for costs fatal to this application?</u>

101. QPQ argues in its written submissions that Mr. Schute's:

> *'express decision not to bring an application for security for costs or to apply to strike out the proceedings as an abuse of process under O. 19 r. 28 RSC, is telling, and militates against the grant of relief.'*

102. This Court does not agree that the failure of Mr. Schute to seek security for costs militates against the court granting the disclosure order now sought by him. This is because it is clear from the Supreme Court decision in *Moorview Developments v First Active Plc* [2019] 1 IR 417, [2018] IESC 33, at pg. 445, per McKechnie J., that the fact that a security for costs application could be made, but is not made, does not preclude a litigant seeking to use other pre-trial procedures to protect its interests or achieve its ends:

> *'[…] I cannot accept the argument that the fact that an application may be made seeking security for costs can itself preclude the recognition of what is otherwise a valid discretionary jurisdiction, founded on both statute and the rules of court, to award costs against a non-party. Given the multiplicity of pre-trial, trial and post-trial procedures now available to litigants, all designed with the intention of facilitating the efficient conduct of court proceedings and thereby assisting the administration of justice, it will frequently be the case that there are various discrete avenues by which a party may seek to protect its interests or achieve its ends.'*

103. Accordingly, this Court does not consider that the availability of another procedural remedy (security for costs) precludes Mr. Schute from seeking disclosure to ascertain whether unlawful funding arrangements may exist.

Conclusion regarding disclosure of funding arrangements

104. This Court does not accept that any of QPQ's arguments, against the grant of this application, provide a basis for refusing this application, in circumstances where there is sufficient evidence, in this Court's view, to justify a disclosure of the funding arrangements for the Irish litigation.

105. Accordingly, this Court will order that QPQ disclose '*the name and address of each person or entity who has provided funding to [QPQ] in this litigation, together with the dates and extent of such funding in each case',* as sought in para. 3 of Mr. Schute's Notice of Motion.

106. As regards the other items sought by Mr. Schute in his Notice of Motion, it is to be noted that in *Thema*, at para. 26, Clarke J. described the category which could be disclosed as being *'details as to the identity of the funder and the terms of the funding*'.

107. It seems to this Court that the document sought at para 4.3 of the Notice of Motion (*'a copy of any written agreement in place in relation to the funding of the proceedings herein*')

falls within this category and so should be disclosed to Mr. Schute to enable him to discover his true adversary. Thus, this Court would also order the disclosure of this category of document.

108. The remaining documents which Mr. Schute seeks to have disclosed by QPQ at para. 4 of the Notice of Motion, are:

> *'4.1 The register of members of QPQ A.G. from 1 February 2023 to present;*
>
> *4.2 The annual financial statements of QPQ A.G. for the years 2023 to present, to include any draft financial statement for 2025 and/or 2026;'*

109. Expert evidence was provided to this Court (from Dr. Martin Michel) to the effect that under Swiss law these documents are not publicly available, unlike the situation in Ireland, and that Mr. Schute would not normally be entitled to these documents under Swiss law.[20]

110. However, this is not a reason, *per se*, for an order not to be made in this case. This is because, firstly, QPQ does appear to have documents in its possession, which would be regarded as being the corporate documents of QPQ AG. This is because, as part of its discovery, it provided the minutes of QPQ AG meetings, to which reference has already been made. Thus, it seems to this Court that there is no reason why this Court should not order QPQ to provide the register of members and financial statements of QPQ AG, which may or may not be in its possession.

111. In addition, the fact that one *may or may not* get an order from a Swiss Court to disclose these corporate documents does not impact upon the jurisdiction of this Court to make an order to disclose documents in the first place, particularly when these documents *could* provide evidence to support a claim that a breach of Irish criminal law has taken place.

112. In this regard, this Court notes the expert opinion of Dr. Claudio Bazzani (at para. 28 of his expert report) that, *'a High Court order for the production of documents from QPQ*

[20] Affidavit of Dr. Martin Michel, paras. 4-7. See also the expert report of Dr. Claudio Bazzani, para. 10-13.

AG is permissible as a matter of Swiss law' and that, '*if the High Court were to make such a request in a letter of request, it would likely be executed by the competent High Court of Zug towards QPQ AG.' Can you send me this para please from his report*

113. Thus, an order for the disclosure of these corporate records will be made.

Disclosure will be made to the Court and to Mr. Schute

114. Finally, since the disclosure is being made for public interest reasons as set out above, it is appropriate, as was done in the *Persona* case, that the disclosure be made, not just to Mr. Schute, as requested in the Notice of Motion, but also to the Court. In this way, the High Court will have more information, in relation to a trial it is due to hear, regarding whether the underlying litigation was, or was not, funded in contravention of Irish criminal law. This is clearly in the public interest.

CONCLUSION

115. Certain forms of third-party funding of litigation, namely those amounting to maintenance or champerty, constitute a tort or crime. Accordingly, there is a public interest in the exposure of such funding, if it exists. For this reason, and the reasons set out above, this Court will grant an order requiring QPQ to disclose to Mr. Schute, and the Court, details of any persons who have provided funding for this litigation and details of that funding.

116. This matter will be put in for mention a week from its delivery at 10.45 a.m. to deal with any final orders and costs. However, on the assumption that it should *not* be necessary to expend costs on a further court sitting, and in order to facilitate the parties agreeing all outstanding matters, the parties have liberty to notify the Registrar if such a listing proves to be unnecessary. This is particularly so in light of the clear implication from *Word Perfect*

Translation Services Ltd v Minister for Public Expenditure and Reform [2023] IECA 189 at para. 94, that there is an onus on lawyers to take a broad-brush approach to costs.