COMMERCIAL COURT

[2026] IEHC 516

RECORD NUMBER 2025/4332

THE HIGH COURT

BETWEEN

GOLDSTEIN PROPERTY ICAV

PLAINTIFF

AND

RELM LOAN OPPORTUNITIES 2 DAC, RELM LOAN OPPORTUNITIES 3 DAC, RELM LOAN OPPORTUNITIES 4 DAC, KEN FENNELL AND BRENDAN O'REILLY

DEFENDANTS

JUDGMENT of Mr. Justice Twomey delivered on the 24th day of July, 2026

INTRODUCTION

1. This is a case involving allegations of lawfare, namely the use of legal proceedings as a weapon, as it involves a claim that legal proceedings are being used to inflict injustice, rather than achieve justice. The allegations are made by the first, second and third

defendants ("**RELM**") against the plaintiff ("**Goldstein**"), which is beneficially owned by Mr. Mel Sutcliffe ("**Mr. Sutcliffe**"). The allegations are made in support of RELM's application for an injunction preventing Goldstein from pursuing litigation (known as an anti-suit injunction) in New York ("**New York Proceedings**").

2. The application for this anti-suit injunction is made in these proceedings which are being case managed by the Commercial Court ("**Estoppel Proceedings"**). These Estoppel Proceedings involve a dispute between Goldstein and RELM over RELM's decision to appoint receivers to certain properties owned by Goldstein and charged in favour of RELM, as security for RELM's loans to Goldstein.

3. The New York Proceedings are in aid of the Estoppel Proceedings, as they seek discovery from the owner[1] of RELM, namely Avenue Capital Group LLC and related entities ("**Avenue**"), for the purpose of the Estoppel Proceedings.

4. RELM seeks the anti-suit injunction, because it claims that the primary intention of Goldstein, in bringing the New York Proceedings, is to maximise the legal costs incurred by RELM/Avenue, despite the fact that one of stated aims of proceedings in the Commercial Court is to *'minimise'* legal costs.[2]

5. In particular, RELM claims that Goldstein issued the New York Proceedings as part of its tactic to put financial pressure on RELM/Avenue to settle the Estoppel Proceedings on terms favourable to Goldstein, and so as a form of '*lawfare'*.[3] RELM seeks this injunction in order to prevent Goldstein from inflicting *'potentially millions in unrecoverable litigation costs'*[4] on its owner, Avenue, in New York.

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[1] Affidavit of Mel Sutcliffe, 13 March 2026, para. 52: *'RELM is effectively owned and controlled by Avenue Capital'*; Affidavit of Paul Dowling, 2 March 2026, para. 62.: '[*RELM is] indirectly owned by funds or sub-funds managed by Avenue Capital Group LLC, Avenue Europe International Management, LP ("Avenue Europe"), and Avenue Capital Management, LP'*.
[2] Order 63A rule 5 of the Rules of the Superior Courts.
[3] Defendant's written legal submissions, para. 4.6.
[4] Affidavit of Paul Dowling, 2 March 2026, para. 90.

6. In support of its application, RELM points to the fact that Goldstein instituted the New York Proceedings, *without* seeking discovery in a more cost-efficient manner in Ireland, and also *without* the consent of the Commercial Court, which is case managing the Estoppel Proceedings.
7. RELM also points to the fact this Court has previously been critical of the way Goldstein weaponised legal costs in related proceedings, in an attempt to intimidate an auctioneer into *not* acting in the sale of one of Goldstein's properties, which is secured in favour of RELM.[5]
8. In addition to relying on this earlier evidence, RELM points to new evidence, namely that Goldstein's American attorneys sent copies of the New York Proceedings to prospective purchasers of the secured properties in Ireland. One might reasonably ask what conceivable reason there could be for a US attorney to be sending Goldstein's discovery proceedings, in a New York court, to a person thinking of buying a property in Ireland? RELM says that this is clearly another attempt by Goldstein to intimidate third parties from having anything to do with the purchase/sale of properties owned by Goldstein, which are being sold by receivers.
9. In opposition to the application for the anti-suit injunction, Goldstein says that issuing proceedings in New York is not a *'step'* in proceedings before the Commercial Court and so Goldstein did not require the consent of the Commercial Court to issue those proceedings. In addition, it says that it is perfectly entitled to gather evidence, however it chooses, including by seeking discovery of documents in foreign jurisdictions.
10. Therefore, the key issue in this case is whether Goldstein is entitled to inflict what could be millions of dollars in irrecoverable costs on RELM's owner, by issuing proceedings which are in aid of proceedings before the Commercial Court, *without* the consent of that court.

[5] *Goldstein v RELM* [2026] IEHC 299 at paras. 3-7.

11. The legal position in Ireland regarding this question is not clear, as an anti-suit injunction has never been granted for an alleged breach of case management rules. If an anti-suit injunction were to be granted in this case, Goldstein states that this would involve the Irish courts departing from the leading authority in England and Wales (*South Carolina Insurance Co v Assurantie Maatschappij 'De Zeven Provincien' NV* [1987] AC 24), which provides that anti-suit injunctions are *only* granted where there is a breach of a legal or equitable right, rather than where there is a breach case management rules. However, RELM states that the *South Carolina* case was decided 40 years ago, when case management did not exist in the same manner as it does today. For this reason, it urges this Court to follow the more recent caselaw from Canada and Australia, in which an anti-suit injunctions have been granted for a breach of case management rules.

<u>BACKGROUND</u>

12. In these proceedings Goldstein claims that RELM is estopped from calling in a series of loans which it gave to Goldstein relating to a portfolio of 47 commercial properties in Ireland. As a result, Goldstein claims that RELM is estopped from appointing the fourth and fifth defendants (the "**Receivers**") as receivers to those properties (the "**Properties**").
13. This Court has previously delivered judgment in these proceedings (*Goldstein v RELM* [2026] IEHC 29 (the "**Estoppel Judgment**"), in which it granted RELM's application to remove a *lis pendens,* which Goldstein had registered over the Properties, when it issued these proceedings.
14. In that judgment, this Court lifted the *lis pendens,* in circumstances where if it had not done so, the *lis pendens* would have essentially granted Goldstein an interlocutory injunction preventing the sale of the Properties, without Goldstein having to make out the normal test for an interlocutory injunction. This removal of the *lis pendens* was made in the context of

Goldstein's estoppel claim being, in this Court's view, '*very weak'*. Nonetheless, this Court decided that bringing that weak claim did not amount to an abuse of process, such as to justify Goldstein's claim being struck out (as being bound to fail).

15. This Court has also delivered another judgment (the "**Redemption Judgment**") in relation to the dispute between Goldstein and RELM in the related set of proceedings (*Goldstein v RELM* [2026] IEHC 299) (the "**Redemption Proceedings**"). In that judgment, this Court refused to grant Goldstein an interlocutory injunction preventing the sale of the Properties, as it found that the case being made by Goldstein in those proceedings (regarding a dispute between the parties about how much was needed to redeem the loans) was ultimately founded upon the same core *'very weak'* argument as in these Estoppel Proceedings.
16. It was in that Redemption Judgment that this Court criticised the litigation conduct of Goldstein, and its attempts to frustrate the sale of the Properties and the receivership by weaponsing legal costs, in order to intimidate an innocent/unrelated auctioneer from acting in the sale of the one of the Properties.
17. Another related set of proceedings is also before the Irish courts, in which Goldstein claims certain assets are excluded from the receivership (the "**Excluded Assets Proceedings**").
18. For ease of reference, and where the context so requires, the term 'RELM' will be taken to include the Receivers and defined terms in this judgment have the same meaning as defined terms in the Estoppel and Redemption Judgments.

<u>The relief sought in the current application</u>

19. The present application is brought by RELM seeking two primary reliefs.
20. Firstly, RLEM seeks an anti-suit injunction restraining Goldstein from further prosecuting proceedings which it has commenced in the United States District Court for the Southern District of New York, entitled *Application of Goldstein Property ICAV for an order pursuant to 28 U.S.C. §1782 to conduct discovery for use in foreign proceedings* Case No.

25-mc-466. That legislation provides for the compulsory production of evidence in the United States of America where that evidence is '*for use in a proceeding in a foreign or international tribunal'*.

21. In these New York Proceedings, Goldstein seeks discovery from Avenue. It is not disputed that Avenue is domiciled in the United States and that Avenue is the owner of the RELM defendants in these Estoppel Proceedings. The discovery is sought for use in these Estoppel Proceedings and as noted, it is being sought under §1782 of Title 28 of the United States Code ("**1782 Application**")

22. The second relief sought by RELM is an order for security for costs against Goldstein. In the alternative to the anti-suit injunction, RELM seeks a direction that any evidence obtained in those New York Proceedings is inadmissible and/or irrelevant.

23. The Notice of Motion dated 2 March 2026 was heard by this Court on 16 and 17 June 2026. However, an application was heard on 15 July 2026 to admit an affidavit dated 9 July 2026 correcting affidavit evidence previously provided by Mr. Sutcliffe during the hearing, regarding the source of funds in relation to the security for costs motion.[6]

ANALYSIS

24. Since Avenue is not a party to the Estoppel Proceedings, the discovery which is being sought from it in the New York Proceedings is third-party discovery. However, since RELM is '*indirectly owned by Avenue',*[7] this means that, in commercial terms, Avenue is very closely connected to the Estoppel Proceedings, as it has a lot at stake financially (*albeit* indirectly) in the outcome.

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[6] This affidavit clarified that Mr. Sutcliffe's investment vehicle, Quanta Capital, was the source for €500,000 which could be provided by way of security for costs in this case. He has previously provided, incorrect sworn evidence, that funds which were on deposit could be used as security for costs (when in fact those funds were charged).

[7] Transcript, Day 2, p 145, line 23, *per* counsel for RELM.

25. This is important background to RELM's application for an anti-suit injunction in the Estoppel Proceedings between Goldstein and RELM. In essence, RELM is seeking to prevent Goldstein from progressing the discovery application in New York against RELM's owner, in aid of Goldstein's proceedings against RELM in Ireland.

<u>Avenue was involved in issues which are at the core of the Estoppel Proceedings</u>

26. It is also relevant to note that, while Avenue is a third party, in the sense that it is *not* being sued by Goldstein in the Estoppel Proceedings, it did have a role in the dispute which forms the basis of the Estoppel Proceedings. This is because it is clear from the Statement of Claim in the Estoppel Proceedings, and the affidavits which have been filed, that Avenue was involved in the lending relationship between Goldstein and RELM. This lending relationship is at the heart of the allegation by Goldstein that RELM is estopped from appointing the Receivers to the Properties.
27. For example, at para. 41(e) of the Statement of Claim it is claimed that:

> '*RELM* ***and Avenue Capital*** *agreed to provide an extension of the term of the RELM facilities by two years'*

and at para. 63(e) that:

> '*RELM contacted [Goldstein's] representative noting that both RELM* ***and its investors [i.e. Avenue])*** *were agreeable to provide a short term extension to 31 December 2024 of the RELM Facilities provided that €1,120,000 in interest was paid*.'
>
> (Emphasis added)

28. Evidence was also provided that two employees of Avenue were on the credit committee of RELM. In addition, it was not disputed that these employees were at a meeting on 27

June 2023[8] when the alleged representations, which ground the estoppel claim, were made by Mr. Dowling to Goldstein (*albeit* that these representations were alleged to have been made on behalf, and with the express or implied authority, of RELM, and not of Avenue).

29. Those alleged representations were that the relevant loan facilities granted to Goldstein by RELM would be extended. In this regard, it was not disputed that these employees of Avenue were also at a meeting on 24 June 2024[9] when updates were provided regarding compliance with the requirements for the alleged extension of the facilities. Similarly, it was not disputed by RELM that Avenue employees attended meetings at which the decisions were made to call in the loans and appoint the Receivers.

30. While all these allegations regarding the involvement of Avenue in the dispute appear not to be disputed, RELM does not accept that Avenue's (or indeed RELM's) acts or omissions give rise to the estoppel claimed.

Could Avenue have documents relevant to the dispute?

31. Because of the foregoing involvement of Avenue in the relationship at the core of the Estoppel Proceedings, Goldstein believes that Avenue may have documents which relate to the *alleged* authority of Mr. Dowling to bind RELM, as well as documents relating to the *alleged* representations made by Mr. Dowling, and also documents regarding the factual matrix of those alleged representations.

32. It seems clear to this Court that, because of the documentary evidence (minutes *etc.*), provided to this Court, of the involvement of Avenue in the lending relationship between RELM and Goldstein, Avenue *could* have documents in its possession which relate to Mr. Dowling's authority, his alleged representations, and/or the factual matrix relevant to any representations made. If Avenue does have any such documents, they may support

[8] Transcript, Day 2, pg. 15 lines 18-25.
[9] Transcript, Day 2, pg. 22 lines 4-6.

Goldstein's claim or hinder RELM's defence and so should be discovered. Indeed, it is relevant to note that RELM does not deny that Avenue *could* have relevant documents.

33. Nonetheless, RELM seeks the anti-suit injunction preventing the New York Proceedings on the grounds that '*all or very nearly all of the documentation must be available in Ireland'*[10] as that documentation is, it is claimed, in RELM's possession and so the application for third-party discovery in a foreign jurisdiction is unnecessary.

34. In this regard, RELM regards as ridiculous that Goldstein has gone to a New York court to seek documents relating to a meeting (on 14 November 2023)[11] that was held in Ireland (*albeit* remotely) concerning Properties and loans in Ireland, which meeting Goldstein itself attended (as well as being attended by Avenue and RELM). In particular, RELM claims that Goldstein does not need discovery of documents relating to a meeting, which Goldstein itself attended. Furthermore, RELM states that Goldstein can seek discovery in Ireland from RELM (or even from Avenue's branch in Ireland) and so it should not need discovery in New York from Avenue.

35. It is true that it is possible, and may even be probable, that RELM will have the same documents as Avenue concerning this meeting (and other related meetings/issues). However, what was said at this meeting, regarding alleged representations made regarding the extension of the loan facilities, is hotly disputed. For this reason, this Court must bear in mind that *it is possible* that Avenue could have documents that are not in RELM's possession, that could be relevant. In particular, RELM did not provide evidence to lead this Court to conclude that Avenue does *not* have documents which are relevant and which are *not* in RELM's possession.

[10] Transcript, Day 2, pg. 144 line 11.
[11] Transcript, Day 2, pg. 20 lines 7-18.

36. For this reason, this Court cannot conclude, on the facts before it, that it *might not* be necessary to make a discovery order against Avenue in a New York court. However, this does not, *per se*, mean that a discovery application should have been brought by Goldstein in New York against Avenue *when, and in the manner in which,* it was brought.

37. This is the key issue in this case.

<u>Should Goldstein have brought the discovery application in New York?</u>

38. RELM claims that Goldstein should not have brought the New York Proceedings *without* the consent of the Commercial Court or, at the very least, without notifying the Commercial Court. This is because, it points out that the Estoppel Proceedings, like all proceedings in the Commercial Court, are being case managed by that court. Furthermore, it points out there can be no dispute that the New York Proceedings are proceedings which are subordinate to, and dependent on the Estoppel Proceedings. To put it another way, the New York Proceedings have no independent existence, since they exist solely to seek discovery of documents in aid of the Estoppel Proceedings.

39. Since Goldstein chose not to seek directions from the Commercial Court regarding issuing the New York Proceedings, or even to notify the Commercial Court of its intention to bring those proceedings, it is important to consider Goldstein's stated reason for doing so and also for the timing of that step.

40. In this regard, Mr. Sutcliffe[12] gave sworn evidence that the discovery of the documents from Avenue was required because there was *'a pressing need'*[13] for Goldstein to have such documents, to enable Goldstein to defend the strike-out application, which had been brought by RELM on the grounds that the Estoppel Proceedings were bound to fail. He

[12] Affidavit of Mr. Mel Sutcliffe, sworn 13 March 2026, para. 11.
[13] *ibid* at para. 57.

gave sworn evidence that such documents were of '*crucial importance*'[14] to the Estoppel Proceedings.

41. The motion to strike-out the Estoppel Proceedings (for which Mr. Sutcliffe said Goldstein needed these documents) was issued by RELM on 27 August 2025. The application for discovery in New York was commenced by an *ex parte* application issued on 23 October 2025. The motion to strike out was heard by this Court on 16 and 17 December 2025.

42. However, Goldstein did not bring to the attention of the Commercial Court, its intention to issue the New York Proceedings, when it appeared, through counsel, in the Commercial Court on 3 September 2025 and 6 October 2025,[15] even though on Mr. Sutcliffe's account, those New York Proceedings were crucial to Goldstein's defence of the strike-out motion.

<u>The primary reason Goldstein brought the New York Proceedings?</u>

43. RELM claims that Goldstein's failure to notify the Commercial Court was not simply an oversight. It claims that the primary reason Goldstein did not bring its alleged urgent need for the documents, and its intended discovery application in New York, to the Commercial Court's attention, was because it was afraid that the Commercial Court might not permit Goldstein to bring the New York Proceedings, either at all or as its first port of call in attempting to get those documents.

44. This is because RELM says that the true purpose of the New York Proceedings, was not any urgent need for the documents. Rather, RELM says that the issuing of the New York Proceedings is yet another abuse of process by Goldstein, in furtherance of its commercial aim of having the Properties returned to its use.

45. In particular, RELM says that the issue of the New York Proceedings simply illustrates the lengths which Mr. Sutcliffe (the person who beneficially owns Goldstein[16]) will go to, in

[14] *ibid* at para. 12 and 57
[15] Defendant's written legal submissions, para. 4.6.
[16] *Goldstein v RELM* [2026] IEHC 299, para. 12.

order to frustrate the sale of the Properties. RELM says it also illustrates the lengths Mr Sutcliffe/Goldstein will go to, in order to improperly put pressure on RELM (and its owner Avenue) to pressure RELM/Avenue to return the Properties to Goldstein's use. It says that this is in keeping with Goldstein's improper actions to date in this litigation (to which this Court referred at paras. 3-11 the Redemption Judgment).

46. In this instance, RELM says that the improper pressure being applied by Goldstein is in the form of the *enormous irrecoverable costs* which Avenue will have to incur to deal with the New York Proceedings, which proceedings, it says, were neither urgent nor necessary (or, at least, should not have been instituted, without first attempting more cost-effective ways of obtaining the documents).

47. Mr. Dowling, on behalf of RELM, in his affidavit of 2 March 2026 puts the matter as follows (at para. 96):

> *'[Goldstein] is seeking to use the New York Proceedings to exert pressure on [the Receivers, RELM], and third-parties engaging with them, all while seeking to evade the cost-shifting protections that might dissuade [Goldstein] from such sharp practices in this jurisdiction.'*

Costs of discovery in New York likely to be multiples of discovery costs in Ireland

48. To support its point regarding the financial pressure which is applied to RELM/Avenue from Goldstein's decision to institute the New York Proceedings, uncontested averments were made by Mr. Dowling on behalf of RELM that:

> '*To issue proceedings against Avenue Capital in New York, a jurisdiction where, I am advised, [Goldstein] is not on risk of an adverse costs order being made against it, but*

where potential legal costs can, I am advised, be many multiples of those typically incurred in Ireland [...]'[17]

49. Thus, it seems that the costs of obtaining discovery in New York in this case could be *'multiples'* of the costs of voluntary discovery or court-ordered discovery in Ireland. (This of course assumes that copies of the Avenue documents are in RELM's possession or procurable by RELM, or indeed by the Irish branch of Avenue, for the purposes of voluntary discovery in Ireland, or for the purposes of a court order).

50. It also seems clear that costs do not follow the event in New York. Thus, Avenue's costs are irrecoverable, in the sense that it will be liable for the costs of its challenge to the discovery application, *irrespective* of the fact that it might be successful in denying or restricting the discovery application. In this regard, RELM/Avenue have already been successful in having the contested discovery application considerably reduced from the terms of the *ex parte* application brought by Goldstein, i.e. by the removal of over half of the categories of discovery, from 30 categories down to 13 categories, as well as the removal of all of the four depositions which had been sought, as well as reducing the time-span of the application for discovery from a start date in 2017 to one in 2019.

51. In addition, as regards the costs of actually *making the discovery itself,* uncontested submissions were made that unlike the position in Ireland, where the party seeking third-party discovery generally pays the costs of the third party who makes discovery, this is not the case in New York. Thus, Avenue will be responsible for the discovery costs (if ordered by the New York court). In this regard, Mr. David Livshiz, an attorney, gave the following evidence on behalf of RELM regarding these discovery costs (at para. 16 of his affidavit dated 26 March 2026):

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[17] Replying affidavit of Mr. Paul Dowling dated 30 March 2026, para. 10(c).

'[I]t appears that [Goldstein] is seeking to circumvent non-US proof-gathering restrictions by seeking the same materials that it could, in principle, obtain from litigants before this Honorable Court, or from others in Ireland that I understand are subject to the jurisdiction of this Honorable Court[…] By doing so, my view is that [Goldstein] appears to be seeking to avoid Irish rules which, I understand, generally require (1) the unsuccessful party to pay the costs of the successful party and (2) a litigant to pay the costs of third-parties from whom it seeks discovery.'

52. In summary therefore, Avenue's costs are irrecoverable *in the United States*, in the sense that even if it wins on the discovery application, it has to bear its own costs. In addition, if it loses, and discovery is ordered, it has to bear the costs of making the discovery, even though it is not being sued in Ireland. It is also the case that these costs are not recoverable *in Ireland* by Avenue, or indeed by the company it owns, RELM. Thus, if RELM defeats Goldstein's claim in the Estoppel Proceedings in Ireland (a claim which this Court has described, in the Estoppel Judgment, as '*very weak'*), Avenue cannot directly, or indirectly (through RELM), recover, in the Irish proceedings, the costs incurred in the United States in the discovery application, since Avenue is not a party to the Estoppel Proceedings.

53. However, it is not just the fact that the costs are irrecoverable, which is significant, it is also the *amount* of those costs. RELM made the following submission regarding the extent of the costs:

'We founded our application from the beginning on the proposition that this Court gives directions in order to ensure the just and expeditious determination of proceedings and, also, to minimise legal costs. And that is entirely absent from [counsel for Goldstein's] analysis of the situation. Because what we are saying is, because all or very nearly all the documentation must be available in Ireland for [RELM/Avenue] to be ***required to spend millions of dollars – and it is not disputed that that will be the cost –*** *in America*

to produce documents of, at best, tangential relevance to the issues in this case is totally disproportionate and is inimical to the Court's objective of minimising the expenditure of legal costs. So there is just no engagement with that, Judge.'[18] (Emphasis added)

54. For these reasons, RELM believes that the real motivation for Goldstein to institute the New York Proceedings, seeking discovery of documents from Avenue, was to apply the financial pressure on RELM/Avenue, of *irrecoverable legal costs in the millions of dollars*, such that they will be more likely to settle the Estoppel Proceedings and the Redemption Proceedings, and so hand back the use of the Properties to Goldstein. In this regard, it cannot be denied that incurring millions of dollars of costs (which will never be recovered) could operate as a very significant financial pressure for RELM/Avenue to settle the various sets of proceedings.

55. In support of a finding that this was in fact Goldstein's primary purpose for instituting the New York Proceedings, RELM points to the fact that this Court has already been critical of the improper way in which Goldstein has conducted this litigation in an attempt to achieve its commercial aim of preventing the sale of the Properties and having them returned to Goldstein's use (see paras. 3-11 of the Redemption Judgment).

56. Further evidence in support of the view that the primary reason the New York Proceedings were instituted was to put pressure on RELM/Avenue to settle, is to be found in the sworn evidence provided by Mr. Dowling (at para. 93(c) of his affidavit of 2 March 2026). He states that:

'[Goldstein] caused its New York Counsel to ***serve copies of the pleadings in the New York Proceedings*** *on the Joint Receivers'* ***appointed sales agents and on prospective purchasers of the Properties****, notwithstanding that (1) none of those parties is party to the New York Proceedings; (2) none of those parties, I am advised, is within the*

[18] Transcript, Day 2, pg. 144, lines 5-19.

jurisdiction of the New York Courts, and (3) no relief of any kind as regards the Properties is sought or could ever be sought in the New York Proceedings' (Emphasis added)

57. It is relevant to note that Goldstein does not seek to deny this claim. In these circumstances, it is difficult to avoid the conclusion that by serving the New York Proceedings on these completely unconnected and innocent third parties, Goldstein is seeking to achieve its commercial aims (of preventing the sale of the Properties) by pressure, rather than by court orders, just as it had done with one of the Properties (Shelbourne House), as pointed out at paras. 3-11 of the Redemption Judgment.
58. In that judgment, this Court found that Goldstein had sought to weaponise legal costs to intimidate third parties, to achieve its aim of preventing the sale of Shelbourne House. In this instance, one could ask what conceivable reason could there be for a New York attorney to send copies of the New York Proceedings to prospective purchasers of the Properties in Ireland?
59. It seems to this Court that it must have been done with a similar aim as the solicitors' letters, sent on behalf of Goldstein to Savills, regarding Shelbourne House. This is because a New York attorney sending copies of the New York Proceedings, to a sales agent/prospective purchaser, carries the clear implication that, *if* the agent sells the Properties or the purchaser buys them, this *might* result in that party getting embroiled in a legal quagmire and having to incur legal costs.
60. This taking the law into one's own hands by Goldstein (though not in the sense of doing anything illegal), that was previously highlighted at para. 1 of the Redemption Judgment, could be said to be occurring again here. This is because it appears to this Court that Goldstein is once again seeking to achieve something, by weaponising legal costs, which it has not achieved by court order.

61. There appears to this Court to be no good reason why a New York attorney would send New York discovery application documents to a prospective purchaser of the Properties in Ireland. All it does is provide support for the view, that the primary reason for taking the New York Proceedings, was not to obtain *'pressing'* evidence to defend the strike-out motion, but rather to achieve something, which Goldstein has been unable to achieve by court order i.e. to thwart the sale of the Properties by applying pressure on sales agents and prospective purchasers, and pressure on RELM/Avenue to settle the litigation and return the Properties to Goldstein's use.

<u>Obtaining discovery from a third party</u>

62. A further factor in favour of a finding that Goldstein's primary purpose in instituting the New York Proceedings, was to inflict enormous irrecoverable legal costs on RELM, as a negotiating tactic, is the fact that, in order to obtain potentially relevant documents, Goldstein's first port of call was to issue the New York Proceedings. It was not to seek voluntary discovery from Avenue, or its Irish branch or indeed from RELM (to the extent that the documents might have been within RELM's possession or procurement).

63. In this regard, it is relevant to note that Mr. Dowling, in his affidavit dated 2 March 2026, states that, as regards one important aspect of the dispute (his alleged authority to bind RELM), there is no evidence which is *'available from Avenue Capital which is not also available from parties to the Irish proceedings'* (at para 82).

64. More generally, however, the fact that the issue of the New York Proceedings was the first port of call for Goldstein is relevant because this is not what *should* happen when it comes to seeking discovery from a third party. It is of course true that Avenue is *not* domiciled in Ireland, and so it is *not* party to the Estoppel Proceedings. Thus, an Irish court cannot order discovery against Avenue (see *Fusco v O'Dea* [1984] 2 I.R. 93, at para. 102).

65. However, this does not mean, that the first thing that Goldstein does is to issue *ex parte* proceedings in New York seeking the relevant documents from Avenue, as Goldstein did in this instance.

66. This is because in *Chambers v Times Newspapers Ltd* [1999] 2 I.R. 424, the High Court (*per* Morris P.) made it very clear what approach was to be taken when a litigant believes that a person, who is not party to the proceedings, may have documents which are relevant, as in this case. At pgs. 429-430, Morris P. stated that:

> '*In my view, however it is undesirable and* ***the Court should be slow to put someone, not a Party to the action, to the trouble of making discovery if it can be avoided*** *and I am satisfied that an Order should only be made against a Third Party in circumstances where the* ***documents in question are not readily available to be discovered by a party to the action*** *or where in the particular circumstances of the case the court the interests of justice require that it should be done.*
>
> *[...]*
>
> *Given therefore that there is no satisfactory evidence that (a) the documents are not available to be discovered by the Plaintiff and (b) that proper discovery will not be made, the question arises as to whether the Court should order third party discovery.*
>
> *I am of the view that it should not. I believe that* ***as a general principle third party discovery, with all the inconvenience which it involves, should only be ordered when there is no realistic alternative available.***'
>
> (Emphasis added)

67. It is true that the foregoing principle was expressed by Morris P. in the context of discovery being sought from a third party, who was domiciled in Ireland.

<u>What if the third party is domiciled outside Ireland?</u>

68. However, it seems to this Court that the underlying principle in *Chambers* is that a third party (i.e. a party who the plaintiff has chosen not to sue) should not *unnecessarily* be '*put to the trouble'* of making discovery '*with all the inconvenience which it involves',*

69. It is important to note that Morris P. does not seek to restrict this principle to third parties who happen to be domiciled in Ireland. Indeed, it seems to this Court that this principle is equally, if not more, applicable to a third party who is domiciled abroad. Such third parties are usually even further removed from the case and there are usually additional complications in having to deal with cross-jurisdictional issues which will arise when a discovery order in aid of Irish proceedings is sought in a foreign jurisdiction. Accordingly, there is even greater *'inconvenience'* for a foreign based third party, than if one was dealing with an Irish-domiciled third party.

70. Indeed, that additional inconvenience is illustrated by the facts of this case, since the New York lawyers have, it seems, agreed, that the format of any affidavits of discovery to be sworn (if necessary) in the New York Proceedings, will be in conformity with the Rules of the Superior Courts, as opposed to a Rule 30(b)(6) deposition under US law.[19] This is clear from Goldstein's written submission at pg. 8, where it is stated that:

> *'[Goldstein] made clear that it will accept the documentation provided in the same format as an Irish affidavit of discovery, which is* ***less onerous*** *than the default position required under the s. 1782 process.' (Emphasis added)*

While Goldstein sought to make a virtue out of its agreement to accept the *'less onerous'* Irish format for discovery, the need for this agreement goes to highlight the inconvenience which it has imposed upon Avenue/RELM by '*fighting a procedural battle in whatever*

[19] Memorandum of Law in Opposition to Motion to Quash, pg. 8.

jurisdiction' Goldstein *'may find a procedural advantage'* (to use the words of Griffiths L.J. in the *South Carolina*, referred to below).

71. For the foregoing reasons, it seems to this Court that Goldstein should not, as its *first step* in seeking any relevant documents from Avenue, have put Avenue to the inconvenience (as well as the irrecoverable and enormous cost) of having to deal with a discovery application in the United States.

72. It is important to note that Goldstein cannot claim that there was no *'realistic alternative'* to getting those documents from Avenue, *other* than by means of the New York Proceedings. This is because there is no evidence that it made *any attempt* to seek those documents by alternative means, e.g. by seeking voluntary discovery from Avenue, or by establishing if these documents might be in the possession or procurement of RELM (and it could then seek them by voluntary discovery or by court order in Ireland) or indeed if the documents might be in the branch office of Avenue based in Dublin (e.g. if soft copies might accessible from the Dublin branch's computer network). In this regard, Mr. Dowling, in his affidavit of 30 March 2026 states, at para. 45, that:

    '[..] Mr. Sutcliffe and [Goldstein] do not in fact care whether those documents could be obtained in a more efficient and cost effective manner. Rather, their primary concerns appear to be to disrupt the [Estoppel Proceedings] and put entities associated with [RELM] to substantial and irrecoverable costs of defending proceedings and/or making discovery in the United States.'

73. In a similar vein, in the letter of 4 February 2026 from RELM's solicitors to Goldstein's solicitors, it is stated:

    '[Goldstein] has not requested that [RELM] make voluntary discovery, nor has it issued a motion seeking discovery in the [Estoppel Proceedings]. It therefore cannot be sure

that it would not be able to obtain the evidence it is seeking in the New York Proceedings in the ordinary course of the [Estoppel] Proceedings.'

74. The fact that Goldstein failed to pursue any '*realistic alternative'*, but instead, as its first step, issued e*x parte* proceedings in New York, therefore provides further support for the view that the primary reason it instituted the New York Proceedings was to put pressure on Avenue/RELM to settle the proceedings and return the use of the Properties to Goldstein.

New York Proceedings run contrary to aim of Commercial Court proceedings

75. Another factor in support of this view (and in support of the grant of the anti-suit injunction) is the fact that the Estoppel Proceedings are being case managed in the Commercial Court. However, the institution of *ex parte* proceedings in New York by Goldstein flies in the face of the clear objectives of the Commercial Court, namely that each step in Commercial Court proceedings is subject to the direction of the Commercial Court with the objective of, amongst other things, minimising costs.
76. That this is the approach of the Commercial Court would, or should, have been known to Goldstein, since this is clear from the following applicable rules and practice direction.
77. Order 63A, rule 5 of the Rules of the Superior Courts states:

 '*A Judge may, at any time and from time to time, of his own motion and having heard the parties,* ***give such directions*** *and make such orders, including the fixing of time limits, for the conduct of proceedings entered in the Commercial List, as appears convenient for the* ***determination of the proceedings in a manner which is just, expeditious and likely to minimise the costs of those proceedings****.*' (Emphasis added)

 It is crucial to note therefore that a key objective of the Commercial Court is to '*minimise the costs of proceedings*'.

78. Order 63A, rule 6(1)(b) states:

> '*(1) Without prejudice to the generality of rule 5 of this Order, a Judge may, at the initial directions hearing:*
>
> *[…]*
>
> *(b) on the application of a party by motion on notice to the other party or parties returnable to the initial directions hearing, give any of the following directions to facilitate the determination of the proceedings* ***in the manner mentioned in that rule:***
>
> *[…]*
>
> *(vi) requiring delivery of interrogatories, or discovery or inspection of documents […]*'

Thus, it is clear that directions, which are given by the Commercial Court in relation to, *inter alia,* discovery, are given with the same objective as rule 5, i.e. in order to minimise costs.

79. It is also relevant to refer to the Practice Direction HC122 for the Commercial Court List which states, at para. 4:

> '*Once a case has been entered in the Commercial List,* ***all further steps in the proceedings*** *(including the fixing of a date for the substantive hearing of the proceedings)* ***will be subject to the directions*** *of the Judge in charge of the Commercial List ("the Commercial List judge"). For that reason, there is no list to fix dates in the Commercial List. The Commercial List judge will assign a hearing date once the judge is satisfied that it is appropriate to do so.*' (Emphasis added)

80. In summary therefore, in light of the Rules of the Superior Courts and the practice direction applicable to the Commercial Court, it seems clear that all steps in Commercial Court proceedings are subject to the directions of the court, and those directions have as their aim the minimisation of costs.

81. It is against this background that this application by Goldstein for a discovery order from a New York court, in aid of the Estoppel Proceedings in the Commercial Court, must be viewed.

82. In particular, Goldstein's decision to take that step *without the consent* of the Commercial Court, and notwithstanding the fact that doing so would maximise, rather than minimise costs, must be viewed against this background.

83. If it is a core principle of the Commercial Court that all steps in Commercial Court proceedings are subject to the directions of the court, and those directions have as their aim the minimisation of costs, how can that court achieve this core principle, if it does not know about proceedings in another jurisdiction which are being commenced by one of the parties? Or to put it another way, how could it be said that issuing proceedings in New York (without notice to the Commercial Court or without seeking its consent) would be likely to minimise costs?

84. However, despite the fact that Goldstein knew, or should have known, that this would issuing the New York Proceedings runs contrary to the *implicit* requirements of the Commercial Court rules (that a step, even in foreign proceedings, be approved by the court) and their express objectives (that costs be minimised), it decided to do so.

85. It seems to this Court that it decided to do so, since its primary purpose was to use the New York Proceedings as leverage in its negotiations with RELM/Avenue, rather than, as it claims, that the documents it was seeking were urgent for its defence of the strike-out application.

86. This Court reaches this conclusion for the following reasons.

<u>The timing and non-disclosure to the Commercial Court of the New York Proceedings</u>

87. Firstly, it is to be noted that the Estoppel Proceedings, alleging that RELM was estopped from appointing the Receivers to the Properties, were instituted on 1 August 2025. Goldstein provided evidence that it instructed New York lawyers during the month of August 2025 (for the purposes of obtaining discovery from Avenue). Then, on 27 August 2025, RELM issued the motion seeking the striking out of the Estoppel Proceedings on the grounds that they were bound to fail. As already noted, Mr. Sutcliffe has provided sworn evidence that Goldstein regarded the discovery application in New York as crucial to its defence of the strike-out motion.[20]

88. The proceedings seeking discovery in New York were issued on 23 October 2025. It is relevant to note that Goldstein appeared, through counsel, in the Commercial Court on 3 September 2025 and on 6 October 2025. At that hearing on 6 October 2025, which was *circa* two months after the New York lawyers had been instructed on the discovery application in New York, a hearing date for the strike-out motion was allocated to the parties, i.e. the dates of 16 and 17 December 2025).[21] However, it is important to note that Goldstein did not disclose its intention to issue the New York proceedings to the Commercial Court. Indeed, the New York Proceedings came to the Court's attention for the first time when these motions were issued on 2 March 2026.[22]

89. At the hearing before this Court, counsel for Goldstein did accept that there was *'some force in the contention'* that Goldstein ought to have mentioned its intention to institute the

[20] Affidavit of Mel Sutcliffe, 13 March 2026, paras. 12 and 57.
[21] Order of Sanfey J., 6 October 2025.
[22] Notice of Motion, 2 March 2026; Transcript, Day 1, pg. 17.

New York Proceedings to the Commercial Court*, before* instituting them, and he stated that Goldstein '*regrets*' not doing so.

90. However, what is particularly relevant about Goldstein's failure to notify the Commercial Court of its intention to issue the New York Proceedings is the fact that, as a consequence, Goldstein did not notify the Commercial Court that it was awaiting evidence which Mr. Sutcliffe claims was crucial to its defence of the strike-out application. More significantly, Goldstein did not seek an adjournment of the strike-out motion, until it had obtained the allegedly *'crucial'* documents from the New York Proceedings. This has two consequences.

91. Firstly, it undermines the credibility of Mr. Sutcliffe, when he claims that he issued the New York proceedings, *'at a time when there was a pressing need to obtain relevant information and documents in the context of the [RELM's] application to dismiss [Goldstein's] claim.'* Clearly, if the documents to be obtained from the New York Proceedings were genuinely crucial, it seems inconceivable that Goldstein would not have sought an adjournment of the strike-out motion until it had the relevant documents. This failure completely undermines Mr. Sutcliffe's claim that the reason the New York Proceedings were instituted was because of Goldstein's *'pressing need'* for *'crucial'* evidence. It also undermines Mr. Sutcliffe's credibility more generally and particularly his denial[23] that the New York Proceedings were instituted in order to impose very significant irrecoverable costs on Avenue in order to apply pressure on RELM/Avenue to settle the litigation.

92. Secondly, it brings into focus the fact that Goldstein deliberately chose not to bring to the attention of the Commercial Court, the fact that it was seeking allegedly crucial evidence in proceedings in a foreign jurisdiction against RELM's owner, even though those New

[23] Affidavit of Mel Sutcliffe, 13 March 2026, para. 59.

York Proceedings are clearly subordinate to, and in aid of, the Estoppel Proceedings in the Commercial Court.

93. This failure, to notify the Commercial Court of this step it was taking in the New York Proceedings, occurred, despite the fact that, as previously observed, all steps in Commercial Court proceedings are subject to the directions of that court.

94. Of course, it is true that the step of issuing New York Proceedings is not a step which is taken within this jurisdiction, and so Goldstein can say, as it does, that it did not breach any *explicit rule* by taking this ‘step’ in a foreign jurisdiction without the consent of the Commercial Court.

95. However, the clear intent of the Commercial Court rules is that every step that is taken in Commercial Court proceedings is done on the direction of the Commercial Court. In this instance, one is dealing with New York Proceedings which have no independent existence apart from the Estoppel Proceedings, as those proceedings constitute a step which was taken in aid of, and so completely subordinate to, the Estoppel Proceedings. Indeed, this point is emphasised by the fact that the affidavits of discovery which are to be sworn in New York, if discovery is ordered, are to be in the form provided for by the Rules of the Superior Courts.

96. For this reason, it seems to this Court that on any reasonable interpretation of the Commercial Court rules, Goldstein should have brought to the attention of the Commercial Court its intention to issue the New York Proceedings. This is particularly so because those New York Proceedings are not only subordinate to the Estoppel Proceedings, but also because their impact is so significant in terms of costs, and the fact that the resulting increase in costs runs completely contrary to the stated objectives of the Commercial Court.

97. Just as this Court noted at paras. 3-11 of the Redemption Judgment that Goldstein’s weaponisation of legal costs to intimidate an auctioneer was not a breach of any express

law, but was still inappropriate, Goldstein appears to this Court to be doing the same thing again in a different context.

98. This time it is doing something, which is not in breach of an *explicit* rule of the Commercial Court (i.e. the issuing of proceedings in New York against a third party), but which has the clear effect of applying financial pressure which may assist it in achieving its commercial aims, and which runs contrary to the aims of the Commercial Court rules to minimise legal costs. In this Court's view, this amounts to a breach of an implicit rule of the Commercial Court (i.e. not to take a step in foreign proceedings, where those proceedings are subordinate and in aid of Commercial Court proceedings, without a direction of the Commercial Court).

<u>New York Proceedings will maximise, not minimise, costs</u>

99. Further support for the view that Goldstein's primary purpose, in taking the New York Proceedings, is to inflict irrecoverable financial costs, potentially in the millions of dollars, on Avenue/RELM as a negotiating tactic, is the fact that no attempt was made by Goldstein to obtain voluntary discovery from Avenue or RELM, or to see to what extent, if any, the documents which it seeks are within RELM's possession or its procurement (from its owner, Avenue). Nor did Goldstein seek to establish to what extent those documents might be available from the branch of one of the Avenue group companies which is based in Dublin.

100. This is relevant because *if* this matter had been mentioned to the Commercial Court, *before* the New York Proceedings were issued, it seems likely, in light of the uncontested submission regarding discovery costs in New York being *multiples* of discovery costs in Ireland, that this Court, and likely RELM, would have considered if there was a *'realistic alternative'* way to get the documents, other than through the 1782 Application.

101. To put it another way, it seems to this Court that Goldstein, by deciding to issue the proceedings in New York *ex parte,* and so without notice to Avenue (or RELM), completely undermined a key objective of the Commercial Court to minimise costs. Instead, its approach will maximise costs (and worse still, maximise irrecoverable costs) for RELM/Avenue. In this Court's view, this could not be said to be an appropriate way to carry on litigation in the Commercial Court and therefore is further support for the view that Goldstein's primary purpose in issuing the New York Proceedings was to use them as a negotiating tactic in its dispute with RELM/Avenue.

Court seeks to ensure that parties' resources are not inappropriately wasted

102. Another factor in support of this conclusion is the fact that this approach of maximising costs goes against the expressly stated objective of the courts to seek to protect, not just the court's resources, but also the parties' resources. As noted by Clarke J. (as he then was) in *Kalix Fund Ltd v HSBC Institutional Trust Services (Ire) Ltd* [2010] 2 I.R. 581, [2009] IEHC 457, at para. 45:

> *'It does seem to me, at the level of principle, that a court has a discretion, in ordering its business, to ensure that* ***scarce court resources and the resources of parties to litigation are not inappropriately wasted*** *by an unnecessary duplication of litigation. In addition it is, of course, important that measures are taken to minimise the risk of any inconsistent determinations arising from different proceedings.'*

103. It seems to this Court that protecting the resources of the parties applies, not just to unnecessary duplication of litigation (which was the context in which Clarke J. was considering waste), but also where it is possible that substantially the same result (in this instance, discovery of documents) *might* be obtained at a fraction of the cost to one of the parties (or an owner of one of the parties).

104. In addition, in this Court's view, this principle (of protecting the resources of parties) also applies to the resources of persons, whether based abroad or in Ireland, even if they are not parties to the litigation. This is because a court is required to administer *justice* and so to act *justly*, and simply because a person is not a party to litigation does not mean that this Court should ignore costs which might have to be incurred by that third party, perhaps unnecessarily, whether it is domiciled in Ireland or not.

105. Of course, in this instance, we are not dealing with some unconnected third party who has been asked to discover documents, since Avenue owns RELM, (the first to third named defendants in the Estoppel Proceedings). For this reason, in commercial terms, there may be little difference, in substance, to Avenue, whether its money is wasted directly (through it having to spend money on legal costs in the United States) or wasted indirectly (through RELM having to spend money on legal costs). Clearly, this is why RELM has brought this application to prevent Goldstein pursuing the New York Proceedings against Avenue.

106. In any event, the end result is that Goldstein failed to pursue *any alternatives* with RELM or indeed Avenue (whether in New York or through its Irish branch) before issuing the New York Proceedings, and so the Commercial Court did not have the opportunity to seek to ensure that the resources of a party (in this instance a very closely connected third party) were not '*inappropriately wasted'*. Thus, this disregard by Goldstein of the role of the Commercial Court (of seeking to prevent the inappropriate waste of a party's resources) is yet another factor in favour of a finding that Goldstein issued the New York Proceedings as a tactic in its negotiations with RELM/Avenue.

<u>Goldstein says it is also spending its own money on the New York Proceedings</u>

107. In its defence to the claim that legal costs are being maximised in order to put pressure on RELM/Avenue to settle, Goldstein points out that it too had to spend money on obtaining legal advice in New York. In this way, it attempts to make a virtue out of the fact

that it too has had to incur irrecoverable legal costs, and it seems to be suggesting that somehow this means that it could not be taking the New York Proceedings for an ulterior motive. This is not a persuasive argument in this Court's view.

108. Firstly, it is likely that Avenue's costs will be considerably greater than Goldstein's costs. This is because Avenue is the party having to provide the discovery and as previously noted, unlike in Ireland, the costs of a third-party providing discovery in the United States is borne by that party (in this instance, Avenue). Accordingly, one would expect Avenue's costs to be much greater than Goldstein's.

109. Secondly, the fact that Goldstein chose to spend money on American legal advice which led it to bring the *ex parte* New York Proceedings, does not answer the point that Goldstein *might* have saved, not just Avenue, but also itself, a lot of money if it had simply first sought voluntary discovery from Avenue and/or RELM and/or from the Irish branch of Avenue.

110. Indeed, if anything, the fact that Goldstein went against the normal commercial instinct of not spending money unnecessarily (by seeking an alternative and cheaper way of obtaining the documents) simply raises the obvious question of why Goldstein would have done so (in the absence of any urgency, as has been noted). To put it another way, *if* Goldstein was operating, *without* any ulterior motive, one would have expected it to find the cheapest way for documents to be discovered (e.g. by seeking voluntary discovery from Avenue, or RELM or the Avenue branch in Ireland). The fact that it did not do so is further support for the view that it had an ulterior reason for bringing the New York Proceedings (namely putting pressure on RELM/Avenue to settle the litigation).

111. Having considered the factual scenario, it is now proposed to consider whether these facts justify the grant of an anti-suit injunction preventing Goldstein from pursuing the New York Proceedings.

THE LAW IN RELATION TO ANTI-SUIT INJUNCTIONS

112. There has been one case in which an anti-suit injunction has been granted by the Irish courts. It is the case of *Re GTLK Europe DAC (in Liquidation)* [2025] IEHC 524, in which the liquidators of the GTLK group of companies sought an anti-suit injunction to restrain the Joint Stock Company State Transport Leasing Company ("**JSC**") from pursuing proceedings in Russia.

113. In those Russian proceedings, JSC was relying on the validity of pledge agreements over certain aircraft. The pledge agreements related to aircraft which were owned by the GTLK group of companies, which companies were ultimately owned by JSC. However, the High Court had previously declared that the pledge agreements were void. JSC had *not* participated in the proceedings in the High Court in which the pledge agreements had been declared void. Nonetheless, JSC subsequently pursued proceedings in Russia relying on the validity of those pledge agreements. In these circumstances, Mulcahy J. granted the anti-suit injunction as he concluded at para. 78 *et seq,* that:

> *'As a matter of principle, an **Irish court must have jurisdiction to protect the integrity of its own processes** by ensuring that parties properly subject to its jurisdiction do not take steps to undermine the jurisdiction or to breach or ignore its orders.*
>
> *[…]*
>
> *The precise parameters of the jurisdiction will have to be developed on a case by case basis.*
>
> *[…]*
>
> *An order may be granted to restrain fraudulent conduct, to prevent foreign proceedings **which are an abuse of Irish court's process** or are vexatious or oppressive, or which seek to undermine or circumvent orders of the Irish courts.'* (Emphasis added)

114. It is relevant to note that the GTLK case concerned an anti-suit injunction which was granted to prevent the undermining of a liquidation process, which, at that stage, was being supervised by the Irish courts, and therefore had the potential to impact on the priorities and payouts of the liquidation process. This case is somewhat different since it concerns the protection of a court's own processes, in a procedural, rather than a substantive context. This is because it relates to the undermining of the court's case management function, rather than priority in a liquidation or other substantive rights.

115. Nonetheless, this Court agrees with the statement of Mulcahy J. that a court must have the jurisdiction to protect the integrity of its own processes. In this Court's view, this applies not just in the context of substantive rights, but also in the context of procedural rights. This is because, as one can see from the evidence of this case, the cost to a party of non-compliance with procedural rights can be just as significant to the parties (in this case one is dealing with irrecoverable costs which could be in the millions of dollars), if not more, than non-compliance with substantive rights. This Court can therefore see no good reason why a court would not have the power to protect the integrity of its own processes in the context of procedural rights, as distinct from substantive rights.

116. As there is little by way of other authority from the Irish courts, regarding the grant of an anti-suit injunction to prevent a litigant from pursuing discovery in another jurisdiction because of a breach of Irish case management rules, several authorities from other jurisdictions were opened to this Court, i.e. *South Carolina Insurance Co v Assurantie Maatschappij 'De Zeven Provincien' NV* [1987] AC 24; *Mancinelli v Royal Bank of Canada* [2017] ONSC 87; *Jones v Treasury Wine Estates Ltd* [2016] FCAFC 59; *Lavecky v Visa Inc* [2017] FCA 454. All of these cases concerned the exact same discovery application as in this case, i.e. the 1782 Application being made in the United States in aid of litigation in England and Wales, Canada, or Australia, and a claim that this 'step' in the

litigation process (i.e. the application for discovery in the United States) should be restricted in the context of the pre-existing litigation in the home jurisdiction.

117. This Court concludes that the most relevant cases which were opened to the Court were those handed down in Canada and in Australia in the last 10 years (in which the anti-suit injunction was granted), rather than the House of Lords' decision from 40 years ago, the *South Carolina* case, in which the anti-suit injunction was refused.

118. This is because the House of Lords' decision dates from a time when case management was in its infancy in England and Wales (or in this jurisdiction), as the parties were regarded as being *dominus litis*, i.e. they had the ultimate authority, direction, and control over a legal case, rather than the courts. However, as noted by the Supreme Court in *Tracey v Burton* [2016] IESC 16, this is no longer the case. This is because, in more recent times, there has been a greater realisation of the public interest there is, in how cases are litigated. In that case, McMenamin J. held, at para. 45, that:

> '*Court time is not solely the concern of litigants, or their legal representatives.* ***There is a strong public interest aspect to these issues****. Time allotted to the parties may be apportioned by a judge fairly, prior to, or during a hearing. But, such time must be predicated on a realistic appraisal of the time a case, or matter, should, ordinarily and properly, take. As Denham J. pointed out in O'Reilly McCabe v. Minister for Justice, & Patrick Cusack Smith & Co (Agents of Thomas McCabe, Ward of Court & Minor) [2009] IESC 52 at par. 33, the constitutional right of access to the courts, while an important right, is not an absolute one. As a corollary of that right, a court must also protect the rights of opposing parties; the principle of finality of litigation; the resources of the courts; and the right to fair procedures which accrue to each party to litigation, as well as plaintiffs. It is an injustice that defendants or plaintiffs be exposed to repeated and vexatious litigation, in* ***which either party incurs unnecessary legal***

***costs** which may not easily be recoverable against an offending party. The public have a right to a court system which operates effectively and expeditiously in the public interest, while ensuring that justice is administered as the Constitution requires.'* (Emphasis added)

119. This principle is clearly applicable to all litigation, but it is of particular importance in Commercial Court litigation, where, as has been noted, there is an emphasis on minimising costs. This modern approach to litigation (as emphasised by McMenamin J.) therefore supports this Court's decision not to follow the *South Carolina* decision. The House of Lords in that case held that an anti-suit injunction (to prevent a 1782 Application) is only available where the applicant (or first party) could show that the second party had invaded or threatened to invade a legal or equitable right of the first party, or that the second party was engaged in, or threatening to engage in, unconscionable behaviour. Save for these two exceptions, the House of Lords held that parties were free to gather evidence however they chose (and so, it seems, in a foreign jurisdiction, even in contravention of case management rules in the home jurisdiction).

120. If this Court were to follow that decision, then Goldstein would be entitled to seek the discovery in New York, since it is not, it seems, invading a legal or equitable right on the part of RELM (*unless* this Court was to deem the issuing of the New York Proceedings as amounting to unconscionable behaviour).

121. It is however relevant to note that, in *South Carolina*, four senior judges granted the anti-suit injunction, preventing the procedural step of seeking discovery in the United States (before being reversed by the five judges of the House of Lords). Those four judges were in the High Court, Hobhouse J., and in the Court of Appeal, Griffiths, Slade and Lloyd L.JJ. In this regard, it is relevant to note that in the Court of Appeal (*South Carolina Co. v Assurantie Provincien* [1986] Q.B. 348) Griffiths L.J., at pg. 358, held:

'*Once the parties have chosen or accepted the court in which their dispute is to be tried they* ***must abide by the procedure of that country and that court must be master of its own procedure****.* ***Litigation is expensive enough as it is, and if a party fighting a case in this country has to face the prospect of fighting procedural battles in whatever other jurisdiction his opponent may find a procedural advantage*** *it may impose intolerable burdens, and encourage the worst and most oppressive form of procedural forum shopping. We should set our face against any such situation developing.*' (Emphasis added)

122. This Court believes that his observation that litigation is expensive enough without making it more expensive is particularly relevant in this jurisdiction, because for several decades[24] judges have (unsuccessfully) called for the reduction in the *'prohibitive'*[25] costs incurred in litigation in this country. For this reason, and the other reasons set out herein, this Court concludes that it should not follow the approach of the House of Lords.

123. Instead, this Court would follow the approach of the decisions of the Australian and Canadian courts, to the effect that an anti-suit injunction *is* available to prevent parties '*stepping outside the case management regime'* of the home jurisdiction (to adopt the language of Perell J. in the Ontario Superior Court in *Mancinelli* at para. 35) and so, to protect the home jurisdiction's case management processes.

<u>The Canadian approach – the *Mancinelli* case</u>

124. Support for this view is to be found in the decision of the Ontario Superior Court in the *Mancinelli* case. There, the plaintiffs brought a class action which was subject to certain case management rules governing discovery from non-parties. Instead of following those rules, the plaintiffs sought to circumvent them by seeking discovery from a non-party by

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

[25] *Bourbon v Ward* [2012] IEHC 30, at pgs. 39-40, *per* Kearns P.

other means, i.e. by making a 1782 Application in the United States, as was done by Goldstein in this case.

125. Perell J. rejected the notion that the plaintiffs were simply gathering evidence. He pointed out that discovery was more than the simple gathering of evidence as it was the '*compelled'* disclosure of evidence (at para. 52).

126. The same point can be made in this case to counter Goldstein's claim that it is simply gathering evidence. Indeed, a further reason why discovery by Goldstein (*via* a court in New York) could not be regarded as simply the gathering of evidence is because it is at a cost (to the third party), which is multiples of the cost of discovery in Ireland (assuming it is available or procurable in Ireland) *and* because these costs in New York are irrecoverable from the applicant seeking the discovery.

127. In granting the anti-suit injunction in *Mancinelli*, Perell J. also observed that the plaintiffs were compelling a third party to provide evidence, *'which it may or may not have been willing to provide voluntarily'* (at para 52). This would also appear to be the situation in this case, since there was no evidence that Avenue and/or RELM could not have provided the evidence voluntarily.

128. Perell J. also noted, at para. 58, that it was '*not unreasonable or unfair for the Defendants to expect that the Plaintiffs would and should abide by the Rules of Civil Procedure'* (which rules required the plaintiffs to first ask for discovery).

129. Similarly, in this case, it seems to this Court that it would not have been unreasonable for RELM/Avenue to have expected Goldstein to abide by the (implicit) rules of the Commercial Court, that any step in subordinate proceedings (which the New York Proceedings are) would be subject to the direction of that court, and indeed that any such step would be in line with the Commercial Court's stated objectives of minimising costs.

130. Perell J. held (at para. 60) that the Canadian court should have been given:

'*an opportunity to consider whether it wishes to seek the American court's assistance which it may yet do'*.

Like Perell J., this Court cannot rule out the possibility that it might need to seek an American court's assistance to obtain discovery of the relevant documents. However, like Perell J., this Court believes that the Commercial Court should have been given the opportunity to consider whether it would be necessary to do so, rather than Goldstein simply making the 1782 Application *ex parte*.

131. It is true that the *Mancinelli* case concerned class action proceedings, which are subject to special case management rules in Ontario, and so it is not directly comparable to this case. However, Commercial Court cases are also subject to special case management rules, and the principle which this Court derives from the *Mancinelli* case, is that a 1782 Application (or indeed a similar application) should not be used to bypass the clear intention of case management rules (whether class action rules or indeed Commercial Court rules). Yet, in this Court's view, this is what Goldstein has done.

132. *If* Goldstein had sought voluntary discovery from Avenue or indeed from RELM (if those documents were within in its procurement) or from the Dublin branch of Avenue, this would amount to the gathering of evidence.

133. However, Goldstein wants this Court to conclude that it was perfectly entitled to *'gather evidence'* by instituting the New York Proceedings, without notice to, or the consent of, the Commercial Court, and perfectly entitled to thereby maximise costs (for the owner of a defendant in those Commercial Court proceedings). However, this conclusion runs contrary to the requirement that the Estoppel Proceedings, in the broad sense, and so including subordinate proceedings such as the New York Proceedings, were to be case managed by the Commercial Court, as well as undermining a key objective of case management in the Commercial Court, namely the minimisation of costs.

134. For this reason, this Court prefers the reasoning in *Mancinelli* to that in *South Carolina*, and so it concludes that Goldstein should have notified the Commercial Court of its intention to issue the New York Proceedings. Indeed, it seems to this Court that if Goldstein had notified the Commercial Court of its intention to make the 1782 Application, that the Commercial Court is likely to have given directions ordering that no such proceedings be issued *until* it was satisfied that no other realistic alternative was available to obtain the relevant documents, in line with the principle to be taken from *Chambers* above.

The Australian approach – the *Treasury Wine* case

135. In reaching this conclusion, this Court also relies on the Australian case of *Treasury Wine*. That case also involved an application for an order restraining the plaintiff from pursuing a 1782 Application. This is because without notice to the docket judge in Australia, the plaintiff had obtained an *ex parte* order from the courts of the United States. The proceedings were a class action which were subject to case management rules in Australia. It is relevant to quote in some detail certain parts of the judgment of the Federal Court of Australia (Gilmour, Foster and Beach JJ.). At para 29. *et seq*, the court stated:

> *'But the present question does not directly involve this Court's power to allow oral depositions, but rather the conduct of Jones and another group member seeking to invoke the powers of a foreign court to obtain compulsory oral discovery* ***outside the docket judge's case management control of this class action and without his knowledge or approval****.*
>
> *This Court has exclusive control over proceedings before it: National Mutual Holdings Pty Ltd v The Sentry Corporation (1989) 22 FCR 209 at 232 per Gummow J. This is all the more so in relation to class actions given the Court's supervisory role under Part IVA of the FCA.*

[…]

The rules of the Supreme Court of Victoria are not the same as those of this Court. Nonetheless the relevant rules in that Court are similar in ***that they have embraced modern judicial case management****. This fact was of significance in his Honour's reasoning supporting the grant of anti-suit injunctive relief. The position here is the same. Moreover, the present case is a class action. Case management of such proceedings has a particular significance given the Court's supervisory role. […]*

TWE does not submit, nor do we conclude, that the fact these proceedings are case managed provides a basis in itself for restraining the conduct of § 1782 depositions. There may be conditions where this Court would, in effect, endorse the making by a party of an application under 28 USC § 1782. So much was recognised in Pathway Investments at [6] but framed within the processes of case management of the Court. ***The vice in the present case is that the conduct of Jones and URS in invoking the US Proceedings without notice and without the imprimatur of this Court has undermined this Court's case management and supervision of the class action.****' […]*

[I]t may be correct to say that the Court does not, in general, exercise any control over the manner in which a party lawfully obtains the evidence which he needs to support his case (see South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provincien" NV [1987] AC 24 at 41 per Lord Brandon of Oakbrook although that observation was made in the context of an application to restrain an application under 28 USC § 1782 for the production of documents). ***But that is no answer to the present case. Any such right cannot be exercised in a manner designed to circumvent this Court's control and supervision of the proceedings before it.****'* (Emphasis added)

136. While the foregoing statements arise from a (case managed) class action suit, it seems to this Court they are equally applicable to a (case managed) commercial action in this Court. Similar to the situation in *Treasury Wine*, the '*vice'* in the present case is that Goldstein, without notice and without the imprimatur of the Commercial Court, has undermined the costs minimisation objective of the Commercial Court, and more generally that court's case management power to direct each step in the proceedings. At para. 23, under the heading *'Protection of this Court's Processes'*, the Federal Court of Australia stated that:

> *'Litigation, particularly in superior courts, in Australia has* ***undergone a dramatic transformation in recent years****.* ***Judicial case management is at the heart of this sea-change.*** *This is now embedded in this Court's constituting Act as well as in its rules and Practice Notes. Section 37M(1) of the FCA provides that the overarching purpose of the civil practice and procedure regime is to* ***facilitate the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible****. Section 37M(2) elaborates on those objectives to include* ***the efficient and timely disposal of cases before it****;* ***not only does this implicitly emphasise the importance of judge controlled litigation, but it suggests that satellite ancillary proceedings may not be conducive to such an objective except in a rare case****. Section 37N(1) requires that parties to a civil proceeding before this Court* ***must conduct such a proceeding in a way that is consistent with that overarching purpose. At the very least, this suggests parties co-operating with the Court, particularly in the invocation of discovery or like processes****.*' (Emphasis added)

137. Since, as noted by Mulcahy J., the anti-suit injunction is available '*to protect the integrity of the court's own processes'*, the foregoing passage has particular resonance for Goldstein's case. While it is true that there were specific class action case management

rules in the *Treasury Wine* case, which have no application to this case, litigation in the Commercial Court, like that in Australia, has undergone a similar *'sea-change'* in Ireland, when it comes to case management. Indeed, as previously noted, it has now reached the stage in the Commercial Court where all steps in proceedings are subject to directions of the court, which directions have as their objective, amongst other things, the minimisation of costs.

<u>But no steps in Irish proceedings were taken by Goldstein</u>

138. While the steps which were taken in this case (namely the application for discovery against a third party in New York) are not steps in the Irish proceedings, nonetheless it would be entirely artificial, in this Court's view, if this Court were to treat them as completely separate proceedings, with no connection with the Estoppel Proceedings, and so of no concern of the Commercial Court, when the New York Proceedings' very existence is dependent on the Estoppel Proceedings.

139. It is also to be noted from the foregoing passage that the Commercial Court case management rules that we are concerned with in this case (which are set out above), are analogous to those in the *Treasury Wine* case. This is because under the Commercial Court rules, the purpose of the case management rules is to *'determine the proceedings in a manner which is just, expeditious and likely to minimise the costs of the proceedings',* while it is clear from the foregoing extract from *Treasury Wine*, that the purpose of the relevant case management rules was to resolve the dispute '*as quickly, inexpensively and efficiently as possible'*.

140. For this reason, like the Federal Court of Australia, this Court believes that our case management rules also *'implicitly emphasise the importance of judge controlled litigation'*

and costs minimisation. It is clear from *Treasury Wine* that subordinate proceedings, particularly in a foreign jurisdiction, are unlikely to be conducive to such an objective.

141. Similar to the approach taken by the Federal Court of Australia, this Court also believes that parties to Commercial Court proceedings should conduct those proceedings in a manner that is consistent with its '*overarching purpose'*, which in Ireland is to '*ensure'* the '*just'* and '*expeditious'* determination of proceedings in order to 'a manner likely to *minimise legal costs'.* This means parties co-operating with the Commercial Court (and so informing the Court), particularly in relation to discovery or similar applications in a foreign jurisdiction.

Another Australian case – the *Lavecky* case

142. This Court's conclusion is also supported by another Australian case, that of *Lavecky*, in which the Federal Court of Australia had to deal with an *application for leave* to make a 1782 Application. At para 18, Perram J. asked the question

> '*[W]ould it be useful from a case management perspective to permit the Applicants to apply for the documents they wish to obtain in the Southern District [of New York]? If so, what conditions should be imposed?*'

143. At para. 19, Perram J. then went on to set out certain factors to be considered in making this decision:

> *'Whilst it is unwise to be definitive about these matters in advance, the following matters are likely to be germane to a consideration of whether to endorse an application made under procedures such as § 1782:*
>
> *(1) What is the importance of the material to be sought under the procedure to the applicant's case?*
>
> *(2) Are there other methods available for obtaining it?*

(3) Does the material sought impinge upon or undermine some important procedural limitation in this jurisdiction such as, for example, the unwillingness of the Court to permit fishing expeditions or, perhaps, the general unwillingness of this Court to order depositions?

(4) What is the cost involved in the process for the parties before this Court?

(5) Is that cost a proportionate burden having regard to the significance of the material?

(6) Is the proposed proceeding under § 1782 in the District Court frivolous or obviously doomed to fail?

(7) How long might the applications take to resolve and what impact might they have upon the timely preparation of the matter before this Court for trial?

(8) Is there any need to impose conditions upon the endorsement so as to address any issues arising from (1)-(7) above?'

144. As regards the first factor, this Court accepts that Avenue may have documents that are relevant to the issues in dispute between the parties. However, factors 4 and 5 are of particular relevance to the current case. This is because it is possible that the documents might be obtained without the necessity for the New York Proceedings. In light of the high costs involved in obtaining the documents through the New York Proceedings (and the irrecoverability of those costs), the Commercial Court (if it had been asked to give directions allowing for the New York Proceedings to issue) would, in all likelihood, have canvassed whether there was a cheaper way in which to obtain the documents (in light of the Commercial Court's stated objective of minimising costs).

145. Of course, it is important to point out, as was noted by the Federal Court of Australia in *Treasury Wine* at para. 47, that there may be conditions where this Court, like that court, *might* endorse the making of an application under §1782. However, in this Court's view,

an *ex parte* 1782 Application, without notice to the Commercial Court, should not have been the *first* option pursued by Goldstein.

Putting this breach of the implicit rules on case management in context

146. In this instance, the failure to notify the Commercial Court in advance, let alone seek its consent, regarding the 1782 Application, must be seen in the context of what Goldstein has done to date.

147. As noted in the Estoppel Judgment, it took Goldstein 8 months, after the appointment of the Receivers over its 47 Properties, *before* it issued the Estoppel Proceedings alleging that the appointment of the Receivers was invalid (on the grounds that RELM allegedly breached representations made on its behalf). Furthermore, on the day it issued those proceedings, Goldstein registered a *lis pendens*, in order to thwart the sale of the secured Properties. This Court found that this registration was unlawful (which finding has not been appealed by Goldstein).

148. More significantly, however, this '*stepping outside the case management rules'* by Goldstein's 1782 Application, in order to maximise costs for Avenue must be seen in the context of Goldstein's previous actions. In particular, it must be seen in the context of Goldstein's weaponisation of legal costs against an innocent/unconnected auctioneering firm in order to intimidate that firm into not acting in the sale of one of the Properties (which was highlighted by this Court in the Redemption Judgment at paras. 3-11).

149. However, it turns out that this is not all. Since that judgment, more evidence has been provided to this Court, namely that Goldstein, through its American lawyers, sent the New York Proceedings to sales agents and prospective purchasers of the Properties. At para. 93(c) of Mr. Dowling's affidavit, dated 2 March 2026, he avers:

> '*[Goldstein] caused its New York Counsel to serve copies of the pleadings in the New York Proceedings on the Joint Receivers' appointed sales agents and on prospective*

purchasers of the Properties, notwithstanding that (1) none of those parties is party to the New York Proceedings; (2) none of those parties, I am advised, is within the jurisdiction of the New York Courts; and (3) no relief of any kind as regards the Properties is sought or could ever be sought in the New York Proceedings'.

150. This evidence is not controverted by Goldstein. One could therefore ask, what conceivable reason could there be for Goldstein's American lawyers to send the New York Proceedings to these unconnected/innocent third parties, who appear to have no legitimate basis for receiving same?

151. It seems to this Court that the only reasonable explanation is that Goldstein instructed its lawyers to do so with the aim of intimidating those innocent and unconnected third parties into not being involved in selling or buying, any of those Properties. Put otherwise, if a New York law firm sends a copy of proceedings, which relate to a dispute over properties, to a person interested in buying those properties, there would appear to be an implicit message that the recipient could incur significant legal costs, unless the recipient is careful.

152. This action by the American lawyers (on the instructions, it must be assumed, of Goldstein) therefore appears to be yet another attempt to weaponise the threat of litigation, or the threat of legal costs, by Goldstein to seek to thwart the sale of the Properties by the Receivers.

153. For this reason, the breach of the implicit rules of the Commercial Court and Goldstein's conduct in maximising costs in contravention of the clear aim of those rules, must be seen for what it really is, i.e. not some inadvertent issue of proceedings, but rather an attempt to apply improper pressure on Avenue/RELM and other third parties to thwart the sale of the Properties and have them returned to Goldstein's use.

<u>Should this Court grant the anti-suit injunction?</u>

154. In summary therefore, this Court takes the view that, as the court's processes have to be respected, a failure to comply with the implicit case-management rules of the Commercial Court (and the stated aims of those rules to minimise costs) is sufficient for the grant of an anti-suit injunction, even if the failure does not amount to a breach of legal or equitable right or unconscionable behaviour.

155. This Court would, *in principle,* grant an anti-suit injunction against Goldstein to prevent an abuse of the processes of the Commercial Court, in the sense of preventing procedural steps being taken which are inconsistent with the expressly stated aims of the Commercial Court (to minimise costs).

156. More generally, the anti-suit injunction is also justified because the decision of Goldstein to issue the New York Proceedings, without any reference, whatsoever, to the Commercial Court, which is charged with *case managing* the Estoppel Proceedings, is completely inconsistent with that role of the Commercial Court.

157. There are, however, complications to such an order being granted in the particular circumstances of this case.

What should be this Court's response be *at this stage* of the New York Proceedings

158. The primary relief claimed by RELM in this anti-suit injunction is an order *'restraining [Goldstein] from pursuing or taking any further steps in further or of in connections with'* the 1782 Application. It is important therefore to note the status of the New York Proceedings.

159. Goldstein issued the New York Proceedings on 23 October 2025, and Judge Margaret Garnett granted an *ex parte* order on 6 November 2025. This was challenged by Avenue through a motion to quash, which was filed on 26 February 2026, which was opposed by Goldstein through a memorandum of law in opposition to the motion, which was filed on

19 March 2026. At present, the motion has been fully argued, and the parties are awaiting judgment from Judge Garnett.

160. It follows therefore that all that is left to happen in the New York Proceedings is the issue of the judgment of the New York court by Judge Garnett as to whether, and if so, on what terms, to order discovery. For this reason, Goldstein claims that the orders which RELM now seeks *restraining* Goldstein are moot, since there is nothing more for Goldstein to do in the United States. However, of course, *if* Goldstein had mentioned this matter to the Commercial Court *before* issuing the New York Proceedings, then this Court would have been able to do something to seek to minimise costs (for RELM/Avenue and Goldstein). Unfortunately, the Commercial Court was not given that option, and so all that is left to happen in the New York Proceedings, is for judgment to issue. In a sense therefore, Goldstein is benefiting from its own omission, by claiming that the relief now being sought is moot.

161. Nonetheless, there is merit in Goldstein's argument because, firstly this Court is *not* being asked by RELM to injunct Judge Garnett from issuing judgment, and in any event, if it was so asked, this Court has no jurisdiction to make such an order. Thus, any order this Court might make cannot alter the fact that Judge Garnett's judgment will issue.

162. Secondly, there would appear to be no costs saving (or, certainly no costs saving of any significance) in this Court simply awaiting that judgment. For this reason, it seems to this Court (subject to further submissions) that it should await that judgment. Indeed, it might be regarded as discourteous to Judge Garnett, who may even, by now, have completed and/or issued the judgment, if this Court were to make the order sought, which would, in any way interfere with the work which has been done to date by her on the discovery application.

163. Thirdly, there is also a practical reason why this Court might not issue an anti-suit injunction, in relation to proceedings, which are effectively finished. This is because *if* an order is made to discover certain documents by Judge Garnett, that means that there *may* well be one less item to be agreed between the parties (or decided by an Irish court) regarding discovery of documents and progress might well then be made regarding whether those documents are in fact available *via* RELM or *via* Avenue's branch in Ireland. After all, both parties were represented in the proceedings before Judge Garnett to argue whether documents were relevant and should be discovered. Accordingly, the decision of Judge Garnett *could* therefore resolve at least this part of the discovery process.

164. For all these reasons, there appears to be little to be gained by making the orders sought, at this stage (*albeit* that this Court would have made such an order if it had been given the opportunity *before* the case had, in effect, ended).

165. There is also one further reason. It is that *even if* Goldstein had brought to this Court's attention, its intention to issue the New York Proceedings, it is *possible* that, after all other avenues to obtain relevant documents were exhausted, the New York Proceedings, in some form, might have been necessary. In this regard, just like the Canadian court in *Mancinelli*, this Court cannot rule out that at some stage, it might require the '*American court's assistance'*. Thus, attempting to bring an end to proceedings that are, in any event, already practically finished, might end up being more costly in the long run.

166. To summarise therefore, this Court believes that Goldstein should *not* have pursued the New York Proceedings. If those proceedings were *not* at an end (which they are, save for the delivery of the judgment) this Court would have granted the anti-suit injunction. However, this Court's *preliminary view* is that it should not issue an anti-suit injunction, for practical, rather than legal, reasons. In light of the practical issues that might arise regarding compliance with a New York court's order (in a manner that is '*just, expeditious*

and likely to minimise costs' as required by the Commercial Court's rules), this Court will hear from the parties, before deciding whether to adopt this approach and what final orders to make.

<u>If it is too late to grant the anti-suit injunction, what might this Court do?</u>

167. In considering what approach should be taken by this Court, if it does not grant an anti-suit injunction, there appear to be only two possible outcomes of the judgment which is awaited from the New York court.

168. Either the discovery will be refused, or certain documents will be ordered to be discovered. Since this Court has concluded that Goldstein should *not* have issued the New York Proceedings, without advising the Commercial Court, it seems to this Court that if a discovery order is made against Avenue, then this Court should, if possible, have a role in ensuring that the discovery is achieved in the most cost effective way possible (subject to ensuring that there is no breach of any US court orders).

169. This is because, the logic of what has been stated previously, regarding the role of the Commercial Court in making directions to minimise costs, extends to minimising costs, insofar as possible, in proceedings in another jurisdiction (where, as here, those proceedings are subordinate to, and/or in aid of, Commercial Court proceedings).

170. However, this is an issue about which this Court would need to hear from the parties, before reaching a final decision. In addition, this is not something which can be comprehensively dealt with *in advance* of knowing *whether* such a court order will be made, and the *terms* of that court order. Indeed, because of the cross-jurisdictional complexities that have been caused by Goldstein's decision to pursue the New York Proceedings unilaterally, this Court does not propose to make any final orders until it hears from the parties regarding those issues.

171. For this reason, and subject to n from the parties, it seems to this Court that when the New York court issues its determination, then the parties should return to the Commercial Court for directions to see if it is possible to achieve that discovery from RELM and/or the branch of Avenue in Dublin, and if so whether that approach would be a more cost-effective way to achieve same, rather than through Avenue in New York (provided that this would not be in contravention of the New York court's order).

172. In this context, it is relevant to note that the American attorney for Goldstein., Ms. Lauren Coppola, at para. 21 of her affidavit dated 16 March 2026, states that parties are often required to comply with discovery orders in the United States in a period of '*3-4 weeks*'. This adds complexity to the form of order which should be made by this Court, in light of Avenue's undoubted desire to ensure compliance with Judge Garnett's order for discovery, should one issue. It is of course important to observe that all of this complexity arises from Goldstein's decision to institute the New York Proceedings, without the knowledge or consent of the Commercial Court.

173. Of course, if Judge Garnett were to refuse discovery in its entirety, then this Court might have to consider the possibility that it would issue an anti-suit injunction regarding an appeal by Goldstein. However, these are just some of the matters that will have to be addressed in the final orders (and there may have to be two versions of those orders, one set of court orders in advance of the Judge Garnett's decision, dealing with security for costs and other matters, and one set of court orders after that decision).

174. Finally, RELM also seeks an order to the effect that any evidence obtained on foot of the discovery sought in the New York Proceedings is inadmissible. However, this part of the motion might be moot, in light of this Court's decision on the anti-suit injunction and/or the decision of Garnett J. Even if this is not the case, this Court cannot see how it could make an order about the admissibility of evidence, without knowing what the evidence is.

SECURITY FOR COSTS

175. The other relief sought by RELM was security for costs from Goldstein in relation to the Estoppel Proceedings. Security for costs in the sum of €723,000 has already been provided by Goldstein in relation to the Redemption Proceedings.

176. In this regard, it is not in dispute that Goldstein cannot afford to pay the legal costs incurred by RELM, in the event that RELM is successful in the Estoppel Proceedings.

177. Expert evidence has been provided on behalf of RELM that the legal costs are likely to come to €944,460 (excluding VAT). This is the only evidence before this Court regarding the likely costs of the Estoppel Proceedings, as Goldstein has not sought to dispute this expert evidence, by submitting its own expert evidence. Instead, Goldstein has offered €500,000 as security, *albeit* that it maintains that it should not have to pay any security for costs.

178. Goldstein maintains this objection to putting up any security for costs, on the basis that RELM is responsible for Goldstein's inability to pay their costs, were Goldstein to be ordered by a court to pay RELM's costs in the Estoppel Proceedings.

179. The law in relation to security for costs, unlike that in relation to anti-suit injunctions, is well-established in Ireland and does not need to be re-stated in any detail. In brief, Clarke J. (as he then was) in *Usk District Residents Association Limited v Environmental Protection Agency* [2006] ILRM 363 (summarising an earlier decision of Morris P. in *Interfinance Group Ltd v KPMG* [unreported, High Court, 29 June 1998]) held that in order to obtain security for costs, the onus rests upon the moving party to establish (a) a *prima facie* defence to the plaintiff's claim and that (b) the plaintiff will not be able to pay the moving party's costs if the moving party is successful. Once these criteria are established, the onus moves to the other party to establish '*specific circumstances in the case which*

ought to cause the court to exercise its discretion not to make the order sought'. Clarke J. noted that the most common examples of such special circumstances include circumstances where the plaintiff's impecuniosity flows from the wrong allegedly committed by the moving party, or where there has been delay by the moving party seeking the order sought.

180. In this case, it is accepted that a *prima facie* defence has been made out by RELM and that Goldstein will not be able to pay RELM's costs, so the onus moves to Goldstein to establish *'special circumstances'*.

181. However, the biggest obstacle that Goldstein faces in discharging this onus is the fact that it is clear from the Redemption Judgment at para. 63 that the value of the security which RELM has over the Properties is insufficient (by a sum of approx. €20 million) to pay the outstanding loan balance due from Goldstein to RELM.

182. Combined with this is the fact that there is no evidence to suggest that, when RELM appointed the Receivers on 13 November 2024, the financial position of Goldstein was any different from that reflected in the Redemption Judgment. For this reason, the suggestion by Goldstein that, were it not for the alleged unlawful appointment of the Receivers, Goldstein would be able to pay RELM's legal costs, is not sustainable. Put otherwise, the evidence shows that Goldstein was 'under water' to the tune of approximately €20 million. It is difficult to see how, based on these values, Goldstein could have paid legal costs at this time (*before* the appointment of the Receivers), and therefore it is difficult to sustain the argument that, but for the (allegedly wrongful) appointment of the Receivers, Goldstein *would* have been able to pay RELM's legal costs. Put another way, Goldstein simply did not have the money to pay legal costs because of its own lack of funds, not because of anything that RELM did.

183. Furthermore, when one looks at this from a cash-flow perspective, it is also clear that immediately prior to the appointment of the Receivers, Goldstein did not have sufficient

cash-flow to meet the loan and interest repayments, let alone legal costs. This is clear from the email dated 4 October 2024 of Ms. Eithne Friel (an independent accountant who acted for Goldstein in negotiations with RELM), in which she states:

'*Dear Paul,*

[...]The interest outstanding for RELM 2 & RELM 3 facilities is outlined below.

[...]

The shortfall in interest for these two periods arose as a consequence of two matters:

1. *The Interest reserve of €2m for RELM 2, which was provided for in the Amended and Restatement of the RELM 2 Facilities at end of November 2022,* ***was exhausted in full by August 2024*** *(the last draw down was €154k). This interest reserve amount underpinned the interest repayments for RELM 2 from Q4 2023 to end of August 2024 and the requirement to employ same arose as a consequence of the fact that the tenant, Whitefire, vacated Shelbourne House in Q4 2023.*
2. *August & September 2024 rent from Gateway Integration ULC in the amount of €1m* ***was not paid by the tenant.***

Our client is committed to working with you, the Lender and your investor, in order to reach a resolution.[...]

- *I* ***appreciate enforcement is an option under consideration by your Investor****, however I expect this will yield the lowest return with the largest funding gap.*
- *It is in the interest of all parties to work together to reach a resolution and my client is committed to same and reducing the funding gap, and* ***repaying the loan in full, where possible****[...]*' (Emphasis added)

In addition to these clear references to an inability to meet the repayments, in Ms. Friel's affidavit of 24 September 2025, at para. 87, she also states

‘*Further email exchanges took place between Mr Dowling to me between 21 October 2024 and 24 October 2024, seeking to move matters forward including a confirmation that [Goldstein] could lodge the interest deficit of now €1.7 million into an escrow account to be held pending the conclusion of the refinance of the facility. Mr Dowling seemed to take issue with this offer, asking for confirmation that the Fund has* ***"the Fund chosen not to pay anything" which was clearly not the case****; and the deficit was to be funded by equity from the Investor of the Fund, demonstrating the commitment to resolve matters.*’ (Emphasis added)

This statement by Ms Friel clearly implies that the failure of Goldstein to make the loan repayments, was because of its impecuniously, rather than it being a choice, of Goldstein’s, not to pay.

184. In all these circumstances, it is difficult to avoid the conclusion that Goldstein’s inability to pay legal costs (such as to justify this Court in making an order for security for costs in the first place) was *not* caused by the (allegedly unlawful) decision to appoint the Receivers, but rather was a pre-existing impecuniosity that had nothing to do with RELM’s appointment of the Receivers.

185. Indeed, even if the inability to pay costs, on the part of Goldstein, *was* due to the alleged wrongdoing of RELM (which it is not), that does not necessarily preclude an order for security for costs. As noted by Clarke C.J. at para. 101 of *Quinn Insurance Limited v PricewaterhouseCoopers* [2021] 2 I.R.70, [2021] IESC 15:

‘*However, even if the full special circumstance under Connaughton Road Construction Limited v. Laing O’Rourke Ireland Limited [2009] IEHC 7 is not established, it does not seem to me that that is the end of the matter. Thereafter the court can also consider whether the proceedings would in fact be stifled and, in so doing, will have to analyse* *any assertion put forward on behalf of the plaintiff concerned that it would not be in a position to put up security should it be ordered.*'

As Clarke C.J. stated at para. 99:

'On the broader question of whether it is appropriate for the court, at least in certain cases, to have regard to the likelihood that ordering whatever security may be considered appropriate may actually stifle the proceedings, I am influenced by the potentially significant consequences of both the making and the refusing of an order of security. The making of an order runs the risk that a good claim may actually be stifled. The refusal of the order runs the risk that the defendant's right of defence may be materially compromised. Both of these are significant considerations which lead me to the view that ***the court should err on the side of greater inquiry and should thus place at least some weight on an assessment of the extent to which ordering an appropriate form of security may actually stifle the claim****.'* (Emphasis added)

186. Thus, in *Hedgecroft Limited v Htremfta Ltd* [2018] IECA 364, at para. 51, Costello J. (as she then was) upheld a grant of security for costs where the High Court had found that the plaintiff's inability to pay stemmed from the defendant's alleged wrongdoing, because, *inter alia*:

'*[T]here was* ***no evidence that*** *the consequence of the [security for costs order] is that the appellant will thereby be deprived of access to the courts and* ***that its claim will be improperly stifled*** *[…]*

[I]t is open to the members of the company to provide the security for costs by way of investment in the company'. (Emphasis added)

Similarly, in this case, there is no evidence that an order of security for costs will stifle Goldstein's Estoppel Proceedings, and it is also open to the owner of Goldstein (Mr.

Sutcliffe) or other investors, to provide security for costs by way of investment in Goldstein, should they so wish.

187. Furthermore, the reason this Court can say that an order for security for costs is unlikely to stifle the Estoppel Proceedings is because, despite its accepted impecuniosity, Goldstein has had no difficulty in pursuing *three* sets of High Court proceedings. In addition, Goldstein has provided security for costs of *'more than €700,000'*[26] in the related Redemption Proceedings. Mr. Sutcliffe has also, through his investment vehicle, Quanta Capital, offered to provide Goldstein with €500,000 as security for costs in these proceedings.[27]

188. Furthermore, in the Redemption Proceedings, Goldstein offered a fortified undertaking as to damages, in the sum of €2 million, in its unsuccessful attempt to get an injunction against RELM (see para. 75 of the Redemption Judgment). In that case, Goldstein also indicated that it had no difficulty in sourcing the shortfall of €5 million (between the value of the security and unpaid loan/interest) in order to offer to re-finance its loans (see para. 29 of the Redemption Judgment).

189. Added to all of this, of course, is that Goldstein seems to have no problem paying American lawyers even though it could have, and should have, sought to avoid the need to pursue the New York Proceedings.

190. To apply the observation of Clarke C.J. at para. 85 of *Quinn*, if Goldstein (the plaintiff) '*puts up security and wins, then the security will be returned'* and Goldstein will *not* be out of pocket. However, if the defendant, in this case RELM, wins but Goldstein has not put up security, RELM is '*at the permanent loss'* of its legal costs in defending the proceedings. This is the very stark difference in the positions of Goldstein and RELM *if* security for costs

[26] Transcript, Day 2, p 134, line 16.
[27] Affidavit of Mr. Sutcliffe, 13 March 2026, paras. 41-45; Transcript, Day 2, pg. 135, lines 14-17. The source of these funds was corrected by the affidavit of Mr. Sutcliffe dated 9 July 2026 at paras. 7-11.

is *not* ordered. In such a situation, whether Goldstein wins or loses the litigation, in one sense, it does not lose, since it does not pay costs. However, it is the complete opposite for RELM, because whether it wins or loses the litigation, in one sense, it loses, since it has to pay costs. To put it another way, without security for costs, RELM is certain to lose, irrespective of the court decision. With security for costs, there is an even playing field between RELM and Goldstein.

191. This is why the default rule is, and should be, that security is provided by an impecunious corporate plaintiff (and indeed why for impecunious individual plaintiffs, the failure to require security for costs can operate to create a unlevel playing field and to perpetuate injustice), as was noted by Clarke J. (as he then was) in *Farrell v Bank of Ireland* [2012] IESC 42 at paras. 4.15-4.20.

192. For this reason, without security for costs, *one injustice is guaranteed* – an unlevel playing field. It is why security for costs is such an important aspect of 'justice' in litigation, particularly when costs are '*prohibitive',*[28] and, it seems, with no realistic prospect of them ever being reduced.

193. It is also why applying the test of '*the least risk of injustice',* which one must (per Clarke C.J. in *Quinn* at para. 100), when determining security for costs issues, also favours the grant of security.

194. To put it another way, as Clarke C.J. did at para. 108 of *Quinn*, if the person behind Goldstein, Mr. Sutcliffe,[29] who will benefit from Goldstein winning this litigation, does '*not consider it worthwhile to take the risks inherent in putting up security'*, then *'why should [he] be in any better position than a wealthy corporate plaintiff'*, which because it

[28] *Bourbon v Ward* [2012] IEHC 30, at pgs. 39-40, per Kearns P.
[29] See para. 12 of the Redemption Judgment.

is a 'mark' for costs, has to decide whether it is worth putting *its own assets at risk* to pursue litigation.

195. Mr. Sutcliffe (or any other investors) are not entitled avoid putting their own assets at risk and so to a 'free ride' at the expense of RELM as they pursue this litigation in the hope of a victory. This 'free ride' is the injustice which arises, as noted by Clarke C.J. at para. 95, where a shareholder/investor:

> '*can put up their ow**n money to fund proceedings on behalf of an impecunious corporate plaintiff** with a view to benefiting if the proceedings are successful, while at the same time leaving the defendant with potentially **no recourse** in respect of their costs should the proceedings be successfully defended.'* (Emphasis added)

Indeed, this injustice to a defendant is arguably a greater injustice, than that of an impecunious corporate plaintiff *not* having the funds to pursue a case. This is because, at least in the case of an impecunious corporate plaintiff, it will be able to seek investors *if* it has a reasonable claim and then it will have a *choice* to litigate. However, a defendant facing an impecunious plaintiff has no choice. It does not choose to be sued. That defendant has an injustice imposed on him/her from the moment the proceedings are issued. The irrecoverable costs it will spend in winning the case (particularly if it is a 'very weak' case like this one) will never be recovered and so those irrecoverable costs (in this case in the combined sum of millions of euro) can operate as a form of *'blackmail'*[30] of the defendant forcing him/her to settle, even spurious claims.

196. Another factor this Court considers, in its overall assessment of where the least risk of injustice lies, is the weakness of Goldstein's case, which was noted by this Court in the Estoppel Judgment at para. 33. While this factor is not determinative, the risk of injustice

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[30] *Farrell v Bank of Ireland* [2012] IESC 42, per Clarke J. (as he then was), para. 4.12.

to RELM is enhanced in circumstances where this Court has already expressed a preliminary view that Goldstein has a weak case, *albeit* this is a *preliminary* view, and it could change by the time of the trial. Nonetheless, the weaker an impecunious plaintiff's case *appears* to be, the more likely the defendant will win the case, but still end up paying its legal costs and so the greater the risk of injustice for the defendant. This is a further factor therefore in favour of security for costs being granted.

197. More generally, as a matter of public policy, it is also preferable that parties pursing litigation should put up security for costs, as otherwise, there is a risk that they will initiate proceedings in the knowledge that they do not bear any costs risk. It is preferable that parties make decisions in relation to the prosecution of proceedings in the knowledge that they bear a costs risk, since they will then be less likely to prosecute proceedings which are likely to fail, as form of blackmail or for other ulterior motives. This is a matter of public interest, since court resources should not be expended on cases, where they are being pursued or defended by impecunious litigants (whether plaintiffs or defendants), in part because those litigants will never have to pay legal costs if they lose and/or as a form of *'blackmail'* to quote the Supreme Court in *Farrell.* It is clear that more rational decision making on the pursuit of litigation, and so on the use of court resources, is likely to be made where both sides have 'skin in the game'.

198. For all these reasons, this Court would order security for costs. In this regard, as the only evidence this Court has before it, regarding the amount of those costs, is the evidence on behalf of RELM, this Court proposes to order security in that amount of €944,460 which is exclusive of VAT.

CONCLUSION

199. For the foregoing reasons, this Court concludes that Goldstein should not have issued the New York Proceedings *without* the consent of the Commercial Court. As a result, this Court *would* have granted an anti-suit injunction, if it were not for the fact that there appears to be nothing left for Goldstein to do in the New York Proceedings, save to await the delivery of the judgment of the New York court.

200. The Court will hear submissions from the parties as regards the appropriate orders which might be made before and/or after the issue of that judgment, in order to ensure that the Estoppel Proceedings (to which the New York Proceedings are subordinate) are determined in a manner which is '*just, expeditious and likely to minimise costs*', as required by the rules of the Commercial Court.

201. In addition, this Court will order security for costs against Goldstein because it does not have the funds to pay RELM's legal costs if it loses, and because its inability to pay was not caused by the acts or omissions of RELM. It is also because it is in the public interest that litigants such as Goldstein/Mr. Sutcliffe have 'skin in the game'. In this way, they are disincentivised from taking cases for ulterior motives, or where there is not a reasonable prospect of success, as their own money is on the line, if they lose.

202. This matter will be put in for mention a week from its delivery at 10.30 a.m. to hear from the parties regarding final orders.