



[2026] IEHC 644

THE HIGH COURT

IN THE MATTER OF THE FOREIGN TRIBUNALS EVIDENCE ACT 1856

**AND IN THE MATTER OF CIVIL PROCEEDINGS NOW PENDING BEFORE THE
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA**

[2026/140 IA]

BETWEEN

RUNBUK INC

PLAINTIFF

AND

ICE CAP ADVENTURES AND DAVID KELLY

DEFENDANTS

JUDGMENT of Mr. Justice Barry O'Donnell delivered on the 28th day of September, 2026

1. On the 15 June 2026 this court made an *ex-parte* order which gave effect to Letters Rogatory obtained from the United States District Court for the Southern District of Florida. The order provided for the examination of Mr. Richard Donovan in this jurisdiction and required him to disclose and bring certain documents or categories of documents with him for the purpose of that examination.

2. Mr. Donovan has brought a motion seeking to set aside the order made *ex-parte*. The application is based largely on two grounds: (a) material non-disclosure by the plaintiff in respect of the application made on the 15 June 2026; and (b) the request made in the Letters Rogatory is oppressive, overly broad and constitutes in substance a request for discovery of documents.

3. It should be noted that a number of separate proceedings will be referred in this judgment. In the first instance, there are these proceedings seeking to give effect to the Letters Rogatory forwarded by the US District Court for the Southern District of Florida (*the Florida Court*). Second, there are the underlying proceedings in Florida, which will be referred to as “*the Florida proceedings*”. Thirdly, Mr. Donovan has brought proceedings in the Superior Court of the State of California (*the California Court*) and which I will refer to as “*the California proceedings*”. The California proceedings are against the plaintiff in this and the Florida proceedings along with two individuals associated with that company. For ease of reference, I will refer to the plaintiff in the title of this action, who is the plaintiff in the Florida proceedings, and the first defendant in the California proceedings, as “*Runbuk*”. Mr. Donovan is a plaintiff in proceedings brought by him in California in the United States of America and will be referred to by his name; and references to the defendants should be taken as referring to the defendants in the Florida proceedings.

4. For the reasons outlined in this judgment, I do not consider that Mr. Donovan has satisfied the court that the orders obtained *ex-parte* should be set aside and I have decided that the motion should be refused. In those premises, I will have to hear from the parties regarding how the orders should be varied to reschedule the necessary steps to allow for effect to be given to the Letters Rogatory.

BACKGROUND

5. The purpose of these proceedings is to give effect to orders made by the US District Court on the 4 June 2026. On that date, the Florida Court issued a request for international judicial assistance from this court to obtain evidence to be used in civil proceedings pending before that court. In effect, the Letters Rogatory were sought for the purpose of obtaining testimony and documentation from Mr. Donovan, who resides in County Galway. The order giving effect to the request for judicial assistance would require Mr. Donovan to give sworn evidence and be questioned by US lawyers before an Irish examiner, an Irish senior counsel, and to produce certain documentation in the course of that examination.

6. The Florida proceedings involve claims of breach of trademark and trademark confusion. Runbuk organises and operates the ‘World Marathon Challenge’ (*WMC*), which is an annual event founded in 2015. The WMC consists of seven marathons over the course of seven days, taking place on each of the seven continents. According to Runbuk, it is referred to in the long-distance running community as the “777 challenge”.

7. Mr. Donovan was the original organiser of the WMC, prior to Runbuk obtaining the rights to the event in December 2022. For the period in which Mr. Donovan was the organiser / owner of the event, he was assisted by the second-named defendant, Mr. David Kelly, who acted as the race doctor. During the course of his ownership, Mr. Donovan registered three trademarks associated with the WMC:

- i. 7 MARATHONS 7 CONTINENTS 7 DAYS;
- ii. 7 MARATHONS 7 CONTINENTS IN 7 CONSECUTIVE DAYS; and
- iii. 7 MARATHONS CLUBS

8. It is claimed that in 2020, Mr. Donovan contacted Runbuk to ascertain whether it would be interested in acquiring the rights to the entire WMC, including the registrations and other intellectual property. In December 2022, a sales agreement was executed between Mr. Donovan and Runbuk. The result of this sales agreement was that 100% ownership of the intellectual property was transferred to Runbuk.

9. Following the conclusion of the sale agreement, significant differences arose between Mr. Donovan and Runbuk. Mr. Donovan initiated proceedings in California against Runbuk and its principals, alleging, *inter alia*, breach of contract, unfair competition, and trademark infringement. In the California proceedings, Runbuk issued a countersuit alleging, *inter alia*, breach of contract, breach of covenant of good faith, trademark infringement, and unfair competition practices. The proceedings in California pre-date the proceedings in Florida.

10. The first-named defendant company was founded by the second-named defendant. In 2023, the defendants began promoting a new multi-continental event titled: The Great World Race. The GWR organises an annual event which consists of participants running a marathon on each of the seven continents in seven days.

11. The dispute underpinning this application arises in circumstances where Runbuk alleges that the defendants leveraged their time, experience and prior affiliation with WMC; as well as leveraged the timing of the ownership transfer from Mr. Donovan to Runbuk, in order to attract, divert, and confuse customers in a narrow market and to pass off the GWR event as one organised by the same organisers as the WMC.

12. Runbuk alleges that the defendants advertised the GWR with the same marks associated with the WMC, as well as marks near identical. The mark offered by way of example is: 7 MARATHONS, 7 CONTINENTS, 1 WEEK.

13. Runbuk contends that the role of Mr. Donovan in these proceedings arises in circumstances where it is alleged that, notwithstanding a non-compete agreement, he assisted the second-named defendant in establishing the GWR.

THE REQUEST

14. The request for judicial assistance by way of letters rogatory contains 11 lines of enquiry:

- a) *The involvement of David Kelly in the WMC; including his access to customers and potential customers, his authority to speak on behalf of WMC, and his use of trademarks to refer to WMC.*
- b) *The use of 777 with the provisions of marathon services by WMC when owned and operated by Mr. Donovan.*
- c) *The professional relationship between Mr. Donovan and David Kelly, including, but not limited to, any assistance Mr. Donovan has provided David Kelly in connection with TGWR.*
- d) *Documents sufficient to support both declarations Mr. Donovan submitted under penalty of perjury in this case.*
- e) *The role of Kelly McLay in connection with the WMC and any information Mr. Donovan may have about Mark Conlon's association with TGWR.*

- f) *The role of Mark Conlon in connection with the WMC and any information Mr. Donovan may have about Mark Conlon's association with TGWR.*
- g) *Mr. Donovan's association with the RunFun Travel and any information Mr. Donovan may have about RunFun Travel's use of trademarks identical, or confusingly similar to, trademarks used in association with WMC.*
- h) *Communications between Mr. Donovan and any third party relating to the status or ownership of WMC after Mr. Donovan's ownership of WMC ended.*
- i) *Communications between Mr. Donovan and any third party related to TGWR.*
- j) *Communications between Mr. Donovan and any customer, potential customer, or individual related to a former runner of WMC concerning TGWR.*
- k) *Compensation received by Mr. Donovan in connection with promotion, operation, or other assistance with TGWR.*

15. The request also encompasses:

“all documentation in his...possession, power, or control touching on the action including, but not limited to, the lines of inquiry identified above. This request does not encompass any documents privileged under either the laws of Ireland or the law of the requesting jurisdiction.”

16. Runbuk emphasised that the lines of enquiry are deemed to be relevant to the dispute by the requesting court and that neither defendant objected to the request when they were afforded an opportunity to do so.

17. The request is dated the 4 June 2026. The first dispute which has arisen in these proceedings is that this request was made shortly prior to the Florida Court imposing an indefinite stay on the Florida proceedings. This stay was not disclosed to this court at the hearing of the *ex-parte* application on the 15 June 2026. The respondent therefore seeks to set aside the *ex-parte* order on the basis that this amounted to material non-disclosure warranting the court to exercise its jurisdiction to refuse to give effect to the Letters Rogatory.

APPLICABLE LEGAL PRINCIPLES

18. Prior to addressing the question of whether the order of the 15 June 2026 ought to be set aside, it will be helpful to first set out the principles underpinning requests by way of Letter Rogatory. There is no disagreement between the parties in respect of the relevant principles, and the court was assisted by the careful legal submissions of both parties.

19. The starting point is the Foreign Tribunals Evidence Act, 1856. Section 1 of the 1856 Act is set out as follows:

Where, upon an Application for this Purpose, it is made to appear to any Court or Judge having Authority under this Act that any Court or Tribunal of competent Jurisdiction in a Foreign Country, before which any Civil or Commercial Matter is pending, is desirous of obtaining the Testimony in relation to such Matter of any Witness or Witnesses within the Jurisdiction of such first-

mentioned Court, or of the Court to which such Judge belongs, or of such Judge, it shall be lawful for such Court or Judge to order the Examination upon Oath, upon Interrogatories or otherwise, before any Person or Persons named in such Order, of such Witness or Witnesses accordingly; and it shall be lawful for the said Court or Judge, by the same Order, or for such Court or Judge or any other Judge having Authority under this Act, by any subsequent Order, to command the Attendance of any Person to be named in such Order, for the Purpose of being examined, or the Production of any Writings or other Documents to be mentioned in such Order, and to give all such Directions as to the Time, Place, and Manner of such Examination, and all other Matters connected therewith, as may appear reasonable and just; and any such Order may be enforced in like Manner as an Order made by such Court or Judge in a Cause depending in such Court or before such Judge.

20. Order 39 r. 39 of the Rules of the Superior Courts provides for applications anticipated by s. 1 of the 1856 Act.

21. The principles underpinning application of this kind are well-settled. Both parties referred the court to the decisions of Denham J. in *Novell Inc. v. MCB Enterprises* [2001] 1 I.R. 608; Hogan J. in *Cornec v. Morrice & ors* [2012] 1 I.R. 804; Noonan J. in *Cutler v. Azur Pharma* [2015] I.R. 167; and McCracken J. in *Sabretech Inc. v. Shannon Aerospace Limited* [1999] 2 I.R. 468.

22. The general overarching consideration underpinning applications of this type was pithily expressed by Lord Denning MR in *American Express Warehousing Ltd v. Doe* [1967] 1 Lloyd's Rep. 222, where he stated:

“I think we in this Court should do what the United States Court ask us to do. The witnesses should be examined here to help the United States Courts to do justice. If the position were reversed, we would confidently expect the United States Courts to help us. So we should help them.”

23. In *Novell*, the applicant brought proceedings in the United States (Utah) for copyright and trademark infringement on the basis that software which was intended to be destroyed in Ireland was in fact stolen and subsequently sold by the defendant in the United States. The applicant also brought proceedings in this jurisdiction (which were issued prior to the proceedings in Utah) for negligence, fraud and dealing in stolen property. Letters Rogatory were issued by the United States District Court of Utah.

24. The respondents opposed the application to give effect to the request for judicial assistance on the basis that the examination would be oppressive and would give an unfair advantage to the plaintiff in the Irish proceedings. The respondents further argued that the request in essence amounted to a request for documents intended to strengthen their case in the Irish proceedings.

25. Denham J. delivering judgment set out the underlying position which this court must take when approaching applications to give effect to Letters Rogatory:

“Under the principle of comity, the courts of this jurisdiction would always be favourably disposed towards complying with such a letter of request from a

court of another jurisdiction. The courts should be slow to refuse such an order.”

26. In setting aside the High Court’s order, Denham J. considered that it would potentially place the defendants in an invidious position with regard to preparing their defence to the case of fraud made against them. Denham J. emphasised the potential impact on the constitutional guarantee of fair procedures if such an order were to be granted.

27. *Sabretech Inc v Shannon Aerospace* [1999] 2 I.R. 468 arose from an incident involving an aircraft which crashed in Florida, causing many fatalities. The Letters Rogatory concerned a request to examine the records custodian of the respondent. The custodian averred on affidavit that he had no oral evidence to offer in relation to the matter, which was not disputed by the applicant. McCracken J. was therefore required to consider whether the request was truly therefore “*merely a request for discovery of documents*”.

28. Importantly, the individual sought for examination had no recollection of working on the relevant aircraft. Further, documentation provided to the court made clear that no prior attempts were made to depose the individual, or to obtain the documents sought in lieu of examination. It was therefore clear that the request was one truly of discovery and was refused by McCracken J.

29. *Cornec v. Morrice & ors* [2012] 1 I.R. 804 concerned a request for judicial assistance from Colorado. Of particular importance in that case is that it was alleged that the plaintiff’s attorney travelled to Ireland and met with two journalists. As a result of this meeting, it was alleged, articles critical of the defendants were published in the Sunday World newspaper. The underlying dispute concerned the sale of shares from the plaintiff to the first-named defendant.

The plaintiff claimed that only \$4.7 million of the \$17.6 million that was owed was paid. Letters Rogatory were issued by the District Court of Denver and the relevant application before the Irish High Court was opposed by the respondent. At para. 19 of his judgment, Hogan J. set out the considerations which should be addressed by the court when considering a request for international assistance by way of Letters Rogatory:

*“The power to grant international assistance via the letters rogatory is, of course, a discretionary one. Naturally, in the interests of the international judicial comity, this Court will endeavour to give assistance where at all possible to requests of courts from foreign states and, as Denham J. put it in *Novell Inc. v. MCB Enterprises* [2001] 1 I.R. 608, it should “be slow to refuse such an order.” Nevertheless, before any such order could properly be granted, it would be necessary to establish that (i) the evidence proposed to be taken is relevant to the foreign proceedings; (ii) the application is not oppressive; (iii) the grant of the request would not override any established privilege or protection available to the prospective witness and (iv) the evidence so taken on commission is itself admissible under the law of the requesting state. The applicant for such judicial assistance must satisfy all four of these conditions. I propose now to consider each of these conditions.” [emphasis added]*

30. In the particular circumstances of the case, Hogan J. held the two individuals sought to be examined were entitled to assert an immunity from disclosure owing to the potential for the examination to require the individuals to disclose journalistic sources, which would have the ability to significantly “*hamper the exercise of freedom by the journalist in question.*”

31. *Cutler v. Azur Pharma* [2015] I.R. 167 is the most recent of the authorities referred to by the parties. Noonan J. provided a comprehensive judgment setting out the basis upon which a court would be compelled not to make an order giving effect to Letters Rogatory. The dispute underpinning that application arose in circumstances where the plaintiff claimed that the defendant company deliberately understated the revenue of a medication which impacted upon contingent milestone payments owing to the plaintiff. The Letters Rogatory sought the examination of KPMG auditors.

32. Noonan J. started his analysis of the legal principles by referencing Denham J. in *Novell* that “[u]nder the principles of comity, the courts of this jurisdiction would always be favourably disposed towards complying with such a letter of request...”. After which, Noonan J. outlined the *dicta* of Hogan J. concerning the elements which need to be established before an order could properly be granted.

33. Noonan J. further identified in respect of *Sabretech* that the witness in question was identified “*purely as the custodian of records*” and the court therefore concluded he could have no relevant evidence to give by way of oral evidence.

34. In respect of the application before him, Noonan J. noted that the court has jurisdiction to “*limit or ‘prune’*” the requirement for the production of documents. Noonan J. was therefore satisfied to grant a varied order.

THE EVIDENCE

35. The evidence before the court comprised, for Runbuk, a series of affidavits sworn by Elaine White a solicitor acting for the company in this jurisdiction. In turn, for the purposes of the set aside affidavit, Ms. White exhibited affidavits sworn by David Bloch the US attorney acting for Runbuk in the Florida proceedings. For his part, Mr. Donovan also swore a number of affidavits.

36. It is to be recalled that the relevant timeline for the non-disclosure issue is that the request for assistance was made by the US Court on the 4 June 2026. The affidavit grounding the application was sworn by Ms. White on the 10 June 2026. The proceedings were stayed in Florida by an order made by the US Court of its own motion on the 11 June 2026. The application was moved *ex-parte* and the order made by this court on the 15 June 2026.

37. It is important to note that all parties were in agreement, and the court fully accepts, that Runbuk's Irish legal team was not aware of the stay when the application was moved. The issue is whether Runbuk, which was represented in the Florida proceedings, ought to have ensured that the stay was drawn to the attention of the court as part of the initial *ex-parte* application.

38. Ms. White's initial affidavit set out the nature of the proceedings and exhibited material generated in the Florida proceedings together with the Letters Rogatory. That has been summarised above and does not need to be set out again. The only problematic issue at that stage was that the Florida Court sought to have the examination occur within a very short time period. The court was not satisfied to adhere to that timeline because, as properly accepted by

Runbuk's Irish legal team, the timeline would not have afforded Mr. Donovan a reasonable opportunity to take steps if he chose to take advice and to seek to challenge the order.

39. Mr. Donovan through his legal representatives applied to the court and sought to issue a notice of motion on 26 June 2026 setting aside the *ex-parte* order. That application was grounded on an initial affidavit sworn by Mr. Donovan on the same date. Mr. Donovan identified that the Florida proceedings were stayed by an order made in the proceedings on the 11 June 2026, and he contended that that fact was material and ought to have been drawn to the attention of the court as part of the *ex-parte* application. Mr. Donovan also described the California proceedings, in which he had made discovery, and he expressed a concern that could be summarised as being that Runbuk was seeking to utilise the Letters Rogatory to obtain an advantage in the California proceedings. In that sense he was concerned that the application was oppressive.

40. Ms. White swore a replying affidavit on the 9 July 2026. In her affidavit, Ms. White exhibited a then draft affidavit that had been sworn by Mr. Bloch. The explanation for the non-disclosure of the stay order was that Mr. Bloch did not consider that the order affected the validity or operation of the Letters Rogatory. Ms. White noted that if she had been aware of the order it would have been drawn to the attention of the court.

41. Mr. Bloch noted the following matters, which I have summarised:

- a. First, the defendants to the Florida proceedings did not oppose the application to have Mr. Donovan examined in Ireland.
- b. Second, the Florida Court agreed that Mr. Donovan's testimony was critical to Runbuk's case in chief.

- c. Third, the stay imposed by the Florida Court was a stay on deadlines and not a general stay and it was imposed to allow the Court to assess the impact of a separate case brought by the defendants against Runbuk's owners.
- d. Fourth, different lawyers act for Runbuk in the California proceedings.
- e. Fifth, Mr. Donovan could have but did not apply to have the Letters Rogatory quashed in the Florida Courts.
- f. Sixth, under local law, Mr. Donovan has the option of designating his evidence obtained by means of the Letters Rogatory as "Confidential" or "For Attorney's Eyes Only", which would address the concerns about the use of information obtained for the Florida proceedings in the California proceedings.

42. Mr. Donovan swore a replying affidavit on the 17 July 2026. In that affidavit he made the following points, which I have summarised:

- a. First, Runbuk should not have sought to have Mr. Donovan examined while the stay was operative, and that he understood that a number of other scheduled depositions in the case had been cancelled.
- b. Second, Mr. Donovan disputed that his US lawyers had been notified of the Letters Rogatory, and therefore he had been deprived of the opportunity to challenge the orders in the Florida Court.
- c. Third, Mr. Donovan noted that he made two declarations in the Florida proceedings for the benefit of the defendants. My understanding is that these are roughly equivalent to affidavits. The second declaration was withdrawn.

- d. Fourth, he states his understanding that – at that point in time – the Florida proceedings remained at an interlocutory stage; Runbuk had sought a preliminary injunction, and that application had not been determined.
- e. Fifth, in relation to the matters that he considered oppressive, Mr. Donovan asserted that there is considerable overlap between the California proceedings and the Florida proceedings, and that the requests for documentation are overly broad.

43. Ms. White then swore a third affidavit on the 22 July 2026, which again exhibited a draft affidavit from Mr. Bloch. Ms. White averred that her firm had written to Mr. Donovan's solicitors on the 22 July 2026 proposing that effect not be given to the Letters Rogatory until the stay in the Florida proceedings is lifted. In his affidavit, Mr. Bloch made the following points, which again I have summarised:

- a. First, Mr. Bloch contends that it remains open to Mr. Donovan to seek to set aside the request from the Florida Court in that venue. Mr. Bloch suggests that this has not happened because it would undermine the fact that he had voluntarily accepted service of a subpoena from the defendants in those proceedings. In that regard the relevant subpoena was exhibited and it would be fair to observe that it incorporates a quite extensive request for the production of documentation.
- b. Second, Mr. Bloch emphasised that Mr. Donovan had voluntarily provided declarations on behalf of the defendants in the Florida proceedings, in support of their opposition to the Runbuk preliminary injunction application. The relevant declarations were exhibited by Mr. Bloch and

again they appear to involve Mr. Donovan engaging extensively with the subject matter of the dispute.

- c. Third, Mr. Bloch reiterated that there were legal options available to Mr. Donovan effectively to insulate information obtained as part of the Florida proceedings from sharing in the California proceedings.
- d. Fourth, Mr. Bloch asserted that by instituting his own proceedings in California against Runbuk Mr. Donovan has already exposed himself to the requirement to comply with discovery requests in that forum.

ARGUMENTS AND DISCUSSION

Non-disclosure issue

44. In seeking to set aside the *ex-parte* order, Mr. Donovan identifies the following omissions which it is argued amount to material non-disclosure:

- i. Runbuk did not inform the court that Mr. Donovan was involved in litigation in California; and
- ii. Runbuk did not disclose that the Florida Court stayed proceedings in advance of the application being made before this court.

45. Mr. Donovan argued that, in *Cutler*, Noonan J. noted that the authorities suggest where there is material non-disclosure at the *ex-parte* stage, it should move the court to exercise its discretion against giving effect to the request.

46. It can be noted that in *Cutler*, the material non-disclosure argued was the failure of the grounding affidavit to refer to the discovery process ongoing in the United States in those

proceedings. Accepting that the affidavit clearly failed to disclose this issue, Noonan J. nonetheless considered that it was not appropriate to refuse relief on this basis:

I do not think it is a matter that is sufficiently serious to warrant a refusal of the request. There is no suggestion that the omission was in some way deliberate or calculated to mislead, particularly in circumstances where the court would be likely to assume in any event that discovery would be part and parcel of the US proceedings. There is also the fact that no actual advantage was derived from the ex parte order and thus no prejudice was suffered by KPMG, unlike the situation that might arise for example if an injunction was obtained ex parte. As Clarke J. remarked in Bambrick (at p. 9), the application of the principle of disclosure should not be carried to extreme lengths.

47. Mr. Donovan argued that the material non-disclosure in the instant case was more serious than that in *Cutler*, and that the court should be minded to exercise its discretion to refuse relief on that basis. It was asserted that there was a “clear line” between the material non-disclosure and the advantage gained by the plaintiff.

48. In regard to the failure to inform this court of the stay, Mr. Donovan noted that the Florida Court of its own motion, suspended all depositions and discovery in the proceedings. The order of this court providing for the examination of Mr. Donovan was therefore “in contravention” of the Florida Court’s stay. The existence of litigation in California was also argued to be material information which was not disclosed to the court at the *ex-parte* stage.

49. Runbuk accepted that this court ought to have been informed of the stay issued by the Florida Court when making its application and this was acknowledged throughout the course

of the *inter partes* hearing. Notwithstanding this, Runbuk argued, by reference to the judgment of Roberts J. in *Petersen Energia v. Argentine Republic* [2025] IEHC 463, that the court retains the task of considering the materiality of the fact omitted and there is no default rule which requires the court to discharge the relief granted *ex-parte*.

50. The parties also referred to *Bambrick v. Cobley* [2005] IEHC 42, in which Clarke J. set out three factors which the court ought to consider when determining whether to set aside *ex-parte* relief. The court should consider: i) the significance of the undisclosed fact; ii) the extent to which the omission was deliberate or culpable; and iii) the justice of the case as a whole.

51. The respondent therefore advances the argument that the Florida Court simply stayed the case management and there is no evidence that the Letters Rogatory were rescinded or suspended. It is also argued that there is little to no materiality in the failure to disclose. This is on the basis that this court did not adopt the timetable included within the Letters Rogatory for the completion of the examination.

The non-disclosure issue

52. Full and frank disclosure is a non-negotiable requirement in any *ex-parte* application, and the court must be alert to ensure that the requirement is adhered to. The approach that the court will adopt where relevant matters were not drawn to the attention of the court will be case and context specific, and the court's discretion has to be exercised carefully but not in an automatic or algorithmic manner.

53. The court is conscious that, in common with all *ex-parte* applications that have a potential effect on other parties, the applying party has to exercise some judgment or

discrimination in seeking to identify what is relevant. This can lead to legitimate disputes, where, in good faith, something may not be referred to but which may be considered relevant by another party. It can also be observed that while the Irish legal representatives are not to be criticised and the court accepts that there was no deliberate non-disclosure on their part, this is not the focus of the exercise. The obligation is on the moving party. Lawyers act as agents for clients and it is imperative that clients are informed of their obligations. If a party withholds material information from the court in an *ex-parte* application, the fact that their lawyers are not culpable does not affect the analysis.

54. There is no doubt that as part of the initial application there was a failure to disclose the fact of the California proceedings and the stay that had been imposed. These fall to be addressed separately in the first instance.

55. In relation to the California proceedings, I consider that these should have been referred to in the application. Where a party to litigation is seeking to obtain orders directing a person to give evidence in this State, the fact that the affected person is engaged in litigation elsewhere with the party seeking the order is likely relevant, particularly so where the other litigation arises from largely the same underlying issues. The reason it is relevant is that, when deciding on an application under the Foreign Tribunals Evidence Act, the court needs to make at least an initial determination as to whether the request is oppressive. The case law, for instance *Novell*, demonstrates how the existence of other proceedings can be very material to the court's analysis of whether an application may be oppressive.

56. Here, in my view, Runbuk gave a reasonable summary of the Florida proceedings and Mr. Donovan's role, and explained why the request was being made. Those reasons were

fleshed out in the documents exhibited from the Florida proceedings, and it can be noted that in the request from the Florida Court there was no reference to the California proceedings. I accept that the non-disclosure in this case was not motivated by bad faith or any intent to mislead the court. Unlike, for instance, a case where a party obtained an interim injunction and there was material non-disclosure, in this case the orders made did not bite and Mr. Donovan has now had a full and proper opportunity to explain why he considers the orders should not be made. Hence, while I am satisfied that the existence of the California proceedings should have been disclosed, I am satisfied that the initial non-disclosure is not at a level where it requires the court – having conducted a detailed *inter partes* hearing in which all parties put the evidence that they considered relevant before the court, and has been able to consider the issues in the round – to refuse relief.

57. The non-disclosure of the stay is more serious. The *ex-parte* application was progressed with a degree of urgency, and as noted above, Runbuk and the Florida Court had requested that Mr. Donovan's examination occur within a very short timescale. There is a dispute as to the precise effect of the stay. While this dispute was on affidavit and there was no cross examination, it seems to the court that Mr. Donovan, who is not a party to the Florida proceedings, has slightly misconstrued what was ordered. As explained by Mr. Bloch, and as I read the document, the stay related to deadlines and did not rescind or formally suspend the court's orders. Clearly the Florida Court was aware that it had made the request for judicial assistance, but this was not adverted to in the stay application. There is no doubt in my mind that Runbuk and its US lawyers should have drawn the stay to the attention of its Irish lawyers. The court would then have been able to address the application without the attendant urgency and could have taken steps to ascertain the precise effect of the stay or to direct that Mr. Donovan be put on notice of the application.

58. I consider that this lapse was more serious than the decision not to refer to the California proceedings, and I consider that Mr. Bloch's seemingly unilateral decision that the stay was not material clearly was a serious error of judgment. Nevertheless, it seems to me that the justice of the case does not warrant refusing the application on this basis. First, Mr. Donovan was not required to submit to an examination and had the opportunity to make this application. Second, the court now has had access to a wide range of evidence and arguments and is in a position to form a view on the overall merits of the application. Third, quite properly, Runbuk offered to suspend any examination until the stay was lifted. Fourth, as it happens, between the hearing of the application and the preparation of this judgment the Florida Court rejected Runbuk's preliminary injunction application and lifted the stay.

Oppression issues

59. I will now address the additional arguments made by Mr. Donovan. These effectively were (a) that the application in reality is one for discovery and (b) that the request is oppressive because of its overlap with and potential impact on the California proceedings. In summary, the court is not satisfied that Mr. Donovan has substantiated those assertions.

60. The issue of discovery has been addressed in a number of judgments and is best illustrated by the observations of McCracken J. in *Sabretech* referred to above. The court will not accede to a request for judicial assistance if in reality no oral testimony is sought and the request properly characterised is one for discovery. Here, I am fully satisfied that there is a legitimate reason and basis for Mr. Donovan's examination. Clearly, he is a critical witness given his history with the WMC, and the fact that he has already provided what can be characterised as affidavits in support of the defendants and has voluntarily submitted to the equivalent of a subpoena duces tecum issued by the defendants. It simply cannot be said that the dominant purpose of the request is to obtain documents and not testimony.

61. The oppression argument is similarly misplaced:

- a. First, this is a case in which the court seised with the proceedings and which must be taken to have a far greater level of knowledge and insight into the proceedings has satisfied itself that Mr. Donovan is a critical witness and that the orders were necessary. The court must as a matter of comity afford considerable weight to that factor.
- b. Second, in any event, I have carefully considered the categories of documents sought in the request and the underlying Florida proceedings. I am satisfied that there is a basis rooted question.
- c. Third, the fact that there is an overlap of issues between the Florida and California proceedings does not require this court to determine the proper locus for Mr. Donovan to make disclosure. It is entirely conceivable that rather than being relevant to one set of proceedings only and not the other, the documents and testimony sought can legitimately be responsive to both sets of proceedings. If the overlap gives rise to issues of fairness, this seems to me to be a matter to be addressed in the US courts.
- d. Fourth, insofar as Mr. Donovan expressed concern that information disclosed in the Florida proceedings may be used by Runbuk to his detriment in the California proceedings (and this was not explained with sufficient clarity), he has not responded in any substantive way to the response of Mr. Bloch. It is notable that Mr. Donovan is represented in the proceedings that he brought in California, but he has not put any evidence before the court from his lawyers in those proceedings in support of his concerns. On the other hand, Mr. Bloch has stated that as a matter of relevant US law Mr. Donovan has access to mechanisms that will

effectively insulate his information from use by Runbuk in the California proceedings.

- e. Fifth, similarly Mr. Donovan has not rebutted the point made by Mr. Bloch that, as a matter of US law, Mr. Donovan could, but has not attempted to, apply to the Florida Court to overturn, vary or alter the request.
- f. Sixth, overall, the court, frankly, is not impressed by Mr. Donovan's overall approach by which he has sought to avoid being examined in this jurisdiction as requested by the Florida Court, despite (a) choosing to sue Runbuk in California on the basis of claims that have a similar origin to those in Florida, and by doing so must be treated as having submitted to the requirement to make discovery and give evidence; and (b) agreeing voluntarily to provide testimony and documentation to the defendants, but not Runbuk, in the Florida proceedings.

62. In all the premises, having considered the relevant case law and the papers submitted by the parties, the court is satisfied that the request made by the Florida Court should be acceded to, despite the issues around initial non-disclosure. I will list the matter before me on Tuesday, the 6 October 2026 at 10.30am to address the issue of costs and also the rescheduling of Mr. Donovan's examination, and I will expect the parties to liaise in that regard with a view, if possible, to present a consensus view to the court on those issues.