THE HIGH COURT

COMMERICAL

[2014/1960 S: 2014/128 COM]

BETWEEN

ALBANIABEG AMBIENT Sh.p.k.

PLAINTIFF

AND

ENEL S.p.A. AND ENELPOWER S.p.A.

DEFENDANTS

JUDGMENT of Mr. Justice McDermott delivered on the 8th day of March, 2016

1. The defendants seek an order pursuant to Order 12 Rule 26 of the Rules of the Superior Courts setting aside the order of the High Court (Hedigan J.) of 21st July, 2014 granting the plaintiff liberty to serve proceedings outside the jurisdiction and an order dismissing the proceedings on the grounds that the Court does not have jurisdiction or ought not to assume jurisdiction to hear and determine them.

Background

2. The plaintiff seeks to enforce the judgment of the Tirana District Court of Albania delivered on 24th March, 2009 against the defendants in the amount of €433,091,870.00 and costs. The plaintiff is a company incorporated under the laws of Albania and engaged in the sale and supply of energy and related services. Both defendants are companies incorporated under Italian law and are also engaged in the sale and supply of energy and related services.

3. In or about 1996 the plaintiff's parent company (at the time BEG S.p.A.) sought and obtained a concession for the construction and operation of a hydroelectric power plant in the Kalivac region of Albania. During the period in which BEG was endeavouring to obtain this concession the defendants allegedly expressed their interest in purchasing electricity generated by the power plant and the right to supply it to consumers in Italy. On 2nd February, 2000 a final cooperation agreement was concluded between BEG and the defendants. This agreement provided, inter alia, that the parties would establish a special purpose vehicle, the plaintiff company, for the purpose of implementing the terms of the concession. Subsequent to the entry into force of this agreement, the defendants, it is alleged, undermined the completion of the power plant by various acts and omissions which were intended to delay and disrupt its construction.

4. It is claimed that the first defendant also entered into direct competition with the plaintiff in Albania in breach of an exclusivity agreement between the plaintiff and defendants. It is said that as a result the project was not completed in 2003 as originally envisaged. Consequently, proceedings were initiated before the Tirana District Court in which damages were claimed for, inter alia, tort and unfair competition.

5. It is claimed that the Tirana District Court was a Court of competent jurisdiction to determine the plaintiff's claim and that the defendants submitted to its jurisdiction. The Court heard and considered the respective arguments of the parties. On 24th March, 2009, the Tirana District Court delivered what is said to be a final and conclusive judgment. It ordered that the defendants pay to the plaintiff (i) the sum of €25,188,500.00 in damages for tort and unfair competition for the period prior to 2005 and (ii) a sum to be calculated on a formula devised by a Court-appointed panel of experts which would form part of the final judgment of the Court for damages for tort and unfair competition for the years 2005 to 2011. On the application of this formula the sum calculated for damages for those years amounted to €407,903,370.00. Thus the total damages awarded by the Tirana District Court amounted to €433,091,870.00.

6. The defendants appealed against this judgment to the Tirana Court of Appeals. On the 28th April, 2010, the Tirana Court of Appeals affirmed the judgment of the Tirana District Court in its entirety.

7. The defendants appealed against this judgment to the Supreme Court of Albania. On the 7th March, 2011 the Supreme Court affirmed the judgment. The defendants subsequently applied to the Supreme Court requesting it to reconsider its judgment. This application was refused on the 17th June, 2011.

8. It is claimed that despite the repeated demands for payment of the sum awarded, it has not been discharged by the defendants. The plaintiff brings these proceedings seeking to enforce the Albanian judgment in Ireland.

9. On the 21st July, 2014 following an *ex parte* application, an order was made granting leave to the plaintiff to issue and serve the proceedings on the then intended defendants. Notice of the issue of proceedings was served by registered post in accordance with the order. By letter dated 19th September, 2014 the solicitors on behalf of both defendants entered a Conditional Appearance stating that it was entered for and on behalf of the defendants solely in order to contest the jurisdiction of the Irish Courts and to facilitate the bringing of an application by way of notice of motion to set aside the service upon it of these proceedings. Without prejudice to that appearance, the defendants reserved the right to defend the proceedings in full. Following an application by the plaintiff, the Commercial Court (McGovern J.) admitted these proceedings to the Commercial List on 13th October, 2014. The motion now under consideration issued on 10th November, 2014.

Italian Proceedings

10. In November, 2000 BEG commenced arbitration proceedings against the second defendant before a Tribunal of the Chamber of Commerce in Rome claiming contractual damages for a purported breach of the 2000 cooperation agreement. The Tribunal ruled in favour of the second defendant in December 2002 and found that the Cooperation Agreement had not been breached. Appeals were

brought to the Rome Court of Appeals in 2009 and the Italian Supreme Court in 2010 by BEG which were rejected and the ruling of the Tribunal was upheld.

11. During the course of the Italian proceedings BEG, through the plaintiff, (a then wholly owned Albanian subsidiary) initiated the proceedings in Albania in relation to the same issues which culminated in the judgment previously described.

12. The defendants applied to the European Court of Human Rights in September, 2011 claiming that the judgment in the Albanian Courts had been obtained by the plaintiff in breach of the defendants' rights under the Convention. This application was rejected on 22nd May, 2014 on the basis that not all domestic remedies had been exhausted.

13. The plaintiff has attempted to seek enforcement of the Albanian judgment in a number of other jurisdictions namely New York, the Netherlands, France and Luxembourg. No application has been made seeking the enforcement of the judgment in Italy.

Order 11 of the Rules of the Superior Courts
14. Order 11 Rule 1 provides, inter alia, as follows:

> "…service out of the jurisdiction of an originating summons or notice of an originating summons may be allowed by the Court whenever - …
>
> (q) the proceeding is brought to enforce any foreign judgment".

15. Order 11 Rule 2 provides:

> "Where leave is asked from the Court to serve a summons or notice thereof under rule 1, the Court to whom such application shall be made shall have regard to the amount or value of the claim or property affected and to the comparative cost and convenience of proceedings in Ireland, or in the place of the defendant's residence, and particularly in cases of small demands where the defendant is resident in England, Scotland, or Northern Ireland, to the powers and jurisdiction, under the statutes establishing or regulating them, or of the Courts of limited or local jurisdiction in England, Scotland or Northern Ireland respectively".

16. Order 11 Rule 5 provides:

> "Every application for leave to serve a summons or notice of a summons on a defendant out of the jurisdiction shall be supported by affidavit, or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a citizen of Ireland or not, and where leave is asked to serve a summons or notice thereof under rule 1 stating the particulars necessary for enabling the Court to exercise a due discretion in the manner in rule 2 specified; and no leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order."

The Law
17. It is clear that the Court which granted leave to issue and serve the proceedings upon the defendants out of the jurisdiction was satisfied that it was appropriate to do so because it was a proceeding brought to enforce a foreign judgment under Order 11 Rule 1 (q). The Court made that order having regard to the matters set out in Order 11 Rule 2 concerning the value of the claim, the comparative cost and convenience of bringing the proceedings in Ireland and the place of the defendant's residence. It was satisfied that "the case was a proper one for service out of the jurisdiction". A Court must be satisfied that Ireland is the forum in which the case may be suitably tried in the interests of all the parties and the interests of justice at the *ex parte* stage. Inevitably, in a motion of this kind under Order 12 Rule 26, the Court, because of the extensive nature of the affidavits exchanged between the parties, has a larger body of evidence to consider on the relevant issues than the Judge who made the order at the *ex parte* stage. The onus of proof remains on the plaintiff to establish that it has a good cause of action and that it is proper to determine the case in this jurisdiction.

The Hagen
18. There is a disinclination to assert jurisdiction over foreign defendants at common law. This approach is summarised in the judgment of Vaughan Farwell LJ in *The Hagen* [1908-10] All ER Rep 21 at 189 as follows:-

> "During the present sittings Vaughan Williams LJ and myself have on more than one occasion had to consider Order XI and we have had many authorities discussed and fully considered by the Court, and the conclusions to which the authorities led us I may put under three heads. First we adopted the statement of Pearson J. in *Societe Generale de Paris v Dreyfus Bros*. (1885) 29 Ch. 239 at 242, that "it- becomes a very serious question whether or not, even in a case like that, it is necessary for the jurisdiction of the court to be invoked and whether this Court ought, to put a foreigner, who owes no allegiance here, to the inconvenience and annoyance of being brought to contest his rights in this country and I for one say, most distinctly that I think this Court ought to be exceedingly careful before it allows a writ to be served out of the jurisdiction". The second point which we considered established by the cases was this, that if on the construction of any of the sub-heads of Order XI there was any doubt it ought to be resolved in favour of the foreigner; and the third is that in as much as the application is made *ex parte*, full and fair disclosure is necessary, as in all *ex parte* applications, and a failure to make such full and fair disclosure would justify the court in discharging the order even though the party might afterward be in a position to make another application."

19. In determining the issue under Order 12 Rule 26, the Court must determine whether (i) the plaintiff has a "good arguable case" and (ii) whether the case is a "proper one" to be determined in this jurisdiction. The "comparative cost and convenience", meaning the fitness, propriety and suitability of bringing the proceedings in this jurisdiction, informs the exercise by the court of its discretion.

A good arguable case
20. The plaintiff's claim is for summary judgment in which it seeks to enforce an award by an Albanian court in this jurisdiction. The defendants have indicated an intention, should it become necessary, to defend the application on its merits. The plaintiff only has to establish a "good cause of action" based on an arguable case. This is not a determination of the plaintiff's case on the merits but nevertheless, having regard to the disinclination to impose jurisdiction on foreign defendants, the cause of action relied upon must be carefully considered on the affidavits submitted by both sides.

21. The factual background to the obtaining of judgment before the Tirana District Court of Albania is not seriously in dispute. Judgment was obtained in the amount claimed but serious issue is taken by the defendants as to whether this judgment should be enforced. If required, the defendant proposes to defend the claim on the basis that:-

> (a) The Albanian judgment was repugnant to the basic principles of international law and national justice;
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> (b) The judgment was contaminated by egregious breaches of fair procedures;
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> (c) The plaintiffs cause of action was res judicata having already been determined in Italy; and
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> (d) An unqualified judgment sum (to the extent that it has not been qualified by the Albanian Court but which must be determined by reference to a formula determined by non judicial "experts") is unenforceable in Irish Law."

22. I am satisfied that, on the evidence adduced, the plaintiff has established that it has a good arguable cause of action in seeking to enforce the judgment of the Albanian Court within the meaning of Order 11 having taken into account the level of scrutiny required and the final nature of a determination concerning the jurisdiction of the Court and its consequences for the defendants (see Fennelly J. *Analog Devices BV v. Zurich Insurance Company* [2002] 1 I.R. 272 at page 281).

Comparative cost and convenience – a proper case?
23. The Court in exercising its discretion on this application must take into account a number of relevant factors. The Court must consider whether there is some other available forum which has competent jurisdiction and is appropriate for the trial of the action. It must consider whether the case may more suitably be tried there in the interests of the parties. It must take a broad view of this issue and take account of the relevant factors including convenience, expense, the availability of witnesses, the governing law and the place of residence and business of the defendants. There must be a sound basis for the hearing of the proceedings in Ireland and the application should not be granted if the initiation of proceedings in this jurisdiction is a "mere device" to ensure that the defendants are brought before Irish courts. In summary, the Court must be satisfied that the case is a fit, proper and suitable one for determination in this jurisdiction. (Per Fitzgibbon LJ. in *McCrea v. Knight* [1896] 2 I.R. 619 at 625; *Intermetal Group Ltd. v. Worsale Trading Ltd*. [1998] 2 I.R. 1 per Murphy J.; *Analog Devices B.V. v. Zurich Insurance Co*. [2002] 1 I.R. 272 per Fennelly J.).

Assets within the Jurisdiction
24. The defendants submit that the commencement of summary judgment proceedings in Ireland would serve no useful purpose because the plaintiff has failed to identify any legitimate practical benefit, if successful in bringing these proceedings. It is submitted that since the defendants have no assets in Ireland against which any judgment could be enforced, and there is no basis for concluding on the evidence that they are likely to have any such assets in Ireland in the future, the court should exercise its discretion against permitting the plaintiff to proceed in this jurisdiction.

25. It is not a precondition to the exercise of the court's discretion that the proposed defendants have assets within the jurisdiction against which a judgment may be enforced. However, the Court is entitled to consider whether the conduct of proceedings in this jurisdiction will serve any useful purpose. In that context the plaintiff must demonstrate that he can reasonably expect to benefit from a judgment obtained in this jurisdiction. This issue was considered by the English Court of Appeal in *Tasarruf Mevduati Sigorta Fonu v. Demirel and Anor* [2007] 4 All E.R. 1014. It rejected the submission that it was a necessary precondition to the exercise of jurisdiction that assets be within the jurisdiction. A contrary conclusion would deprive a plaintiff of bringing proceedings if there were a belief, hope or expectation that assets belonging to the defendant would or might arrive in the jurisdiction. In addition, a plaintiff might wish to obtain judgment and seek enforcement by compelling a person who has the right to call upon assets of the defendant outside the jurisdiction to call for such assets. Such a rule would also be inconsistent with the wide discretion vested in the Court (per Sir Anthony Clarke M.R. at paragraphs 23 to 25).

26. However, it was also made clear in *Tasarruf* that the discretion should not be exercised in favour of a plaintiff "unless it can be shown that a "solid practicable benefit" would ensue". It was said:

> "27. … we accept that the court should not automatically exercise its discretion in favour of permitting service out of the jurisdiction unless it is just to do so, and that it will ordinarily not be just to do so unless there is a real prospect of a legitimate benefit to the claimant from the English proceedings. We see no reason why that benefit should not be indirect or prospective. …
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> 29. Thus a claimant seeking to enforce a foreign judgment by action does not have to show that there are assets in the jurisdiction. To require him to do so would be tantamount to constrain the rule as if it were limited in that way. A claimant must show that he has a good arguable case in the action, that is that he has a good arguable case that judgment should be given based upon the foreign judgment. He must in our opinion ordinarily show further that he can reasonably expect a benefit from such a judgment. Otherwise there will be no useful purpose in the proceedings."

27. In *Tasarruf* the plaintiff sought to enforce three judgments in favour of the complainant which had been granted by the Turkish Courts. The judgments were based on a finding that Mr. Demirel was guilty of fraud. The Court of Appeal concluded that in such cases it is often difficult to locate a defendant's assets. Mr. Demirel claimed that he had no assets in the United Kingdom. The Court noted that judgment debtors were often reluctant to advertise the nature and whereabouts of their assets. Though there was no primary evidence to that effect in the *Demirel* case, it appeared to the Court of Appeal to be a real possibility. Mr. Demirel had been involved in business in Turkey on a large scale. He had not kept his assets in Turkey and made use of the international banking system. He used an international bank to procure the setting up of trusts to shelter his assets in the Cayman Islands. The Court concluded that it was "not unlikely" that he might use the international banking system of which London was a central part. The Court was also mindful of the fact that a time limit of six years applied to the bringing of the action from the date upon which the judgment became enforceable. If the appeal were allowed, no action could be brought in future because it would be statute-barred and Mr. Demirel would then be able to bring funds to London free of the risk of execution. Furthermore, the Court noted that if judgment were obtained in England, use could properly be made of the various methods of, and aids to enforcement, including an oral examination of the judgment debtor as to the nature and whereabouts of his assets. In affirming the judgment of the High Court, the Court of Appeal concluded that there was a reasonable prospect that the claimant could obtain a real benefit from the action in England to enforce the Turkish judgment and that England was the proper place to bring the claim under the equivalent rule. I am satisfied that the facts of this case are entirely distinguishable from those in *Tasaruff* which concerned a judgment based on a finding of fraud and the removal of assets by the Defendant from Turkey. In this case the judgment obtained does not involve a history of fraud, deception or the removal or hiding of assets by the defendants so as to avoid execution of judgment. However, the principles set out in the judgment have been found to be persuasive in this jurisdiction.

28. In *Yukos Capital S.A.R.L. v. OAO Tomskneft VNK* [2014] IEHC 115 Kelly J. considered and applied the principles in *Tasarruf*. The applicant, a Luxembourg company, sought to enforce an international arbitration award against the respondents, a Russian joint stock company, in Ireland. The respondent challenged the leave granted to the applicant to issue and serve proceedings on the grounds that there was no proper basis for the exercise of the High Court's jurisdiction under Order 11. The applicant, notwithstanding the State's obligation to recognise international arbitration awards, was still obliged to obtain leave to issue and serve the proceedings out of the jurisdiction in a case in which the respondent did not reside in Ireland. Kelly J. accepted the principles adumbrated in the judgment of the Court of Appeal in *Tasarruf* including the proposition that the presence of assets was not a precondition to the exercise of the discretion to permit service out of the jurisdiction. The learned Judge held that the Court must determine whether, in the absence of assets in, or likely to be in the State some "solid practical benefit" would ensue if the award were to be enforced. Kelly J., having considered the evidence, set aside the order of the High Court which had granted leave stating:-

> "140. The discretion which falls to be exercised must take into account the fitness, propriety and suitableness of the case.
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> 141. It is a case with no connection with Ireland. There are no assets within this jurisdiction. There is no real likelihood of assets coming into this jurisdiction. This is the fourth attempt on the part of the applicant to enforce this award. There is little to demonstrate any "solid practical benefit" to be gained by the applicant. The desire or entitlement to obtain an award from a "respectable" Court has already been exercised in the Courts of France and is underway in the Courts of Singapore.
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> 142. The respondent has already had to undertake a defence of the proceedings in Russia and in France and has been successful to date in so doing. It would be unjust to require the respondent to yet again defend its position. The respondent should not be forced to come into a third state (Ireland) which is foreign to it and reargue its case again. It is not appropriate for this Court to assume jurisdiction."

Evidence of a Practical Benefit

29. In the first affidavit of Timothy Fritz on behalf of the plaintiff, a claim is made at paragraphs 41 to 44 inclusive that the first defendant ENEL S.p.A. has substantial links to this jurisdiction and the Irish economy because it has engaged in the listing of a number of debt securities in the Irish stock exchange since in or about 2000. It is claimed that, because Ireland is a favourite location for debt listing, securitisation and asset repackaging transactions, it is likely that the first defendant would opt to list further notes on the Irish stock exchange against which execution of the judgment sought to be enforced would be possible.

30. It is also claimed that both defendants are members of the ENEL group of companies which has a presence in Ireland through "a registered branch of ENEL Ingegneria ae Ircerca S.p.A. (EIR) a subsidiary of the first defendant ENEL S.p.A. It is claimed that EIR had total assets of €282,833,779.00 and liabilities of €230,333,390.00 as of December 31st, 2012.

31. In his second affidavit Mr. Fritz states that EIR is the wholly owned subsidiary of the first defendant ENEL S.p.A. and is a member company of the ENEL group of which both defendants are members. It is claimed that the parent and sole shareholder of EIR, the first defendant ENEL S.p.A., would be entitled to any dividend declared by EIR. It is therefore suggested that because of the links between the first defendant and EIR it may be open to the plaintiff post judgment to seek to lift the corporate veil between the two entities to enable enforcement as against the assets of EIR. It is further claimed that the defendants would only be able to engage "more fully in this regard following discovery in aid of execution".

32. In his first replying affidavit Mr. Giuseppe Ferrara on behalf of the defendants acknowledges that the first defendant ENEL S.p.A. has nine bonds listed on the Irish stock exchange. These are debt securities. They operate as loans to the first defendant and are subject to repayment or redemption in the future and to a coupon or interest rate in the interim. The bonds are listed on the ISE as one of the world's most popular stock exchanges for the listing of debt securities. A great many companies with no link to Ireland and a number of countries have chosen to list debt securities on the ISE. The bonds reflect monies owed by the first defendant which must be repaid to the bond holders upon maturity. He states that it is not possible for the plaintiff to seek execution of the Albanian judgment against the redemption amount of these bonds or the interest payable by the first defendant in the interim. He notes that any monies received by the first defendant on foot of the bonds are not free standing assets of the first defendant but by virtue of the nature of the debt securities, are subject to contractual obligations concerning redemption and interim interest payments. The plaintiff therefore has no entitlement to enforce his judgment against such instruments.

33. Furthermore, Mr. Ferrara states that eight of the bonds are said to be subject to English law and the jurisdiction of the Courts of England and Wales. One of the bonds is subject to the law of New York and the jurisdiction of the New York Courts. They have no connection with Ireland or Irish law. This is the likely scenario in respect of any future bonds that may be listed. In addition, the funds by which the bonds are purchased by third parties are not located or receivable in Ireland. None of the bond monies under the presently listed bonds were receivable in Ireland. The bonds may be listed or delisted on the ISE without affecting the underlying liabilities. There is no reason why any funds to be realised from future bonds that may be issued or listed on the ISE would ever be held in, or pass through, Ireland. There is no nexus or connection between where a bond is listed and where the funds generated by the bond issuance are receivable or located. He states that it is highly unlikely that such funds would ever be received in Ireland.

34. Mr. Ferrara acknowledged in respect of the second point that EIR, a group company, separate from the defendants, registered a branch in Ireland in June 2012 having entered into a contractual relationship for the provision of site supervision services for a project in Wexford. EIR's only link to Ireland was in the form of that contract originally entered into in April 2012 and due to expire in December 2014. The relatively modest monthly fee for the provision of services under the Irish contract was to be received by EIR in a bank account held in its name in Italy. The contract was governed by Italian law and any disputes thereunder were to be resolved by the Courts of Rome. The service provider under the contract was Italian and clearly not either of the defendants. EIR has a standard practice when entering a contract of services in a foreign jurisdiction to establish a branch there although it remains at all times an Italian registered company. Mr. Fritz in a responding affidavit stated that EIR is the wholly owned subsidiary undertaking of the first defendant ENEL. He asserts that as the parent and sole shareholder of EIR, the first defendant would be entitled to any dividend declared by EIR. He states that it may be open to the plaintiff post judgment to seek to lift the corporate veil between the two entities. Mr. Ferrara responds that since EIR is a distinct legal entity and not one of the defendants there is no connection with this jurisdiction upon which the plaintiff can rely in these proceedings arising from the fact that EIR has an Irish branch. EIR is not a defendant to the proceedings and is a separate and distinct Italian legal entity. No basis has been advanced as to how or why the "corporate veil" might be lifted as between an Italian company and its Italian subsidiary or how a judgment against one Italian company is enforceable against the assets of a subsidiary company under Irish or Italian law. Mr. Ferraro also queries the practicality of seeking discovery in aid of execution against defendants or directors who are not within the jurisdiction. Furthermore, he notes

that any dividend declared by EIR would be declared in Italy to its shareholders. In addition, it is difficult to see how an order might be obtained by way of equitable execution against funds payable to EIR pursuant to a contract with another, particularly since EIR is not a defendant to the proceedings.

35. I am not satisfied that there is any, or any adequate, evidence to establish that either defendant has any assets within the jurisdiction or that there is a reasonable possibility or real prospect that they may have such assets in the future. The fact that bonds are listed on the Irish stock exchange in respect of the first named defendant does not establish a close connection between it and this jurisdiction, or the presence, or likely presence of assets within the jurisdiction from which execution could be obtained. The evidence is that none of the funds receivable by the first defendant in respect of these bonds are received or receivable in Ireland. The funds are not payable directly to the first named defendant on the issuing of a bond, but are conveyed through international or national intermediaries operating outside this jurisdiction. The evidence is also that it is unlikely that any such funds would be receivable within the jurisdiction in the future. There is no evidence that the issuing of the bonds has any connection with this jurisdiction. Indeed, eight of the bonds are subject to the laws of the United Kingdom and the jurisdiction of the courts of England and Wales: one of the bonds is subject of the laws of New York and the jurisdiction of the New York courts. There is no evidence that the second defendant has any bonds listed on the Irish stock exchange.

36. The plaintiff submitted that a judgment obtained in Ireland could be enforced against dividends payable to the first defendant by its subsidiary EIR. EIR is not a defendant in these proceedings. It has an Irish registered branch which was set up because it was providing services under contract to a company in Ireland. I am satisfied that EIR is an Italian company registered in Italy and subject to Italian law. If any dividends are payable by it to ENEL, they are payable in Italy pursuant to Italian law and I am satisfied that its dividends are not susceptible to execution in Ireland on foot of a judgment obtained from an Irish court against the first defendant. It seems to me that the appropriate jurisdiction in which to pursue such an application, if it were open, is Italy. Furthermore, apart from the Irish branch, which was opened for a limited purpose, EIR has no other connection with Ireland. It is completely unconnected with these proceedings.

37. It is also submitted that the plaintiff would be entitled to enforce any judgment obtained against the first named defendant by seeking an order of garnishee in respect of monies payable by the Irish company to which EIR was providing services. The plaintiff submits that it would be open to it, post judgment, to seek the lifting of the corporate veil and to pursue EIR through the courts in respect of monies due by the first named defendant. It should be noted that EIR is not a party to these proceedings nor is any basis offered on which the corporate veil between EIR and the first defendant might be lifted and the separate legal personality and limited liability of EIR set aside.

38. In any event, the only connection between EIR and Ireland is based on the existence of a short term contract in respect of a site in Wexford which terminated in or about December 2014. The contract is governed by the law of Italy and the monies are payable to an Italian bank account. The connection of EIR to Ireland or to these proceedings is extremely tenuous (see *Yaiguaje v. Chevron Corporation* [2013] ONSC 2527). In respect of EIR there is no basis advanced for lifting the corporate veil in this jurisdiction, in these proceedings or otherwise, and there is no evidence that there are any assets of EIR in this jurisdiction nor is there any reasonable possibility that there may be such assets within this jurisdiction, for the purpose of enforcement in that event.

39. It was also submitted that the defendants had a connection to this jurisdiction through other companies but I am satisfied that this evidence invites the court to engage in contemplating the future lifting of corporate veils on an extensive basis without any established basis or reasonable possibility of advantage to the Plaintiff in these proceedings and based on a connection to the defendants which is similarly ill-defined and tenuous.

40. I am therefore satisfied that there are no assets within the jurisdiction and there is no reasonable possibility, much less real likelihood, of any assets of the defendants coming into this jurisdiction. Therefore, there is no "solid practical benefit" or any real prospect of a legitimate benefit whether indirect or prospective to be obtained in seeking the enforcement of this judgment in Ireland. There is no useful purpose to be served by these proceedings.

Practical difficulties

41. In considering the comparative costs and convenience of proceeding in Ireland the court must have regard to the reality of how that might be done. The plaintiff is an Albanian company, the defendants Italian. It is clear that issues at the centre of any trial of this action would require the hearing of witnesses and evidence concerning the underlying dispute, and the issues that arose between the parties before the Italian and Albanian courts. Witnesses giving evidence as to matters of fact, or as expert witnesses, for example on matters of law, would have to travel from Albania and Italy.

42. The court has already noted that proceedings have been issued in a number of other jurisdictions, but not in Italy. Extensive evidence has been set out in affidavits as to the state and nature of those proceedings. It does not seem to me to be fair to the defendants to require them to attend in yet another foreign jurisdiction having regard to the overall cost implication and lack of any real prospect of achieving any purpose by seeking to secure the enforcement of the Albanian judgment here.

Conclusion

43. I am satisfied having considered all of the above matters and the submissions and evidence advanced by the parties that this is not a proper case in which the court should exercise its discretion to allow these proceedings to continue against the defendants. I have taken into account the fitness, propriety and suitability of this case for hearing in this jurisdiction. The contracts and issues which led to the judgment in the Tirana District Court have no connection with Ireland. There are no assets of the defendants in Ireland. There is no reasonable prospect or possibility that there will ever be any assets of the defendants in Ireland. Consequently, I am not satisfied that there is any "solid practical benefit" to be gained by the plaintiff. It would be unjust in the circumstances to require the defendants to come into this jurisdiction and embark upon a further defence of this case.

44. The court will grant the relief claimed in the notice of motion.