2013 No. 10341P
(2013 No. 148 COM)

THE HIGH COURT
COMMERCIAL

BETWEEN:/

RORY McILROY

Plaintiff

-AND-

HORIZON SPORTS MANAGEMENT LIMITED, GURTEEN LIMITED AND CANOVAN MANAGEMENT SERVICES

Defendants

AFFIDAVIT OF CONOR RIDGE

I, Conor Ridge, Company Director, of 11 Mespil Road, Dublin 4, aged eighteen years and upwards MAKE OATH and say as follows:-

1. I am the managing director of Horizon Sports Management Limited ('Horizon') having its registered office at 11 Mespil Road, Dublin 4. I make this affidavit on behalf of and with the consent of each of the Defendants herein and do so from facts within my own knowledge save where otherwise appears and whereso appearing I believe the same to be true.

2. I make the affidavit in response to the affidavit sworn on behalf of the Plaintiff by Mr. Eoin MacNeill on the 10th day of September 2014 to resist the Plaintiff's application for what the Defendants believe is unnecessarily broad discovery. I believe and am advised that the question of the appropriateness of the categories of discovery sought by the Plaintiff that are in issue is more properly a matter for legal argument. However, there are a number of aspects of Mr. MacNeill's affidavit which require to be addressed.

3. I believe that Mr. MacNeill's Affidavit does not describe the parties' respective positions, in particular that of the Defendants, in sufficient detail. In addition, I take particular exception to averments at paragraphs 13 and 14 of Mr. MacNeill's affidavit. These averments have been made by him (as he says) to assess arguments which might be made on behalf of the Defendants about the relevance and necessity of the categories of documents sought by the Plaintiff. In the circumstances, Mr. MacNeill has sought to make the matters averred to relevant to the issue before the Court in this motion for discovery. Despite the fact that I believe (and am advised) that this is not the case, since these matters have again been put in issue I have no option but to deal with them

4. It is common case between the parties that the Plaintiff entered into a Representation Agreement with the Second Defendant on the 21st day of December 2011 ("the Agreement") and that this agreement was amended in March 2013. As set out in Mr. MacNeill's Affidavit, the Plaintiff, in these proceedings is seeking a declaration that, *inter alia*, he is entitled to rescind the Agreement or, alternatively, that the Agreement is void *ab initio* for breach of alleged fiduciary duty.

5. The Defendants absolutely reject the allegations and intend to fully contest these claims. It is the Second Defendant's position that it remains the lawfully appointed agent of the Plaintiff, and that, pursuant to the Agreement, it will continue to be the Plaintiff's agent until 31st December 2017.

6. The Defendants' position is that the Plaintiff is doing no more than using these proceedings in an attempt to renege on a binding commercial agreement entered into by the parties. In addition to seeking an Order that the Second Defendant remains the Plaintiff's lawful agent, the Second Defendant is seeking a declaration that the Plaintiff discharge commissions due to it by the Plaintiff on foot of sponsorship contracts, endorsement contracts and other commercial agreements put in place by the Defendants on the Plaintiff's behalf. These agreements, which are many in number, include the US$100 million Nike sponsorship contract, sourced and negotiated by the Defendants for the Plaintiff, pursuant to which the Plaintiff has already received US$50

million in payments and will receive a further US$50 million in the coming 2 years and in respect of which the Plaintiff has refused to discharge any further commission payments owing to the Defendants since the first quarter of 2013.

7. The Defendants' evidence will detail the carefully constructed commercial structure and the highly strategic Rory McIlroy brand development platform which the Defendants put in place for the long-term benefit of the Plaintiff, and which played a significant role in the securing of his current portfolio of lucrative sponsorship agreements, the activation of which now forms the bedrock of his global brand value and marketability as an athlete.

8. The Defendants' claim also includes a claim for damages for breach of contract and damages arising from the Plaintiff's repudiatory breach of the Agreements which will include a claim for the commissions which are and/or would have been payable to the Defendants by the Plaintiff pursuant to the Agreement in respect of further sponsorship agreements that the Plaintiff puts in place, or would have been put in place by the Defendants on the Plaintiff's behalf, had they not been unlawfully supplanted by Rory McIlroy Inc.

9. In Paragraphs 13 and 14 of Mr. MacNeill's Affidavit, Mr. MacNeill has sworn that the Defendants have engaged in a pattern of behaviour *'whereby key information ... is only received from the Defendants following an application to Court or the threat of same'*. Mr. MacNeill's averments entirely misconstrue the Defendants' behaviour, are extremely prejudicial and are simply inaccurate. In order to remedy the prejudice which would otherwise be caused by these averments if left unanswered it is necessary to briefly review the Defendants' behaviour prior to the commencement of these proceedings.

10. By an email dated 24th April, 2013 Mr. McIlroy informed me that he intended to set up his own management structure and usurp the Defendants' role. I beg to refer to a copy of that email upon which marked with the letters **"CR1"** I have signed my name prior to the swearing hereof. It was clear that, as of that date, Mr. McIlroy wished to set up

his own management structure despite the fact that he was contractually bound by the Agreement.

11. On the same date, a number of key personnel which the Defendants had put in place as part of their management structure for the Plaintiff resigned from their employment with the First Defendant. At the same time as the Plaintiff decided to renege on the Agreement, the Plaintiff, through companies incorporated specifically for this purpose (Rory McIlroy Inc.), employed these individuals and a consultant who had worked for the Defendants, as direct employees.

12. Having indicated his intention to set up his own management structure, Mr. McIlroy engaged A & L Goodbody Solicitors in May 2013 who corresponded on his behalf. However, rather than stating that Mr. McIlroy intended to set up his own management structure (which would be in breach of the Agreement) A & L Goodboy affirmed the Agreement. In a letter dated 17 May 2013 A & L Goodbody stated:

> *'The contract between our respective clients remains in place. However, our client will determine the nature and extent of your client's involvement in providing services to him. '*

I beg to refer to a copy of that letter upon which marked with the letters **"CR2"** I have signed my name prior to the swearing hereof. By letter dated the 5th day of June 2013, A & L Goodbody subsequently made a request for all of the Plaintiff's documents from the Defendants. The request was analogous to what I now understand to be a formal request for discovery in legal proceedings. For the sake of completeness, I beg to refer to a bundle of correspondence which passed between the parties' solicitors regarding the request for documents upon which pinned together and marked with the letters **"CR3"** I have signed my name prior to the swearing hereof.

13. This document request sought a large volume of documents from the Defendants for the purported purpose of allowing the Plaintiff to carry out a review of his commercial activities. Any entitlement that Mr. McIlroy had to these documents arose from the

contractual relationship between the parties. The Defendants agreed to provide the documents, but this was not a simple task and required a significant amount of time and man-hours to produce. Given the breadth of the request it required the Defendants to engage information technology experts who reviewed all of the Defendants' computer systems in order to locate and collate all potentially relevant documents. The Defendants were obliged to engage an external team of reviewers for this mammoth task which took 2 months to complete and involved thousands of man hours. The total cost to the Defendants in producing these documents was approximately €44,832.50 and involved significant disruption to the Defendants' business and a great amount of time and effort on behalf of the entire staff of the Defendants. The document review process began in June 2013 and the production resulted in the Defendants producing to Mr. McIlroy's solicitors 24,432 documents between 4th July and 30th August, 2013. Documents were provided as and when they were available. While these documents were produced on the basis that Mr. McIlroy had a contractual entitlement to them under the Agreement, Mr. McIlroy himself was at that time failing to respect his own contractual obligations. He and his new team were engaged in undermining the Second Defendant's position as his lawful agent, while the Plaintiff refused to pay commission to the Second Defendant which was due under the Agreement and in fact has since the 30th day of May, 2013, failed to pay any contractual commissions owing to the Defendants.

14. In the circumstances, I find Mr. McNeill's allegation that the Defendants have somehow sought to restrict the Plaintiff's access to documents or information extraordinary.

15. The Defendants have also since provided extensive discovery to the Plaintiff. While the Plaintiff sought 22 categories of discovery, the Defendants agreed to provide 19 categories (in some cases subject to modification) and refused only three categories. In the event motions for discovery were listed for hearing in respect of both the Plaintiff's and the Defendants' discovery. Ultimately, the Plaintiff sought to litigate three categories of discovery but did not pursue one of those categories and a Court ruling was required in relation to only two categories. In the circumstances Mr MacNeill's

attempt to characterise the Defendants as somehow being obstructive in relation to discovery or the voluntary provision of documents is not only inappropriate and prejudicial, but entirely inaccurate.

16. The discovery provided by the Defendants in June 2014 required a review of some 148,894 documents involving a cost of approximately €142,424.75. In all, the Defendants discovered 4,882 documents in the discovery production of June, 2014. This is in addition to the 24,432 documents provided to the Plaintiff on foot of the document production request some 12 months previously.

17. In contrast with the volume of documents produced during the pre-litigation document production by the Defendants and the volume of documents actually discovered by the Defendants in the course of the proceedings, Mr. McIlroy's discovery has been highly unsatisfactory. Mr. McIlroy has professed himself (as stated on his behalf, through counsel, in the course of an application for further and better discovery) to use only mobile phone devices for communication, to keep no notes and to correspond in no other way with any third parties. Despite this, and after the litigation had commenced, Mr. McIlroy destroyed data held on at least one mobile device, in particular the mobile phone which he had been using during the crucial period between January and May, 2013, thereby preventing a review of that data for the purposes of discovery. In addition at the hearing of the Defendants' application for further and better discovery, where, in respect of three categories of discovery, Mr. McIlroy discovered no more than 34 documents the explanation for the scant discovery made in respect of these three categories, was Mr. McIlroy's exclusive use of his mobile devices for communication. In the circumstances, I find it very difficult to understand how Mr. McNeill can attempt to make any complaint about the Defendants' production of documents or disclosure of information given the Plaintiff's own approach and attitude to document discovery in these legal proceedings.

18. Mr. McNeill at paragraph 13 of his affidavit also complains that the Defendants refused to disclose commercial terms which Horizon had with Mr. Graeme McDowell. His complaint in this regard is also totally unwarranted. The commercial terms between

Horizon and Mr. McDowell were never of any relevance in these proceedings until Mr. McIlroy amended his Statement of Claim on 30 June 2014, some nine months after the original Statement of Claim had been delivered. It was at this time and for the first time ever that the Plaintiff made a fresh allegation that a representation had been made to him that the terms of his contract with the Second Defendant were to be the same as Mr. McDowell's commercial terms with Horizon. There is no basis whatsoever to this allegation. The Defendants have never suggested that Mr. McDowell's terms were the same as the Plaintiff's and accept absolutely and without reservation that Mr. McDowell had different terms to the Plaintiff.

19. The Plaintiff, prior to the amendment of the Statement of Claim, had no entitlement whatsoever to know Mr. McDowell's commercial terms and disclosure of this information was absolutely subject to Mr. McDowell's consent. I believe that the Plaintiff has now sought to involve Mr. McDowell in these proceedings by reference to a baseless allegation of misrepresentation in order to pressurise the Defendants and to damage Horizon's relationship with Mr. McDowell and ultimately inflict further damage to the Defendants' business and reputation.

20. The Defendants have sought to engage positively with the Plaintiff in respect of his request for discovery arising from his amended pleadings. However, the request for discovery is excessively broad and will require the Defendants once again to carry out a trawl of some 30,000 documents in order to attempt to determine their relevance unless some limitation is put on the request.

21. In all the circumstances I say that Mr. McNeill has misconstrued the true factual position and he has done so with a view to prejudicing the Defendants.

22. Accordingly, I pray this Honourable Court for an Order limiting discovery by the Defendants to the terms set out in the letter dated 29th August 2014 from the Solicitors for the Defendants to the Solicitors for the Plaintiff.

SWORN by the said **Conor Ridge**

this 15th day of September 2014

at 2 Upper Pembroke Street, Dublin 2.

in the City of Dublin

before me a ~~Commissioner for Oaths~~/

Practising Solicitor and I know the Deponent.

Commissioner for Oaths/Practising Solicitor

Filed on the 15th day of September 2014 on behalf of the Defendants by G. J. Moloney, Solicitors of Hambleden House, 19 – 26 Lower Pembroke Street, Dublin 2.

2013 No. 10341P
(2013 No. 148 COM)

THE HIGH COURT
COMMERCIAL

BETWEEN:/

RORY McILROY

Plaintiff

-AND-

HORIZON SPORTS MANAGEMENT
LIMITED, GURTEEN LIMITED
AND
CANOVAN MANAGEMENT SERVICES

Defendants

AFFIDAVIT OF CONOR RIDGE

G. J. MOLONEY
Solicitors for the Defendants
Hambleden House
19-26 Lower Pembroke Street
Dublin 2