

## Litigation - Cyprus

### Courts rule on *Norwich Pharmacal* relief in fraudulent transfer of money case

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The Cyprus courts recently ruled on an application for *Norwich Pharmacal* relief in *Rexel Luxembourg SA v SEPI SARL* (10046/2010). The case related to the fraudulent transfer of money to SEPI's account with a Cyprus bank. The bank, Alpha Bank Cyprus Limited, was added as a co-defendant and a *Norwich Pharmacal* order was sought against the bank for disclosure of the identity of the owners and controllers of the account, together with discovery orders tracing the assets out of the account.

The bank opposed the application, principally on the grounds that the *Norwich Pharmacal* order could not be granted as the bank was contractually obliged to its client on the basis of banking privilege under Section 29(1) of the Banking Laws (1997 and 2/2009).

The court held that:

- it had jurisdiction to grant the *Norwich Pharmacal* and discovery orders. The principles of the Canadian case *Glaxo Wellcome PLC v MNR*<sup>(1)</sup> were upheld.
- Section 29(1) of the Banking Laws did not apply to the facts of the present case. Section 29(1) prohibits disclosure of information by bank employees for their own benefit. In this case the provisions of Section 29(2)(h) - which permit disclosure of information if it is in the public interest - applied, since it was in the public interest that the identity of the fraudsters be discovered.
- the criteria set out in *Mitsui & Co v Nexen Petroleum UK Ltd*<sup>(2)</sup> were upheld and applied. The applicant therefore had to satisfy the court that:
  - a wrong had been carried out by an ultimate wrongdoer;
  - there was a need for an order to enable action to be brought against the ultimate wrongdoer; and
  - the person against whom the order was sought had facilitated the wrongdoing and was able or likely to be able to provide the information necessary to enable the ultimate wrongdoer to be sued.

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#### Endnotes

<sup>(1)</sup> [1998] Can LII 9071 (FCA), [1998] 4 FC 439.

<sup>(2)</sup> [2005] 3 All ER511.

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