

## Litigation - Cyprus

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### Using *Norwich* pharmacal relief and disclosure orders

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**Background**  
**Decision**  
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#### **Background**

Large cross-border business transactions have become commonplace and the banks have created a system which facilitates such transactions, with millions of pounds' worth of capital moving from one jurisdiction to another instantly via wire transfers. Cyprus is emerging as one of the most favoured European jurisdictions in which to conduct international business due to, among other things, its advantageous tax regime and business-friendly environment. The statistics show that there has been a major increase in the number of international companies holding accounts with Cyprus banks, to the benefit of the local economy and banking system.

At the same time, however, the number of fraudulent transactions has increased worldwide and Cyprus is no exception to the rule. In the past few years the Cyprus courts have been busy dealing with cases in which fraudsters have attempted to launder huge amounts of money through accounts held by holding companies in local banking institutions. The funds derive from all types of fraudulent activity, including internet phishing attacks.

Cyprus has established a solid banking infrastructure and a reliable judicial system to cope with this phenomenon by acting swiftly and effectively to prevent the further alienation of such funds through the issue of freezing injunctions. In addition, where necessary the courts issue *Norwich*

*Pharmacal* and disclosure orders against domestic banks (which are innocent third parties in such matters) in order to obtain necessary information, such as the names of the beneficial owners of the account and the signatories, and details of incoming and outgoing payments.

This update analyses the legal mechanism and the principles according to which Cyprus courts grant such relief, with reference to a recent judgment of the Nicosia District Court in *R v S*.<sup>(1)</sup> In this case a fraud in a central European country resulted in a large amount of money being transferred from R's bank account to S's bank account held with a Cyprus bank, for the alleged purpose of purchasing a building in Nicosia. It later transpired that this transaction was not authorised by the management of the purchaser, and in fact the management was completely unaware of the transaction.

## **Decision**

The deceived entity filed court proceedings in Cyprus for, among other things, fraud and money laundering, requesting a freezing injunction against the bank account into which the money was transferred and various *Norwich Pharmacal* orders against the recipient bank to disclose the registered address of the holder of the account and the identities of its directors, beneficial owners and signatories. The court granted the freezing injunction *ex parte*, but ordered the applicant to serve the proceedings on the bank so that the bank would appear in court and state whether it consented to the disclosure of the requested confidential information. The bank opposed the disclosure, placing particular emphasis on Section 29 (on banking secrecy and confidentiality) of the Banking Law (66(I)/1997, as amended), so the matter progressed to an *inter partes* hearing.

In his judgment the judge provided a detailed analysis of all legal principles and issues which a court of law must consider in deciding whether to grant such relief, and cited a series of past court decisions on the matter. The court, citing its own judgment in *Lasala v Patsalides*,<sup>(2)</sup> first examined whether it had the power to grant the requested orders, referring to:

- Section 32 of the Courts of Justice Law (14/1960), which empowers the court to grant an injunction in all cases in which it appears to the court to be just or convenient to do so; and
- Section 29(1)(c) of the same law, which requires judges to apply the principles of equity unless there is a provision in any other law to the contrary.

The judge concluded that the orders requested fell within the scope of the court's equitable jurisdiction, noting further that this was evident from the landmark decision in *Norwich Pharmacal Co v Customs and Excise Commissioners*<sup>(3)</sup> and *Bankers Trust Co v Sharipa*.<sup>(4)</sup>

The judge went on to cite two more recent Canadian cases (*Glaxo Wellcome PLC v MNR* (1998) and *Alberta Treasury Branches v Leahy* (2000)) and quoted the following abstract from the latter case:

*"The jurisdiction of the court to grant such relief is based on the ancient equitable bill of discovery which was the subject of renewed interest in a series of cases starting with Norwich. A concise summary of the remedy is contained in Stone J.A.'s judgment in Glaxo Wellcome PLC v. M.N.R. ... The equitable bill of discovery is in essence a form of a pre-action discovery. It is of ancient origin. It developed alongside the procedures for discovery which are ordinarily available in the course of litigation which, it is worth noting, also originated in the courts of equity. This remedy permits a court, acting through its equitable jurisdiction, to order discovery of a person against whom the applicant for the bill of discovery has no case of action and who is not a party to the contemplated litigation. While it appears that an independent action for discovery cannot be brought against a person who is in the position of a 'mere witness' or bystander to the cause of action, the case law suggests that a bill of discovery may be issued against an individual who is in some way connected to or involved in the misconduct."*

The judge then examined the issue of whether public interest outweighed the bank secrecy provisions in the Banking Law in the light of the decision in *Tournier v National Provincial and Union Bank of England*,<sup>(5)</sup> and concluded on the basis of the evidence and arguments submitted that R had shown serious reasons for the court to exercise its discretion in granting the requested orders. He quoted the following text from *IBL v Planet*<sup>(6)</sup> in this regard:

*"The issue of confidentiality was considered in the Norwich Pharmacal case. The court was entitled to order discovery of documents for the purpose of legal proceedings if the public interest in the administration of justice required it. The court found that in the circumstances of the case the public interest in the confidentiality of the information was outweighed by the interest of justice."*

The judge further commented that the legal principle in *Norwich Pharmacal* has been recognised by subsequent case law as a flexible and adaptable remedy if the circumstances of the case so require.<sup>(7)</sup>

The conditions which must be met for the issuance of a *Norwich Pharmacal* order were codified in *Mitsui & Co v Nexen Petroleum UK Ltd*:

*"the three conditions to be satisfied for the court to exercise the power to order Norwich Pharmacal relief are: (i) a wrong must have been carried out, or arguably carried out, by an ultimate wrongdoer; (ii) there must be the need for an order to enable action to be brought against the ultimate wrongdoer; and (iii) the person against whom the order is sought must: (a) be mixed up in so as to have facilitated the wrongdoing; and (b) be able or likely to be able to provide the information necessary to enable the ultimate wrongdoer to be sued."*<sup>(8)</sup>

Applying the relevant legislative provisions (Section 32 of the Courts of Justice Law) and the conditions in *Mitsui & Co* to the facts of the case, and having considered the evidential material and arguments made by the applicants and the bank, the judge found that all the necessary conditions were met. He therefore ordered the bank to disclose the requested information regarding the account.

## Comment

The Nicosia District Court's decision again confirms the readiness of the Cyprus judicial system to provide effective and efficient assistance in combating fraudulent conduct and money laundering activities, and underlining Cyprus's credentials as a secure environment for businesses to prosper.

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## Endnotes

<sup>(1)</sup> March 29 2011.

<sup>(2)</sup> Civil Action 2952/06.

<sup>(3)</sup> [1974] AC 133.

<sup>(4)</sup> 1980) 3 All ER 358.

<sup>(5)</sup> 1923) All ER 550.

(6) 1990) JLR 294.

(7) See *Ashworth Hospital Authority v MGN Ltd* (2002) 4 All ER 193.

(8) (2005) 3 All ER 511, at page 518.

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