ANGUILLA

IN THE COURT OF APPEAL

HCVAP 2011/001

A, B, C & D

Intended Appellants

and

E

Intended Respondent

Before:

The Hon. Mr. Hugh A. Rawlins — Chief Justice
The Hon. Mde. Ola Mae Edwards — Justice of Appeal
The Hon. Mde. Janice M. Pereira — Justice of Appeal

Appearances:

Mr. Gerhard Wallbank for the Intended Appellants
Ms. Ayodeji D. Barnard for the Intended Respondent

2011: July 5;
September 19.

Civil appeal – Leave to appeal – Norwich Pharmacal order – Whether Norwich Pharmacal orders are injunctions for the purpose of determining whether leave to appeal is required – Whether Norwich Pharmacal orders are final orders for the purpose of determining whether leave to appeal is required – Per incuriam principle

On 30th December 2010, the intended appellants ("the appellants") were refused *Norwich Pharmacal* and *Bankers Trust* relief by the trial judge in the court below. Written reasons were given for this decision on 26th January 2011, and the appellants filed a notice of appeal on 28th January 2011, without first obtaining leave to do so.

The Court directed that the parties address the question of whether leave to appeal was required in light of two earlier decisions of the Court of Appeal, namely TSJ Engineering Consulting Limited v Al-Rushaid Petroleum Investment Company and another[1] and Morgan & Morgan Trust Corporation Limited v Fiona Trust & Holding Corporation et

[1] Civil Appeal No. 13 of 2010 – Territory of the Virgin Islands (delivered 27th July 2010 – unreported).

al.[2] In both of these cases, the court had been called upon to consider whether leave was required to appeal decisions involving *Norwich Pharmacal* orders, firstly on the basis that such orders were in the nature of injunctions – which would have brought them within the exception of the requirement for leave provided by the Supreme Court Act – and secondly, on the basis that such orders were in substance, in the nature of final orders.

Held: deeming the Notice of Appeal against the refusal to grant *Norwich Pharmacal* relief validly filed and making no order as to costs, that:

1. Notwithstanding that a *Norwich Pharmacal* (disclosure) order is a specific type of order directed to a party who may not be said to be a wrongdoer and in respect of which no other cause of action may exist, such an order, by virtue of its import and intent, is an injunction. The learned judge's order which refused the appellant *Norwich Pharmacal* relief was therefore, an order refusing to grant an injunction, and, based on the Supreme Court Act, would fall in the excepted class of orders for which leave to appeal would not be required.

   Bullen & Leake & Jacob's Precedents of Pleadings 16th Ed. Vol. 2 para. 49.03 cited; Norwich Pharmacal Co. and Others v Customs and Excise Commissioners [1974] A.C. 133 (H.L.(E.)) cited; Equatorial Guinea v Royal Bank of Scotland International [2006] UKPC 7 cited; British Steel Corporation v Granada Television Ltd. [1981] A.C. 1096 cited; Novo Nordisk A/S v Banco Santander (Guernsey) Ltd. (1999-2000) 2 I.T.E.L.R. 557 cited; TSJ Engineering Consulting Limited v Al-Rushaid Petroleum Investment Company and another Civil Appeal No. 13 of 2010 – Territory of the Virgin Islands (delivered 27th July 2010 – unreported) and Morgan & Morgan Trust Corporation Limited v Fiona Trust & Holding Corporation et al Civil Appeal No. 24 of 2005 – Territory of the Virgin Islands (delivered 3rd April 2006 – unreported) both considered and treated as having been decided per incuriam.

2. Whether a *Norwich Pharmacal* order granted on an interlocutory application may be considered a final order as opposed to an interlocutory one does not admit of a straightforward answer. In the case at bar, the trial judge's refusal to grant the appellants *Norwich Pharmacal* relief brought finality to the proceedings; the appellants could go no further with their claim, which sought the same relief. Thus, on the peculiar facts of this case the order made would have been a final order. However, in general, whether such orders are considered final or interlocutory may turn on various factors and depend on the circumstances of each case.

   Othniel Sylvester v Satrohan Singh Civil Appeal No. 10 of 1992 – St. Vincent and the Grenadines (delivered 18th September 1995) cited; TSJ Engineering Consulting Limited v Al Rushaid Petroleum Investment Company and another Civil Appeal No. 13 of 2010 – Territory of the Virgin Islands (delivered 27th July 2010 – unreported) cited.

[2] Civil Appeal No. 24 of 2005 – Territory of the Virgin Islands (delivered 3rd April 2006 – unreported).

JUDGMENT

[1] PEREIRA, JA: On 30th December 2010, the trial judge refused to grant '*Norwich Pharmacal*' and '*Bankers Trust'* relief[3] to the intended appellants ("the appellants"). The trial judge gave written reasons for her decision on 26th January 2011. The appellants filed a Notice of Appeal on 28th January 2011, without first seeking the court's permission to so do. On 7th February 2011, the Court directed that the parties address the question whether leave to appeal was first required. This was in light of the Court's prior decision in TSJ Engineering Consulting Limited v Al-Rushaid Petroleum Investment Company and another[4] delivered on 27th July 2010, which in turn followed an earlier decision of the Court, namely, Morgan & Morgan Trust Corporation Limited v Fiona Trust & Holding Corporation et al[5] given on 3rd April 2006. In these earlier decisions the Court was called upon to consider whether leave to appeal was required in respect of *Norwich Pharmacal* orders:

(i) firstly, on the basis that such orders were in the nature of injunctions which would have brought them within the exception of the requirement for leave provided by the Supreme Court Act. In the Virgin Islands, the relevant provision is section 30 of the West Indies Associated States Supreme Court (Virgin Islands) Act.[6] The relevant portion of section 30(4) states as follows:

> "No appeal shall lie without the leave of the judge or of the Court of Appeal from any interlocutory order or interlocutory judgment made or given by a judge except in the following cases-
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> (i) ...;

[3] The *Norwich Pharmacal* relief, in more modern times called a disclosure order, derives its name from the watershed decision, Norwich Pharmacal Co. and Others v Customs and Excise Commissioners [1974] A.C. 133 of the House of Lords in England; *Bankers Trust* type relief which is a relief akin to *Norwich Pharmacal* relief, derives its descriptive name from the decision Bankers Trust Co. v Shapira and Others [1980] 1 W.L.R. 1274, a decision of the English Court of Appeal.

[4] Civil Appeal No. 13 of 2010 – Territory of the Virgin Islands (unreported).

[5] Civil Appeal No. 24 of 2005 – Territory of the Virgin Islands (unreported).

[6] Cap. 80, Revised Laws of the Virgin Islands 1991.

(ii) *where an injunction or the appointment of a receiver is granted or refused;*
(iii) ... ;
(iv) ... ;" and

(ii) secondly, on the basis that those orders are in substance in the nature of final orders.

The earlier decisions

[2] In Morgan & Morgan the Court held in essence that a *Norwich Pharmacal* (disclosure) order was (a) not a final order (for which no leave would be required) and (b) was not an injunction (which would have brought it within the exception of the requirement for leave in respect of an interlocutory order) and accordingly leave to appeal was required.

[3] At paragraph 6 of the judgment, Barrow JA (as he then was) had this to say:

> "The discovery respondent's other submission, that a disclosure order is an injunction, is a completely novel one. Counsel was unfazed by his inability to find any judicial decision or academic writing that supported his view and easily offered the suggestion that basic propositions were frequently assumed without discussion. It was a fleet response. A Norwich Pharmacal disclosure order is a highly specific type of order. It compels the production of information to enable a party to put forward his case. An order for disclosure does not become an injunction because it commands a person to do something. If that were so all orders that commanded persons to do things would be injunctions. An order for specific performance compels a person to do the thing he had promised to do, but that does not make it an injunction. Similarly an order for an account compels a party to do something but it is not an injunction. The reason why these other orders are not called injunctions is because they are not injunctions. In the Secilpar [sic] case, in addition to the disclosure order, the court had also granted an injunction restraining the respondents from disclosing the disclosure order. In the instant case the very order purportedly appealed contained, in addition to the disclosure order, a freezing order or injunction. It is because a disclosure order is not an injunction that, in these cases, the court found it necessary to grant an injunction as a separate order." (emphasis mine)

[4] In TSJ Engineering counsel urged the Court not to follow its prior decision in Morgan & Morgan on the basis that the decision therein was given per incuriam. He sought to show on the authorities on which he relied,[7] that the *Norwich Pharmacal* order was firstly, in the nature of a mandatory injunction; and secondly, was in the nature of a final order and that the Court's decision in Morgan & Morgan was given per incuriam. At paragraph 20 the learned Chief Justice in his judgment (with which the other members of the panel concurred), said in part:

> "... I know of no authority which supports the view that a Norwich Pharmacal order is an order in the nature of an injunction. In my view such orders fall within the category of non-injunctive orders which create legal obligations or command the performance of particular acts, such as orders of mandamus or for specific performance. In the premises, I find that the order in the present case is not exempted from the leave requirement provided under section 30(4) (ii) of the Supreme Court Act." (emphasis mine)

[5] Counsel had also argued in TSJ Engineering that the Court in Morgan & Morgan, ought not to have followed the decision of the Gibraltar Court of Appeal in Secilpar SL v Fiduciary Trust Limited[8] which concluded that the order was an interlocutory order because it was ancillary to the main proceedings in another jurisdiction. He said that in any event it was of persuasive authority only, and that it was also unsound. He argued also that the obligation to disclose was in itself a cause of action. For this proposition he placed reliance on certain dicta of the Lord Justices in the Norwich Pharmacal case. The Court however was not so persuaded and accordingly held that the *Norwich Pharmacal* order, at least on the peculiar facts of TSJ Engineering, was not in the nature of a final order. I propose to return to this later in my judgment.

[6] Mr. Wallbank, counsel for the appellants in the case at bar, where the same issue of leave to appeal from *Norwich Pharamacal* proceedings has arisen, seeks yet

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[7] These authorities were the Norwich Pharmacal case (supra note 1); Maclaine Watson & Co. Ltd. v International Tin Council (No. 2) [1989] Ch. 286; Gidrxslme Shipping Co. Ltd. v Tantomar-Transportes Maritimos Lda. [1995] 1 W.L.R. 299; and Spry's Principles of Equitable Remedies: Specific Performance, Injunctions, Rectification and Equitable Damages.

[8] Civil Appeal No. 5 of 2004 (24th September 2004) (unreported).

again to persuade this Court to depart from its two earlier decisions on the basis, that those earlier decisions were given *per incuriam.* He relies also on English authorities which, he says, had they been brought to the Court's attention in the earlier decisions, would have yielded a different result and that in essence the Court would have held that a *Norwich Pharmacal* (disclosure) order is (a) a type of injunction, and (b) a final order.

The per incuriam principle

[7] Before considering those authorities on which Mr. Wallbank relies in urging the Court to depart from its two prior decisions, I consider this an appropriate point to refer to the per incuriam principle which has long been established in Young v Bristol Aeroplane Company, Limited,[9] (a decision of the English Court of Appeal in 1944) as one of the exceptions to the doctrine of stare decisis, a doctrine fully embraced and applied by this Court, being an intermediate appellate court. This doctrine is to the effect that, save in exceptional circumstances, this court is bound to follow previous decisions of its own. The objective is to ensure certainty or finality in the law. This doctrine, as indicated, gives way, as enunciated in the said decision, to notable exceptions: the doctrine and the principles engaged in applying the exceptions were recently addressed and restated in Brandwood and Others v Bakewell Management Ltd.[10] another decision of the English Court of Appeal given in 2003. These principles for present purposes, may be summarised as follows:

(1) This Court is bound to follow previous decisions of its own save only in exceptional circumstances.

(2) Such exceptions are where:

(a) the court is confronted with two conflicting decisions of its own, then it may decide which of the two decisions it will follow;

[9] [1944] K.B. 718.
[10] [2003] EWCA Civ. 23, [2003] 1 E.G.L.R. 17.

(b) a decision of its own, though not expressly overruled , cannot in its opinion stand with a decision of a higher court (in this case the Privy Council) which is binding;

(c) the court is satisfied that its prior decision was given per incuriam.

[8] What are the guiding principles on which the court may conclude that a prior decision was given per incuriam? Examples are usually given and cover cases in which the court has acted in ignorance of a previous decision of its own which dealt with the matter before it, in which case it must decide which case to follow; or where the court has acted in ignorance or forgetfulness of the terms of a statute or rule having statutory force or some inconsistent authority binding on the court; or where, in rare and exceptional cases, when it is satisfied that the earlier decision involved a manifest slip or error and there is no real prospect of a further appeal to a final appellate court.[11] The instances are not closed. In Brandwood, Ward LJ opined[12] that 'the test is whether the earlier decision is demonstrably wrong' He added this:

> "(5) It is not sufficient for the court to be persuaded of no more than that the previous court did not have the benefit of the best argument that the researches and industry of counsel could provide.
> (6) There remains a residual category, best left undefined, where, in exceptional cases of the rarest occurrence, the court may overrule its own earlier decision if that had been made through some manifest slip or error.
> (7) That exceptional category is more likely to be confined to cases of procedural error, because in relation to the substantive law, certainty is to be preferred to correctness.
> (8) If in doubt this court should leave any correction of the error to the House of Lords." [In the context of this court this would be the Privy Council]."

Is a Norwich Pharmacal order a type or form of injunction?

[11] See: Halbury's Laws 4th Ed. Reissue Vol. 37 para. 1242.
[12] At paragraph 21.

[9] Firstly the question as to what is 'an injunction' should be addressed. Black's Law Dictionary[13] defines an injunction as *"a court order* commanding *or* preventing *an action."* It would follow then that all orders of the court which command or compel an action by whatever case specific name it may be called, would be an injunction. Accordingly, an order for specific performance which compels the performance of a contract or some covenant or condition therein is no less an injunction although in specific terms it is properly so called, an order for specific performance.[14] The converse however does not follow. All injunctions are certainly not orders for specific performance. Gee in his treatise Commercial Injunctions[15] stated thus:

> "Injunctions can be mandatory, prohibitive or negative. The former requires some positive act to be done by the person enjoined, e.g. to pull down a building or to provide information..." (my emphasis). Similarly, Bullen & Leake & Jacob's Precedents of Pleadings[16] contains this statement:
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> "Often in claims based in fraud the claimant will seek injunctive relief before or at the outset of the action. The relief is likely to take the form of claims to preserve assets pending judgment and enforcement, to preserve evidence or for information and evidence required to formulate properly the claim against the prospective defendant. The most common forms of injunctions obtained are freezing orders (formerly called Mareva injunctions) search orders (Anton Piller Orders) and orders to produce information and evidence under the Norwich Pharmacal Co. v Customs and Excise Commissioners [1974] 1 A.C. 133 and Bankers Trust Co. v Shapira [1980] 1 W.L.R. 1274 jurisdictions. ..." (My emphasis)

[10] Accordingly the term injunction is in reality a generic term for a remedy which the court may grant either compelling or prohibiting an action, which may take varied forms and names depending on the specific facts and circumstances of the case in respect of the action brought. I am satisfied that the *Norwich Pharmacal*

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[13] 9th Ed. p. 855.

[14] In Co-operative Insurance Society Ltd. v Argyll Stores (Holdings) Ltd. [1998] A.C. 1, a decision of the House of Lords [UK], Lord Hoffman spoke of specific performance in the context of the grant of a mandatory injunction to carry out building works under a building contract (see page 14).

[15] 5th Ed. para. 2.002.

[16] 16th Ed. Vol. 2 para. 49.03.

(disclosure) order which is an order directed to a person compelling that person to disclose information is, notwithstanding that it is an order of a specific type directed to a party who may not be said to be a wrongdoer and in respect of which no other cause of action may exist, is nonetheless by virtue of its import and intent, an injunction.

[11] Orders for discovery have been a feature of the law for an aeon and accordingly the jurisdiction of the court to grant such orders is well settled. As Lord Reid stated in Norwich Pharmacal,[17] '*discovery as a remedy in equity has a very long history.'* What was not well settled prior to Norwich Pharmacal was the question whether discovery, as an exclusive remedy, availed a claimant who sought it from a party who could not truly be said to be a wrongdoer, (but yet because of the relationship in which that person stood to the wrongdoer, could not be said to be a mere witness) as an aid in finding out who the wrongdoer was. The House of Lords in Norwich Pharmacal settled this point when it decided that '*where a person, albeit innocently and without incurring any personal liability, became involved in the tortious acts of others he came under a duty to assist one injured by those acts by giving him full information by way of discovery and disclosing the identity of the wrongdoers…'*

It is specifically this type of order for disclosure from which the *Norwich Pharmacal* order derived its name.

[12] Neither the Supreme Court Act[18] nor the Civil Procedure Rules 2000 made thereunder, specifically address this peculiar type of order. Injunctions are however addressed generally both in the Act and the Rules. The Act empowers the court to grant injunctions 'in all cases in which it appears to the Court or judge

[17] At page 173.

[18] This is an Act passed and operative in every State and Territory comprising the jurisdiction of the Eastern Caribbean States Supreme Court and which may be styled so as to identify the particular State or Territory but its substantive provisions are in almost every respect identical.

to be just or convenient…'[19] The Rules set out the procedure for seeking interim remedies such as injunctions generally. Yet the *Norwich Pharmacal* jurisdiction is as important today as it was in years past and perhaps even more so given the useful purpose which it serves in providing a remedy in circumstances where none would otherwise exist. It has never been questioned (nor could it be) that this equitable and exclusive jurisdiction is enjoyed to the same extent by the Eastern Caribbean Supreme Court applying the exact same principles. Indeed the starting point for this Court in considering an application for a *Norwich Pharmacal* order is the very decision in Norwich Pharmacal. This Court has in similar manner embraced all the refinements and extensions of the *Norwich Pharmacal* principles developed by subsequent case law. The grant of *Norwich Pharmacal* relief is now very much part and parcel of the legal landscape of this Court's jurisdiction, particularly in the Virgin Islands where the volume of commercial litigation is comparatively high. This is self-evident in the TSJ Engineering and Morgan & Morgan cases themselves. This is no doubt so because the court is charged with exercising the same equitable jurisdiction as the English courts of similar standing. Furthermore, the Supreme Court Act (enacted in all member States and Territories) contains two provisions (one in relation to the High Court, the other in relation to the Court of Appeal) which, in essence, says this:

> "The jurisdiction vested in the Court in civil proceedings shall be exercised in accordance with the Act [the Supreme Court Act], rules of court and any other law in force in the State and where no special provision is therein contained, such jurisdiction shall be exercised as nearly as may be administered for the time being in the Courts [High Court and Court of Appeal] in England. (My emphasis)

It is fair to say that the equitable jurisdiction of the court is one which continues to be shaped and developed as it seeks to achieve, as times and circumstances change, its fundamental objective of ensuring that justice is done. It is not surprising that the expression of the court's jurisdiction is often contained in case law rather than in rules and statutes.

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[19] See: section 23(1) of the Eastern Caribbean Supreme Court (Anguilla) Act, Revised Statutes of Anguilla, Chapter E15.

[13] It bears note that throughout the judgments of the learned law lords, in Norwich Pharmacal, there is no mention of the term 'injunction' in terms of describing this remedy. Indeed it does not appear that, apart from the decisions of this court, has it been necessary to consider the nature of the relief or the terminology used to describe such relief. Perhaps this is so given the requirements generally, for permission to appeal interlocutory orders and the specific exceptions stated in the Supreme Court Act coupled with the terminology used therein. Whatever it may be, it has clearly given rise to differing interpretations in instances where clarification and certainty is desirable.

[14] To what sources do we look for authoritative pronouncements as to the nature of the *Norwich Pharmacal* order? It is firmly established that authorities of the English courts are of persuasive force only in our courts whereas decisions of the Privy Council, as our final appellate court, are binding and therefore of authoritative force. Counsel for the appellant has referred us to the decision of the Privy Council in Equatorial Guinea v Royal Bank of Scotland International[20] in which the Board approved and applied British Steel Corporation v Granada Television Ltd.[21], a decision of the House of Lords. Both decisions concerned *Norwich Pharmacal* type relief. In BSC v Granada Lord Templeman opened his judgment in this way:[22]

> "B.S.C. sought and Sir Robert Megarry V.-C. granted a mandatory injunction directing Granada to identify the B.S.C. employee who provided Granada with B.S.C. documents which were the property of B.S.C."

He was clearly speaking of a *Norwich Pharmacal* order. He went on further to say:

> "It has long been the law that one wrongdoer may be compelled by the victim to disclose the identity of another wrongdoer where their offences are connected: see the *Norwich Pharmacal* case... The decision in the *Norwich Pharamacal* case established that an innocent person who becomes involved in the actions of a wrongdoer may also be ordered to disclose the identity of the wrongdoer provided that disclosure is necessary to enable the victim to take proceedings against the wrongdoer."

[20] [2006] UKPC 7.
[21] [1981] A.C. 1096.
[22] At page 1131.

[15] In the Equatorial Guinea case, the Privy Council referred with approval to Lord Templeman's speech in BSC v Granada in which he referred to the remedy of discovery as being one intended to enable justice to be done. Lords Bingham and Hoffman again confirmed the *Norwich* principle and its purpose. They opined[23] that '*Norwich Pharmacal* relief exists to assist those who have been wronged but do not know by whom. ... Whether it is said that it must be just and convenient in the interests of justice to grant relief, or that relief should only be granted if it is necessary in the interests of justice to grant it, makes little or no difference of substance.'

[16] Given the very origin of the *Norwich Pharamcal* principles can it be seriously argued that the English courts' treatment and acceptance of such an order as an injunction is merely persuasive on this Court? I would think not in the circumstances. Indeed given the court's adoption and full embracement of the principle, the English courts' treatment and view of the nature of such an order as borne out by the cases as well as the academic writers can only be treated to all intents and purposes as being of authoritative force. In Novo Nordisk A/S v Banco Santander (Guernsey) Ltd.,[24] the Royal Court of Guernsey invariably referred in its judgment to the order requiring disclosure as an injunction.

[17] The case law and the treatises to which I have referred are of such highly persuasive authority as to be considered, for the reasons given, as binding on this Court. Accordingly, I am satisfied that a *Norwich Pharmacal* order is an injunction. It follows then that when the learned judge in the case at bar refused to grant the *Norwich Pharmacal* relief sought by the appellant, it was a refusal to grant an injunction. Based on the Supreme Court Act it would have fallen in the excepted class of orders for which leave to appeal would not be required. The Notice of Appeal filed without leave would be validly filed and accordingly stands. Had the Court been assisted with these authorities, which were available at the time the

[23] At paragraph 16.
[24] (1999-2000) 2 I.T.E.L.R. 557.

Court decided the two earlier decisions, it would not have fallen into error. The earlier decisions in Morgan & Morgan and TSJ Engineering on this point must be treated as having been decided per incuriam.

Is a Norwich Pharmacal order made on an interlocutory application a final order?

[18] Having concluded that the order is an injunction, this is sufficient to dispose of the preliminary question posed on the filing of the Notice of Appeal. But guidance is also sought as to whether a *Norwich Pharmacal* order granted on an interlocutory application which is usually the common approach is a final order. This does not admit of a straightforward answer. The test adopted by this Court for determining whether an order is final or interlocutory has been since 1995 in the case of Othniel Sylvester v Satrohan Singh[25] the application test which in essence is this: *An order is final if on an application brought the determination of the Application, whichever way it goes, brings finality to the issue or proceedings.* If not, then the order is interlocutory and would require leave to appeal unless it falls within the stated exceptions under the Supreme Court Act. This approach has been restated many times over in subsequent decisions of this court.

[19] *Norwich Pharmacal* orders are more often than not sought by interlocutory applications even when a claim form is issued seeking precisely the same relief. Some are even sought ex-parte. Where such an order is granted ex-parte it is more difficult to argue that it is final as the order will normally make provision for the matter to come on at a later date on an inter-partes hearing. As Rawlins CJ said in the TSJ Engineering case,[26] much may turn on the terms of the order. In the case at bar, the *Norwich Pharmacal* relief was refused on an inter-partes hearing. This certainly brought finality to those proceedings. The appellants could go no further with their claim which sought the same relief. We cannot say what would have been the position were the relief granted. It may have brought an end

[25] Civil Appeal No. 10 of 1992 – St. Vincent and the Grenadines (delivered 18th September 1995).
[26] At paragraph 31.

to the proceedings in the sense that what the appellants wanted they in fact got. There is also the possibility that the order may have contained further directions requiring further disposition of various ancillary matters by the Court, notwithstanding that the substantive issue, so far as *Norwich Pharmacal* relief is concerned, will have been disposed of. In some instances the court is invited, on dealing with the application inter-partes, to treat the hearing as the hearing of the claim. This gets around the obvious difficulty of having a claim 'hanging' once the order has already been obtained on the inter-partes hearing. This has often been the case, prompting the filing of a Notice of Discontinuance (once the order has been complied with), which, in my view, is in-apt as the relief sought on the claim has already been granted by way of the interlocutory application and the claim to all practical intents and purposes has been spent. A discontinuance or withdrawal of a claim presupposes a claim which is not being pursued, whereas here the claim has been pursued and concluded by way of the disclosure order as the exclusive relief sought. In such a case it may be successfully argued that the order is a final order.

Conclusion

[20] From all that I have said then, it may be deduced that whether a *Norwich Pharmacal* order is final or interlocutory may turn on various factors. However, for the purposes of leave to appeal this exercise is now rendered academic, having concluded that it is an injunction.

[21] The Notice of Appeal against the refusal to grant *Norwich Pharmacal* relief is accordingly validly filed. There shall be no order as to costs.

[22] I am grateful to counsel for their invaluable assistance.

Janice M. Pereira
Justice of Appeal

I concur.

Hugh A. Rawlins
Chief Justice

I concur.

Ola Mae Edwards
Justice of Appeal