

IN THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

COMMERCIAL DIVISION

CLAIM NO.: BVIHC (COM) 2019/0066

BETWEEN:

AAA

Claimant

and

TTT

Defendant

Appearances:

Mr Tim Wright of Bedell Cristin for the Claimant

2019: May 21

JUDGMENT

Non-disclosure order – Norwich Pharmacal relief – whether Norwich Pharmacal relief should be granted ex parte

[1] JACK, J (Ag.): The claimant is a bank. It has made various claims in various jurisdictions arising out of, what is said to be, malfeasance in the leading up to a bankruptcy order made against a company in a foreign jurisdiction.

- [2] In the current case, the claimant seeks *Norwich Pharmacal* relief against the registered agent here in Tortola: see *Norwich Pharmacal Co Ltd v Commissioners for Customs and Excise* [1974] AC 133. It says that various BVI companies for which the defendant is or was the registered agent have been used for laundering monies from the now bankrupt company. They need the details of ownership of the companies and various forms of documentation in order to be able to trace monies and make tortious and equitable claims against those behind the BVI companies. In particular, their aim is, once they have the relevant information, to obtain freezing orders.
- [3] In order not to tip off these potential respondents to a freezing order, the claimant also seeks a non-disclosure order.
- [4] Mr Wright, who appeared for the claimant *ex parte*, sought a “wrap-up” order with the granting of both the non-disclosure order and the *Norwich Pharmacal* order. He said that *ex parte Norwich Pharmacal* relief had previously been granted within this jurisdiction against registered agents. Once such an order was made, the registered agent had fourteen days within which to apply to vary or discharge the order: see CPR rules 11.16 and 11.18. In practice, he said, registered agents generally adopted a neutral attitude to such orders. They usually instructed local legal practitioners and there was, what he described as, “to-ing and fro-ing”, about what documents should be produced.
- [5] In the ordinary way, all applications must be heard *inter partes*. The Court will not entertain applications for *ex parte* orders without good reason. In the current case, there is good reason to hear the application for a non-disclosure order *ex parte*. If the defendant was told of the application, it would be under a duty to discuss the matter with the clients for whom it acts as registered agent. Hearing the initial application for the non-disclosure order *inter partes* would defeat the object of the order.
- [6] I am satisfied that the grant of a non-disclosure order is necessary in order not to tip-off the potential respondents to the freezing order which it is proposed should be made and I make such an order.

[7] The position is different in relation to the *Norwich Pharmacal* relief sought. There is in my judgment no proper ground for determining the matter in the absence of the defendant. Mr Wright suggests that there is really little difference between on the one hand making the order *ex parte* and then letting the registered agent come back if there is a dispute about the terms of the order and on the other hand hearing the matter *inter partes*. The reality, however, is that if a claimant obtains an *ex parte* order, the defendant is immediately on the back foot; the Court has already given at least a preliminary view that an order should run against the defendant. This is particularly so when, as is often the position in similar cases to the present, the real point of disagreement between the claimant and the defendant may be the scope of the documentation which should be produced. The defendant is entitled to provide input into that issue before an order is made.

[8] Mr Wright submits that it is more convenient to a claimant to obtain an order in the absence of the defendant. No doubt. That, however, in my judgment, is irrelevant.

[9] Mr Wright also says, as I have noted, that the Court has been persuaded in at least some previous cases to grant *Norwich Pharmacal* relief *ex parte*. He could, however, draw my attention to no reported case in this jurisdiction in which such a course has been adopted. I accept that there may be cases where such *ex parte* relief is appropriate. However, the general rule, which of course is the general rule applying to all litigation, is that the Court will not act without hearing both sides to a case. The current case is not in my judgment exceptional. There are no special circumstances which would justify making the order *ex parte*. In the absence of special circumstances, it is inappropriate to grant *ex parte* relief. I therefore refuse to make an *ex parte Norwich Pharmacal* order.

[10] I accept that there is urgency to this matter. I shall therefore abridge time for the *inter partes* hearing of the *Norwich Pharmacal* application. Provided the papers in this matter are served by close of business today, I shall order a return date on Friday 24th May 2019 at 10am. That will **allow the defendant two clear days' notice to obtain legal advice.**

Hon. Justice Adrian Jack (Ag.)
Commercial Judge

By the Court

Registrar