

Cyprus

Norwich Pharmacal relief in Cyprus



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The ability of the Cypriot courts to grant interim orders for the protection of assets that may be in jeopardy of alienation or in order to preserve a particular status quo pending the final outcome of the action, is well-rooted in the Cypriot legal system.

By applying equitable principles Cypriot courts may, in certain instances grant an order for the discovery of documents or information against a third party, not a party to the proceedings. This form of relief derives from the classic statement of Lord Reid in the leading English House of Lords decision of *Norwich Pharmacal Co v Customs and Excise Commissioners* (1974) AC 133, p175:

“(The authorities) seem to me to point to a very reasonable principle that if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrong-doing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers. I do not think that it matters whether he became so mixed up by voluntary action on his part or because it was his duty to do what he did... But justice requires that he should co-operate in righting the wrong if he unwittingly facilitated its perpetration...”

The spectrum of the Norwich Pharmacal relief as it has become known, has been greatly extended and advanced by the English Courts in subsequent cases, as for example *Murphy v Murphy* (1999) 1 WLR 282 and *Bankers Trust Co v Shapira and Others* (1980) 1 WLR 1274.

Although it was generally accepted that the Norwich Pharmacal remedy would, in principle, be recognized in Cyprus, it was only recently that it was specifically adopted by the Supreme Court of Cyprus. In *TBF (Cyprus) Ltd and others v Emporikis Meleton Sxediasmou kai Epichirimatikou Kefalaïou Anonimis Etairias and others* (Civil Appeal 10694, dated February 13 2001), an *ex parte* order was issued at the first instance for the discovery and inspection of documents within the frame of an application to set aside or stay the proceedings due to the allegation that Cypriot courts were not the appropriate forum (the *forum non conveniens* doctrine) to hear the action. The Supreme Court of Cyprus upheld the granting of the order stating that: “Cypriot case-law does not shed light on this issue. Nevertheless, we have located English case-law that has clarified the issue...taking a positive stance on this issue”. In this case:

- (i) The Supreme Court of Cyprus held that a Norwich Pharmacal order could be granted in a proper case (applications concerning the setting aside of the writ of summons was one of them);
- (ii) The appellants’ complaint to the effect that the order would assist one of the parties in pursuing further its potential claim was unfounded since this is one of the objectives of this relief;
- (iii) Given that the appellants had already referred to the relevant documents in the affidavit they submitted, their allegation that the other party was “fishing for evidence” could not be accepted; and
- (iv) The relevance and necessity of the disclosure of the requested documents derived from the affidavit that the defendants had filed in support of their application for the setting aside of the writ of summons.

This case demonstrates that the Cypriot courts have the power to grant Norwich Pharmacal orders when the judge is satisfied that such an order is reasonable and will serve the interests of justice. Undoubtedly this is a discretionary remedy and the granting of such a relief will always depend on the circumstances of each particular case.

It should be expected that the applicability of the remedy will be upheld by the courts not only in straightforward discovery instances but also in complicated asset tracing, for example, cases that may affect a wide variety of entities including banks, trustees, corporations and their servants. Nevertheless, it could be argued that there may be instances where the Cypriot courts will refuse to grant such a relief irrespective of how fair and just it is, for example when the information is protected by law as confidential information or when a witness will testify as to these during the trial (and are not necessary at the pre-trial stage).

A potential flaw to the development of this principle in Cyprus is the fact that in urgent cases a Norwich Pharmacal application can only be filed as an interim application within the context of existing underlying main proceedings. As a result, there might be instances where no main proceedings can be justified and thus such a relief could not be sought *ex parte* on an urgent basis.