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## **Power of Cypriot Courts to Issue Discovery and Disclosure Orders**

Contributed by **Soteris Pittas**

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The Supreme Court recently recognized and established the jurisdiction of the Cypriot courts to issue discovery and disclosure orders - known as Norwich Pharmacal and Bankers Trust orders.

In the English case *Norwich Pharmacal v Customs & Excise Commissioners* it was held that, although as a general rule no independent action for discovery can be taken in regard to a person against whom no reasonable cause of action can be alleged or who was a mere witness, the rule does not apply where: (i) without the discovery of the information in the possession of the person against whom discovery is sought, no action can begin against the wrongdoer; and (ii) the person against whom discovery is sought was, through no fault of his or her own, involved in the wrongful acts of another so as to facilitate the wrongdoing. In such circumstances, although the person might have incurred no personal liability, he or she is under a duty to assist the person who has been wronged by providing full information and disclosing the identity of the wrongdoer.

In another English case, *Bankers Trust v Shapira*, it was held that, for the purposes of giving effect to a defrauded plaintiff's equitable right to trace its money, the court is entitled to order a bank to disclose details of and documents and correspondence relating to the account of a customer who was guilty of fraud, even if the bank has incurred no personal liability for the fraud. This ruling was based on the grounds that unless there was the fullest possible disclosure, the fund could not be traced. To justify such an order, however, the evidence of fraud against the customer must be very strong.

The new availability of these interlocutory remedies to litigants before the Cypriot courts, together with the recent recognition of the Cypriot courts' powers to issue injunctions with extraterritorial effect (for further details please see "Injunctions with Extraterritorial Effect", makes Cyprus an attractive forum for pursuing legal rights through court actions. In addition, the accession of Cyprus to the European Union and the applicability of the EU Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (44/2001) has extended the jurisdiction of the Cypriot courts to issue injunctions in aid of legal proceedings pending before the courts of any EU member state, as well as to enforce and register interim injunctions issued by the Cypriot courts in any EU member state.

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Norwich Pharmacal and Bankers Trust orders may now be used and enforced in Cyprus following the recent decision of the Supreme Court, as well as under EU Regulation 44/2001.

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