



Norwich Pharmacal Principles re-affirmed by the Supreme Court of Cyprus

By Mrs. Ioanna Demetriou

The unanimous judgment of the Supreme Court of Cyprus delivered in **Avila Management Services Ltd e.a. v. Frantisek Stepanek e.a. Civil Appeal 54/2012, 27/6/2012**, (the “STEPANEK”) was until recently the only instance that the Supreme Court of Cyprus had the chance to adjudicate on matters relating to the jurisdiction of the Cypriot Courts to issue Disclosure orders otherwise known as Norwich Pharmacal.

On a recent development in **Penderhil Holdings Limited e.a. v. Ioannis Kloukina, Civil Appeals No. 319/11 and 320/11, 13/1/2014** (the “PENDERHIL”), the Supreme Court examining the joined appeals against Norwich Pharmacal type orders issued in first instance by the District Court of Limassol, the motion being handled by our Senior Partner Dr. Pavlos Neofytou Kourtellos re-affirmed unanimously the power of the Cyprus Courts to issue orders for the disclosure of information and documents from third parties innocently caught up in wrongdoing, essential to assist parties to pursue their cases either inside jurisdiction or in aid of foreign proceedings directly applying the principles envisaged in **Norwich Pharmacal Co and others v. Commissioners and Custom Excise (1973) 2 All E.R. 943** establishing the power to order. As per Lord Reid in Norwich Pharmacal (at 175):

"(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 Supreme Court in PENDERHIL referred also with approval to **Mitsui & Co Ltd v. Nexen Petroleum UK Ltd (2005) EWHC 625** where it was held that for a discovery order to be issued:

«(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.»

The Norwich Pharmacal jurisdiction still under development constitutes if such motion is carefully prepared an important weapon in the litigator's armoury, with a whole host of uses. Most recently our firm successfully obtained Norwich Pharmacal relief acting for a foreign entity against a local bank in aid of LCIA Arbitration proceedings. The case sets a precedent being the first disclosure order issued in aid of international arbitration proceedings by a Cyprus Court.

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