



## Stay granted against the enforcement of a Norwich Pharmacal Order – Not a solid precedent

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In the case **Penderhil Holdings Ltd v. Ioanni Kloukina**, Civil Appeal No.319/2011, dated **2/11/2011** the Supreme Court of Cyprus examined whether a stay can be granted against the enforcement of Norwich Pharmacal orders, pending the adjudication of the appeal filed by the Defendants against the first instance judgment pursuant to which disclosure orders were granted in favor of the Plaintiffs.

The First Instance Court had previously rejected the application for stay of the Norwich Pharmacal order pending appeal and consequently the Defendants filed a similar application for stay before the Supreme Court of Cyprus within the frame of the filed appeal.

In rejecting the said application at first instance though following English authorities of similar line, the District Court's judgment was courageous indeed, with the Court deciding against the stay request even though the appeal would in effect become of no substance since the Defendants would have in the interim to disclose the requested information otherwise they would be in contempt of the Court's disclosure orders.

The said judgment essentially reveals the tension between the urgency element and the commercial ratio envisaged in the disclosure orders and/or the Norwich Pharmacal type orders and the need to serve justice on appellate level. In Norwich Pharmacal the English House of Lords reaffirmed the long established rule that no independent action for disclosure of information might be brought against a person where no separate cause of action for some wrongdoing could be alleged against him. However the Court said that there were certain exceptions. In so stating the Court was recognising the need to strike a balance between the obligation of a party to assist in the pursuit of a likely claim, and his right to be free from harassment from those on "*fishing expeditions*", that is hunting for evidence of wrongdoing not previously established.

On the contrary the Supreme Court of Cyprus, decided to grant the stay of enforcement against the Norwich Pharmacal orders, pending appeal. Upon reviewing the reasoning of the Court the stay order was granted based on the following:

- i. That the Applicant has filed an arguable appeal;
- ii. That the non granting of a stay of the enforcement of the orders, would have rendered the appeal nugatory;
- iii. If the Supreme Court, were to issue the requested stay, and finally decided to dismiss the appeal, the negative consequences to the Respondent, would merely be restricted to a delay in receiving the requested information;
- iv. If on the other hand, the Court was to reject the requested stay the appeal would have no subject matter anymore;



The question arises whether the Supreme Court with its judgment formulates a precedent opening in this way the door for obtaining stay orders against the enforcement of Norwich Pharmacal orders whenever an appeal has been filed. Such approach will surely attract those parties willing to frustrate successful applicants at first stage and will serve as a delay mechanism of the enforcement of disclosure orders.

Apart from the fact that the Court concluded in favour of the stay order based on the specific circumstances of the case it clarified further that this approach should be read differently in respect to pre-existing precedents of lower Courts and English authorities.

Subsequent developments to the issue of the judgment in concern point to the opposite interpretation of the Supreme Court's decision and the Klukinas case should not be taken as a solid precedent. In the instance of **Avila Management Services Ltd e.a. v Frantisek Stepanek e.a., Civil Appeal No. 54/2012, dated 27/6/2012** a request for stay was not granted and the Supreme Court in an expeditious manner heard shortly after the substance of the appeal deciding in favour of the party obtaining disclosure relief. The above reflects the readiness of the Court to entertain both justice and party's urgency along with commercial reason finding a golden medium.

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