



Cyprus case law, Norwich Pharmacal Order Stay application rejected

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With reference to our previous article titled “[Norwich Pharmacal Stay order – Not a solid Precedent](#)” (see “Articles” section, dated July 2nd 2013) referring to the Supreme’s Court judgement in the case **Penderhil Holding Ltd v Ioanni Kloukina No.319/2011** (“**Penderhil**”) where a stay for Norwich Pharmacal Order was granted in favour of the Plaintiff while appeal was pending we took the position that the judgment formulates not a solid precedent. Such interpretation we had observed would attract those parties willing to frustrate successful applicants at first stage serving as a delay mechanism of the enforcement of disclosure orders opening in this way the door for obtaining stay orders against the enforcement of Norwich Pharmacal orders whenever an appeal has been filed.

Our approach was recently well affirmed by the District Court of Limassol recent judgement denying stay application against the enforcement of Norwich Pharmacal order. The applicants based their request on Penderhil however the Court denied issuing a stay order commenting that Penderhil does not provide a general principle in favour of stay merely on the fact that an appeal was filed.

With reference to the **Hammond Suddard case Solicitors v. Agrichem International Holdings Limited [2001] All ER (D) 258 Dec**, the Court stated that the decision to exercise its discretion to grant a stay depends upon the surrounding circumstances of the case.

The general rule is that once a Court issues a judgment, the judgment is directly binding and enforceable on all parties and the society as a whole. The fact that an appeal might be filled against the judgment does not negate or suspend the judgment at first instance. The judgment remains valid until any modification or reversal of the Court of Appeal is made.

The Court recognised that there can be cases where a stay can be granted provided exceptional circumstances are met as in the Penderhil case. The case law redounds that the successful applicant at first stage should be able to proceed with the implementation of the judgement but must not simultaneously place the appellant to a particular disadvantage the appeal should not be deprived of its effectiveness.



As it appears from the judgment the Court rejected the stay order based on the following:

- i. The damages that the applicant claims are not by any sense of such importance that could justify the stay order;
- ii. The grant of the stay would reverse an interim judgment that has already been justified;
- iii. The applicant did not provide the Court with enough details of the damages in order to persuade the necessity of the stay order;
- iv. The success of the appeal is rather uncertain;

As regards the appeal being filed the Court by referring to the **Rual Trade Ltd a.o v. Raikov a.o No.3582/2011** (see also Articles section "[Cyprus Court rules that RUSAL's affiliated companies obtained information illegally](#)" dated August 19th 2013) stated that the fact that a stay is rejected does not prevent the appellant to seek for other solutions as those adopted in the aforesaid case. A stay order should not function as a device for fragmentation of the proceedings and its grant should be avoided in cases where there is not a justified reasoning.

Hence the Court added that in the case that such a practise would be declared as a solid precedent would most likely lead to frustration of the principle of the immediate execution of the court judgements as well as causing a delay on the enforcement of the disclosure orders.

Both Rual Trade and Penderhil cases cited by the Honourable Court as precedents were successfully handled at first instance level by our Senior Partner Dr. Kourtellos.

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