



e-Disclosure order versus MetaQuotes The evolution of Norwich Pharmacal Order

“Thoughts do more. Words do much. Actions do much more”

The Supreme Court of Cyprus upheld on 14 November 2018 the 1st instance judgment ordering electronic disclosure against MetaQuotes Software, the well-known Forex trading platform developer, an e-disclosure order the first of its kind in Cyprus! Even the intrusiveness of the order proposed by our side the Supreme Court agreed with our submissions that intrusion can be significantly reduced by ordering that the necessary work should be carried out by an independent expert appointed.

The unanimous judgment affirms the Cyprus Court’s power to order inspection of a database and to give access to a party’s computer or database. As such the court may permit inspection and interrogation of the computer system by an independent expert to protect the interests of the disclosing party (MetaQuotes). That, of course, is what was sought here by our law firm in favour of the client. The court is entitled to order discovery of documents and information for the purpose of legal proceedings if the public interest in the administration of justice requires so. The judgment now marks the evolution of the *Norwich Pharmacal* jurisdiction.



In the words of the Supreme Court: “...It is useful to recall the evolutionary course and the perpetual pattern of the disclosure orders and of all forms of remedies based on the law of equity as a consequence of the rapid evolution and the ever-changing complexity of the transactions and of the resulting difficulty in detecting the labyrinth of complex web of committing and covering up various types of torts. Hence the need to adapt the exercise of the powers of the Courts in order to deal with these rapidly evolving situations and to safeguard the right to an effective remedy to defend the interests of each party...the ultimate purpose of issuing such disclosure orders, provided the conditions are met, is to serve the public interest and the unimpeded and fair administration of justice. In the light of the facts of our case, there is no possibility of searching for information from other sources.....The use of computers, their rapid growth, the primary role they play in the whole range of financial transactions and the storage of electronic data require a continuous change in the disclosure procedures and a continuous search for new, compatible with existing data, methods of safeguarding the rights of each person concerned to gain effective access to the Court in order to assert his rights.”

In this instance the client has been deprived of huge amounts resulting from the fraudulent actions of a brokerage firm offering investment services through MT4 platform through a license of the type “white label” granted by MetaQuotes. The brokerage firm later denied even the existence of a customer relation. Innovative litigation and going beyond traditional disclosure, the client now will be provided with full access to critical information.

MetaQuotes is ordered, inter alia, to disclose all the transactions of numerous trading accounts of the client, which appear in the platform of MT4 unto the name of the client maintained for the benefit of the brokerage firm. To ensure compliance and implementation of disclosure on the basis of the orders issued an ancillary order provides for the appointment of an independent IT expert with the necessary



technical understanding to access to MetaQuotes database and permits the IT expert to make images or some other copy of the database with a view to preparation of a report limited to identification of the information sought by the applicant. It is, of course, the only way to ensure unimpeded course and full justice, since the involvement of an independent expert acting as an officer of the Court and the conditions imposed on the confidentiality obligation shielded the defendant's rights completely, eliminating, on the other hand, the risk of disclosing and using data of other persons, taking into account the interventionist character of the decrees issued.

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