

The Jurisdiction of Cyprus Courts to issues Norwich Pharmacal Orders for the purpose of initiating legal proceedings abroad.

The Litigation Department of our firm headed by the Partner Mr. Kyriacos Theodorides and his team Mr. Michael Loizou and Mr. Akis Koumas, had successfully issued on behalf of one of our foreign client a very important judgment considering NORWICH PHARMACAL Orders (Discovery Order).

The unanimous decision of the Supreme Court dated 27/6/2012 is the first decision issued by the Supreme Court of Cyprus and relates to the jurisdiction of the Cypriot Courts to issue Disclosure orders known as NORWICH PHARMACAL Orders. Until recently, there have been occasionally issued by the First Instance Courts of Cyprus decisions related to NORWICH PHARMACAL Orders, but the above decision is the first decision which appealed at the Supreme Court, in the exercise of Secondary jurisdiction, for the above mentioned subject.

The issue of the order for the Disclosure of Documents, known as NORWICH PHARMACAL Order, as it has been shown by the evolution of the jurisprudence of the English Courts, is an important tool for the parties, by which allows the victim of the wrongdoing to receive information and documents by which to identify the wrongdoer and with which documents and information will compose the offence. The issuance of such Orders extended to cases where the third person from whom the information has been requested may be innocent but have been taken in the wrongdoing part as well as in cases where the identity of the wrongdoer was known.

In the aforesaid case, Respondents No. 1 and 2 which are Czech nationals and shareholders of the Respondent No. 3 Company, which is registered in the Czech Republic, succeeded in issuing a NORWICH PHARMACAL Order at the District Court of Limassol on the 19th of December 2011 (claim action No. 1043/2011) against the Appellants No. 1 and 2. With the above-mentioned Decision dated 19/12/2011 Appellants No. 1 and 2 were ordered to proceed for Disclosure of documents and information by an Affidavit within a specified deadline. It is worth mentioning that the requested information and documents for disclosure, were necessary to be disclosed to the Respondents, in order for them to file a legal action in the Czech Republic against the wrongdoers for damages for a considerable amount of money.

It should be noted that the said wrongdoing for which the claim would have been filed for damages has been committed outside the Republic of Cyprus, but the Respondents used the jurisdiction of the Cypriot Courts since the Appellants No. 1 and 2 have resided within the jurisdiction of the District Court of Limassol.

The Appellants have filed the present appeal against the First Instance decision of the District Court of Limassol dated 19/12/2011 aiming to overrule the First Instance judgment. The Supreme Court rejected

the appeal by its decision dated 27/6/2012 and having proceeded with detailed reference to relevant English case law related to NORWICH PHARMACAL Orders has reached the following conclusions:

(a) The NORWICH PHARMACAL Orders fall in the formation of common law which evolves and adapts to the individual requirements of the economic and social mainstream of English society, affecting all countries that the philosophy of Anglo-Saxon Law (as well as Cyprus) applies.

(b) The power to issue such an order is always subject to the discretion of the Court which will not satisfy a request if the information can be obtained by any other means or if the Court is not convinced that there is intention to initiate actions against wrongdoers.

Further, the Supreme Court rejected the position of the Appellants that the Respondents could have used the mechanism provided by the Regulation (EC) 1260/2001 of the Council of the European Union in order to seek assistance from the Judicial Courts of the Czech to the Cypriot Courts to provide them with evidential material. The reason that the Court rejected the position of the Respondents was that the EC Regulation requires that the obtaining of evidence is possible in the country that it was sought and in Cyprus a witness can be summoned for judicial assistance but cannot be compelled to present documents which denies that it has in his possession and storage. Contrary, the NORWICH PHARMACAL Orders allow the obtaining of information for a court decision applicable and enforceable in the country where such Order is issued. Further, the Supreme Court stated that it is clear from the text of the EC Regulation that the said Regulation concerns court proceedings that had been already filed and not court proceedings that will be filed in future.

Another important fact that has emerged is whether the NORWICH PHARMACAL Orders may be issued by the Cypriot Courts in order to help bring an action outside the jurisdiction of the Cypriot Courts. The Supreme Court decided that there is no impediment as a matter of principle and NORWICH PHARMACAL Orders can be issued also in order to assist obtaining data and information for taking action outside the jurisdiction of the Cypriot Courts. The Supreme Court stated that the complexity of modern commercial activities in the course of which may be involved various physical and legal persons within and outside the Republic of Cyprus, is that the scope of such an Order would be too limited if it applied only to purported actions within the jurisdiction the Cypriot Courts.

If you need any clarifications regarding the above Decision, please contact Mr. Kyriacos Theodorides, Partner, Head of the Litigation Department, at theodork@yiangou.com.cy.