



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO. FSD 295 OF 2022 (IKJ)

IN THE MATTER OF NORWICH PHARMACAL RELIEF

**AND IN THE MATTER OF CERTAIN PROCEEDINGS IN THE GRAND COURT OF THE
CAYMAN ISLANDS ((1) B and (2) B v CL)**

IN CHAMBERS

Appearances:

**Mr Adam Crane, Baker and Partners (Cayman Islands), for the
Applicants**

Before: The Hon. Justice Kawaley

Heard: 15 December 2022

Date of Judgment: 15 December 2022

HEADNOTE

Ex Parte Originating Summons seeking Norwich Pharmacal Order-ancillary ‘seal and gag’ order sought short notice given to professional service provider respondent-information sought to identify perpetrators of fraud, recover misappropriated assets and bring proceedings against wrongdoers



EX TEMPORE JUDGMENT

Introductory

1. This is an Ex-Parte Originating Summons issued by the applicants on or about 9 December 2022 seeking *Norwich Pharmacal* relief in respect of four Cayman Islands companies. The relief is sought against the Respondent, which provides registered office facilities to these companies.
2. The Respondent was in fact served with this application and the ex parte ‘Gagging and Sealing’ Order, which was made a few days ago, and elected not to appear. The position appears to be that the terms of an order have been substantially agreed but that the Court’s jurisdiction to make the order has not been formally conceded.

The Application

3. The application can be dealt with somewhat shortly because the First Applicant was placed into liquidation by myself and the underlying wrongdoing which forms the basis of the present application is the same large-scale, notorious fraud that underpinned the First Applicant being placed into liquidation. The Summons is supported, substantively, by the First Affidavit of Angela Barkhouse who is one of the Joint Official Liquidators alongside George Kimberley Leck of the First Applicant, and she is also one of the liquidators of the Second Applicant.
4. The purpose of the application is summarised in paragraph 6 of Ms Barkhouse’s Affidavit, and it is, in short, to obtain copies of share registers and all books and records and financial documents that it is believed the registered office holds in respect of the various entities that it is believed, based on the liquidator’s enquiries, played an active role in this fraud. I am satisfied that there is a good arguable case, based on the evidence of Ms Barkhouse, that the four Cayman entities were involved in the suspected wrongdoing.



The law

5. The legal principles which govern an application of this type are not controversial in this jurisdiction and it suffices to refer to the recent decision of Justice Margaret Ramsay-Hale (as she then was) in *Hangzhou Lingquin Investment Partnership Enterprise v Harneys Liquidation Services (Cayman) Limited and Harneys Fiduciary (Cayman) Limited*, which was in fact an *inter partes* hearing on the papers with an unreported judgment being delivered on 7 June of this year. The law was conveniently summarised in this way (at paragraphs 20 – 24):

“20. *The jurisdiction of the Court to order a person innocently involved in apparent wrongdoing by another person to disclose information or documentation required for the issuing of proceedings was established in the House of Lords decision in Norwich Pharmacal and others v Customs and Excise Commissioners [1974] AC 133. Lord Reid explained the basis for the exercise of the Court’s equitable jurisdiction to order disclosure from a third party at [175] where he said this:*

‘...if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrongdoing 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 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. It may be that if this causes him expense the person seeking the information ought to reimburse him but justice requires that he should co-operate in righting the wrong if he unwittingly facilitated its perpetration.’

21. *In Braga v Cayman Trust Company (Cayman) Limited & Others 2011(1) CILR 402, the Chief Justice observed that the jurisdiction to make a Norwich Pharmacal order is broad, flexible and developing, and not limited, as stated in many of the authorities, to discovering the identity of a wrongdoer but could be granted in circumstances in which the wrongdoer’s identity was known but information was needed to prove the wrongdoing.*



22. *In Essar Global Fund Limited and another v ArcelorMittal USA LLC CICA (Unrep) 3 May 2021 the Court of Appeal considered the requirements for the grant of a Norwich Pharmacal order. Martin JA in his judgment said this at paragraph 16:*

'It is now well established that the requirements for the grant of a Norwich Pharmacal Order are as follows:

- (i) a wrong must have been carried out, or arguably carried out, by an ultimate wrongdoer;*
- (ii) there must be 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 far as to facilitate the wrongdoing, and (b) be able to or likely to be able to provide information necessary to enable the ultimate wrongdoer to be sued.'": Mitsui and Co Ltd v Nexen Petroleum Limited 21 Lightman J.'*

23. *The Court noted at [17] and [18] that the scope of the jurisdiction has developed 'beyond mere identification of the wrongdoer' and could be ordered where the identity of the wrongdoer was known but the applicant requires disclosure of crucial information in order to bring its claim or other legitimate redress for wrongdoing.*

24. *The meaning of 'arguably' in the context of an application for an Norwich Pharmacal order was also considered by the Court which affirmed the test laid down by Mustill J (as he then was) in the The Niedersachsen (1983) 2 Lloyd's Report 600 at 605 which has been applied many times since:*

'I consider that the right course is to adopt the test of a good arguable case, in the sense of a case which is more than barely capable of serious argument, and yet not necessarily one of which the judge believes to have a better than 50 per cent chance of success.'”



6. The Applicant's counsel addressed the law far more fully in his Skeleton Argument than it is necessary to recite in this Judgment, but most importantly he took the Court through the key elements of the test and how they applied to the facts of the present case.

The merits of the application

Wrongdoing

7. Dealing with the first threshold issue, a wrong must have been carried out or arguably carried out. It was submitted that the test was amply satisfied on the facts of this case because the Applicants have a strong basis for their belief that the Cayman entities were likely involved in the fraud and that the applicants have a legitimate proprietary claim to the funds.
8. As I noted in the course of argument, the Court can place considerable weight on the evidence which supports the present application. This is because the evidence is provided not by partisan commercial adversaries of the alleged wrongdoers, but by professional liquidators who have been specifically tasked with investigating and remediating the broader fraud. And so I have little difficulty in accepting that there is a good arguable case that the four entities in question have been involved in the wrongdoing alleged.

Necessity for relief

9. Secondly, the order must be necessary in a practical sense. And here it was submitted that the application meets the test as the Applicants have no other means of obtaining the information or documents sought.
10. That submission is easy to accept because the role that these entities played in the wider fraud was clearly a somewhat detached role and there are no pending proceedings in other jurisdictions which could be used to obtain discovery from these entities; and so, this is the logical jurisdiction to get the particular species of information which is sought. The information is sought both for

investigative purposes and for the purposes of substantiating claims and I am satisfied that it is necessary for the relief to be granted.

Involvement of the Respondent

11. Thirdly, there is a requirement that the person against whom the order is sought must be involved in a way that is more than ‘a mere witness.’ That requirement is demonstrably met in the present case because it is clear, in my judgement, having regard to previous decisions of this Court, that a service provider that holds documents relating to companies that it provides administrative services for is clearly innocently involved in any wrongdoing which their client may be culpable for.

Discretionary considerations

12. In all the circumstances of the present case, to adopt the submission of Mr Crane:

“97. The public interest is strong in permitting the Applicants to vindicate the rights of Bridge Global and Brazen Sky and for the deterrence of the use of Cayman Islands corporate structures and professionals to facilitate the commission of fraud.”

Conclusion

13. And so for those reasons I grant the orders sought, the terms of which have been substantially agreed with the Respondent.



**THE HONOURABLE MR JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT**