



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

**CAUSE NO FSD 297 OF 2022 (IKJ)**

**IN THE MATTER OF AN APPLICATION FOR NORWICH PHARMACAL RELIEF**

**BETWEEN:**

**NORTHEAST SECURITIES CO., LTD.**

**Plaintiff**

**-v-**

**(1) TRICOR SERVICES (CAYMAN ISLANDS) LIMITED;**

**-and-**

**(2) INTERNATIONAL CORPORATION SERVICES LTD**

**Defendants**

**Before:** The Hon. Justice Kawaley

**Appearances:**

Ms Katie Pearson of Claritas Legal Limited for the Plaintiff

Mr Jason Mbakwe of Carey Olsen for the 1<sup>st</sup> Defendant

Mr Bhavesh Patel of Travers Thorp Alberga for the 2<sup>nd</sup> Defendant

**Heard:** In Chambers

**Date of hearing:** 30 November 2023

**Judgment delivered:** 30 November, 2023

*231130- In the Matter of Northeast Securities Co., Ltd v Tricor Services and International Corporation Services Ltd- FSD 297 OF 2022 (IKJ) – Ex Tempore Judgment*

## HEADNOTE

*Renewed application for Norwich Pharmacal Order-costs as between plaintiff and entity found to be alleged wrongdoer's "money-box"-whether costs of innocent parties' compliance with order are recoverable from alleged wrongdoer-governing principles*

## EX TEMPORE JUDGMENT

### Introductory

1. On 3 April 2023 I granted the Plaintiff a *Norwich Pharmacal* Order for the reasons set out in the Judgment delivered on that date. By email dated 9 November 2023, the Plaintiff renewed its application. The renewed application was not opposed by China Hydrogen Energy Limited ("CHEL"). Mr Mbakwe appeared on behalf of the 1<sup>st</sup> Defendant and indicated that while his client did not oppose the application he would invite the Court to ensure that Order was drafted as narrowly as possible. Mr Patel for the 2<sup>nd</sup> Defendant adopted a similar position. Both counsel encouraged the Court to have regard to the form of order proposed by Harneys on behalf of CHEL.

### Further Disclosure Order

2. In the course of the hearing some of the changes to the Plaintiff's draft proposed by Harneys were accepted, others were not. I grant the Plaintiff an Order in terms of the draft submitted subject to the modifications indicated in the course of argument

### Costs as between the Plaintiff and CHEL

#### Costs order sought

3. The real controversy was in relation to costs as between the Plaintiff and CHEL. The Plaintiff sought an Order in the following terms:

*"CHEL shall pay the Plaintiff's costs of this application, to be taxed on the standard basis if not agreed. For the avoidance of doubt, the costs payable by CHEL to the Plaintiff shall include:*

- (a) *The Plaintiff's costs of the Disclosure Order and this Order; and*
- (b) *The costs paid to the Defendants pursuant to paragraph 6 of the Disclosure Order and paragraph 6 of this Order."*

### **Pre-hearing correspondence**

4. On 3 March 2023 (before the 16 March 2023 hearing, Claritas on behalf of the Plaintiff wrote Harneys as follows:

*"In the circumstances, our client politely declines your invitation to withdraw its application. In the event your client maintains its opposition to the its application, and the application is ultimately successful, our client reserves the right to seek an order that your client pays its costs of the proceedings, or at least that portion which is attributable to your client's opposition to the application."*

5. On 10 October 2023, prior to the renewed application, Claritas wrote to Harneys as follows:

*"In the circumstances, our client intends to renew its Application dated 9 December 2022. We now enclose by way of service the Third Affirmation of Rongping Wu in support of the renewed Application, and our client's proposed draft Order. As you can see, the draft Order includes at paragraph 7 an order that you pay our client's costs of the Application."*

### **Governing legal principles**

6. The general rule in *Norwich Pharmacal* cases is that the Plaintiff pays the costs of compliance with the Order unless the person who has become mixed up in wrongdoing opposes the application in an unreasonable manner. Ms Pearson referred in this regard to two cases. Firstly, *Totalise plc-v-The Motley Fool Ltd* [2002] 1 WLR 1233 and the Judgment of Aldous LJ at paragraphs 29-30. Also reference was made to *JSC BTA Bank-v-Ablyazov* [2015] 1 WLR 1547 and the observations of Flaux J at paragraph 79.
7. Ms Pearson ultimately contended that the present case did not fall within these principles at all and that the normal costs principles in adversarial litigation apply. I agree that the normal costs rules

apply to a party like CHEL, which I consider now to have been shown to be the Judgment Debtor's "money- box"<sup>1</sup>. Costs follow the event.

### **Findings**

8. The Plaintiff seeks all the costs of the initial application, but its attorneys fairly accepted in their 3 March 2023 letter that the appropriate items of costs would be the costs attributable to CHEL's opposition. Those are the costs the Plaintiff should be entitled to recover from CHEL which unsuccessfully opposed the application for the Order granted on 3 April 2023.
9. As far as the renewed application is concerned, CHEL did not appear in opposition to the present Order. It did engage in some sabre-rattling, but it mainly made comments on the Plaintiff's proposed draft Order, some of which were accepted and some of which were rejected. In my judgment the Plaintiff should not be awarded costs against CHEL in respect of the present renewed application.
10. The Plaintiff also seeks to recover the costs of compliance it has paid to the Defendants (and will pay pursuant to today's Order). The general rule in *Norwich Pharmacal* cases is that the Plaintiff should pay the costs of obtaining the information it seeks unless the persons mixed up in the alleged wrongdoing act unreasonably. It is inconsistent with that principle for CHEL to be ordered to pay the Plaintiff's costs of gathering information at a stage when it is unclear where the information will lead. The appropriate context for the Plaintiff to seek to recover these costs is in the context of substantive enforcement proceedings in which such costs ought to be recoverable.
11. The position is different where a party such as CHEL has unsuccessfully participated in legal proceedings. Then the usual costs rules apply.



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

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<sup>1</sup> This term has been used in various contexts e.g. *Lakatamia-v-Shipping Company Limited-v-Nobu Su* [2014] EWCA Civ 636, per Sir Bernard Rix LJ at paragraph 42.  
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