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Applying for Norwich Pharmacal relief in the BVI

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In light of the privacy afforded to companies incorporated in the British Virgin Islands (the **BVI**), it is no surprise that the BVI Court regularly considers applications seeking disclosure from innocent third parties – often corporate service providers - in the form of *Norwich Pharmacal* relief.

Helpfully, the procedure for seeking such relief has recently been discussed by Wallbank J in *CIF v (1) DLG and (2) GIY*, in which judgment was handed down on 29 February 2024.

CIF v (1) DLG and (2) GIY

Background

This was a typical case for *Norwich Pharmacal* relief, where the applicant was a judgment creditor in respect of an unsatisfied foreign money judgment. The applicant produced evidence indicating that the person behind the foreign judgment debtor(s) (the **wrongdoer**) had a documented history of dishonesty in business affairs and of non-fulfilment and/or evasion of legal obligations.

The applicant's case outlined that they had good reason to believe that the wrongdoer was the underlying beneficial and/or legal owner of shares in numerous companies incorporated in the BVI that were under the respondent registered agents' administration. An application was therefore made against the two BVI registered agents to obtain information and documents which would further this belief and assist the applicant to consider any available enforcement options.

At an *ex parte* hearing, the applicant successfully sought:

(a) a seal and gag order (that is, an order sealing the court proceedings and restraining the respondents from disclosing the existence of the proceedings subject to the terms of that order); and

(b) a *Norwich Pharmacal* order, which included a cap on the respondents' costs (which were to be paid by the applicant, CIF) of U$4,000.

The procedure

The Court addressed the following procedural points which will be useful for both applicants and respondents to such applications to bear in mind:

1. It is only appropriate to seek *ex parte Norwich Pharmacal* relief in cases of urgency where there is no time to give notice to the respondents, otherwise it is not justified (although technically possible). Such urgent cases will be the exception,

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rather than the rule.

2. In furtherance of the overriding objective to deal with cases justly, if the case is not urgent then the preferred method is a two-stage process where:

    a. the applicant applies for an *ex parte* seal and gag order to be determined on the papers or at a hearing; and

    b. thereafter, the applicant applies for *Norwich Pharmacal* relief on notice to the respondent.

3. The usual rule is that the respondent's reasonable costs of the application and any associated costs of compliance with the order shall be met by the applicant.

4. It is possible for an applicant seeking *Norwich Pharmacal* relief on an ex parte basis to also seek an order limiting the respondent's costs, so long as the limitation on costs is:

    a. imposed as an interim measure pending the return date;

    b. expressed to be subject to the respondent's right to apply to vary and discharge the *ex parte* order; and

    c. reasonably sufficient to enable a BVI professional corporate services provider to consider the application and comply with the order.

Summary

This decision is a useful reminder of the process which should be followed when applying for *Norwich Pharmacal* relief in the BVI. This will be particularly relevant when information is sought from corporate service providers who may have become "involved" as a result of their role as registered agent and their access to information regarding BVI companies.

Should you require assistance with an application for Norwich Pharmacal relief in the BVI, please contact our Insolvency and Corporate Disputes team who will be happy to advise you.

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