



Neutral Citation Number: [2025] CIGC (FSD) 30

Cause No: FSD 2025-0064 (JAJ)

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**FINANCIAL SERVICES DIVISION**

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

**IN CHAMBERS**

**BETWEEN:**

- (1) L.R. CAPITAL CHINA GROWTH II COMPANY LIMITED**
- (2) CONG LIN**

**Plaintiffs**

**-and-**

**INTERNATIONAL CORPORATION SERVICES LTD**

**Defendant**

**Appearances:** Mr Spencer Vickers and Mr Romane Duncan of Conyers Dill & Pearman LLP for the Plaintiffs

**Before:** The Honourable Justice Jalil Asif KC

**Heard:** 8 April 2025

**Ex tempore judgment delivered:** 8 April 2025

**Finalised judgment approved:** 11 April 2025

*Practice and procedure—application for document preservation order and sealing and gagging orders in support of Norwich Pharmacal application—whether apparent merit of Norwich Pharmacal application relevant—whether to make orders sought*

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## JUDGMENT

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### A. Introduction

1. This is an application by the Plaintiff by an *ex parte* summons dated 20 March 2025 seeking: (i) a document preservation order; (ii) a sealing order; and (iii) a gagging order against the Defendant. The Defendant is International Corporate Services Limited (“ICS”), which is a registered office service provider within the Cayman Islands. The application is made against the background of an intended application for Norwich Pharmacal relief which has been commenced by way of a separate *ex parte* originating summons also issued on 20 March 2025.
2. I have had the benefit of hearing Mr Spencer Vickers on behalf of the Plaintiffs who has, with very good humour, put up with a number of questions that I have put to him during the course of hearing argument on the application.
3. In very brief summary, the background is as follows. Mr Cong Lin, who is the Second Plaintiff, is the director of the First Plaintiff company. The First Plaintiff made a loan to a company called Strategic Global (Energy) Investment Limited (“Strategic Global”), which is registered in the Cayman Islands. ICS provides its Registered Office. The initial loan agreement was concluded in December 2017, and an amended loan agreement was agreed between the parties in January 2019. The loan agreement appears to have been for a substantial sum: I am told that the amount outstanding for payment under the loan agreement is over US \$49 million.
4. The loan agreement operated as a form of revolving credit, and during the period of the loan there were various withdrawals and repayments by Strategic Global. However, by about 2020 or so, Strategic Global started to go into default in making repayments. On 21 August 2024, the First Plaintiff commenced proceedings against Strategic Global in the High Court of Hong Kong for repayment of the outstanding loan facility.

5. It appears from the evidence that Strategic Global has not participated in those proceedings in Hong Kong. The First Plaintiff is in the process of obtaining a default judgment for the amounts outstanding. Although it appeared from the evidence and skeleton argument that were presented to me that the First Plaintiff had already obtained that default judgment, Mr Vickers has clarified in the course of argument that, in fact, the High Court in Hong Kong has not yet entered judgment and the terms of the proposed default judgment are still a matter of debate between the First Plaintiff's attorneys in Hong Kong and the judge in Hong Kong who is seized of the matter.
6. In any event, it appears that on or about 5 February 2025, in anticipation of potential enforcement of the default judgment, Mr Cong instructed his attorneys in the Cayman Islands to perform a Companies Registry search against Strategic Global. The result of that search, which is in the bundle at page 70, recorded the directors of Strategic Global as being Bo Zhou, who Mr Cong was aware is a director of Strategic Global and whom he believed to be the sole director and, to his surprise, Mr Cong himself was listed as the second director.
7. This caused concern on Mr Cong's part, as he says it was clearly incorrect: he has never agreed or been appointed a director of Strategic Global. His attorneys in the Cayman Islands, Conyers Dill & Pearman, therefore wrote to a number of entities, including the Tax Information Authority, the Cayman Islands Companies Registry and to ICS to query the inclusion of Mr Cong as a director of Strategic Global and to indicate that he is not.
8. They received responses, firstly, from the Tax Information Authority which said,

*"... We note on the latest ESN (i.e. 2023 ESN Year), the information provided by your Registered Office does not reflect the director."*

In other words, Mr Cong was not shown as a director in documents filed with the Tax Information Authority in 2023.
9. The response from the Cayman Islands Companies Registry was that:

*"Our records indicate that Mr Cong Lin is not listed as a Director. A correction was implemented in 2022 to address this discrepancy, and a revised [Register of Directors and Officers] was subsequently issued."*

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So, as far as the Registry is concerned, it appears that they are suggesting that a clerical error of some kind occurred before 2022 with result that Mr Cong was incorrectly recorded as a director of Strategic Global, but that was corrected in 2022.

10. The response from the attorneys for ICS, was to forward a copy of the Register of Directors and Officers, which they had retrieved from the CAP system on 7 February 2025. This shows a number of past appointments and resignations of directors, culminating in the appointment of Mr Zhou on 20 September 2016. According to this copy of the Register of Directors, he is the only director of Strategic Global. Furthermore, there is no entry on this version of the Register recording either the appointment or resignation of Mr Cong as a director of Strategic Global at any time, which also tends to suggest that the inclusion of Mr Cong as a director of Strategic Global in the records maintained by the Cayman Islands Companies Registry was a clerical error.
11. Mr Vickers points out that the copy of the Register of Directors and Officers that was provided by ICS's attorneys is dated February 2021, and so he suggests faintly that there may be a later version which has not been disclosed and which may record Mr Cong's appointment as a director after February 2021. It seems to me that that is some somewhat speculative.
12. Nonetheless, against that background Mr Cong believes and argues that this is all part of a plan by Mr Zhou to damage Mr Cong's reputation. I should say that Mr Cong, amongst other things, provides family office services. He has expressed concern in his affidavit evidence that the involvement or the apparent involvement of himself as a director of Strategic Global, being a company against whom the First Plaintiff, at Mr Cong's instigation, has pursued proceedings in Hong Kong, which appears to be in the process of allowing judgment to be entered in default, and against whom the First Plaintiff then intends to enforce that judgment, could give rise to serious professional reputational issues for Mr Cong. Indeed, Mr Cong has commenced proceedings in Hong Kong already on that basis, by way of a writ issued on his behalf by Clifford Chance on 10 February 2025. In those proceedings, Mr Cong alleges in the endorsement on the writ that his claim against Strategic Global arises by reason of:

*“... false and defamatory and injurious statements maliciously published by [Strategic Global] concerning the Plaintiff in filings and documents supplied to [ICS] about or after 21 August 2018, which led to the addition of the Plaintiff to the Register of Directors of the 1st defendant.”*

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A copy of the Cayman Islands Company Registry search results dated 5 February 2025, showing Mr Cong as a director of Strategic Global is annexed to the writ.

13. Mr Cong's claim against Bo Zhou is said to arise by reason of Mr Zhou's "*directorship and ownership of [Strategic Global], and thus his role in procuring the Publications*", in other words, the filings and documents that Mr Cong believes must have been provided to ICS in order to obtain the registration of Mr Cong as a director of Strategic Global.
14. The Statement of Claim in Mr Cong's Hong Kong claim runs to 11 pages and makes a number of very detailed allegations of defamatory conduct on the part of Strategic Global and Mr Zhou.
15. Against that background, I put to Mr Vickers that I have concerns about the merits of the intended Norwich Pharmacal application in circumstances where: the intended proceedings for which the Norwich Pharmacal documents are said to be necessary have in fact already been started; and where the chronology of the apparent inclusion of Mr Cong as a director of Strategic Global does not, at first blush, appear to fit Mr Cong's theory of the case.
16. Mr Vickers drew my attention to the BVI decision of Jack J in EGE v Nerine Trust Co Ltd (unreported 15 April 2021) recording that an earlier judgment of his had been overturned on appeal but the judgment on appeal was sealed. He explained that he had dismissed an application for a sealing and gagging order to support an application for a Norwich Pharmacal order on the basis that the case was not suitable for Norwich Pharmacal relief. The Court of Appeal for the East Caribbean Supreme Court allowed the appeal on the ground that the judge had inappropriately decided the Norwich Pharmacal application instead of the application that was before him. Jack J wished to inform the local profession of the effect of the Court of Appeal's judgment but also to emphasise that if the court makes a sealing and gagging order, it does not follow that it will make a subsequent Norwich Pharmacal order.
17. I consider that it is appropriate to take into account the apparent merit of the underlying Norwich Pharmacal application in determining whether or not I should accede to the relief sought today, namely, the sealing and gagging orders and document preservation order. In doing so, I have not decided the intended Norwich Pharmacal application. However, as indicated, I consider that it is material to consider the apparent merits of the associated Norwich Pharmacal application. If the

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Norwich Pharmacal application appears on its face to be a particularly strong one, that might overcome doubts about the necessity for a sealing and gagging order or for a document preservation order. On the other hand, if the application appears to be weak, that is something to be weighed in the overall balance when deciding whether the interests of justice support making a sealing and gagging order or a document preservation order.

18. I also put to Mr Vickers that if I were minded to make a document preservation order directed at ICS to require it to preserve documents that are currently in its possession concerning Mr Cong's involvement as a director of Strategic Global, then the necessity for a sealing and gagging order would fall away. Mr Vickers acknowledged, on the basis of Cathay Capital Holdings III LP v Osiris International Cayman Ltd (unreported 30/08/21), a decision of Doyle J, that the Plaintiffs' concerns might be sufficiently addressed by making a document preservation order alone, without conceding that I should not grant the wider relief sought.

19. In the Cathay Capital case, Doyle J indicated but there were three aspects of full and frank disclosure that were brought to his attention.

a) The plaintiff in that particular case was not alleging fraud against the two alleged wrongdoers and intended defendants, and the plaintiff's fear that it was very likely that they might take steps to frustrate the relief sought might not be well founded.

Pausing there, Mr Vickers draws a distinction between Cathay Capital and this case on the basis that Mr Cong is alleging fraud against Mr Zhou and Strategic Global, and that allegation is made in Mr Cong's affidavit in support of the applications to me, although it is not clear that it is alleged within the Hong Kong proceedings that he has commenced. For that reason, I understood Mr Vickers to suggest that I should be more open to the submission that Mr Zhou and Strategic Global might seek to take steps to frustrate the relief sought against ICS if sealing, gagging and document preservation orders are not made.

b) Doyle J goes on to record two other aspects raised by way of full and frank disclosure in the Cathay Capital case, the second one being that "*the precise roles of Mr Sun and Ms Ren are not ascertainable from the director search (which does not name them as directors) and it is unclear if they could now be able to cause the company to take steps to frustrate the relief sought.*"

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Mr Vickers' suggestion is that there is a difference in this case because it is clear that Mr Zhou is still the sole director of Strategic Global, and therefore Mr Zhou could still cause ICS to take steps to frustrate the relief sought, for example, by giving instructions to ICS to destroy documents or potentially by seeking to change the Registered Office from ICS to some other service provider.

- c) The third area of full and frank disclosure that was put before Doyle J in the *Cathay Capital* case, was that “*it is likely (but not certain) that the Defendant will retain a copy of its file if the Company engages a new registered office service provider. Further the Defendant is unlikely to destroy documents at the request of the Company.*” Both of those seem to me to be factors that are likely to apply in this case, given that ICS is a CIMA-regulated entity and Registered Office service provider operating within the Cayman Islands. Doyle J referred to this as point D11(3), based on its location within the skeleton argument.

20. Justice Doyle goes on to say in his judgment in *Cathay Capital* at [33], and I consider the following to be relevant to my determination of the relief sought in this case:

*“33. Even before reaching paragraphs D10 and D11 of the skeleton argument, I had point D11(3) firmly in mind. The defendant is described as the registered office service provider of the Company. It should have no axe to grind and it would be very foolish to destroy or release documents without keeping copies. This initial thought is reinforced by the knowledge provided to the court at the hearing this morning that the Defendant is a regulated entity in this jurisdiction.”*

21. I skip over the next paragraph which deals with Doyle J's consideration of whether it is appropriate to deal with a *Norwich Pharmacal* application on an *ex parte* basis. Mr Vickers sensibly does not invite me to do so, and the Plaintiffs' intention is that that application will proceed on an *inter partes* basis at a later hearing at which ICS will have a full opportunity to present its position.

22. Justice Doyle goes on, however, at [35] to say this,

*“35. I am satisfied, however, that it is appropriate to grant on an ex parte / without notice basis, an order that the Defendant must take steps to preserve the documents in relation to the Company set out in schedule A of the draft Order insofar as the same are within its possession, power, or control (and with the amendments to the draft Order and Schedule specified during my exchanges with counsel earlier this morning) pending the determination of the application for the disclosure order which should be heard at a with notice hearing.*

36. *In the particular circumstances of this case, I am persuaded that in order to secure the documents and to counteract any pressure from others in respect of the removal or destruction of the documents, I should make an order to ensure that they are preserved, at least until the*

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*application for the disclosure Order can be heard on notice and determined. This will reinforce what the Defendant should already be doing, namely, preserving important company records and documentation. It should also allay any fears that others may attempt to remove the documents outside the jurisdiction of this court.”*

23. Now, I pause there again to consider this aspect of Doyle J's decision in *Cathay Capital*. Having read through the judgment, it is unclear to me what were the “*particular circumstances of the case*” and the evidence that it was likely that pressure might be brought to bear on the service provider that would lead them to not to comply with their obligations to preserve important corporate documents, which Doyle J had in mind. Mr Vickers was unable to direct my attention to anything in the judgment to indicate this.

24. The closest that it comes, as far as I can see in the judgment, is a short passage from the evidence that was quoted at [29] of Doyle J's judgment, where he says:

*“29. There is reference to Mr Wolensky's explanation of the Plaintiff's concern at paragraph 59(h) of Wolensky I ... as follows:*

*‘If the application is made inter-partes in the absence of a gagging order, there is a real risk that the Defendant, as the registered office provider of the Company would alert the Company to the application and the relief sought. As the directors and/or parties in control of the Company include the wrongdoers, Mr Ren and Ms Sun ..., it is very likely that they will take steps to seek to frustrate the relief sought, by changing the registered office provider or otherwise, or to try to move Norwich Pharmacal documents outside the jurisdiction of the court.’”*

Justice Doyle does not recite any supporting evidence for what seems to me, really, to be little more than a bald assertion of the existence of a risk.

25. In the case before me, I have looked hard to see where there is a factual basis for the existence of a risk of removal or destruction of documents in circumstances where the Defendant is a Registered Office service provider within the Cayman Islands, regulated by CIMA, and I am struggling to see in the material before me that there is a real risk, as opposed to a bare assertion of the existence of such a risk. The evidence in this case seems to me to provide a flimsy basis on which to make an order against the Defendant on an *ex parte* basis that they should ensure that documents are preserved. There is really no material before me to indicate that ICS would comply with any instructions by Mr Zhou to destroy corporate records, given ICS's regulatory obligations. It seems to me it would be an extremely surprising outcome if ICS were to do so simply because a client gave that instruction, and

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particularly in circumstances where ICS is, or will be aware of an imminent Norwich Pharmacal application to be heard on an *inter partes* basis with a view to ordering provision of copies of such documents. Further, it seems to me that the risk of Mr Zhou and Strategic Global giving an instruction to ICS to transfer the Registered Office to another entity, and ICS doing so without keeping a copy of its file is equally pretty unlikely.

26. For those reasons I am not persuaded on the evidence that is before me that this is a case where a document preservation order is necessary in order to protect evidence because of a *real* risk, rather than a fanciful risk, that those documents might be lost to the Plaintiffs unless such an order is made.
27. In terms of a gagging and/or sealing order, it seems to be that the justification for making such orders is even weaker. I note that in Cathay Capital Justice Doyle refused gagging and sealing orders on the basis that he had made a document preservation order, and for that reason concluded those orders were not necessary, appropriate or proportionate. He commented that gagging and sealing orders should be *exceptional*.
28. I agree and accept that gagging and sealing orders should be *exceptional*. It has not been made out to my satisfaction that a gagging or sealing order is necessary in the interim before the Norwich Pharmacal application is determined. I am not persuaded that there is a real risk that Mr Zhou and Strategic Global will give instructions to ICS to destroy the documents which ICS should be preserving come what may, or to transfer the registered office without keeping a copy of its files, and that ICS will then act upon those instructions. It seems to me that, given its regulatory obligations and its knowledge that there are existing proceedings for a Norwich Pharmacal order, it is highly unlikely that ICS would comply with any such instructions from Mr Zhou and Strategic Global if they were given.
29. In addition, it seems to me that it is not necessary for me to make a gagging or sealing order in relation to the Norwich Pharmacal application that is going to be heard. I bear in mind that Mr Cong has already commenced proceedings in Hong Kong against both Strategic Global and Mr Zhou and Mr Vickers has told me that those proceedings have already been served upon Mr Zhou (but not yet served on Global Strategic), and so really it seems to me that there is no substantial purpose to be

served by making either a sealing order or a gagging order in relation to the Norwich Pharmacal application.

30. For the reasons that I have set out, I do not accede to the application.

**Dated 11 April 2025**



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**THE HONOURABLE JUSTICE JALIL ASIF KC  
JUDGE OF THE GRAND COURT**