



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

CAUSE NO. FSD 325 of 2024 (DDJ)

IN THE MATTER OF A NORWICH PHARMACAL APPLICATION

**AND IN THE MATTER OF CERTAIN PROCEEDINGS IN THE SUPREME COURT OF
THE STATE OF NEW YORK, COUNTY OF NEW YORK (FORTRESS CREDIT CORP. -
v- CHARLES S. COHEN)**

B E T W E E N :

**FORTRESS CREDIT CORP.
(a Delaware company)**

Plaintiff

- and -

**(1) LANTANA CORPORATE SERVICES LIMITED
(2) AMRL (CAYMAN) LIMITED
(3) PETER A. DE VERE**

Respondents

Before: The Hon. Justice David Doyle

Appearances: Andrew Lomas and Sebastian Gollins of Kobre & Kim (Cayman) for the
Plaintiff
Kai McGrielle of KSG for the Respondents

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Heard: 31 October 2024

**Ex Tempore Judgment
Delivered:** 31 October 2024

**Draft Transcript of
Ex Tempore Judgment
circulated:** 5 December 2024

Transcript approved: 10 December 2024

Determination of application for a Norwich Pharmacal Order

JUDGMENT

Introduction

1. By what was described as *ex parte* originating summons dated 25 October 2024 (and brought to my attention on 29 October 2024) the Plaintiff seeks a *Norwich Pharmacal* Order against the Respondents and an order that pages 483 to 509 of JMK-1 be sealed.
2. To cut a long story short, the Plaintiff on 30 October 2024 obtained, before the Supreme Court of the State of New York, summary judgment on a guarantee given by Charles S Cohen (“Mr Cohen”) to it to secure obligations under a loan that is now in default. The guarantee being effectively capped at US\$187.25 million.
3. Entry of the summary judgment has been deferred pending an auction of the assets of Cohen Reality Enterprise LLC on 8 November 2024. The Plaintiff thinks that there is a substantial likelihood that the auction will not raise sufficient funds to satisfy the outstanding debt.
4. It is stated that shortly after 3 October 2024 the Plaintiff discovered that Mr Cohen was taking steps to transfer assets out of his direct ownership. One category of transfers has a Cayman nexus, namely certain sea vessels, including a US\$65 million Cayman-flagged yacht named M/Y Seasense, which the Plaintiff says have been transferred between various Cayman entities that are

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(or were) managed and controlled by the Respondents, each of which is stated to be resident in Cayman. The Plaintiff's case is that the First Respondent was the registered agent of dissolved entities and is the registered agent of each of their successors. The First Respondent is stated to be a subsidiary of the Second Respondent which is stated to be a law firm, and the Third Respondent is stated to be a Cayman attorney.

5. The Plaintiff is seeking to understand the current beneficial ownership of the sea vessels and the surrounding circumstances of the liquidations, formation of new entities and transfers of ownership.
6. The order seeks the provision within 7 days of:
 - (1) the register of members;
 - (2) the register of directors;
 - (3) records of ultimate beneficial ownership and affidavit within 3 days thereafter confirming compliance and giving details of the type and value of assets.
7. As I understand the Plaintiff's case they do not seek to override legal professional privilege and have limited the information and documents they seek.
8. Although the Plaintiffs filed an *ex parte* application they did give short notice to the Respondents and Mr Cohen on the evening of Friday 25 October 2024.
9. KSG responded on 28 October 2024 indicating they were acting for all three Respondents and were authorised to accept service. KSG finished their one page letter with the words:

“... please consider whether your client would be receptive to agree to a short extension to the proposed 7-day period to respond to the Order once it is made.”
10. This afternoon Mr Kai McGriele has helpfully appeared for the Respondents at short notice.
11. The Respondents adopt a neutral position. They do not consent to an order but they do not oppose an order being made, although they argue for time until 14 November 2024 in respect of compliance

with 1.1 of the draft order and to 21 November 2024 in respect of compliance with paragraph 1.2 of the draft order.

12. Having heard counsel on the timing of compliance with the order I am content, balancing various interests, to specify by 3pm on those dates in the order. So 1.1 will be before 3pm on 14 November 2024 and 1.2 will be before 3pm on 21 November 2024.
13. Mr Andrew Lomas, who appears on behalf of the Plaintiff, alongside Mr Sebastian Gollins, made the point, in effect, that if compliance as regards the companies listed at paragraphs 5, 6, 7 and 8 of Schedule B to the order could be provided before the auction date that would be most helpful. The Respondents of course will need time to gather together the information and documentation to ensure strict compliance with the order, but if the Respondents can provide that information requested in connection with those companies listed at paragraphs 5, 6, 7 and 8 of Schedule B earlier than 14 November and if possible prior to the auction date then so be it, but the obligation under the order will be before 3pm on 14 November 2024. I am sure however that the Respondents will take account of the exchanges that have taken place at court today and the comments I have just made.

The law

14. I turn now to the relevant law in connection with *Norwich Pharmacal* orders.
15. The Plaintiff's skeleton argument dated 29 October 2024 refers to *Norwich Pharmacal* [1974] AC 133 and the judgment of Ramsay-Hale J (as she then was) in *Hangzhou* (FSD unreported judgment delivered on the papers 7 June 2022). At paragraphs 20 to 24 the present Chief Justice helpfully outlined the relevant law.
16. The Plaintiff also refers to the Privy Council's judgment in *Stanford Asset Holdings Limited* [2023] UKPC 35 delivered on 10 October 2023 and a fourfold test, namely:
 - (1) Has the applicant demonstrated a good arguable case that a form of legally recognised wrong has been committed against it by a person?
 - (2) Is the respondent mixed up in it so as to have facilitated the wrongdoing?

- (3) Is the respondent able, or likely to be able, to provide the information or documentation necessary to enable the ultimate wrongdoer to be pursued?
- (4) Is requiring disclosure from the respondent an appropriate and proportionate response in all the circumstances of the case, bearing in mind the exceptional but flexible nature of the jurisdiction?
17. In effect at paragraph 36 Sir Nicholas Underhill set out and adopted paragraph 35 of Saini J's judgment in *Collier v Bennett* [2020] EWHC 1884 (QB).
18. Kawaley J in *Northeast Securities Ltd v Tricor Services* (FSD unreported judgment delivered 3 April 2023) at paragraph 4 referred to *Essar Global* (CICA 3 May 2021) described as "The leading case of the Cayman Islands Court of Appeal" on the *Norwich Pharmacal* jurisdiction and in particular paragraphs 15 and 16. Those judgments must be read in light of *Stanford*.
19. In *Cathay Capital Holdings* (FSD unreported judgment 24 August 2021) I considered the position where a court is asked to proceed on an *ex parte* basis to grant *Norwich Pharmacal* orders against regulated corporate service providers.
20. Mr Lomas also helpfully brought my attention this afternoon *Filatona Trading Limited v Quinn Emanuel Urquhart & Sullivan UK LLP* [2024] EWHC 2573 (Comm), relatively fresh off the English judicial press on 14 October 2024. I note at paragraph 3 the observation there from another case that there are few reported cases in which a *Norwich Pharmacal* order has been sought against a law firm.
21. In my exchanges with counsel this afternoon I sought to deal with any concerns in connection with legal professional privilege.
22. It is in my experience rare to see *Norwich Pharmacal* applications made against law firms or attorneys and in view of concerns of legal professional privilege it is right that the court adopts a cautious approach.

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23. Having adopted that cautious approach, I am, however, satisfied that the conditions that need to be satisfied before a *Norwich Pharmacal* order is made have in fact been satisfied in the particular circumstances of this case and I am content to make an order substantially in terms of the draft order which was handed up to the court during exchanges today. I am sure counsel have a note of the amendments that I suggested. 1.1 will be before 3pm on 14 November 2024, 1.2 will be before 3pm on 21 November 2024. There will also be an express provision in respect of legal professional privilege to the effect that nothing in the order shall require the Second and/or Third Respondents to produce documentation or information which is covered by legal professional privilege and in respect of the affidavit if the documentation and information is covered by professional privilege the Third Respondent can state that the position is so covered. Nothing in these orders is intended to override the position of legal professional privilege.

The sealing application

24. I now turn to the sealing application.
25. I could find no reference in the skeleton argument to the relevant legal principles or the reasons for the sealing request. I think this is because the Plaintiff, in accordance with a Practice Direction, felt that the matter could proceed by way of letter and administratively.
26. The Summons however requested two forms of relief: firstly, the *Norwich Pharmacal* Disclosure Order and, secondly, the Sealing Order, so I have dealt with the application for the Sealing Order in court this afternoon.
27. The affidavit in support of the Summons did not make reference to any evidence in support of the application for the Sealing Order.
28. I have, however, noted the contents of the letter dated 25 October 2024 from Kobre & Kim and paragraphs 11-15 under the heading “(ii) Confidential Information – Sealing.” I note the reference to Order 63 rule 3(4) of the Grand Court Rules and Practice Direction 1 of 2015 and *Sasken*

Communication v Spreadtrum 2016 (1) CILR 1 at 17. I do not think they were in the authorities bundle but I have read those authorities separately.

29. It is stated that in May 2024 Mr Cohen submitted financial information (the “Confidential Exhibit”) which has been sealed in proceedings in New York. I see that stated at paragraph 12. I could not find the order that was made in New York but I am told that the Confidential Exhibit has already been sealed in those New York proceedings and I take that at face value, and this is on the basis that the information was personal and sensitive information. Even leaving aside any order in the New York Proceedings it is clear from the Confidential Exhibit that the information was provided on a confidential basis. The covering letter of 3 May 2024 to Fortress from a certified public accountant who had been directed to provide certain information by Mr Cohen says that “the information contained herein is highly confidential. Mr Cohen has specifically requested that this statement not be discussed with anyone beyond Fortress Investment Group without his express permission.”
30. The request for the sealing of pages 483 to 509 of JMK-1 is on the basis that it is necessary in the interests of justice and is no broader than is necessary to protect Mr Cohen’s privacy interests.
31. I have considered those pages. I have considered the stipulation of confidentiality and it appears that the Plaintiffs and Mr Cohen agree that they remain confidential.
32. I am grateful to Mr Gollins for his assistance on the sealing order point. Mr Gollins on his feet this afternoon has also quite properly brought to my attention the need to seal Exhibit KJ-1, an affidavit sworn on 28 October 2024. That needs to be sealed for similar reasons. It is a one paged exhibit. It is a financial compliance certificate.
33. The Plaintiff has taken a proportionate approach to sealing. The Plaintiff does not seek to prevent the Respondents from access to the relevant pages, only third parties. It does not seek the complete sealing of the court file or even the entirety of JMK-1.
34. As Practice Direction 1 of 2015 makes clear the proportion of the court file to be sealed should be no broader than is necessary to protect the privacy interest in question. To that extent the Plaintiff’s application is well-focused and refined, unlike some others I have seen over the past few years.

35. I am, however, content to grant the Sealing Order in this case substantially in terms of the draft helpfully provided in advance of today's hearing, such draft to include reference in recitals to the appearances and also reference to, in addition to pages 483 to 509 of Exhibit JMK-1, also to Exhibit KJ-1, correction of minor typographical error in 1(b), that word should be 'restrained'. So I grant the Sealing Order in those terms.
36. Practice Direction 1 of 2015 refers to "a statement of the duration for which the order is required". In this case it will be until further order of the court.
37. So that is my judgment on the applications presently before the court.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT