**OTKRITIE SECURITIES LTD v BARCLAYS BANK (SEYCHELLES) LTD**

**(2012) SLR 67**

J Renaud for the applicant

P Pardiwalla SC for the respondent

**Ruling delivered on 30 March 2012 by**

**EGONDA-NTENDE CJ:**

This is an application for an order of discovery or more technically a *Norwich Pharmacal* order compelling the respondent to disclose certain information.  It must be set out at the outset that the applicant alleges no wrongdoing on the part of the respondent but contends that the respondent has become a conduit for the fraudulent holding and transfers of money that was fraudulently obtained from the applicants by a group of individuals.  The application is brought by notice of motion and is supported by an affidavit sworn by Mr Neil Patrick Dooley, a solicitor acting for the applicant.  At the hearing of this application which on the orders of court proceeded inter partes, Mr Pesi Pardiwalla informed court at the outset that the respondent was willing to abide by the decision of this court and would not oppose or support the application.  Mr John Renaud acting for the applicant referred this Court to the case of *Norwich Pharmacal v Commissioner of Customs and Excise* [1974] AC 133 which he stated contains the principle which supports the grant of the orders he is seeking.  He referred to sections 5, 6 and 17 as the law upon which this application is made.  Basically that where the law of Seychelles is silent the law applicable by the Supreme Court of England or the practice and pProcedure of the Supreme Court of England shall apply.

The facts that give rise to this application have been set out in the affidavit of Mr Neil Patrick Dooley.  The applicant is a financial services company incorporated in England and Wales providing execution services to hedge funds, asset managers, and broker dealers.  The applicant at the relevant time employed Mr Georgy Urumov, Mr Ruslan Pinaev, Mr Sergey Kondratyuk, Mr Yefgeni Jemai, and Mr Alessandro Gherzi.  It is contended that the said persons who were employees of the applicant in breach of their fiduciary duties caused the applicant to acquire Argentinean Warrants for the price of $213 million when they are only worth $53 million, causing a loss of $160 million.  This fraud involved the manipulation of the applicant’s trading systems by changing the exchange rates of the Argentinean Peso to the United States Dollar exchange rate.    Instead of the applicable rate of Peso 4 to US$1 the rate was changed to Peso 1 to US$1, causing the first applicant to pay four times the market value of the Argentinean Warrants.  In an effort to conceal this fraud, senior management of the applicants were told that the Argentinean Warrants were to be resold to Threadneedle Asset Management at a significant profit.

An employee of Threadneedle by the name of Mr Gherzi facilitated this fraud.  Mr Gherzi was close to Mr Vladimir Gersamia, an employee of Threadneedle who was subsequently sacked in connection with this fraud.  It is stated that Mr Gherzi disclosed to the applicant that he had received $2.4 million from Mr Gersamia in relation to the Argentinean Warrants fraud but declined to state the whereabouts of the money.  Mr Gersamia was dismissed by Threadneedle.  It is believed by the applicant that part of the proceeds following from the fraudulent activities of the aforesaid persons found its way in the different accounts of the respondent.  In particular, information disclosed by one Mr Dolidze indicated that a sum of $2.3 million out of these proceeds had been paid to an account at the respondent in the name of Mr Gersamia Senior.

In tracing the various entities that received part of this money and were partly used as conduit there is Airdale International Limited. An Airdale account has been discovered to show a receipt of $2.5 million from a company called Bexerton Limited from an account at the Barclays Bank of Seychelles Ltd.  The address of Bexerton which is given as Paliashvilli Street 32, Flat 27, Tbilisi, Georgia is the same address Mr Gersamia had given for himself.  This account of Airdale in the Republic of Bahamas has been frozen by an order of Mr Justice Milton Evans.

Mr Patrick Dooley concludes his affidavit and I quote paragraphs 36, 37 and 38 -

1. It is clear that the accounts of members of the Gersamia family have been used to launder the proceeds of fraud as described above.  At the very least the account of Mr Teimuraz Gersamia has received US$2.75 million and he has paid a kickback to Mr Gherzi of US$2.5 million.  All of these transactions involved accounts held with the respondent.
2. Although at present the applicant is unable to show that any monies misappropriated by each of Mr Urumov, Mr Pinaev and Mr Kondratyuk passed through the accounts of the respondent, it is possible that they have used the respondent as a conduit to launder proceeds in much the same way, and as a result the applicant also requests disclosure of any accounts in the name of, or operated by, each of Mr Umurov, Mr Pinaev, Mr Kondratyuk and Mr Jemai.
3. In the circumstance the applicant now seeks an order that the respondent disclose to the applicant the documents specify in the draft order attached.

Unfortunately I have not been able to see the draft order referred to.

There has been one case prior to the one before me in which the Supreme Court has had occasion to consider whether an application such as this one before me can be granted by a court in Seychelles.  This is *Ex parte: Danone Asia Pte Limited & Ors v Offshore Incorporations (Seychelles) Ltd* Civil Side No 310 of 2008 before Perera CJ.  The Supreme Court came to the conclusion that it had the jurisdiction to issue an order to respondents who may not be parties to an action and who are not involved in the alleged wrongdoing but who have information that is relevant to establish the identity of the wrongdoers against the applicant, relying on sections 5 and 17 of the Courts Act.

I am satisfied that this Court has jurisdiction under sections 5 and 6 of the Courts Act, which provide for jurisdiction in civil matters of the Supreme Court and the equitable jurisdiction of the Court to make orders as the kind sought in the action before me.  What is important is that certain minimum conditions are fulfilled.  It is clear that a remedy of this nature is an exceptional remedy and for instance it will not be available in respect of an innocent bystander or a person who would qualify only as a witness in a matter.  There must be a nexus established between the information sought to be discovered and the alleged wrongdoing that has inflicted loss or damage to the applicant.

The application must not be a mere fishing expedition.  There is no question as was observed by Mr Dooley in his affidavit in paragraph 36 that the proceeds of the fraud in question have been partly laundered through the accounts of members of the Gersamia family and those transactions involved accounts held with the respondent.  I would have no hesitation in issuing the orders in relation to the accounts held by the Gersamia family and payments made from the same.

More particularly I order the respondent to produce any and all documents relating to –

1. establishing the identity of the beneficial owners of Bexerton Limited;
2. establish details in relation to the transfer made on 17 May 2011 in the amount of US$2.5 million; and
3. establish details of the accounts held in the name of Mr Teimuraz Gersamia and transfers on –
4. 6 April 2011 in the amount of US$2.3 million from Belux (Hong Kong) Company Limited;
5. 26 April 2011 in the amount of US$250,000 from the account of Templewood Capital Limited; and
6. 1 June 2011 in the amount of US$200,000 from the account of Templewood Capital Limited.
7. details of sums and balances held by the respondent in the names of Bexerton Ltd, Vladimir Gersamia, Teimuraz Gersamia including any accounts where the aforementioned are beneficial owners of any accounts or are signatories.

The respondent shall not inform the foregoing entities or any persons associated with them of this application or this order.

As noted by Mr Dooley, no connection has been shown that any monies misappropriated by Mr Urumov, Mr Pinaev, and Mr Kondratyuk or any other person mentioned in the application passed through the accounts of the respondent but he alleges that there is a possibility that this may have happened and therefore requested disclosures in respect of any accounts that may be held in those names.  I see no basis for extending any orders to those persons who have not been shown to have any links with the respondent.

This application is allowed in part and costs shall be borne by the applicant.