

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MC 34 /2018

[2018] SCSC 517

**MR CHENG SHENG KUEI
(AKA ARISTO CHEN)**

Petitioner

versus

GENPO CONSULTING (SEYCHELLES) LIMITED

Respondent

Heard: 30th May 2018

Counsel: Mr. Durup for petitioner

Delivered: 30th May 2018

ORDER

M. Twomey, CJ

[1] The Applicant is a director of Full Kang Co. Ltd, a company incorporated under the International Business Companies Act 2016 (hereinafter the Company) with GenPro Consulting (Seychelles) Ltd as its registered agent.

[2] He is a shareholder of the Company together with his brother Chen Pao-Tzu ad his father Chen Ho-Cheng.

[3] He applies ex parte for an order for disclosure, inspection and/or delivery of copies of documents relating to the Company, which information is held by the Respondent.

- [4] The Applicant makes this application for disclosure to enable him to produce information, documentation including forged documents to the Courts in Taiwan in relation to a subsisting fraud case and in order to secure his rights against Chen Pao-Tzu in Taiwan.
- [5] The urgency of the present application is explained by the fact that Chen Pao-Tzu has submitted a purported share holders' resolution to add new directors to the Company so as to control the company.
- [6] The Respondent has also given notice of its resignation as registered agent for the Company with indication that Sterling Trust and Fiduciary Ltd is its next registered agent with the same being registered by the Financial Services Authority Seychelles (FSA), followed subsequently by the reversal of this registration as an erroneous transaction by the FSA.
- [7] The confidentiality of the proceedings are necessary to avoid the tipping off of Chen Pao-Tzu who may conceal, remove or dissipate the assets or otherwise hinder the enforcement and tracing procedure that will inevitably follow.
- [8] The orders ultimately sought by the Applicant in the present matter are for orders for the Respondent to release information and documents relating to the Company, a restraint order on the Respondent from directly or indirectly notifying any other person of the existence of this disclosure order and an order sealing the court file and removing the parties' names from any publicly circulated cause list.
- [9] *Norma Pharmacal* orders are well established in the laws of Seychelles and I do not propose to rehash the same but I do refer to the first application of its kind in Seychelles, namely *Danone Asia Pte Limited and ors v Offshore Incorporations (Seychelles) Ltd* CS 310/2008 (unreported). Such orders are grounded in equity and emanate from the case of *Norwich Pharmacal v Commissioners of Customs and Excise (1974) AC 133*.
- [10] The conditions which must be satisfied before a *Norwich Pharmacal* order may be granted were summarised by Lightman J in *Mitsui & Co Ltd v Nexen Petroleum UK Ltd* [2005] EWHC 625 (Ch), [2005] 3 All ER511 at

[11] "(i) a wrong must have been carried out, or arguably carried out, by an ultimate wrongdoer; (ii) there must be the need for an order to enable action to be brought against the ultimate wrongdoer; and (iii) the person against whom the order is sought must: (a) be mixed up in so as to have facilitated the wrongdoing; and (b) be able or likely to be able to provide the information necessary to enable the ultimate wrongdoer to be sued."

[12] Returning to the circumstances in the present case, I must also be satisfied that the Applicant is not involved in a mere fishing expedition (see *AXA Equity and Law Life Assurance Society Plc and others v National Westminster Bank (PLC)* [1998] SLC1177).

[13] The Applicant in the present matter has made full and frank disclosure of all the facts relating to this case and I am satisfied that the application is not a fishing expedition but justified and necessary for the obtention of information for its use in court proceedings in Taiwan.

[14] Section 378 of International Business Companies Act 2016 permits disclosure to a third party of such information and documents by an order of the Court.

[15] I therefore make the following orders:

[16] IT IS ORDERED that:

1. The Respondent shall within seven days of the date of service of this order disclose all documents or information in the Respondent's knowledge or possession concerning the ownership, members, directors and assets of Full Kang Co. Limited, including but not limited to the following:
 - a) Share register;
 - b) Register of directors;
 - c) Details of the beneficial owners of all shares issued;
 - d) Minutes of any meetings of the shareholders;
 - e) Copies of all written resolutions of the shareholders;

- f) Minutes of any meetings of the directors;
- g) Copies of all written resolutions of the directors;
- h) Copies of any written communications sent to and from the Respondent in respect of or in any way related to the directors of the company.
- i) Copies of all “know your client” or anti-money laundering records kept by the Respondent in connection with the directors.
- J) Any other documentation which relates to the ownership of Full Kang Co. Limited

[17] The Respondent shall verify the disclosure provided pursuant to paragraph 1 of this order within seven days of service of this order by serving on the Applicant’s attorneys an affidavit sworn by an authorised officer of Respondent, exhibiting copies of the documents disclosed.

[18] The Respondent must not inform anyone else of these proceedings or that he is to disclose the documents or information sought until 30 days after the service of the affidavit referred to in paragraph 2 of this order (or by later date agreed in writing with the Applicant).

[19] The Court file in respect of these proceedings shall be sealed and public inspection thereof shall not be permitted until further Order of the Court.

[20] The Registrar is directed to remove reference to the names of the parties to these proceedings from any cause lists which are publically circulated until further order of this Court.

[21] The Respondent’s reasonable costs, including his costs and expenses of complying with this order, be paid by the Applicant.

[22] The Respondents may apply to the court at any time to vary or discharge this order, but if they (or any of them) want to do so, they must first inform the Applicant's attorneys in writing at least 48 hours beforehand.

Signed, dated and delivered at Ile du Port on 30th May 2018.

M. Twomey
Chief Justice