

SUPREME COURT OF SEYCHELLES

Not Reportable
[2019] SCSC 462
MC 34/2019

In the matter between:

BIB LIMITED
(*rep. by Mr Divino Sabino*)

Applicant

and

OCRA (SEYCHELLES) LIMITED

1st Respondent

VASCORY LIMITED

2nd Respondent

Neutral Citation: *Bib Limited v Ocra (Seychelles) ltd. & Or* (MC 34/2019) [2019] SCSC 462
Before: Twomey CJ
Heard:
Delivered: 5 June 2019

ORDER

TWOMEY CJ

1. The Applicant is a company incorporated in Belize on 11 January 2013, the First Respondent is the registered agent of the Second Respondent, an International Business Company incorporated under the International Business Companies Act 2016.

2. On 1 April 2013, the Applicant entered into a share Purchase Agreement with the Second Respondent to purchase 3 million shares of a UK based entity, Vasseti (UK) Plc within 3 years of the date of the Agreement.

3. The Applicant made payments totaling Euro 1 million to the Second Respondent but no shares as per the agreement has been transferred to it. Subsequently the Applicant sought the return of the Euro 1 million. It succeeded by a court action in Malaysia in recovering Euro 100,000 from the Second Respondent's agent, nominee or associate company, Kyowa Kanko Kaihatsu Malaysia Berhad on the instructions of Ranjeet Singh Sidhy and Hirofumi Ouchi.
4. The Applicant has not been successful in recovering the balance of Euro 900,000 and has filed legal proceedings against another associate company of the Second Respondent and the two above-named agents in the Kuala Lumpur High Court. It has prayed for the lifting of the corporate veil of the Second Respondent which has not been forthcoming about its Directors and Members.
5. The Applicant herein 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 First Respondent.
6. The Applicant makes this application for disclosure to enable him to obtain information that will assist it in pursuing its case and to secure his rights against the First Respondent.
7. *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*.
8. 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

"(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."

9. 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).
10. 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 Kuala Lumpur.
11. 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.
12. I therefore make the following orders:

IT IS ORDERED that:

1. The First Respondent shall within three days of the date of service of this order disclose all documents or information in the Respondent's knowledge or possession concerning the ultimate beneficial ownership, members, directors and assets of Vascory 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) Details of any assets owned or held by the Second Respondent.

2. The First 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 the First Respondent, exhibiting copies of the documents disclosed.
3. The First Respondent must not inform anyone else of these proceedings or that he is to disclose the documents or information sought until by later date agreed in writing with the Applicant.
4. 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.

5. The Registrar is directed to remove reference to the names of the Second Respondent to these proceedings from any cause lists which are publicly circulated until further order of this Court.

6. The First Respondent's reasonable costs, including his costs and expenses of complying with this order, be paid by the Applicant.

Signed, dated and delivered at Ile du Port 6 June 2019.

Twomey CJ