

SUPREME COURT OF SEYCHELLES

Not Reportable

[2021] SCSC ... 153
MC 19/2021

In the Ex-Parte matter of:

RICHARD GRAINGER
(rep. by Rene Durup)

Applicant

In the matter between:

RICHARD GRAINGER

Applicant

and

WM BRANDS ONE LIMITED
represented by its Director

1st Respondent

NOBEL CAPITAL GROUP
represented by its Director

2nd Respondent

Neutral Citation: *ExParte Richard Grainger* (MC19/2021) [2021] SCSC (16th April 2021).
Before: E. Carolus J
Summary: Application for Norwich Pharmacal Order.
Heard: 31 March 2021
Delivered: 16 April 2021

ORDER

- (a) The 2nd respondent shall not later than 7 days of the date of this Order disclose the following documents and/or information as well as any other relevant documents and/or information relating to the 1st respondent in its possession or on record, in accordance with paragraph (b) –
- (i) The share register (including names and addresses of shareholders);
 - (ii) Register of directors (including names and addresses of directors);
 - (iii) Register of beneficial owners (including names and addresses of beneficial owners);
 - (iv) Minutes of any meetings of the shareholders;

- (v) Copies of all written resolutions of the shareholders;
 - (vi) Minutes of any meetings of directors;
 - (vii) Copies of all written resolutions of the directors;
 - (viii) Copies of any written communication to and from the 2nd respondent in respect of the company, any of the company's directors and/or shareholders, or any of the company's directors and/or shareholders' representative;
 - (ix) Copies of any documents relating to the 1st respondent pursuant to the 2nd respondent's obligations under the Anti-Money Laundering Act and any other due diligence regulations.
- (b) Disclosure under paragraph (a) shall be effected by serving on the applicant or his attorney in Seychelles an affidavit sworn by an authorised officer of the 2nd respondent, exhibiting copies of the documents disclosed.
- (c) The 2nd respondent shall not inform anyone else of these proceedings or that it is to disclose the documents or information sought until 30 days after the service of the affidavit referred to in paragraph (b) of this order (or such later date as agreed in writing with the applicant).
- (d) The 2nd respondent's reasonable costs, including his costs and expenses of complying with this order, shall be paid by the applicant.
- (e) The 2nd respondent may apply to the court at any time to vary or discharge this order, subject to first informing the applicant's attorney in writing at least 48 hours beforehand.
- (f) The Registrar is directed to ensure that:**
- (i) The court file in respect of these proceedings is sealed and no public inspection thereof permitted, until further order of the court.**
 - (ii) Reference to the names of the parties to these proceedings is removed from any cause lists which are publicly circulated until further order of this court.**

(iii) This Order is served on the 2nd respondent forthwith.

ORDER

CAROLUS J

- [1] This Order arises from an ex parte application for a Norwich Pharmacal Order for the 2nd respondent Nobel Capital Group Limited to disclose records and information in its possession relating to the 1st respondent WM Brands One Limited.
- [2] The applicant, a citizen of the United Kingdom avers in his affidavit in support of the application that he is an investor residing in the United Kingdom, that 1st respondent is an international business company incorporated in Seychelles and that the 2nd respondent is the latter's registered agent.
- [3] The circumstances that gave rise to the present application as averred by the applicant are as follows: Around January 2020 he came across Worldmarkets ("WM"), an online cryptocurrency investment platform, on a YouTube channel called cryptoexposed. The presenter gave reviews on cryptocurrency investments and portrayed himself to be a trusted reviewer who exposed scams in the industry.
- [4] The applicant conducted due diligence on their compliance and blockchain membership. According to WM they operated under the company "WM Brand One Limited" and provided their certificate of compliance under the Financial Market Regulations Regulation Centre.
- [5] Since the applicant's friends had invested with WM and the reviews were sound he started investment on WM's online platform from 26th June 2020. Since then at all material times he has been in surplus on his investment account with WM. He made deposits and withdrawals and according to his statement of account from WM for the period June 2020

to January 2021 he made a net profit of USD71,475.67. As at January 2021 he had a balance of USD 109,271.31 on his account with WM.

- [6] He realised something was wrong when, in early September 2020 he requested withdrawal of USD48,000 but received only USD20,000 whereupon he requested closure of his account. His request was initially ignored and he was subsequently informed that there would be delays due to issues with their payment providers Swiftxchange and OKEX. He later learnt that Swiftxchange did not exist. All his attempts to recover the balance of his funds from WM were to no avail and he received only automated responses acknowledging receipt of his emails and informing him that there were delays in processing payments. When he made a request, through another friend and investor, to WM to make an internal transfer of the funds he wanted to withdraw to their OKEX account, since OKEX was still allowing internal transfers, it did not honour that request. When OKEX resumed external withdrawals in November 2020 payment was still not made.
- [7] Applicant also found out that WM is fraudulently misrepresenting past performance figures on their site by uploading links associated with an external software (FXste) to fake results. WM does not have approval of FXste to place their software on WM's website. FXste confirmed to the applicant that WM was not their client, and further asked them to remove FXste's links and any reference to their software from WM's site which WM refused to do.
- [8] Applicant avers that WM is operating a scam and fraudulent scheme to target investors like him, that to date they have defrauded him of the sum of USD37,795.64 and they completely ignore all correspondence from him. He avers that in view of WM's wrongdoing which is operated by 1st respondent, he requires documents and information in possession of the 2nd respondent to enable him to pursue legal action against the 1st respondent and any accomplices to the scam and fraudulent scheme.
- [9] Applicant therefore seeks a Norwich Pharmacal Order for 2nd respondent to disclose and produce to the applicant or his attorney-at-law in Seychelles, the following documents relating to the 1st respondent in its possession or on record, within seven days of such Order

(x) The share register (including names and addresses of shareholders;

(xi) Register of directors (including names and addresses of directors);

(xii) Register of beneficial owners (including names and addresses of beneficial owners);

(xiii) Minutes of any meetings of the shareholders;

(xiv) Copies of all written resolutions of the shareholders

(xv) Minutes of any meetings of directors;

(xvi) Copies of all written resolutions of the directors;

(xvii) Copies of any written communication to and from the 2nd respondent in respect of the company, any of the company's directors and/or shareholders, or any of the company's directors and/or shareholders' representative;

(xviii) Copies of any documents relating to the 1st respondent pursuant to the 2nd respondent's obligations under the Anti-Money Laundering Act and any other due diligence regulations.

[10] Applicant further prays that the 2nd respondent be ordered not to inform any third party to these proceedings of any Order made pursuant to its application.

[11] Norwich Pharmacal orders are grounded in equity and emanate from the case of Norwich Pharmacal v Commissioners of Customs and Excise (1974) AC 133. 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 as follows:

- (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.*
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- [12] In addition, an application for a Norwich Pharmacal must not be a mere fishing expedition. Vide *AXA Equity and Law Life Assurance Society Plc and others v National Westminster Bank (PLC)* [1998] SLC1177).
- [13] The applicant has made full and frank disclosure of all the facts relating to the present application and has supported his application with all necessary documentary evidence. I am satisfied that all the conditions necessary for the granting of a Norwich Pharmacal order exist in the present case. I am further satisfied that the application is not a mere fishing expedition but justified and necessary for obtaining information to enable the applicant to bring and pursue legal action against the 1st respondent and any accomplices to the scam and fraudulent scheme.
- [14] Section 378 of the International Business Companies Act permits disclosure to a third party of such information and documents by an order of the court.
- [15] Accordingly I make the following orders:
- (a) The 2nd respondent shall, not later than 7 days of the date of this Order, disclose the documents and/or information referred to at paragraph 9 (a), (b), (c), (d), (e), (f), (g), (h) and (i) of this Order, as well as any other relevant documents and/or information in its possession or on record.
 - (b) Disclosure under paragraph (a) shall be effected by serving on the applicant or his attorney in Seychelles an affidavit sworn by an authorised officer of the 2nd respondent, exhibiting copies of the documents disclosed.
 - (c) The 2nd respondent shall not inform anyone else of these proceedings or that it is to disclose the documents or information sought until 30 days after the service of the affidavit referred to in paragraph (b) of this order (or such later date as agreed in writing with the applicant).

(d) The 2nd respondent's reasonable costs, including his costs and expenses of complying with this order, shall be paid by the applicant.

(e) The 2nd respondent may apply to the court at any time to vary or discharge this order, subject to first informing the applicant's attorney in writing at least 48 hours beforehand.

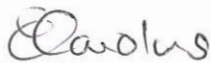
[16] The Registrar is further directed to ensure that:

(a) The court file in respect of these proceedings is sealed and no public inspection thereof permitted, until further order of the court.

(b) Reference to the names of the parties to these proceedings is removed from any cause lists which are publicly circulated until further order of this court.

(c) This Order is served on the 2nd respondent forthwith.

Signed, dated and delivered at Ile du Port on 16th April 2021



E. Carolus J