

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC 306

MC15/2023

In the matter between:

VLADIMIR ZHELEZOV

(rep. by Karine Dick)

APPLICANT

And

AAA INTERNATIONAL SERVICES LTD

(Absent/unrepresented)

RESPONDENT

Neutral Citation: *Vladimir Zhelezov vs. AAA International Services Ltd* [2023] SCSC 306..

MC15/2023

Before: Dodin J

Heard: 21 April 2023

Delivered: 25 April 2023

ORDER

DODIN J.

- [1] This is an application for a Norwich Pharmacal Order to be issued against the Respondent requiring the Respondent to disclose and produce records and information in respect of certain transactions which the Respondent in its course of business as agent of Biasa LTD was likely to have knowledge or record of.

- [2] The Applicant, Vladimir Zhelezov, is an Executive Director of BSK Finance and Consulting LLC, a company registered and located in Russia which is part of the Ambermanor Group. The Applicant is a beneficial owner of the Ambermanor Group. The main activity of the Ambermanor Group is investing in distressed and undervalued assets in the Russian Federation, in particular, commercial real estate. The Ambermanor Group comprises several companies incorporated in Russia, Cyprus and the British Virgin Islands.
- [3] The Respondent is a company registered in Seychelles and was incorporated under the Companies Act 1972 on 8th June 2006. The Respondent is also the registered agent of Biasa Ltd. Biasa Ltd is a Seychelles company that owned Lavrode from 23 July 2019 to 27 April 2020. Lavrode was transferred to Biasa on 23 July 2019, shortly after a loan of Ruble 1.2 billion was provided to Lavrode by Linkind.
- [4] The Applicant makes the present application for disclosure in aid of a civil claim issued by Apirateno Limited, an Ambermanor Group company registered in Cyprus. The claim issued by Apirateno is currently under consideration by the Kuntsevsky District Court in Moscow with case number 02-6933/2021; the details of the claim are set out in paragraph 66. Furthermore, the Applicant makes the present application for disclosure in aid of a contemplated application for disclosure in Cyprus in respect of Lavrode Limited.
- [5] The Applicant's case is that one Mr. Shumilin, being a Managing Director of the Moscow Office, used his position to procure, on 5 July 2019, a sham loan in the amount of Ruble 1.2 billion (equivalent to approximately EUR 16,899,300) from Linkind Limited, a Cyprus company that at the time was part of the Ambermanor Group, to Lavrode, a Cyprus company which is or was at the time beneficially owned by Mr. Shumilin through a nominee shareholder Sokratis Barsegiannidis, a Greek national. On 23 July 2019, shortly after the transfer of Ruble 1.2 billion from Linkind to Lavrode, Lavrode was transferred from Sokratis Barsegiannidis to Biasa. On 27 April 2020 Lavrode was transferred back from Biasa to Sokratis Barsegiannidis. The Applicant believes that both Sokratis Barsegiannidis and Biasa were nominee shareholders of Lavrode for Mr. Shumilin.
- [6] The Applicant's case is that Respondent is innocently mixed up in Mr. Shumilin's wrongdoing by virtue of providing registered agent services to Biasa. The Applicant took

steps against Mr. Shumilin as soon as details of the dissipation of funds from the Ambermanor Group became known following an internal audit at the Ambermanor Group. The internal audit started in July 2021, following which a criminal complaint was filed by the Applicant against Mr. Shumilin in October 2021, and a civil claim was filed by Apirateno against the Respondent in November 2021.

- [7] According to the Applicant, there is risk that Mr. Shumilin may take further steps to conceal his ownership of Lavrode, given that ownership of Lavrode changed several times from a nominee shareholder (Sokratis Barsegiannidis) to Biasa and then back to the same nominee shareholder as described above. Furthermore, the Applicant avers that Mr. Shumilin may take steps to conceal Lavrode's assets, for example, by transferring funds from Lavrode's bank account at ArmBusinessBank or elsewhere in order to frustrate future enforcement against Mr. Shumilin.
- [8] The Applicant avers further that it fears that if Mr. Shumilin were tipped off by the Respondent (or their officers or employees) requesting instructions how to respond to any Order for disclosure, there are strong grounds to believe that he would take whatever steps he could to conceal, remove or dissipate assets or otherwise hinder the enforcement and tracing process that will inevitably follow. It is therefore essential that the existence of these proceedings should remain confidential until such time as the disclosure requested has been obtained.
- [9] The Application is supported by an affidavit of Gleb Lavrinov, a former director of BSK Finance and Consulting LLC.
- [10] Norwich Pharmacal Orders originate from the English case of *Norwich Pharmacal v Commissioners of Customs and Excise (1974) AC 133* which the Court under its equitable jurisdiction can issue. This Court has such jurisdiction under sections 5, 6 and 17 of the Courts Act vesting in this Court all the powers, privileges, authority and jurisdiction capable of being exercised by the High Court of Justice of England.
- [11] Lord Reid stated in the *Norwich Pharmacal* case [supra]:

“...that if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrongdoing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers”.

[12] The House of Lords set the threshold requirements for obtaining a Norwich Pharmacal Order, which are that *“the applicants must have a bona fide claim against the alleged wrongdoers; it may not be issued against a mere witness or disinterested bystander to the alleged misconduct and the person from whom discovery is sought must be the only practical source of information available.”*

[13] In the case of *Alberta Treasury Branches v. Leahy, 2000 ABQB 575* [Can LII] the application of the order was further elaborated as follows:

“[106] The foregoing review demonstrates that:

- a. Norwich-type relief has been granted in varied situations:*
 - (i) where the information sought is necessary to identify wrongdoers;*
 - (ii) to find and preserve evidence that may substantiate or support an action against either known or unknown wrongdoers, or even determine whether an action exists; and*
 - (iii) to trace and preserve assets.*
- b. The court will consider the following factors on an application for Norwich relief:*
 - (i) Whether the applicant has provided evidence sufficient to raise a valid, bona fide or reasonable claim;*
 - (ii) Whether the applicant has established a relationship with the third party from whom the information is sought such that it establishes that the third party is somehow involved in the acts complained of;*
 - (iii) Whether the third party is the only practicable source of the information available;*
 - (iv) Whether the third party can be indemnified for costs to which the third party may be exposed because of the disclosure, some refer to the*

associated expenses of complying with the orders, while others speak of damages; and

(v) Whether the interests of justice favour the obtaining of the disclosure.”

[14] The above were more or less adopted by the Supreme Court of Seychelles in the cases of *Brickhill Capital (NZ) Limited v Vistra (Seychelles) Limited (MA40/2017) [2017] SCSC (27 July 2017)* and *Eastern European Engineering Ltd v Vijay Construction (Pty) Ltd (MA119/2020) [2020] SCSC 573 (10 August 2020)*. See also *Ex-parte Ilhan Bozdeniz MC13./2022* unreported.

[15] In *Collier v Bennett [2020] EWHC 1884 (QB)* the Court set out the hurdles that must be overcome by an applicant if the application for a Norwich Pharmacal Order is to succeed. These are:

“(i) The applicant has to demonstrate a good arguable case that a form of legally recognised wrong has been committed against them by a person;

(ii) The respondent to the application must be mixed up in so as to have facilitated the wrongdoing;

(iii) The respondent to the application must be able, or likely to be able, to provide the information or documents necessary to enable the ultimate wrongdoer to be pursued; and

(iv) Requiring disclosure from the respondent is an appropriate and proportionate response in all the circumstances of the case, bearing in mind the exceptional but flexible nature of the jurisdiction.”

[16] The first three hurdles must be met before the court will consider the (iv) condition. The Court will also not allow the equitable doctrine to be used as a “fishing expedition”, nor will the Court allow the information sought to be used for an improper purpose.

[17] Having considered the application and affidavit in support, I am satisfied that there is sufficient ground placed before this Court to grant the order as prayed for by the Applicant.


[18] I therefore grant the Application by making the following orders:


- i. The Respondent is ordered to disclose to the Applicant all documents or information in its knowledge or possession concerning the ultimate beneficial ownership, members, directors and assets of Biasa Ltd, which shall include 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 to the directors;
 - h) Copies of any written communications sent to and received from the Respondent in respect of or in any way related to Biasa Ltd;
 - i) Copies of any powers of attorney issued by Biasa Ltd to any persons;
 - j) Copies of all “known your client” or anti-money laundering records kept by the Respondent in connection with Biasa Ltd and, in particular, any documents obtained by the Respondent in relation to Biasa Ltd pursuant to the Respondent’s obligations under the Anti-Money Laundering and Countering the Finance of Terrorism Act 2020;
 - k) Any other documentation which relates to the ownership of Biasa Ltd; and
 - l) Details of any assets owned by Biasa Ltd at the time it owned Lavrode from 23rd July 2019 to 27th April, 2020.

- ii. The Respondent is ordered to make the disclosures within 7 working 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.
- iii. The Respondent is ordered not to disclose or 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 ii of this order or by date agreed in writing with the Applicant.
- iv. I order that the Court file in respect of these proceedings be sealed and public inspection thereof shall not be permitted until a further order of the Court.
- v. I further order that the Court Registrar remove all reference to the names of the parties to these proceedings from any cause lists which are publicly circulated until further order of this Court.

[19] All the costs reasonably incurred by the Respondent in complying with the above orders shall be borne by the Applicant.

Signed, dated and delivered at Ile du Port, Victoria on 25th day of April 2023


C G Dodin
Judge

The seal of the Seychelles Supreme Court is circular. It features a central emblem with a tree and a sun, surrounded by the text "SEAL OF THE SEYCHELLES SUPREME COURT" and a small star at the bottom.