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Supreme Court confirms principles for issuing gagging orders with Norwich Pharmacal orders



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Litigation, Cyprus

In its recent judicial review decision on an application by Page Directors Ltd and Pageserve Ltd, the Supreme Court confirmed that, based on the wide powers that are conferred on Cyprus courts by Article 32 of the Administration of Justice Law, judges have discretionary power to issue disclosure orders (otherwise known as Norwich Pharmacal orders), backed up by gagging orders. **(1)**

A Norwich Pharmacal order may be made against a third party which has been innocently involved in wrongdoing, forcing the disclosure of documents or information in order to identify the wrongdoers or to help the applicant to bring legal proceedings against the wrongdoers.

A gagging order prevents the wrongdoers being made aware of the situation.

In *Upmann v Elkan*, **(2)** which was adopted by the Cyprus courts, it was acknowledged that there is a duty on a person who is involved in the wrongdoing of others to assist by disclosing information and the identity of the wrongdoers.

In the case under review, the applicants were corporate service providers against which interim orders had been obtained. They applied to the Supreme Court to rescind the orders. The Supreme Court refused the application, noting that:

"It is common practice in applications for Norwich Pharmacal type orders that such orders are usually supported by gagging orders that are intended to limit the risk of removal or destruction of evidence. The court must in every occasion be satisfied that the risk of dissipation of the information is of such scale that there is truly a need to issue an ex-parte gagging order."

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Endnotes

(1) Application 118/15, October 12 2015.

(2) (1871) LR 12 Eq 140.

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