

ROYAL COURT

67.

10th May, 1990

Before: The Deputy Bailiff, and
Jurats Vint and Le Ruez

<u>Between:</u>	IBL Limited	<u>First Plaintiff</u>
<u>And:</u>	Meridian Group (UK) Limited	<u>Second Plaintiff</u>
<u>And:</u>	Planet Financial & Legal Services Limited	<u>First Defendant</u>
<u>And:</u>	Brian Harrison Webbe	<u>Second Defendant</u>

Application by defendants to adjourn their
application to lift an injunction and to
strike out action.

Advocate A.R. Binnington for the plaintiffs,
Advocate G.R. Boxall for the defendants.

JUDGMENT

DEPUTY BAILIFF: The Court is going to grant only a very short
adjournment for the further inter partes hearing of the substantive
issues in this case. The Court is concerned here essentially with the
effect and development of the principle contained in Norwich Pharmacal

Company -v- Commissioners of Customs and Excise (1973) 2 All ER 943. The application is certainly not unique since the Norwich Pharmacal case has been applied in Jersey on a number of occasions. This Court is not concerned with policy in the political sense, but is concerned with the interests of justice.

The defendants have had since the 18th April, 1990, to consider the principles of law involved and should have been ready to argue the substantive matters today. Indeed, the defendants were only saved from being in contempt by my willingness to abridge time so that the matter could come before the Court today.

The Court agrees that it is desirable that it should have before it submissions on the development in England of the Norwich Pharmacal principle. But that should not be a difficult or time consuming matter as it requires only a consideration of those judgments that have applied, explained, restricted or extended in England and Jersey the application of that principle since 1973. The Court is not bound to develop the law of Jersey in parallel with that of England. It may well be, although we do not so decide, that the Royal Court should be more adventurous in ensuring that in the interests of justice there should be greater disclosure in Jersey. And we shall be prepared to hear the arguments on the matter of confidentiality if it is the submission of the defendants that an order of this Court is insufficient protection.

The Court doubts whether the submission of the affidavits with the mass of exhibits was really essential to the attention and advice from English counsel on the legal principles involved.

The Court has an inherent jurisdiction to adjourn any matter but it must exercise its discretion judicially. The court regrets that the parties found it necessary to resort to hotly contested correspondence where it should have been possible to agree a date for the legal arguments to be heard with the order for discovery extended meanwhile.

The Court rejects the proposition that the present application is akin to an Anton Piller order. An Anton Piller order is between plaintiff and defendant and gives right to surprise access to premises and seizure and removal of papers. Nothing of the sort has been granted here. The issue of confidentiality does not in our view carry the importance which Mr. Boxall would have the Court believe. If the defendants act upon an order of this Court they are protected. The Court regards the interests of justice as paramount to the matter of confidentiality.

The plaintiffs' Order of Justice is technically defective in undertaking (2) on the last page. The Order is sought for use of documents and information for the purposes of the consolidated English actions or for new proceedings to be commenced. This should be and, or at least and/or. The Court approaches the matter in that way.

The cases of G.H. Bass & Company -v- Royal Bank of Scotland (10th December, 1987) Jersey Unreported; and Arab Monetary Fund -v- Chase Bank (20th April, 1989) Jersey Unreported; and the case of Bankers Trust Company -v- Shapira & Ors. 1980 3 All ER 353 indicate that the principle of the Norwich Pharmacal case is capable of being extended to ensure that justice be done.

Therefore we adjourn the further hearing of this case on the principles of substantive law to be applied until Tuesday next, the 15th May, 1990, at 10.00 a.m. We shall be able to sit throughout that day and if necessary on the afternoon of Wednesday the 16th May, 1990.

For the guidance of counsel and without limiting them in any way we should expect to be addressed further by Mr. Boxall in particular on the development of the Norwich Pharmacal case principle and why we should not, in the interests of justice, further extend the principle if it is necessary, to enable the plaintiffs to obtain the information they now seek, even if we go beyond the decisions of the English Courts in the process; and by Mr. Binnington in particular on the question which concerns us raised by Mr. Boxall that the action amounts to a fishing expedition and no more.

In the meantime we note the undertaking contained in Mr. Webbe's affidavit that he is able to and will abide by the restraining Order set out in paragraph (c) of the Prayer of the Order of Justice. We also order that the C.E.S. material already obtained shall not be used for any purpose until after the completion of the inter partes hearing and the delivery of our decision upon it.

Authorities

Norwich Pharmacal Company -v- Commissioners of Customs and Excise
(1973) 2 All ER 943.

G.H. Bass and Company -v- Royal Bank of Scotland (10th December, 1987)
Jersey Unreported.

Arab Monetary Fund -v- Chase Bank (20th April, 1989) Jersey
Unreported.

Bankers Trust Company -v- Shapira (1980) 3 All ER 353.