IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO FSD 7 OF 2013 ASCJ

IN THE MATTER OF CONFIDENTIAL RELATIONSHIPS (PRESERVATIONS) LAW ("CR(P)L") (2009) REVISION

AND

IN THE MATTER OF A NORWICH PHARMACAL APPLICATION

IN CHAMBERS
THE 7TH JUNE 2013, 8TH JULY 2013 AND 7th FEBRUARY 2017
BEFORE THE HON. CHIEF JUSTICE

Appearances: Mr. Jeremy Walton of Appleby for the Applicant NML (with him Ms. Anna Gilbert of Appleby)

Mr. Lawrence Cohen QC appearing on instructions of Appleby for further arguments on 7th June 2013.

JUDGMENT

1. This is NML's application that the judgment delivered ex parte in this matter on the 15th March 2013 be sealed permanently.

2. In its original application of 6th March 2013, NML sought an order that the publication of the ruling, order or judgment to be then given, be restricted. An order was made that publication of the judgment, which followed on 15th March 2013, be embargoed for six months and that certain redactions be made to anonymize the judgment to protect the confidentiality of the private information that NML wished to adduce in evidence in subsequent civil proceedings before

this Court. That information relates to the identity of the owners of an account held with a bank carrying on business in the Cayman Islands.

3. The reasons for that earlier order of embargo and redaction were two-fold.

4. Firstly, to protect the confidentiality of the account holders whose confidential information about their bank account was the subject matter of NML's application, the outcome of which as explained in the judgment was that the confidentiality of the information should be protected.

5. Secondly, so as not to unduly or unnecessarily impair NML's efforts in its subsequent proceedings. These would be aimed at enforcing NML's foreign judgment in this jurisdiction, to the extent there might be assets available here against which the judgment could be enforced and which efforts might be thwarted by publication of the embargoed judgment. A six month embargo was felt sufficient to allow for such efforts. Otherwise, I was satisfied that the judgment should be published as judgments usually are, to inform the public interest in the due administration of justice through the Courts.

6. Now, further information has been brought to my attention by way of the submissions of Mr. Cohen QC and I have been asked to reflect upon the expression of certain findings made in the embargoed judgment which are critical of NML while NML has had no opportunity to respond to those criticisms. The embargoed judgment having been given upon an ex parte application, Mr. Cohen believes it is more appropriate to return to the Court for elucidation or expansion of the order restricting its publication, than to seek to appeal against the critical findings in the judgment.

7. He expressed the view that because ex parte judgments do not benefit from the fuller analysis of the facts and the law afforded by inter partes hearing, the usual practice is that such judgments are not published. He did not however, go so far as to say that ex parte judgments will never be published even when they deal with important points of principle.

8. But the thrust of Mr. Cohen's argument was less about the criticism of NML than it was about the inefficacy of the limited embargo on publication as a means of protecting the confidential information in question. He submitted that the further information now available suggests that the confidential information about the bank account and ultimately about the identity of the account holders, could not be protected once the judgment is published.

9. The further information given by Mr. Cohen in his submissions and more specifically expanded upon at my direction in an affidavit later filed by Anna Gilbert, is to the effect that as the principal account holder mentioned in the judgment is a member of a very limited class of persons within the public service of Argentina, publication of the judgment could lead to the disclosure of the identity of the account holder and so to the disclosure of the very confidential information that the judgment is meant to protect.

10. Having considered the further information provided by Ms. Gilbert's affidavit, it appears that the class of persons, although limited, is not as confined as Mr. Cohen suggested. I am satisfied that the judgment can be further anonymized to eliminate any real risk of disclosure of the identity of the account holders even while allowing for its eventual publication in the public interest.

11. As to the criticism of NML, I accept that they should be ameliorated. This is because NML has not been called upon to address the concerns which arise about its procurement of the confidential information in question. That was done by way of its agents described as "investigators", who appear to have come into possession of the information by unauthorised means.

12. NML disavows any involvement with their means of procurement and there is simply no known basis upon which to suggest otherwise.

13. For these reasons the embargoed judgment will be redacted of the criticisms, and further redacted to vouch-safe the confidentiality of the information. Its publication will be further embargoed for six more months for a total period of 12 months commencing the date of this ruling. Beyond that time, I see no justification for prohibiting the publication of the judgment which deals, notwithstanding its ex parte nature, with important points of principle in which there is a distinct public interest.

14. This ruling will itself be embargoed from publication for a coterminus period of 12 months.

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Hon. Anthony Smellie
Chief Justice

July 8 2013

Released on 7th February 2017 after further extensions of the embargo on publication.