

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(COMMERCIAL DIVISION)**

CLAIM No: BVIHC (COM) 2021/68

BETWEEN:

(1) EGE

(2) HLM

Claimants

and

(1) NERINE TRUST CO LTD

(2) TRIDENT TRUST CO LTD

Defendants

Determined on paper with written submissions:

Ms. Claire Goldstein and Ms. Paula Gibbs of Harney, Westwood & Riegels LP for
the Claimants

2021 April 15

JUDGMENT

[1] **JACK, J [Ag.]**: This is an *ex parte* application for a seal and gag order as a precursor to an application for **Norwich Pharmacal** relief.¹ The claimants say they have been the victims of a substantial fraud and that the two registered agents, who are defendants to the action, have been innocently mixed up in the fraud. This judgment concerns a procedural issue.

¹ Norwich Pharmacal Co Ltd v Commissioners for Customs and Excise [1974] AC 133.

- [2] An applicant for **Norwich Pharmacal** relief has a choice. They can either make a “wrap-up” application, where they seek both a seal and gag order and the **Norwich Pharmacal** relief in one application. Or they can apply for a seal and gag order with the intention of subsequently issuing an application for the **Norwich Pharmacal** order to be heard on the return date of the seal and gag order.
- [3] In the current case the claimants have pursued the latter route. In a recent case where the claimant also took this approach, I refused to make the seal and gag order on the basis that the case was not a suitable one for the grant of **Norwich Pharmacal** relief. The claimant appealed and the Court of Appeal allowed the appeal. On at least one reading of the Court of Appeal’s judgment the error I made was that I determined an application which was not before me, namely the **Norwich Pharmacal** application, when deciding the application which was before me, namely the seal and gag application. I should have decided the seal and gag application solely on its own merits.
- [4] The Court of Appeal’s judgment is subject to an indefinite seal and gag order made by the Court of Appeal, although the indefinite length of the order may be under review. It is thus not currently available.
- [5] I bring the gist of the judgment’s attention to the profession, because it is not the case that making a seal and gag order means that the Court necessarily considers that the case is an appropriate one for **Norwich Pharmacal** relief. That will be a matter for determination when the application for that relief comes before the Court. I should not want the defendants in the current case to assume that the Court will necessarily grant **Norwich Pharmacal** relief: it may do or it may not do. The **Norwich Pharmacal** is simply not before me.
- [6] In the current case, it is appropriate in my judgment to grant the seal and gag order in order that, in the event it is appropriate to grant **Norwich Pharmacal** relief, the alleged participants in the fraud are not tipped off.

[7] So far as anonymisation is concerned, the claimants sought to have the case called “A and B v C and D”. This is not a useful form of anonymisation, because it does not adequately differentiate the name from other cases. Further, there is on the facts of this case no need to anonymise the names of the registered agents. There is no risk of tipping off the alleged fraudsters by naming the registered agents. Accordingly, I have anonymised the case in the style of the heading to this judgment.

Adrian Jack
Commercial Court Judge [Ag.]

By the Court

Registrar