

Supreme Court judgment on appointment of IT experts



04 December 2018 | Contributed by Elias Neocleous & Co LLC

Litigation, Cyprus

On 14 November 2018 the Supreme Court of Cyprus issued an innovative judgment relating to Norwich Pharmacal orders, which demonstrates the Cyprus courts' readiness to stay abreast of technological developments.⁽¹⁾

The appeal arose from an application by the respondent, as the claimant in proceedings in the Limassol District Court, for an application for a Norwich Pharmacal order against the appellants. In the main proceedings the claimant alleged that he was the victim of fraud and conspiracy in connection with online foreign currency trading, and as a result had suffered significant financial loss. The appellants, one of the leading developers of software applications for brokerages, banks and exchanges, were the developers of the trading platform used by the company with which the claimant had been trading. The purpose of the Norwich Pharmacal order was to obtain details of transactions and related records in order to identify the persons involved in the wrongdoing so that he could take action to recover his losses. The first-instance court issued the order requested by the claimant, which included the appointment of an independent computer expert who would provide the technical expertise to implement the order for disclosure of the information.

The appellants asked the Supreme Court to reverse the lower court's decision on the grounds that the first-instance court had misinterpreted the case law regarding the conditions for issuing Norwich Pharmacal orders, since the records and information which the claimant sought to obtain were not in their possession, because only the licensee of the software had access to transaction data.

The Supreme Court made clear that the issuance of such orders is within the discretion of the court, which should be exercised based on the public interest and the service of justice. According to the Supreme Court, this means that established legal principles must constantly adapt to keep abreast of the challenges posed by technological progress. The appointment of an IT expert to provide specialist technical assistance in order to disclose details about the fraud reflected this principle.

The Supreme Court therefore upheld the first-instance decision, which it considered to be an appropriate response to the technical change that fully respected the established principles in relation to Norwich Pharmacal orders, leading to the effective service of justice. The Supreme Court's approach was similar to that adopted by the English High Court in *Patel v Unite* six years ago.⁽²⁾

For further information on this topic please contact Pantelis Mountrakis at Elias Neocleous & Co LLC by telephone (+357 25 110 110) or email (pantelis.mountrakis@neo.law). The Elias Neocleous & Co LLC website can be accessed at www.neo.law.

Endnotes

(1) *Metaquotes Software Ltd v Dabaou*, Civil Appeal E324/2016, 14 November 2018.

(2) *Patel v Unite* (2012) EWHC 92 (QB).

The materials contained on this website are for general information purposes only and are subject to the disclaimer.

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription.



Pantelis Mountrakis