

BVI Norwich Pharmacal Relief it's not just against Registered Agents

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Disclosure orders granted against former liquidator and directorship services provider

In the recent case of FHL v LTC & 5 others BVI HC (COM) 2020/0048 the BVI Commercial Court granted a wider Norwich Pharmacal relief, requiring disclosure not only from several Registered Agents, but also a former voluntary liquidator and professional nominee director of the relevant BVI companies.

Brief background

The applicant, a BVI company, had obtained a number of judgments in Russia against two Russian individuals. It was seeking disclosure of documents and information in relation to a several BVI companies that were said to have been used by the individuals in a complex scheme aimed at hiding and dissipating their assets. Two of the BVI companies had been dissolved through voluntary liquidation.

General principles

Under BVI law, a respondent to a Norwich Pharmacal application must be innocently mixed up in, so as to have facilitated, the wrongdoing and be able or likely to be able to provide the information sought. It is well settled in the BVI that Norwich Pharmacal relief may be available against a Registered Agent. In an earlier decision in UVW v XYZ BVIHC (COM)108 of 2016 Wallbank J also observed that the relief may be available against other corporate service providers, depending upon the type of services provided, where they do more than just trade with a company or its underlying owner but by their services facilitate the functioning of the company.

Relief against voluntary liquidator and professional nominee director

In FHL v LTC no wrongdoing was alleged by the Applicant against the voluntary liquidator of the

two BVI companies or their former corporate director. Wallbank J granted the relief sought, accepting the Applicant's argument that the voluntary liquidator in fulfilling their functions of distributing assets and winding up the companies is innocently involved in the life or affairs of the company and is also likely to have the sort of information that the Applicant is looking for as to ownership and assets, for the purposes of enforcement.

In a similar manner the relief was granted with respect to the former corporate director of the same companies on the basis that a corporate services company providing directors was innocently mixed up in the wrongdoing by being involved in the affairs of the companies and is likely to have information of the type sought.

Conclusion

Voluntary liquidators and, in particular, directors are likely to have more documents and correspondence about the affairs of a company than a Registered Agent and so the decision in FHL v LTC represents an important development of the Norwich Pharmacal principles in the BVI of great assistance to judgment creditors.

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