

[2006 JLR 478]

FEDERAL REPUBLIC OF BRAZIL and MUNICIPALITY OF SÃO PAULO v. CITIBANK NA and EIGHT OTHERS

ROYAL COURT (Birt, Deputy Bailiff and Jurats Le Brocq and Newcombe): November 1st, 2006

Civil Procedure—disclosure—Norwich Pharmacal order—bank may be ordered to make pre-trial disclosure of documents and information about customer’s account alleged to contain proceeds of fraud if real prospect would enable plaintiff to locate money and bring proceedings to recover it.

The plaintiffs applied for a disclosure order against the first to fifth defendants.

The plaintiffs, the Federal Republic of Brazil and the Municipality of São Paulo, sought disclosure from the first to fifth defendants (“the banks”) of information and documents concerning the Jersey bank accounts of the sixth to ninth defendants (“the companies”). The companies were allegedly connected with M who was a prominent figure in Brazil and the subject of criminal investigations concerning allegations of corruption, embezzlement of public funds and money laundering

2006 JLR 479

during his time as Mayor of São Paulo. There was *prima facie* evidence that M and others had defrauded the Municipality of large sums of money. The plaintiffs alleged that some of the money had been paid into the companies’ bank accounts in Jersey and sought information about those accounts from the banks to enable them to discover the whereabouts of the funds and to consider whether they could bring proceedings against M and others to recover them.

The plaintiffs submitted that the court had power to make a *Norwich Pharmacal* order for the disclosure of the requested information and documents as the banks had become mixed up in the alleged wrongdoing of M and others.

The companies opposed the order and submitted that the court did not have power to make it as (a) *Norwich Pharmacal* orders could only be made to identify alleged wrongdoers and the plaintiffs already had this information; and (b) the equitable jurisdiction to protect and preserve trust assets did not apply as the plaintiffs had not established that proceeds of the frauds had in fact been paid into the accounts.

Held, ordering the banks to make disclosure:

The banks would be ordered to disclose the information and documents concerning the companies’ accounts to enable the plaintiffs to ascertain the whereabouts of the proceeds of the frauds and to consider whether proceedings could be brought to recover them. The banks were mixed up in and had facilitated the alleged frauds (albeit innocently)—as there were sufficient grounds for suspecting that the proceeds had been paid into the companies’ accounts with them—and they therefore had a duty to assist the plaintiffs by providing full information, including the identity of the alleged wrongdoers. A *Norwich Pharmacal* order, which was intended to enable a plaintiff to bring an action against an alleged wrongdoer, could be made against a third party mixed up in alleged wrongdoing for the disclosure not merely of the identity of the alleged wrongdoer, but also of information relating to whether a plaintiff had a cause of action against the wrongdoer or to the discovery and protection of traceable funds. An order had, however, to be limited to the specific purpose for which it was justified and a general obligation to give pre-trial discovery could not be imposed on third parties if the identity of wrongdoers were known. In the present case, the court had power to make the *Norwich Pharmacal* order against the banks, as there was a real prospect that the disclosed information and documents would assist the plaintiffs to trace the funds of which the Municipality had been defrauded, and the jurisdiction overlapped with the equitable jurisdiction to preserve and protect trust assets ([paras. 28–33](#)).

Cases cited:

- (1) *A v. C*, [1981] Q.B. 956; [1980] 2 All E.R. 347; [1980] 2 Lloyd’s Rep. 200, applied.

2006 JLR 480

- (2) *Aoot Kalmneft v. Denton Wilde Sapte*, [2002] 1 Lloyd’s Rep. 417, applied.
 (3) *Arab Monetary Fund v. Hashim (No. 5)*, [1992] 2 All E.R. 911, applied.
 (4) *Bankers Trust Co. v. Shapira*, [1980] 1 W.L.R. 1274; [1980] 3 All E.R. 353; (1980), 124 Sol. Jo. 480, applied.
 (5) *Durant Intl. Corp. v. Att. Gen.*, 2006 JLR 31; on appeal, 2006 JLR 112, referred to.
 (6) *Grupo Torras S.A. v. Royal Bank of Scotland PLC*, 1994 JLR 41, applied.
 (7) *I.B.L. Ltd. v. Planet Fin. & Legal Servs. Ltd.*, 1990 JLR 294, applied.
 (8) *London & Counties Secs. Ltd. v. Caplan*, English Ch. D., May 26th, 1978, unreported, referred to.
 (9) *MacKinnon v. Donaldson, Lufkin & Jenrette Secs. Corp.*, [1986] Ch. 482; [1986] 1 All E.R. 653, *dicta* of Hoffmann, J. applied.

- (10) *Mediterranea Raffineria Siciliana Petroli S.p.A. v. Mabanft G.m.b.H.*, English C.A., 1978 M No. 4019, December 1st, 1978, unreported, applied.
- (11) *Murphy v. Murphy*, [1999] 1 W.L.R. 282; [1998] 3 All E.R. 1, considered.
- (12) *Norwich Pharmacal Co. v. Customs & Excise Commrs.*, [1974] A.C. 133; [1973] 2 All E.R. 943, applied.
- (13) *P v. T Ltd.*, [1997] 1 W.L.R. 1309; [1997] 4 All E.R. 200, applied.

P.D. James for the plaintiffs;
Ms. N.M. Langlois for the first defendant;
M.J. Thompson for the second to fifth defendants;
Ms. G.S. Robinson for the sixth to ninth defendants.

1 **BIRT, DEPUTY BAILIFF:** The background to this application is to be found in the judgments of the Royal Court and the Court of Appeal in the case of *Durant Intl. Corp. v. Att. Gen.* (5) (reported respectively at 2006 JLR 31 and 2006 JLR 112). That case arose in connection with letters of request from the Federal Republic of Brazil seeking assistance from the Attorney General in connection with criminal investigations into the conduct of Mr. Paulo Maluf and others.

2 In a nutshell, the criminal investigations relate to allegations of corruption, embezzlement of public funds and money laundering in connection with two major public works contracts for the construction of the Ayrton Senna Tunnel and the Avenue Agua Espraiada in São Paulo while Mr. Maluf was Mayor. In each case, it was alleged that the cost price of the works was fraudulently inflated and the excess, amounting to hundreds of millions of US dollars, was diverted into the hands of Mr. Maluf and his family via bank accounts in Switzerland and Jersey. In addition, there are allegations relating to the embezzlement of part of the proceeds of a municipal bonds issue.

2006 JLR 481

3 Exercising his powers under the Investigation of Fraud (Jersey) Law 1991, the Attorney General obtained information about the affairs of the sixth to ninth defendants ("the companies") which are said to be connected to Mr. Maluf or members of his family. Following various unsuccessful applications by the companies for judicial review, the Attorney General has now released to the Federal Republic the information obtained about the companies in Jersey. That information can of course only be used for the purposes of criminal investigations and proceedings in Brazil.

4 The plaintiffs (being the Federal Republic and the Municipality of São Paulo) now seek what is commonly known as *Norwich Pharmacal* relief (*Norwich Pharmacal Co. v. Customs & Excise Commrs.* (12)) against the first to fifth defendants ("the banks") in respect of the accounts maintained with them by the companies. Discovery of these documents is said to be essential for the purpose of considering whether to bring proprietary or personal civil claims against Mr. Maluf and others in whatever jurisdiction appears to be appropriate to recover the stolen funds.

5 The banks have submitted to the wisdom of the court but, given the particular circumstances of the case, the companies have been convened and have opposed the application.

The plaintiffs' case

6 The plaintiffs have filed two affidavits by Mr. Andrew Witts, a partner of Lawrence Graham LLP, English solicitors for the plaintiffs. The companies have filed an affidavit by Mr. Philip Barden of Devonshires, English solicitors to the companies. We do not think it necessary to go into the detail of their evidence. Suffice it to say that we are satisfied that there is *prima facie* evidence that Mr. Maluf and others have committed the frauds referred to earlier; that the Municipality has been defrauded of large sums as a result thereof; that a substantial proportion of the proceeds was paid to Switzerland and elsewhere outside Brazil; and that some of the proceeds may have found their way into the accounts of the companies held in Jersey. However, some of this is a matter of inference. The plaintiffs do not at this stage have the necessary paper trail to prove that some of the proceeds of the frauds are now to be found in the accounts of the companies with the banks in Jersey.

7 The plaintiffs argue that the banks have unwittingly become mixed up in the wrongdoings of the Maluf family and others and have thereby come under a duty to assist the plaintiffs by giving discovery. They argue that the information about the accounts is necessary in order that they may bring personal and proprietary claims in respect of the frauds. They wish to establish the whereabouts of the proceeds of the frauds with a view to bringing actions in Jersey or elsewhere outside Brazil to claim such funds and to seek their repayment.

2006 JLR 482

8 We should interpose at this stage to say that it occurred to the court on reading the papers that whilst the Municipality, as the victim of the alleged frauds, would clearly have a right to bring civil proceedings for the recovery of the proceeds, the same cannot be said for the Federal Republic. However, in his second affidavit, Mr. Witts has given evidence that under the law of Brazil the Federal Republic must be party to any proceedings brought outside Brazil by the Municipality. The companies have not sought to challenge that

evidence or to take the point in any way and accordingly we say nothing further of it.

The companies' case

9 The companies submit that the plaintiffs have misunderstood the nature of and limitations upon *Norwich Pharmacal* relief. They submit that there are in fact two completely separate jurisdictions under which pre-trial discovery can be ordered. The first is *Norwich Pharmacal* relief but this is confined to giving discovery for the purposes of identifying the wrongdoer so that the claimant knows against whom he may bring proceedings. It does not cover a situation where the claimant knows the identity of the wrongdoer but is seeking evidence to support the claim against him. In this case, say the companies, the plaintiffs know the identity of the alleged wrongdoers and accordingly there is no jurisdiction to grant relief on *Norwich Pharmacal* grounds.

10 The second jurisdiction, they say, is the equitable jurisdiction to protect and preserve a trust fund. The companies argue that *Bankers Trust Co. v. Shapira* (4) is more correctly analysed as an example of this jurisdiction rather than of the *Norwich Pharmacal* jurisdiction. They argue that the plaintiffs have not produced sufficient evidence that traceable proceeds of the frauds have been paid into the companies' accounts at the banks in Jersey, which is an essential precondition of the grant of such relief. Even if the court is against them on that score, they argue that there is no evidence that there is a risk of dissipation because the banks have informally frozen the accounts until any dispute over the provenance of the moneys in the accounts is resolved.

11 In summary, the companies argue that, on the facts of this case, the plaintiffs cannot bring themselves within either the *Norwich Pharmacal* jurisdiction or the equitable jurisdiction and the court therefore has no jurisdiction to grant the relief sought. If the court is against them on the question of jurisdiction, they argue that, as a matter of discretion, the court should not grant relief in this case.

12 These competing submissions require the court to review some of the cases cited to us with a view to ascertaining the correct basis of the jurisdiction which we are being invited to apply.

2006 JLR 483

The law

13 The starting point is *Norwich Pharmacal* (12) itself and, in particular, the classic statement of Lord Reid. Having made it clear that the mere witness rule was still of application within its sphere and that discovery could not be ordered against anyone who happened to be able to give information about the identity of the wrongdoer, he went on to say ([1973] 2 All E.R. at 948):

“They seem to me to point to a very reasonable principle that if through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrongdoing he may incur no personal liability but he comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers.”

In that particular case, the information sought was as to the identity of the alleged wrongdoer and the speeches therefore naturally concentrated on that aspect.

14 In *Mediterranea Raffineria Siciliana Petroli S.p.A. v. Mabanaft G.m.b.H.* (10), the plaintiffs had paid out money by mistake and sought to recover it. They obtained orders against various parties (against whom they had no cause of action) for discovery concerning where the money had gone and who controlled a Panamanian company. The Court of Appeal upheld the orders and Templeman, L.J. said this:

“As my Lord said, it is a strong order, but the plaintiffs' case is that there is a trust fund of \$3,500,000. This has disappeared, and the gentlemen against whom orders were sought may be able to give information as to where it is and who is in charge of it. A court of equity has never hesitated to use the strongest powers to protect and preserve a trust fund in interlocutory proceedings on the basis that, if the trust fund disappears by the time the action comes to trial, equity will have been invoked in vain. That is why orders of this sort were made long before the recent orders for discovery, and they are at the heart of the Chancery Division's concern, and it is the concern of any court of equity, to see that the stable door is locked before the horse has gone.”

15 As Miss Robinson correctly pointed out, the Court of Appeal did not appear to be placing any reliance on the *Norwich Pharmacal* jurisdiction. No reference to that case was made and indeed Templeman, L.J. seems possibly to have been drawing a distinction between the equitable jurisdiction and “the recent orders for discovery.” She also referred us to *A v. C* (1), where Robert Goff, J. followed *Mediterranea* and agreed that there was ample authority that the court could make orders for discovery to ascertain the whereabouts of property which a plaintiff was seeking to trace. Again, he made no reference to *Norwich Pharmacal* (12).

2006 JLR 484

16 In *Bankers Trust v. Shapira* (4), the plaintiff was seeking to trace money of which it had been defrauded. It sought an order against a bank into which the funds had been paid requiring it to disclose various details concerning the account with a view to assisting in the tracing of the money. The Court of Appeal referred to *Mediterranea* (10), *A v. C* (1) and another case, *London & Counties Secs. Ltd. v. Caplan* (8), where the courts had made orders without reference to the *Norwich Pharmacal* principle, as we have seen above. However, Lord

Denning, M.R. went on to refer to and apply the *Norwich Pharmacal* principle. Thus, he said ([1980] 1 W.L.R. at 1281):

"Having heard all that has been said, it seems to me that Mustill, J. was too hesitant in this matter. In order to enable justice to be done—in order to enable these funds to be traced—it is a very important part of the court's armoury to be able to order discovery. The powers in this regard, and the extent to which they have gone, were exemplified in [*Norwich Pharmacal*]."

Having then quoted Lord Reid's remarks, he went on to say (*ibid.*, at 1282):

"So here the Discount Bank incur no personal liability: but they got mixed up, through no fault of their own, in the tortious or wrongful acts of these two men: and they come under a duty to assist the Bankers Trust . . . by giving them and the court full information and disclosing the identity of the wrongdoers. In this case the particular point is 'full information.'

This new jurisdiction must, of course, be carefully exercised . . . With these safeguards, I think the new jurisdiction—already exercised in the three unreported cases—should be affirmed by this court.

Applying this principle, I think the court should go to the aid of Bankers Trust Co."

17 In our judgment, it is quite clear that Lord Denning (with whose judgment the other two judges agreed) considered that the ability to order discovery was derived from the "new jurisdiction" laid down in *Norwich Pharmacal* (12) and that *Mediterranea, A v. C* and *London & Counties Secs.* were examples of the new *Norwich Pharmacal* jurisdiction.

18 The next case in time is *Mackinnon v. Donaldson, Lufkin & Jenrette Secs. Corp.* (9). That case was essentially concerned with whether it was right for the court to make an order having extra-territorial effect but, in passing, Hoffmann, J. considered ([1986] 1 All E.R. at 661) the relationship between *Norwich Pharmacal* and *Bankers Trust* (4) and made it clear that, in his opinion, the *Bankers Trust* jurisdiction was

2006 JLR 485

founded on the principle disinterred by the House of Lords in *Norwich Pharmacal*.

19 He repeated this view in *Arab Monetary Fund v. Hashim (No. 5)* (3). Because Miss Robinson placed some reliance on certain passages from the judgment of Hoffmann, J. we need to refer to them in some detail. Having described how *Norwich Pharmacal* (12) had overturned the assumption that in no circumstances could a third party be required to provide any information other than by oral testimony and having referred again to Lord Reid's well-known *dictum*, he went on to say ([1992] 2 All E.R. at 914):

"The reference to 'full information' has sometimes led to an assumption that any person who has become 'mixed up' in a tortious act can be required not merely to disclose the identity of the wrongdoer but to give general discovery and answer questions on all matters relevant to the cause of action. In my view this is wrong. The principle upon which Lord Reid distinguished the 'mere witness' rule was that unless the plaintiff discovered the identity of the wrongdoer, he could not commence proceedings. The reasoning of the other members of the House is the same. The *Norwich Pharmacal* case is no authority for imposing upon 'mixed up' third parties a general obligation to give discovery or information when the identity of the defendant is already known.

Four years after the *Norwich Pharmacal* case Templeman, J. applied its principle to a case in which the plaintiff wanted to know, not the identity of the wrongdoer, but what he had done with misappropriated money. This was *London and County Securities Ltd. v. Caplan* (26th May 1978, unreported) . . . The judge made an order requiring the bank to disclose whether it still had the money and if not, where it had gone . . . But the principle of making such an order seems to me, if I may say so with respect, justified by the reasoning in the *Norwich Pharmacal* case. Just as no action could be commenced unless the wrongdoer could be identified, so the disappearance of the subject matter of the action could in practice make the trial nugatory."

20 He then went on to explain that *Bankers Trust* (4) relied upon the *Norwich Pharmacal* principle and that Lord Denning had specifically cited Lord Reid's reference to "full information." Finally, he said this (*ibid.*, at 918):

"What are the limits of the *Bankers Trust* jurisdiction? They must, I think, be deduced from the reasoning upon which that jurisdiction, like the *Norwich Pharmacal* jurisdiction, is distinguished from the 'mere witness' rule. It rests upon the proposition that unless the

2006 JLR 486

assets in question can be located and secured, the ultimate determination of ownership of those assets may be frustrated by their removal or dissipation and there will be no point in calling on the third party at the trial to produce the required documents or give the requested information. In my judgment, therefore, the first principle of the *Bankers Trust* case is that the plaintiff must demonstrate a real prospect that the information may lead to the location or preservation of assets to which he is making a proprietary claim."

21 As can be seen, this repeats the view that *Bankers Trust* (4) was merely an elaboration or development of

the *Norwich Pharmacal* principle. However, in *Murphy v. Murphy* (11), Neuberger, J. developed the argument for which Miss Robinson now contends. He said ([1999] 1 W.L.R. at 289–290):

“In agreement with both counsel who appeared on this appeal, it seems to me that these cases demonstrate two different types of circumstance in which the court can order a defendant, who is not otherwise an appropriate party to proceedings, to identify the name and address of a third party. The first type of case is where the defendant has, albeit quite possibly wholly innocently, become ‘mixed up in’ the wrong-doing of the proposed defendant and the plaintiff has a claim in respect of that wrong-doing. In such a case, the House of Lords, in the *Norwich Pharmacal* decision . . . has held that the court can grant the plaintiff the discovery he seeks, if it is appropriate to do so. I shall call this ‘the discovery jurisdiction.’ Secondly, there is what I shall call ‘the equitable jurisdiction,’ considered and applied in the first and last passages I have quoted from the judgment of Robert Goff, J. in *A v C* . . . by Templeman, L.J. in the *Mediterranea* decision . . . and also referred to in *Bankers Trust* . . . Where, as in those three cases, the defendant against whom an order is sought is, albeit wholly innocently, ‘mixed up in’ the wrong-doing of other defendants, there is a risk of some conflation of the two types of jurisdiction (as could be said to appear from the first passage I have quoted from the judgment of Lord Denning, M.R. in the *Shapira* decision). However, this does not seem to me to alter the fact that there are, in reality, two separate jurisdictions, albeit that in many cases they will overlap.”

The judge then went on to exercise the equitable jurisdiction to order discovery of the names of the trustees of various settlements.

22 In *Aoot Kalmneft v. Denton Wilde Sapte* (2), McGonigal, J., like Neuberger, J., concluded that there were, as he put it, two lines of authority to support the power of the court to order disclosure of documents and information by a third party. The first was the *Norwich Pharmacal* line of authority and the second was that exemplified by the

2006 JLR 487

comments of Templeman, L.J. in *Mediterranea* (10). He went on to find that, on the facts of the case, he could order discovery of the information sought on both lines of authority. As to the extent of the *Norwich Pharmacal* jurisdiction, he said this ([2002] 1 Lloyd’s Rep. 417, at para. 17):

“Likewise, in my view, when a Court is considering an application in the context of the *Norwich Pharmacal* jurisdiction, it should be satisfied that there is a real prospect that the information sought may assist in identifying a defendant. The principle is not simply that the wrongdoer be identified but extends in my view to his identification *as a wrongdoer*. The principle is that a ‘mixed up’ third party is under a duty to disclose information to enable the claimant to commence an action. In *Norwich Pharmacal* the information required was the identity of the wrongdoer (the applicant knew what wrong had been done but not who had done it) but I see no reason why the principle is limited to disclosure of the identity of an unknown wrongdoer and does not extend to information showing that he has committed the wrong.” [Emphasis supplied.]

23 The final English case to which we would make reference is *P v. T Ltd.* (13), where Scott, V.-C. held that the *Norwich Pharmacal* principle was not limited to disclosing the identity of an alleged wrongdoer but also extended to the provision of information so that the claimant could ascertain whether the unidentified wrongdoer had in fact committed a tort against him.

24 We have hitherto referred only to English cases but the principles underlying *Norwich Pharmacal* (12) and *Bankers Trust* (4) have been adopted as part of the law of Jersey in a number of cases. In *I.B.L. Ltd. v. Planet Fin. & Legal Servs. Ltd.* (7), Tomes, Deputy Bailiff reviewed the matter at some length and held that, even if the court were thought to be extending the *Norwich Pharmacal* principle, it should not be afraid to do so in the interests of justice. The court held that the *Norwich Pharmacal* principle applied equally to information aimed at establishing what form of action the plaintiff could bring as it did to information concerning the identity of the alleged wrongdoer.

25 Finally, in *Grupo Torras S.A. v. Royal Bank of Scotland PLC* (6), Bailhache, Deputy Bailiff summarized the position as follows (1994 JLR at 48):

“In our judgment, it can now be asserted that in Jersey, although as a general rule no independent action for discovery will lie against a person against whom no reasonable cause of action can be alleged or who can be called as a mere witness in the substantive trial, the

2006 JLR 488

rule does not apply where (a) without discovery of the information in the possession of the person against whom discovery is sought no action can be begun against a wrongdoer; and (b) such person has himself, albeit innocently, been involved in the acts of the wrongdoer so as to facilitate them. In such circumstances, although he might have incurred no personal liability, he is under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoer.”

Discussion

26 We accept Miss Robinson's contention that there are two original sources of the jurisdiction to order discovery against third parties, namely, the ancient equitable jurisdiction to preserve and protect a trust fund (referred to by Templeman, L.J. in *Mediterranea* (10)) and the new *Norwich Pharmacal* jurisdiction (where third parties have become "mixed up" in the wrongdoing of others).

27 But where we part company with Miss Robinson is in her submission that these two jurisdictions are completely separate and that one must bring oneself within one or the other. It is because of this approach that the companies are able to submit in this case that the plaintiffs are in possession of too much information to enable them to rely upon the *Norwich Pharmacal* jurisdiction (because they know the identity of the wrongdoers) but too little information to rely upon the equitable jurisdiction (because they cannot produce sufficient evidence of payment of traceable funds into the Jersey accounts). We have to say that this is not an attractive submission and leads us to question whether the premise underlying the submission can be correct.

28 In our judgment, the two original jurisdictions overlap to a very considerable extent and indeed it may well be the case that the ancient equitable jurisdiction has in practice been subsumed almost entirely by the *Norwich Pharmacal* jurisdiction. There may still be cases where the equitable jurisdiction will give relief where the *Norwich Pharmacal* jurisdiction will not but it is hard to think of an example. Certainly, in the ordinary case, where a person can be ordered to give information under the equitable jurisdiction to help preserve and protect traceable funds, it is hard to imagine that he will not also have become "mixed up" in the wrongdoing. Consistently with this view, we are of the opinion (shared, it would seem, by two judges as eminent as Lord Denning and Hoffmann, J.) that *Bankers Trust* (4) is properly to be regarded as an application of the *Norwich Pharmacal* principle, although it can also be justified as an example of the old equitable jurisdiction. Thus, the bank had become mixed up in the wrongdoing and could therefore be ordered to give discovery in accordance with *Norwich Pharmacal* (12). Conversely, it

2006 JLR 489

could also be ordered to give discovery under the equitable jurisdiction for the purpose of protecting traceable funds. In *Murphy* (11), Neuberger, J. held that the two jurisdictions would overlap in many cases. We entirely agree and, as already mentioned, we think that the *Norwich Pharmacal* jurisdiction has to a considerable extent subsumed the equitable jurisdiction, not least because it is very much wider. The *Norwich Pharmacal* jurisdiction can be used to order discovery for the purpose of protecting and preserving traceable funds but it can also be used to order the provision of information which has nothing to do with trust moneys (e.g. *Norwich Pharmacal* itself and *P v. T Ltd.* (13)).

29 It will be seen from the foregoing that we do not accept Miss Robinson's submission that the *Norwich Pharmacal* jurisdiction is limited to information about the identity of the wrongdoer. Our reasons for so holding can be summarized briefly as follows:

(i) As already indicated and as was held by Lord Denning in *Bankers Trust* itself and by Hoffmann, J. in *Arab Monetary Fund* (3), *Bankers Trust* was expressly said to be an example of the *Norwich Pharmacal* jurisdiction; yet the relief sought was information about the whereabouts of moneys, not the identity of the wrongdoer.

(ii) Although in *Norwich Pharmacal* itself the House of Lords was concerned with the identity of the wrongdoer and that was the focus of the speeches, it is noteworthy that Lord Reid referred to "full information."

(iii) In *Aoot Kalmneft* (2), McGonigal, J. held that the *Norwich Pharmacal* jurisdiction extended to information showing that the alleged wrongdoer had committed a wrong, i.e. that there was a cause of action against the wrongdoer.

(iv) Similarly, Scott, V.-C. held in *P v. T Ltd.* (13) that the jurisdiction extended to information intended to enable the plaintiff to determine whether he had a cause of action.

(v) Finally, in *I.B.L.* (7) and *Grupo Torras* (6), the Royal Court purported to exercise the *Norwich Pharmacal* jurisdiction when ordering the disclosure of information other than the identity of the wrongdoer. Tomes, Deputy Bailiff made it clear in *I.B.L.* that Jersey law might in any event choose to go beyond the limits of the *Norwich Pharmacal* jurisdiction and we agree that that is open to this court.

(vi) Paragraph (a) of the formulation by Bailhache, Deputy Bailiff in *Grupo Torras* (quoted at para. 25), is clearly wide enough to cover information aimed at establishing whether the plaintiff has a good claim against the wrongdoer as well as that aimed at establishing the identity of the wrongdoer.

2006 JLR 490

30 We accept the cautionary note of Hoffmann, J. in *Arab Monetary Fund* (3) that *Norwich Pharmacal* is no authority for imposing upon "mixed up" third parties a general obligation to give discovery or information when the identity of the defendant is already known. We agree that in each case the court must consider carefully whether the unusual step of requiring a third party to give pre-trial disclosure is justified and any discovery ordered must be limited to the specific purpose for which its production is justified. Nevertheless, as the cases have shown, whether the information relates to the identity of the wrongdoer, to whether the plaintiff has a cause of action against the alleged wrongdoer, or to the ability to protect or discover the whereabouts of traceable moneys, the court may order a "mixed up" third party to give discovery.

Application to the facts

31 We propose to proceed by applying the *Norwich Pharmacal* jurisdiction in accordance with the principles we have described. The evidence satisfies us that there is *prima facie* evidence that one or more members of the Maluf family have been guilty of fraud to the prejudice of the Municipality. We also consider that there is sufficient suspicion that proceeds from some of these frauds have passed to accounts in Switzerland and from there to the accounts of the companies in Jersey to justify an order that the banks give discovery about the accounts so as to enable the Municipality to locate and preserve traceable funds and to decide whether it has grounds to bring actions against the companies or others in Jersey or elsewhere to recover the funds. The Municipality needs to discover the whereabouts of the funds of which it has been defrauded and, adopting the test laid down in *Arab Monetary Fund*, we think there is a real prospect that the information from the banks will assist in this process.

32 Having found that we are able to make the requested orders under the *Norwich Pharmacal* jurisdiction, we do not need to go on to consider the equitable jurisdiction to preserve a trust fund.

33 Miss Robinson submitted that, even if we found that we had jurisdiction to make such an order, we should exercise our discretion not to do so because of, amongst other matters, delays since 1999; the fact that this was a fishing expedition; and the fact that the accounts were in fact informally frozen by the banks and accordingly there was no risk of dissipation of the funds. We do not agree. If the Municipality has been defrauded, it is entitled to seek to recover the stolen funds. It needs to establish once and for all whether some of the funds are in or have passed through the accounts of the companies in Jersey. In our judgment, the interests of justice point strongly in favour of giving the plaintiffs the

2006 JLR 491

relief which they seek. For these reasons, we order the banks to give disclosure as set out in the Order of Justice.

Order accordingly.