

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE**
MISCELLANEOUS PROCEEDINGS NO 2152 OF 2018

IN THE MATTER of s.42(1) of the
High Court Ordinance (Cap. 4)

and

IN THE MATTER of Order 24 Rule 7A
of the Rules of the High Court (Cap. 4A)

and

IN THE MATTER of the Inherent
Jurisdiction of the High Court

BETWEEN

STICHTING RIJSMUSEUM TWENTHE Plaintiff

and

HANG SENG BANK, LIMITED Defendant

Before: Deputy High Court Judge Keith Yeung SC in Chambers

Date of Hearing: 14 December 2018

Date of Decision: 14 December 2018

DECISION

1. This is an application by the plaintiff for a *Norwich Pharmacal* order against the defendant.

2. I have read the affirmation of Mr Arnoud Odding affirmed on 3 December 2018 in support. He is a director of the plaintiff. According to his affirmation, the plaintiff has fallen victim to an email / impersonation fraud in the following circumstances:

- (a) The plaintiff is primarily engaged in exhibiting artworks;
- (b) On 8 March 2018, a representative from the plaintiff visited an art fair in the Netherlands and became interested in a painting that was represented by an agency called Simon C. Dickinson (“**Dickinson**”);
- (c) Subsequently, Mr Ker and Mr Knolle, respectively a director of Dickinson and Head of Collections and Curator of Fine Arts of the plaintiff, entered into email communications for the sale and purchase of that painting;
- (d) On 20 July 2018, Mr Knolle received an email from Mr Ker. An invoice issued by Dickinson was attached. It contained the payment terms (including details of the recipient account for the wire transfer) for the purchase of the painting;
- (e) On 26 July 2018, Mr Knolle received another email purportedly from Mr Ker. He was instructed thereby to pay the owner of the painting directly, by making wire transfer in the sum of GBP2,366,000.00 to account no. 775-249113-883

held with the defendant bank by “Chiying Trade Co Limited” (“**Chiying A/C**”);

(f) The plaintiff did as instructed on 30 July 2018;

(g) It was subsequently discovered that Dickinson’s email system had been hacked, and the email of 26 July 2018 was in fact not from Mr Ker. The change of recipient account was a fraud;

(h) The matter has been reported to the Netherlands Police. It was also reported to the Hong Kong Police on 20 August 2018;

(i) On 29 October 2018, the plaintiff’s solicitors contacted the Hong Kong Police and were informed that there was no fund remaining in the Chiying A/C.

3. I have considered the authorities cited to me, including *A Co. v. B Co.* [2002] 3 HKLRD 111. I am satisfied that there is cogent and compelling evidence showing that serious fraud has taken place. I am satisfied that the order sought will very likely reap substantial and worthwhile benefits for the plaintiff. I am also satisfied that the discovery sought is appropriate and not unduly wide. Given the nature of the fraud, I am also satisfied that a gagging order is appropriate. I have also been informed this morning that the defendant adopts a neutral stance to the application. Subject to certain amendments I set out and discussed below, I grant the order sought.

4. The first matter concerns the heading of the Originating Summons. There is no need to make reference to section 42(1) of the High Court Ordinance and Order 24 rule 7A. The jurisdiction of the power to grant Norwich Pharmacal relief is an inherent one. But as no

one has been misled by the reference to that section and that rule, and this not being the appropriate case to argue over the strict applicability of section 42(1) in an application of this sort, I make no formal amendment in those regards.

5. In respect of the permitted use of the documents and information to be disclosed, I add the additional words of “except the disclosing defendant” at the end of paragraph 3 of the draft order. I say immediately that there is no evidence or suggestion at this stage whatsoever that the defendant has done anything wrong. But as a matter of principle and fairness, issue of right against self-incrimination might be engaged if the documents and information to be disclosed were to be used against the disclosing bank. That should be expressly excepted at this stage.

6. On the question of costs, it should be expressly made clear at paragraph 5 that the plaintiff do reimburse the defendant for the costs and expenses in complying with the order in paragraphs 1 and 2 on an indemnity basis.

(Keith Yeung SC)
Deputy High Court Judge

Mr Adam Clermont, of Messrs Payne Clermont Velasco, for the plaintiff

The defendant was not represented and did not appear