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DCMP 4365/2024
[2024] HKDC 1629

IN THE DISTRICT COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
MISCELLANEOUS PROCEEDINGS NO 4365 OF 2024

IN THE MATTER of the Inherent Jurisdiction of
the District Court

and

IN THE MATTER of Order 24 Rule 7A of the Rules
of the District Court (Cap 336H)

BETWEEN

ORLANDO D’ALIMONTE Plaintiff
and
STANDARD CHARTERED BANK Defendant
(HONG KONG) LIMITED

Before: Her Honour Judge G Chow (in Chambers)
Date of Hearing: 26 September 2024
Date of Decision: 26 September 2024

DECISION

Introduction and Background Facts

1. I have before me an application by the Plaintiff (“P”) by Originating Summons dated 5 August 2024 (“the OS”) against Standard Chartered Bank (Hong Kong) Limited (“the Bank”) for disclosure of the documents set out in the OS under the court’s inherent jurisdiction to grant *Norwich Pharmacal* relief.

2. P, a Canadian citizen, claims to be a victim of a fraud.

3. On 24 November 2023, P received a call from someone claiming to be an Amazon staff, requesting confirmation of an order purportedly placed by P. P requested the staff to cancel the order. As the staff advised that a fraud has taken place, he transferred the call to Trade Commission Services for P to report the fraud.

4. A person identified as Garry Wilson and a fake police officer named Eric P Kressman (“Eric”) offered to assist. However to confirm P’s identity he was asked to state the last 3 digits of his new Social Insurance Number and an approximate balance of his bank account. He was told that his identification may have been compromised and it was necessary to take steps to protect his bank information and secure his funds.

5. As a result, upon the instructions of Eric, on 24 November 2023, P withdrew CAD10,000 and deposited it into a Bitcoin machine by entering a password provided by Eric.

6. On 27 November 2023, Eric claimed that the “Department” was satisfied with the transaction and required P to forward at least 85% of his total bank assets as a measure to secure his funds and demonstrate good faith. Eric assured that the funds would be returned to P’s account within 48 hours. Later that day, P was provided with the banking details for the wire transfer by Eric.

7. P had some suspicion and asked for proof of identity. Eric sent a fake government letter which included P’s name, fake ID and a badge of Eric. Upon that reassurance, on 27 November 2023, P transferred CAD87,673.23 (“the Funds”) from his bank account held with Royal Bank of Canada (“RBC”) to an account held with the Bank (“the Account”) as instructed.

8. On 28 November 2023, P realized that he may have been scammed and immediately filed a report with the Canadian police.

9. On 29 November 2023, RBC received an email from the Bank which suggested that P had fallen victim of a fraud.

10. On 30 November 2023, P reported the matter to the Hong Kong Police (“HKP”).

11. Subsequently, a police officer of HKP informed P that the Account has been frozen.

12. P now seeks an order for disclosure of documents in connection with the opening of the Account, all transactions in, payments into and out of and the destination of all payments out of, the Account, for the period from 26 November 2023 to the date of the order.

13. The Bank has been served the OS. It indicated that subject to the timing for production of the documents, the usual indemnity to pay the Bank's costs of complying with any order and removing "correspondence" from the definition of documents to be provided, it adopts a neutral stance with regard to P's application and seeks to be excused from attending today's hearing. The Bank has not attended today's hearing.

14. Ms Li, counsel, appears on behalf of P.

Applicable principles

15. The applicable principles for *Norwich Pharmacal* relief are well-settled. It is not a usual order and will not be lightly granted in the absence of powerful factors:

- (1) It is made against an innocent party whose only involvement is to become mixed up in the tortious or wrongful activities of others;
- (2) The wrongdoing exists only on the part of a person or persons against whom no relief may be sought at the stage of the application and against whom there is probably insufficient evidence to found an action;

(3) There will usually be a legal relationship between the innocent person against whom a discovery order is sought and the alleged wrongdoer, and the relationship may involve strict duties to be observed on the innocent party's part. Any discovery to be made will involve a breach of confidentiality and may expose the innocent party to civil liability and possibly even criminal liability; and

(4) The court must accordingly balance the competing interests of the victim of the alleged wrongdoing and an innocent party caught up in the wrongdoing.

See *A Co v B Co* [2002] 3 HKLRD 111 at §12 *per* Ma J (as he then was).

16. In *A Co v B Co* at §13, the main requirements for *Norwich Pharmacal* relief were set out:

(1) There must be cogent and compelling evidence to demonstrate that serious tortious or wrongful activities have taken place (where fraud or similar serious allegations are made, the degree of proof must correspondingly be high);

(2) It must be clearly demonstrated that the order will or will very likely reap substantial and worthwhile

benefits for the plaintiff, and where a tracing claim is likely to be made there must a serious possibility that the discovery sought will either allow the plaintiff to preserve what may well be his assets or realistically lead to the discovery of such assets; and

- (3) The discovery sought must not be unduly wide, so an order must be specific and also restricted to those documents or those classes of documents that are necessary to enable the plaintiff to preserve or discover assets.

Analysis and Order

17. Applying the above legal principles to the facts of the present case, I am satisfied that a *Norwich Pharmacal* order should be granted.

18. Firstly, from RBC's wire transfer advice, screen shots of *Whatsapp* conversations with the fraudsters, the reports to and correspondence with HKP, there is before me cogent and compelling evidence that P has been defrauded to transfer the Funds into the Account.

19. Secondly, the information sought by P is highly germane to the identity and contact details of the holder(s) of the Account and the issue of fundflow. Disclosure of such information would likely reap substantial and worthwhile benefit to enable P to identify the wrongdoer(s) to enable him to commence proceedings against the wrongdoer(s) to recover or

preserve his monies as well as enable P to serve any court documents on the identified wrongdoer(s).

20. Thirdly, I am satisfied that the discovery sought is specifically defined and not unduly wide save that the disclosure should be from the period from 27 November 2023 (which is the date of the transfer of the Funds to the Account). I have also taken into account the neutral stance adopted by the Bank who has not suggested any difficulty in complying with the orders sought save for the time to disclose the documents sought and that disclosure of “correspondence” between the Bank and the account holder is unduly wide and unspecific. I agree disclosure of the other documents sought should be sufficient and it is not necessary for “correspondence” to be disclosed.

21. Having balanced the competing interest of the victim and the innocent party (the Bank) caught up in the wrongdoing, and mindful that the power to order disclosure should be exercised with great caution, I would make an order in terms of the draft Order as amended by me.

(G Chow)
District Judge

Ms Polly Li, instructed by Payne Velasco, for the plaintiff

The defendant was not represented and did not appear