

Article

BVI Norwich Pharmacal orders unaffected by Broad Idea (No 2)

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Since the Court of Appeal’s decision in *Broad Idea International Ltd v. Convoy Collateral Ltd* BVIHCMAP 2019/0026 (“Broad Idea (No 2)”) was handed down on 29 May this year, our litigation team has frequently been asked to advise on the impact of that decision on the BVI Court’s jurisdiction to grant interlocutory relief in aid of foreign proceedings, and Norwich Pharmacal orders in “support” of intended foreign proceedings. In relation to interlocutory relief generally, the reality is that, post Broad Idea (No 2), the position is now somewhat uncertain.

For example, the decision in Broad Idea (No 2) (which may well be subject to further appeal to the Privy Council and/or corrective legislative intervention) was strictly speaking confined to Chabra type relief (where no cause of action exists against the BVI defendant). The decision did not directly deal with the Court’s jurisdiction to grant other forms of interlocutory relief in aid of foreign proceedings, in particular where the relief is sought against a BVI defendant that is also a defendant in the foreign proceedings. As such, and notwithstanding some of the broad statements in Broad Idea (No 2) itself, the reality is that until matters are revisited or further developed by the Court of Appeal, or legislation is passed to create a statutory basis for the jurisdiction, the Court’s power to grant interlocutory relief in aid of foreign proceedings will remain uncertain.

However, in our view the position in relation to Norwich Pharmacal relief in the BVI in support of intended foreign proceedings is much clearer, and (as matters currently stand) not open to serious doubt. Neither Broad Idea (No 2) nor its immediate predecessor, Broad Idea (No 1) *Convoy Collateral Ltd v. Broad Idea International Ltd and Another* BVIHCMAP 2016/0030 (unreported, 30 March 2020) dealt with or commented upon the Court’s jurisdiction to grant Norwich Pharmacal relief. Therefore, those decisions do not, in themselves, impact the Court’s jurisdiction in this area, and it is otherwise established in the BVI that Norwich Pharmacal orders can be made in support of intended foreign proceedings: see *K and S v. Z and Z* BVIHCM 2020/0016 (unreported, 10 March 2020).

In any event, even if there were any lingering doubts as to the Court’s jurisdiction to grant Norwich Pharmacal relief post Broad Idea (No 2), those doubts have seemingly been removed by the very recent decision in *A Foreign Representative in Foreign Insolvency Proceedings v. Five Registered Agents* BVIHCM [redacted] (unreported, 11 June 2020). In that case Jack J considered the potential impact of Broad Idea (No 2) and confirmed that it did not affect the Court’s jurisdiction to grant Norwich Pharmacal orders in support of intended foreign proceedings, which jurisdiction the Court retained. That is welcome news.

A copy of *A Foreign Representative in Foreign Insolvency Proceedings v Five Registered Agents* can be downloaded [here](#).

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This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

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