

CASE NOTE – CIVIL PROCEDURE

Lifting a *Riddick* Undertaking – When can documents disclosed under compulsion be used for purposes extraneous to civil proceedings?

Lim Suk Ling Priscilla and another v Amber Compounding Pharmacy Pte Ltd [2020] SGCA 76

The Singapore Court of Appeal in this decision adopted a multi-factorial balancing exercise in assessing whether a party ought to be released from the *Riddick* undertaking, i.e. an implied undertaking to the court not to use documents obtained during the course of proceedings for extraneous purposes.

Background

This appeal primarily concerns an application by for release of the *Riddick* undertaking in order to report the commission of several alleged criminal offences to various enforcement authorities.

Amber Compounding Pharmacy Pte Ltd and Amber Laboratories Pte Ltd (collectively, “**Amber**”) commenced an action against Priscilla Lim (“**Lim**”) and UrbanRx Compounding Pharmacy Pte Ltd (“**UrbanRx**”) (collectively, “**Defendants**”) claiming that they had misappropriated Amber’s confidential information and trade secrets for the purposes of benefitting UrbanRx’s business.

Amber successfully applied for search orders against the Defendants and more than 100,000 documents were seized pursuant to these search orders (“**Seized Documents**”). In the search orders, Amber gave the express undertaking not to use the information or documents obtained except for the purposes of the proceedings. Subsequently, however, Amber’s representative disclosed some of the Seized Documents to various authorities to report the commission of several alleged criminal offences by the Defendants. Amber then took out a court application to seek retrospective leave to use some of the Seized Documents for the purpose of making reports to the authorities, as well as, prospective leave to disclose additional Seized Documents to aid the investigations.

Findings

The Court of Appeal departed from the previous two-step test in *Beckett Pte Ltd v Deutsche Bank AG [2005] 3 SLR(R) 555*, which stood for the proposition that prejudice to a disclosing party was an overriding factor against lifting of a *Riddick* undertaking, and preferred a balancing exercise to determine whether the circumstances justify the lifting of the *Riddick* undertaking.

Factors which favour the lifting of the *Riddick* undertaking include:

1. Countervailing legislative policy;
2. Support of related proceedings;
3. Investigation and prosecution of criminal offence(s);
4. Public safety concerns; and
5. International comity.

Factors which may militate against lifting of the *Riddick* undertaking include:

1. Public interest in encouraging full disclosure;
2. Disclosing party's privacy interests;
3. Injustice or prejudice to the disclosing party;
4. Improper purpose for which leave was sought; and
5. The timeous assertion of the privilege against self-incrimination by the disclosing party.

In this case, the Court of Appeal decided against the lifting of the *Riddick* undertaking based on the following:

1. The Defendants have asserted their privilege against self-incrimination;
2. Amber was motivated by an improper purpose;
3. There is a need to protect the Defendants' privacy and to promote full disclosure in civil proceedings;
4. The Defendants would suffer prejudice (i.e. further investigations and possible prosecution).

The above factors outweighed the consideration that the Seized Documents are necessary for the investigation and prosecution of criminal offences. In this regard, the Court of Appeal noted that the authorities have been notified of the possible offences and could investigate the matter on their own.

Comment

In determining whether a *Riddick* undertaking should be lifted, the weight accorded to prejudice suffered by the disclosing party is no longer as significant because a multi-factorial balancing exercise is now preferred. This approach is consistent with developments in other Commonwealth jurisdictions and resonates better with the twin object of the *Riddick* undertaking, i.e. to promote openness in discovery while simultaneously protecting the disclosing party's right to privacy.

In addition, the Court of Appeal's decision emphasizes the importance of timeous assertion of the privilege against self-incrimination by the disclosing party. On the facts, the Court of Appeal accorded significant weight to this factor when deciding against the lifting of the *Riddick* undertaking.

This case also provides a timely reminder that it is important to seek leave of Court *before* using or disclosing documents obtained during the course of proceedings for extraneous purposes, e.g. disclosure to authorities. A party failing to do so may be found in contempt of court for breaching the *Riddick* undertaking.

This case note is intended to provide general information only and should not be relied upon as an exhaustive or comprehensive statement of law. Should you have any specific questions, please speak with your usual contact at Amica Law LLC, or you may direct your query to mail@amicallaw.com.

*We wish to express our thanks to **Nicholas Tong** for his contributions to this case note.*

