

RFU USES NORWICH PHARMACAL ORDER TO TACKLE TICKET TOUTS

LITIGATION AND DISPUTE RESOLUTION

In the recent case of *Rugby Football Union v Viagogo Ltd* [2012] UKSC 55, the Supreme Court made a Norwich Pharmacal Order requiring the defendant (Viagogo) to provide the Rugby Football Union (RFU) with the names and addresses of people who had used its website to buy and sell rugby tickets at inflated prices. In reaching this conclusion, the Supreme Court rejected Viagogo's argument that the order would interfere disproportionately with the data protection rights of the individuals who had bought and sold the tickets.

This case indicates that the courts will not allow wrongdoers to hide behind the anonymity which the internet appears to provide. In that context it is worth noting that the use of a pseudonym will not always guarantee anonymity. For example, it may be possible to trace an individual through their unique IP address by obtaining their contact details from their internet service provider. Norwich Pharmacal Orders can be used to do this.

Rugby fans might also be interested to note that it was held at first instance, and not subsequently disputed, that the sellers and buyers of the tickets were arguably guilty of breach of contract and/or conversion and that the individuals who used the tickets to enter Twickenham were arguably guilty of trespass.

WHAT IS A NORWICH PHARMACAL ORDER?

A Norwich Pharmacal Order is an order requiring a party that has become mixed up in a wrongdoing, and who has facilitated that wrongdoing without necessarily becoming liable for it, to disclose information that will enable a claimant to bring a claim against the real wrongdoer. Norwich Pharmacal Orders are often used to discover the identity of defendants to a potential claim.

BACKGROUND FACTS

The RFU has a policy of promoting the sport of rugby by selling tickets at a reasonable price. Its terms and conditions stipulate that any resale of a ticket at above face value will constitute a breach of contract rendering the ticket null and void. The RFU discovered that tickets for England rugby internationals, which had a face value of £20 to £55, were being advertised for sale on Viagogo's website for up to £1,300.

The RFU asked Viagogo for the names and addresses of the people who were buying and selling tickets at inflated prices so that it could take action against them. When Viagogo refused to provide this information, the RFU applied for a Norwich Pharmacal Order requiring Viagogo to disclose it. The order was granted at first instance and upheld on appeal. Viagogo appealed to the Supreme Court.

THE SUPREME COURT DECISION

In the Supreme Court, Viagogo argued that the Norwich Pharmacal Order should not be granted because it would interfere disproportionately with the data protection rights of the individuals, who had bought and sold the tickets. The Supreme Court rejected this argument. Lord Kerr, who gave the only reasoned judgment, accepted that, in dealing with a claim for the disclosure of personal data, the court must weigh the potential value to the party seeking the material against the interests of the data subject. However, in conducting this balancing exercise, the court was not restricted to considering the benefit that the RFU would gain from obtaining the names of particular individuals who had used the Viagogo site to buy and sell tickets. Consideration could also be given to the RFU's broader aims of discouraging others from "flouting" its rules and preventing the future sale of tickets at inflated prices. In that context, the Norwich Pharmacal Order was in the interests of everyone wanting to attend international rugby matches and granting the order was "the only possible outcome of the weighing exercise in this case."

CONTACT DETAILS

If you would like further information or specific advice please contact:

GEOFF STEWARD

DD: +44 (0)20 7849 2341

geoff.steward@macfarlanes.com

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MACFARLANES LLP

20 CURSITOR STREET LONDON EC4A 1LT

T: +44 (0)20 7831 9222 F: +44 (0)20 7831 9607 DX 138 Chancery Lane www.macfarlanes.com

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