



Neutral Citation Number: [2020] EWHC 2520 (Ch)

Case No: BL-2020-000957

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22nd September 2020

Before :

BEFORE MS CLARE AMBROSE SITTING AS A DEPUTY HIGH COURT JUDGE

Between :

LINDA HICKOX

Claimant

- and -

(1) SIMON DICKINSON

Defendants

(2) SIMON C DICKINSON LTD

Luke Harris (instructed by **Charles Russell Speechlys LLP**) for the Claimant
Emily Neill (instructed by **Howard Kennedy LLP**) for the Defendants

Hearing dates: 8 September 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Ms Clare Ambrose:

Introduction

1. This is the trial of a Part 8 claim under which the Claimant is seeking information relating to an oil painting entitled *Calanque de Canoubier (Pointe de Bamer)* made by the impressionist painter Paul Signac in 1896 (“the Painting”). The Claimant contends that the Painting was stolen from her by a third party Mr Timothy Sammons. Mr Sammons is a former art dealer who was convicted of grand larceny and fraud in New York on 2 July 2019. The Defendants are art dealers and advisors based in London. Their connection to the Painting is that the Second Defendant acted as agent for a purchaser of the Painting. The Claimant seeks information from them as to the location of the Painting and any transactions involving it, including the identity of any purchaser.
2. The Claimant seeks an order under the court’s *Norwich Pharmacal* jurisdiction against the Defendants requiring disclosure of the following information and documents:
 - (1) the current location of the Painting;
 - (2) the current possessor of the Painting;
 - (3) if the Painting has ever been in either of the Defendants’ possession, custody or control:
 - (a) the identity of the party which delivered it to that Defendant;
 - (b) the identity of any party who gave instructions in respect of the Painting while it was last in the Defendants’ possession, custody or control;
 - (c) the substance of those instructions;
 - (4) the identity of any party who has had possession of the Painting since 1 January 2012;
 - (5) details of any transaction involving the Painting which has occurred since 1 January 2012 including for each such transaction details of the following
 - (a) the nature of the transaction;
 - (b) the terms of the transaction;
 - (c) the identity of any parties to the transaction;
 - (d) details of any property exchanged under the transaction;
 - (e) details of any of proceeds of sale or fees or commissions generated by or payable as a result of the transaction and in each case:
 - (i) by and to whom these monies were payable; and
 - (ii) where these monies now are.
3. The evidence before me was:
 - a) a witness statement of the Claimant;

- b) a witness statement of Ms Emma Ward, managing director of the Second Defendant;
 - c) a witness statement of Mr Tim Maxwell served on behalf of the Claimant exhibiting the indictment of Mr Timothy Sammons in the Supreme Court of the State of New York.
4. The issue for decision is whether to grant the *Norwich Pharmacal* relief requested. I cover the following areas:
- i) The factual background;
 - ii) The applicable law;
 - iii) Is there a good arguable case of the tort of conversion by a person other than Mr Sammons?
 - iv) Is there a good arguable case of other wrongs in bailment and unjust enrichment?
 - v) Are the Defendants mixed up in the alleged wrong and is the order necessary to enable action to be taken to pursue the alleged wrongdoers?
 - vi) Overall justice;
 - vii) Relief against the First Defendant;
 - viii) The equitable jurisdiction in aid of tracing property.

The factual background

5. The summary below is based on the witness statements and exhibits. Neither party proposed that oral evidence be given.
6. The Claimant is an individual living in the United States. It appears that in 2011 she was the owner of the Painting and it hung in her apartment in New York.
7. The Second Defendant is a company based in England that acts as a fine art dealer and private adviser. The First Defendant is an Old Master specialist, and he is the founding director of the Second Defendant.
8. Ms Emma Ward gave evidence on behalf of the Second Defendant as its managing director. She specialises in the impressionist and modern art field. It was her evidence that the Second Defendant was founded by the First Defendant and “the Dickinson brand” operates from two offices, the London office operated by the Second Defendant, and the New York office operated by a separate company, Dickinson Roundell Inc, based in the United States.
9. In late 2011 the Claimant discussed the potential sale of the Painting with Mr Sammons and Ms Lindsey Pryor. Ms Pryor was described as a director on the website of Timothy Sammons Fine Art Agents (“TSFAA”). The Claimant describes TSFAA as the public face of three companies then owned by Mr Sammons including a company based in the United States, Timothy Sammons Inc (“TSI”), a UK company and also a Swiss company, all bearing his name. The website described Mr Sammons

as having attended Cambridge, qualified as a UK solicitor at Linklaters and worked at Sotheby's for 14 years.

10. The Claimant says that in around January 2012 she consigned the Painting to TSFFA and that, as discussed with Mr Sammons and Ms Pryor, TSI was to act as her agent for the sale of the Painting. She signed an agreement entitled Sales Agreement with TSI on 9 March 2012. It turned out that TSI had been dissolved since April 2011 but she was unaware of that at the time.

11. The Sales Agreement provided that *"You instruct us to act as your agent for the purposes of the sale of the Property. This appointment is exclusive to TSI.*

...

You agree to consign the property for sale as set out in the Letter and the terms which will, once signed by you, form part of this agreement".

12. The Sales Agreement included a letter under which it was stated that:

"You instruct us to act exclusively on your behalf for the purposes of sale...The purpose of our reporting to you in this way is to provide you with unbiased information to enable you to make an informed decision on how and where to sell...Once the decision for sale has been taken and the method determined, we will ensure that you get the best possible result... If the sale is by private treaty we will identify the buyer and negotiate the best possible price."

13. There is a dispute between the parties as to whether there was ever any valid sale of the Painting, with the Claimant saying the picture was stolen by Mr Sammons, that any sale was made without authority, and that she remains entitled to the Painting. The Defendants on the other hand are saying that the Painting was lawfully sold and that Mr Sammons stole the proceeds of sale. It is common ground that Mr Sammons committed a wrong against the Claimant. However the nature of the alleged wrong and its consequences are a matter of argument.

14. The Second Defendant's evidence from Ms Ward is that it acted as agent for a purchaser of the Painting and transferred the agreed price in full to "the agent for the Claimant" within 2 days of the sale being agreed. The Second Defendant's evidence was that other information about the sale was confidential by reason of a general custom in the art world that the identity of clients of art dealers remains undisclosed. She says that the Second Defendant acts for wealthy individuals who place great emphasis on privacy and security. These individuals wish not only that their names be kept confidential but also the price and date of sale, and its terms.

15. The Claimant adduced evidence of email correspondence between herself and Mr Sammons where he stated on 22 July 2013 that *"we have a sale agreement"* for a sale at USD 4.85m (giving her USD 4.5m net proceeds) under which full payment was to be made in 160 days. In September 2013 he said, *"running through the chronology"* that when in June 2013 there was an offer, she had agreed that *"we"* could sell the

Painting if she received net USD 4.5m, “*We agreed a gross figure of \$4.85m at end July (22nd)...We would not identify the buyer but I attach a copy of the relevant sales invoice with the buyer’s name redacted. We have a deposit of 3%*”. Over the next months he continued to indicate that the buyer wished to complete and the Claimant unsuccessfully attempted to chase payment and locate the Painting. In April 2014 he was telling her that the picture was in Zurich and was about to be shipped back to her in New York. This never happened and she has obtained an air waybill dated 4 March 2012 evidencing shipment of a painting from New York to London. She understands it relates to the Painting and her private investigator was told by the shipping company that the Painting was shipped directly to Christie’s Fine Art on 5 April 2012.

16. In around July 2014 Mr Ian Dalziel, who appeared to be a director of Mr Sammons’ Swiss business, took over the communications. He told her on 7 July 2014 that he believed the painting had been sold to a client of the First Defendant’s New York operation.
17. In December 2014 the Claimant filed a complaint of criminal activity in the New York County District Attorney’s office.
18. On 8 April 2015 the Claimant entered into a settlement agreement with Mr Sammons and TSI under which they agreed to pay her USD 4.85m but no moneys were paid. Part of the settlement was that Mr Sammons would provide sworn confessions of judgment if the sum agreed was not paid.
19. On 16 April 2015 Mr Sammons made the agreed sworn confession of judgment that the Painting was sold on 22 July 2013 for USD 4,850,000.
20. Mr Dalziel reported in May 2015 that he understood that the Painting had in fact been sold on 25 October 2012 for USD 4.85m and that the price had been transferred to an account controlled by Mr Sammons, and the dealer was the Second Defendant.
21. In June 2015 the Claimant’s private investigator approached the Second Defendant to request information including the bill of sale. He was referred to its solicitors, Howard Kennedy, but they refused on grounds of confidentiality and a lack of obligation to disclose.
22. In June 2015 the Claimant testified before a New York grand jury against Mr Sammons. She believes that it was said in those proceedings that a named individual X (who I shall not name) was the purchaser.
23. Based on the information gleaned from Mr Dalziel, the New York court and also her private investigator the Claimant’s position is that the Painting was probably shipped to London in March 2012 and may have been sold to X with a payment of USD 4,850,000 having been made to an account controlled by Mr Sammons on or around 25 October 2012.

24. In July 2015 the Claimant instructed Enyo Law solicitors in London and they made contact with the Second Defendant requesting a copy of the bill of sale and asking to discuss what other documents it may possess. Again, the Second Defendant referred the matter to its solicitors who refused to make any disclosure on the grounds of confidentiality.
25. In August 2015 Enyo Law again made a request for the bill of sale with a fuller explanation and reference to the criminal proceedings. The request was again refused on the basis that insufficient legal grounds for disclosure had been set out, and suggesting that the Second Defendant would reconsider if the Claimant fully set out her grounds in the manner she would if making an application to court.
26. In September 2015 the Claimant registered the Painting as stolen on the Art Loss Register database.
27. On 13 November 2015 judgment was entered by the Claimant against Mr Sammons and TSI in the amount of USD 4,850,000 based on the affidavits of confession of judgment sworn by Mr Sammons on 16 April 2015. It appears that the judgment is unpaid.
28. The Claimant's evidence is that at this stage she decided to focus her finite resources on the ongoing criminal proceedings and did not pursue the disclosure request, believing further information would emerge in the criminal trial.
29. The criminal proceedings in New York continued, Mr Sammons was indicted in June 2016 on 15 counts. The indictment was against Mr Sammons, also Timothy Sammons Inc, and Timothy Sammons Ltd. The proceedings were based on Mr Sammons' activities in relation to this Painting and other high value art works. The indictment included grand larceny in the first degree, 6 counts, grand larceny in the second degree, 8 counts, and a scheme to defraud in the first degree on one count.
30. The Grand Jury proceedings are subject to some secrecy but the indictment disclosed that the counts of larceny were that Mr Sammons and TSI stole property from individuals. Under the scheme to defraud it stated that:

“The defendants in the County of New York, during the period from on or about October 1, 2010 to on or about May 30, 2015, engaged in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person and to obtain property from more than one person by false and fraudulent pretenses, representations and promises, and so obtained property with a value in excess of one thousand dollars from one or more such persons.”
31. Mr Sammons was made bankrupt in England in January 2017 and was also extradited to the US in 2017 where he was arraigned in October 2017.

32. On 2 July 2019 Mr Sammons pleaded guilty in New York on all 15 counts, and he was convicted and sentenced to 4-12 years in prison according to the website of the Manhattan District Attorney which published a picture of the Painting and referred to it by name. It stated that:

“Between 2010 and 2015, SAMMONS brokered the sale of multiple pieces of art on behalf of his clients at auctions and private sales, but failed to turn over the corresponding proceeds of those sales to the owners. In many cases, SAMMONS misled his victims about the timing of the sales or failed entirely to inform them that their artwork had been purchased. When victims inquired about the status of their artwork, the defendant responded by asking them to be patient or ignored them entirely. In some instances, SAMMONS used the proceeds from the sale of artwork owned by one victim to pay debts owed to other victims. The defendant also used victims’ artwork as collateral to obtain personal loans from a financing company based in New York, and when SAMMONS failed to repay these debts, many of the works were sold at discounted prices.”

33. In September 2019 a further request was made on the Claimant’s behalf for information from the Second Defendant. This request was made via the Art Loss Register and again the request was referred to the Second Defendant’s solicitors and was refused on grounds of confidentiality.
34. On 2 March 2020, Charles Russell Speechlys LLP (who were by that time instructed by the Claimant) wrote directly on her behalf to the Second Defendant’s lawyers Howard Kennedy requesting documents and information. This request was again refused.
35. On 23 July 2020 the Claimant issued her Part 8 claim seeking an order to obtain information or documents concerning the theft and subsequent sale of a painting belonging to the Claimant. The information is requested on the basis that it will enable the Claimant to establish the basis of the transactions and determine the potential defendants.

The applicable law

36. In relation to the *Norwich Pharmacal* jurisdiction there was substantial common ground as to the applicable law. The Defendants relied on the following explanation by Saini J in (1) *David Collier* (2) *Rachel Riley* (3) *Tracy Ann Oberman v Daniel Bennett* [2020] EWHC 1884 (QB) (“*Collier v Bennett*”) as follows at [35-41]:

“Based principally upon the above case-law (and specifically upon the way in which more recent cases have refined and explained the original tests), I suggested to the parties, and they accepted, a broad formulation of a workable and practical test under CPR 31.18 as follows:

(i) *The applicant has to demonstrate a good arguable case that a form of legally recognised wrong has been committed against them by a person (the **Arguable Wrong Condition**);*

(ii) *The respondent to the application must be mixed up in so as to have facilitated the wrongdoing (the **Mixed Up In Condition**);*

(iii) *The respondent to the application must be able, or likely to be able, to provide the information or documents necessary to enable the ultimate wrongdoer to be pursued (the **Possession Condition**);*

(iv) *Requiring disclosure from the respondent is an appropriate and proportionate response in all the circumstances of the case, bearing in mind the exceptional but flexible nature of the jurisdiction (the **Overall Justice Condition**).*

The Arguable Wrong, Mixed Up In, and Possession, Conditions each raise threshold hurdles and one does not get to the Overall Justice Condition unless the applicant overcomes those three hurdles. However, certain matters which arise in relation to the Arguable Wrong Condition, such as the strength of what has been established as a good arguable case, will feed into the Court's assessment when considering the Overall Justice Condition.

*Based on the submissions made to me, I would identify a number of particular points which require emphasis when applying these conditions. First, in relation to condition (i), Arguable Wrong, as Ramilos makes clear at [17], showing a good arguable case requires more than "an honest and reasonable belief that there has been wrongdoing". Second, the court has to be vigilant in guarding against "fishing exercises" in what is regarded as an exceptional jurisdiction. Flaux J in Ramilos cited Lord Mance JSC's analysis of the scope of the jurisdiction in the Privy Council in *Singularis Holdings Ltd v PricewaterhouseCoopers* [2014] UKPC 36; [2015] AC 1675 at [139]-[140] and at [62] held that:*

*"As that analysis demonstrates, the Norwich Pharmacal jurisdiction remains an exceptional jurisdiction with a narrow scope. The court will not permit the jurisdiction to be used for wide-ranging disclosure or gathering of evidence, as opposed to focused disclosure of necessary information: see the judgment of Rimer J in *Axa* and the Divisional Court in *Mohamed* at [133]. It clearly does not extend to the sort of wide-ranging requests set out in the schedule to the draft order in the present case. Furthermore, it is impermissible to use the jurisdiction as a fishing expedition to establish whether or not the claimant has a good arguable case or not. This emerges from the decision in *Norwich Pharmacal* itself, particularly in the speech of Lord Cross of Chelsea, in the passage where he approves the *Post* case to which Rimer J refers in *Axa* as cited at [23] above. I agree with Rimer J that Lord Cross was approving the whole of the passage he cited from the *Post* case, including the statement that bills of discovery could not be used: "to enable a plaintiff to fish for information of any causes of action he may have against other persons than the defendant..."*

*Third, in relation to condition (iv), the Overall Justice Condition, the principles to be derived from the authorities generally, including the factors relevant to the exercise of the Court's powers were considered by the Supreme Court in *The Rugby Football Union v Consolidated Information Services Limited* [2012] 1 WLR 3333, [2012] UKSC 55 (Lord Kerr) at [15]-[17]. I will not set out that lengthy extract which is now well-known. Lord Kerr's summary is helpful but not intended to cover every possible*

factor which might go to the Overall Justice Condition. It is not intended to be used as a form of statutory check-list.

*Finally, I observe that it is not necessary to resolve the issue raised before me as to whether the Court is conducting some form of discretionary exercise in applying the Overall Justice Condition. It is simply a heavily fact-specific judicial assessment of whether the remedy is required to do justice. I refer to Andrew Baker J's observations in *Burford Capital* at para. 42.2 where he neatly summarises what I think is the nub of the question the court must answer in relation to the Overall Justice Condition."*

37. I also take into account Lord Kerr's non-exhaustive guide in *Rugby Football Union v Consolidated Information Ltd* [2012] 1 WLR 3333 at [17] setting out relevant factors in the overall discretion:

- "(i) the strength of the possible cause of action contemplated by the applicant for the order...*
- (ii) the strong public interest in allowing an applicant to vindicate their legal rights...*
- (iii) whether the making of the order will deter similar wrongdoing in the future...*
- (iv) whether the information could be obtained from another source...*
- (v) whether the respondent to the application knew or ought to have known that they were facilitating arguable wrongdoing...*
- (vi) whether the order might reveal the names of innocent persons as well as wrongdoers, and if so whether such innocent persons will suffer any harm as a result...*
- (vii) the degree of confidentiality of the information sought...*
- (viii) the privacy rights under article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of the individuals whose identity is to be disclosed...*
- (ix) the rights and freedoms under the EU data protection regime of the individuals whose identity is to be disclosed...*
- (x) the public interest in maintaining the confidentiality of journalistic sources, as recognised in s.10 of the Contempt of Court Act 1981 and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms."*

38. In *Mitsui & Co Ltd v Nexen Petroleum UK Ltd* [2005] EWHC 625 (Ch) at [21] Lightman J provides a useful summary that makes clear that disclosure will only be ordered if necessary to enable action to be brought against the wrongdoer. Flaux J in *Ramilos Trading Ltd v Buyanovsky* [2016] EWHC 3175 described the second condition as the "necessity" condition.

"The three conditions to be satisfied for the court to exercise the power to order Norwich Pharmacal relief are:

- i) a wrong must have been carried out, or arguably carried out, by an ultimate wrongdoer;*

- ii) *there must be the need for an order to enable action to be brought against the ultimate wrongdoer; and*
- iii) *the person against whom the order is sought must: (a) be mixed up in so as to have facilitated the wrongdoing; and (b) be able or likely to be able to provide the information necessary to enable the ultimate wrongdoer to be sued."*

39. It was common ground that the standard of proof as to the existence of wrongdoing is that of "good arguable case" in the sense of a case that is more than just capable of serious argument. In that sense Lightman's explanation might be adjusted to say that a wrong must have been well arguably carried out.
40. The somewhat novel facts of this case mean that care must be applied in identifying the wrongdoer for the "arguable wrong" requirement. Here it is common ground that Mr Sammons is a wrongdoer in relation to his dealings with the Painting but also that it would be incorrect (and insufficient) to treat Mr Sammons as an ultimate wrongdoer for the purposes of satisfying the test for relief. This is because the Claimant already has judgment against him and he is in prison and bankrupt. Unsurprisingly she considers that further recourse against him would not secure further information or the Painting or its proceeds. In addition, she does not need the information requested to pursue him because he is already well identified as a wrongdoer. The Claimant's counsel was correct to accept that the existence of Mr Sammons' wrongdoing would not in itself justify the requested order, it would be necessary for the Claimant to establish a good arguable case of a separate wrongdoing. This does not, however, mean that Mr Sammons' wrongdoing is irrelevant to the court's decision.
41. The Claimant has not identified who has committed a wrong other than Mr Sammons or articulated precisely what wrong has been committed. The Claimant's position is that the Defendants hold the key to what happened to the Painting and who can be pursued other than Mr Sammons. She says that without the disclosure she cannot specify her claims or plead the conversion (or other wrongs she relies on) that occurred. Her case was, however, specific in contending that Mr Sammons stole the Painting such that anyone who thereafter purchased it or took possession of it committed the tort of conversion. Her counsel submitted that other third parties involved in the transaction may also be liable in conversion, for example if it has been moved, cleaned or exhibited (before or after any sale). She also maintains there may be claims in bailment against any person taking possession of the Painting with sufficient notice of her ownership interest.
42. The Claimant's counsel argued that there may also be claims arising out of breaches of fiduciary duty in that Mr Sammons or his entities held the Painting as fiduciaries at the outset. They owed her a duty not to make an unauthorised profit or favour their own interests. Anyone who received the Painting or its proceeds (for example as carrier, dealer or purchaser) may be liable for knowing receipt or dishonest assistance. The Claimant says she has an arguable case that any transfer of the Painting by Mr Sammons was a breach of fiduciary duty and that those who received the Painting or its proceeds may be liable for breach of duties under a constructive trust.

43. The Defendants' position was that the Claimant cannot identify a wrong other than that committed by Mr Sammons and the *Norwich Pharmacal* jurisdiction cannot be used to see if there is such a wrong. The Defendants relied on the decisions in *Ramilos Trading Ltd v Buyanovsky* [2016] EWHC 3175 and *Burford Capital Limited v London Stock Exchange Group plc* [2020] EWHC 1183 (Comm) to argue that the Claimant's application is wholly speculative and to be treated as a fishing expedition to establish whether there has been any wrongdoing other than that of Mr Sammons. The Defendants argued that the Claimant had no evidence that anyone other than Mr Sammons had done anything wrong and this objection prevented the Claimant meeting the first threshold.
44. The short answer is that the relief is available if there is a good arguable case that there has been a wrong. This may seem obvious but the arguments raised an issue as to how the test distinguishes between a speculative application and a legitimate one, particularly where the existence or nature of a tort has not yet been established.
45. The Claimant's counsel urged me to apply *P v T Ltd* [1997] 1 WLR 1309 whilst the Defendant's counsel emphasised that it should be regarded cautiously, and only justified as an exceptional case. In *P v T* the claimant had lost his job solely on grounds of a third party's allegation of gross misconduct in circumstances where the alleged misconduct and its source had never been disclosed. Notwithstanding disciplinary proceedings and an industrial tribunal hearing, the misconduct allegations had not been substantiated and the employer admitted that it had acted unfairly. The Claimant applied for an order requiring his employer to disclose the allegations and the identity of the person who made them. Sir Richard Scott VC allowed the relief explaining as follows (underlining added):

"In the present case the first issue, I suppose, is whether the circumstances ought to incline the court to exercise what is a discretionary power to order discovery so that the plaintiff may be enabled to bring proceedings to clear his name against the person or persons who supplied the information, which he contends to be false, to the defendant. There are a number of matters to be taken into consideration in this connection. First, there is the nature of the action which the plaintiff might, if he has the information he seeks, bring against the third person or third persons. Two alternative actions have been suggested. One is an action in defamation. It is not known of course whether the communication was oral or written. The second is an action for malicious falsehood. An action for malicious falsehood would require not only that the information given by the third person to the defendant was false but also that the information was given with the intention of doing injury to the plaintiff. In effect it would be necessary I think for him to show that the individual giving the information knew it to be false or had no real belief in its truth. Malice is an essential ingredient in the cause of action, but malice has its own particular meaning in this and most other torts where it is a requisite. So far as defamation is concerned it would be necessary for the plaintiff to show that the information was false. It would be necessary for him to show that the information disparaged him in the eyes of the recipient of it. It appears clear that he would succeed in establishing that last requirement, for it was on the basis of this information that he was charged and

*convicted by his employers of gross misconduct. I find it very difficult to conceive of a case in which an action for malicious falsehood could succeed in which there would not also be a good action for defamation. An action for defamation might be available even if an action for malicious falsehood were not. So far as defamation is concerned the need to show malice would arise only if the communication were covered by qualified privilege. The present position is that it is not possible for the plaintiff to know for certain whether he does or does not have a viable cause of action against the informant. He does not know what was the information that was supplied. As I read his affidavit, he is confident that he had committed no act justifying the description of gross misconduct, but until he knows what it is that he is said to have done his position in that regard will remain inchoate. In that respect his position is not the same as that of the plaintiff in the *Norwich Pharmacal* case [1974] A.C. 133. In the *Norwich Pharmacal* case the plaintiff was able to demonstrate that tortious infringements of patent rights were being committed. It did not know by whom. It did not know whom to sue. But that there was tortious conduct against it was not in question. In the present case it is in question whether a tort has been committed against the plaintiff. He believes that it has. The purpose of any order I make, as I suppose of any order that a judge ever makes, is to try to enable justice to be done. It seems to me that in the circumstances of the present case justice demands that the plaintiff should be placed in a position to clear his name if the allegations made against him are without foundation. It seems to me intolerable that an individual in his position should be stained by serious allegations, the content of which he has no means of discovering and which he has no means of meeting otherwise than with the assistance of an order of discovery such as he seeks from me. It seems to me that the principles expressed in the *Norwich Pharmacal* case, although they have not previously been applied so far as I know to a case in which the question whether there has been a tort has not clearly been answered, ought to be applicable in a case such as the present.*

46. In *Ramilos* Flaux J explored the boundaries of the *Norwich Pharmacal* jurisdiction at length and suggested (at [16]) that the decision in *P v T* was to be regarded as an exceptional case and at the outer limits of the *Norwich Pharmacal* jurisdiction. However, Flaux J also acknowledged that the decision had been approved by Lord Woolf CJ in the House of Lords in *Ashworth Hospital Authority v MGN* [2002] 1 WLR 2033 at [57] where he acknowledged that relief was properly granted where the claimant could not identify without disclosure what would be the appropriate cause of action. Lord Woolf also emphasised that the jurisdiction is an exceptional one, and operates flexibly where relief is necessary, and may inevitably arise in new situations. These comments were expressly confirmed more recently by the Supreme Court in the *Rugby Football Union* case.
47. Andrew Baker J also dealt at length with the court's jurisdiction in *Burford*. He considered (at [35]) that *P v T* is a decision that *Norwich Pharmacal* relief does not require that a claimant must show that a tort has been committed, instead relief can be granted where the requested information may show that no tort was committed at all.
48. The Defendants placed emphasis on the overall analysis in *Burford* and also Flaux J's statement in *Ramilos* (at [62]) that:

“the Norwich Pharmacal jurisdiction remains an exceptional jurisdiction within a narrow scope. The court will not permit the jurisdiction to be used for wide-ranging disclosure or gathering of evidence, as opposed to focused disclosure of necessary information [...] Furthermore, it is impermissible to use the jurisdiction as a fishing expedition to establish whether or not the claimant has a good arguable case ...”

49. It is uncontroversial that the *Norwich Pharmacal* jurisdiction cannot be used for the purpose of fishing expeditions and Flaux J’s dictum above was adopted by Andrew Baker J in *Burford Capital* [132]. Fishing expeditions are a common cause for complaint in litigation but the terminology is rarely defined. It is generally used to explain that a court will not assist a party in attempting to trawl (or cast a net or rod) over someone else’s information in order to see what is out there and whether it would found a case. The term will often be used to describe a very wide ranging request but the essence of the complaint is that the request is speculative. The court will not make an order for disclosure unless there is a realistic basis for the request. In the *Norwich Pharmacal* context it is not enough to speculate that there has been a wrong. This approach was demonstrated by Andrew Baker J in *Burford* (at [145]) and Flaux J in *Ramilos* (at [219]), where having assessed the evidence the court concluded that the claimant’s case was speculative. *P v T* is consistent since Sir Richard Scott VC’s decision was not based solely on the claimant’s belief or speculation but the court’s assessment of the unusual history (including the employer’s admission that its dismissal was unfair). He clearly considered that the case was realistic and not speculative even though the existence and nature of the wrong could not yet be identified.
50. Here, the fact that the Claimant has not yet identified the wrong she alleges does not mean that the application is a fishing expedition as to whether she has a good arguable case. Flaux J was warning against speculative applications but he was not suggesting that an application was impermissible in order to establish whether a wrong has been committed. In all *Norwich Pharmacal* applications the claimant’s case is partly inchoate, that is the very point of the relief. Flaux J emphasised the simple and uncontroversial test (at [17]) that, *“The claimant must show that it has a good arguable case that there has been wrongdoing”*. This test goes to the existence of any wrong as well as its potential merits.
51. There was a related issue as to the level at which the Claimant needs to establish a good arguable case. The Claimant’s counsel contended that the Claimant need not establish each and every element of a potential cause of action and it is enough to show that a wrong has been carried out but the requested information is needed to identify whether the wrong is actionable. Again, the simple answer is that she must establish a good arguable case that there has been a wrongdoing. The Claimant’s application is made on the basis of an arguable cause of action (and accordingly I need not address whether the wrong must be actionable, which was a point addressed in *Burford*). It is insufficient if there is no good arguable case for an essential element of that action. This does not mean that relief will be unavailable if there are significant question marks over important aspects of the case, for example limitation defences. As was explained by Saini J in *Collier v Bennett*, these do not preclude the finding of good arguable case and will generally not be decided on a Part 8 Claim. They are matters for trial. However, if there is a clear defence or no good arguable basis for

essential elements of a cause of action then that may well prevent the claimant establishing a good arguable case for that wrong.

Is there a good arguable case of the tort of conversion by a person other than Mr Sammons?

52. The Claimant put conversion at the forefront of the arguments. This reflected the fact that conversion is a strict liability tort so the existence of knowledge or notice on the part of the wrongdoer is not required.
53. The Claimant's position was that Mr Sammons and TSI did not have an unfettered mandate to sell the Painting and the express terms of the Sales Agreement had indicated that TSI would seek her advice on sale, and this was apparent from Mr Sammons' communications with her. Any transaction, sale or disposition in October 2012 was wrongful since it had been concluded fraudulently. Further, TSI was dissolved when the Sales Agreement was concluded so it was void and did not confer authority to sell. The Claimant's position was that Mr Sammons (acting alone or through his companies) had stolen the Painting and when Mr Sammons (or anyone taking from him) purported to sell the Painting this was a conversion and any subsequent purchaser or person holding the Painting was liable to her for the wrong of conversion. In any event, without the requested information the Claimant could not know whether Mr Sammons had purported to sell the Painting.
54. The Claimant contended that she remained the owner of the Painting which had been stolen from her by Mr Sammons. Accordingly, she could establish the tort of conversion on the part of anyone who took actual or constructive possession of the Painting, and a wrongful sale would amount to a conversion by the transferor. She relied on the principle of *nemo dat quod non habet* (i.e. "no one gives what they do not have") that finds statutory expression in s. 21(1) of the Sale of goods Act 1979, which provides:

"Subject to this Act, where goods are sold by a person who is not their owner, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell"
55. Counsel for the Claimant argued that even if Mr Sammons were able to transfer title to the Painting to the Defendants' client under an exception to the *nemo dat* principle, only the transferee would have a defence to the claim in conversion.
56. For their part, the Defendants denied that there had been any conversion of the Painting that could justify an application since the only wrong identified was Mr Sammons' theft of the proceeds of sale of the Painting. They argued that there was no theft of the Painting. The Defendants' counsel asked me to construe the Claimant's

witness statement as evidence that she had consigned the Painting to Mr Sammons personally and that under the Sales Agreement she had also agreed to consign it to him for sale. The Defendants also relied on the express wording of that agreement to contend that TSI or Mr Sammons had been authorised to sell it. Accordingly, any handling of the Painting before sale (for example cleaning) would have been consistent with the terms under which she had consigned the Painting. In any event, there was no evidence of any acts prior to sale being inconsistent with her rights. The Defendants contended that after the sale the Claimant no longer had title to the Painting since it had been validly sold by her agent. They pointed to her conduct throughout 2014 and 2015 when she continued to take the position that the Painting had been validly sold, and never sought to rescind the agency.

57. The Defendants maintained that even if they were wrong in contending that the Claimant had authorised Mr Sammons or TSI to sell the Painting to their client, there was no conversion since any sale or disposition of the Painting by Mr Sammons would be valid as against the Claimant under the Factors Act 1889. The Factors Act provides a statutory exception to the *nemo dat* principle. The Defendants contend that for the purpose of justifying *Norwich Pharmacal* relief, the Claimant would bear the onus of showing that any person taking from Mr Sammons did not take in good faith. The Factors' Act provides as follows:

"1(1) The expression "mercantile agent" shall mean a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods;

...
2 (1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorised by the owner of the goods to make the same ; provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same.

...
(4) For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary."

58. At the hearing the Defendants gave instructions to counsel indicating that the Painting was sold either on 13 July 2013 or 25 October 2012 but they could not say which date. Following a question as to the identity of the agent to whom they paid the price, they gave instructions that all their dealings in relation to the transaction were with Mr Sammons, that he had control of the Painting at that time, and that the payment of the purchase price had been to an account controlled by Mr Sammons and in the name of TSI. These points were relied upon to argue that the Factors Act applied.

Conclusions on good arguable case on conversion

59. The Claimant clearly concluded an agreement with TSI authorising sale of the painting on her behalf. However, this does not answer any claim in conversion since there are significant issues as to the scope of any authority conferred upon TSI or Mr Sammons, and in particular whether either was authorised to conclude a sale of the Painting in October 2012 (or July 2013), and whether such sale was a conversion or theft. The validity of transactions concluded with TSI may also be disputed. The Defendants were unable to show that the Claimant's evidence was decisive in showing that she consigned the Painting personally to Mr Sammons and authorised him to make the sale to their client, such that any theft was only in relation to the proceeds of sale. The contemporaneous evidence such as the Sales Agreement showed that Mr Sammons used corporate entities rather than contracting personally.
60. The Claimant has a good arguable case that she did not authorise TSI or Mr Sammons to sell the picture under a secret and fraudulent sale in October 2012 or July 2013, and that he converted the Painting and stole it. This is supported by his convictions in relation to his dealings with the Painting, and the extended correspondence with the Claimant, which is all consistent with dishonesty in his dealings with the Painting.
61. The key question is whether there is a good arguable case of conversion by any other person. I am satisfied that the Claimant has such a case against any person who has taken possession of the Painting in relation to the sale or subsequently. This is not speculative since there is a good arguable case that Mr Sammons wrongfully and dishonestly sold the painting without authority and the Painting was delivered following that sale such that the purchaser did not take better title than the Claimant and is liable in conversion unless it can establish an exception to *nemo dat* (see e.g. *Clerk v Lindsell on Torts*, 22nd Ed, 17-16 and 17-22). Although the identities remain unknown, there is little doubt that Mr Sammons acted dishonestly, someone purchased the Painting and some person(s) took possession of it following that sale. Unlike *Burford* where Andrew Baker J was able to conclude that the evidence for any wrongdoing was speculative, here there is strong evidence of a theft that would make subsequent purchasers taking possession liable in conversion unless they can invoke an exception to *nemo dat*.
62. The Factors Act may be a strong defence if it applies but in any claim in conversion there is likely to be a significant issue as to whether it applies to protect the purchaser or others who took possession.
63. The submissions made by the Claimant as to whether Mr Sammons was in possession of the Painting at the date of sale, as to whether he made the sale, as to the possible dates of sale and as to who received the proceeds of sale suggested that the Defendants uniquely hold the information essential to establishing the merits of any claim in conversion. It also showed that the information requested by the Claimant was required to enable her to identify and pursue any potential tortfeasors other than

Mr Sammons. By analogy with Saini J's comments in *Collier v Bennett* [54], it lies ill in the mouth of the person holding back the essential information as to whether the Factors Act would give the purchaser (or others) a good defence to assert that there is a good defence, especially in reliance on selective disclosure.

64. The Defendants have not shown that the potential application of the Factors Act (or other *nemo dat* defences) rebuts what would otherwise be a good arguable case. Although Mr Sammons was very probably a mercantile agent and involved in the sale, it is not clear that he was the person who made the sale or had possession of the Painting with the Claimant's consent at that date. Any person(s) who dealt with Mr Sammons or TSI and asserts good title against the Claimant (under the Factors Act or the other exceptions to *nemo dat*) will generally bear the burden of proving that they acted in good faith and had no notice of his lack of authority (see *Benjamin on Sale of Goods* para 7-045). Here there is no evidence that the buyer lacked good faith but that is unsurprising where the buyer (and any intermediary possessors) cannot be identified without disclosure. It is not decisive since there is no presumption of good faith on the part of the purchaser (or any holder) in the Factors Act 1889.
65. The Defendants also contended that any claim in conversion would be defeated by an obvious limitation defence. They relied on section 3 of the Limitation Act 1980 to argue that the Claimant's cause of action in conversion would have expired (probably in 2018 or 2019) since it provides that where there have been successive conversions, the successive conversions are not actionable after 6 years from the original conversion, and the Claimant's title to the chattel would also be extinguished. The Claimant contended that these provisions would not apply under section 4 of the Limitation Act which provides a special time limit in cases of conversions related to the theft of a chattel.
66. Any claim in conversion is likely to be subject to significant argument about limitation defences and whether the alleged conversions are related to the theft of a chattel. It is common ground that there has been a theft in relation to the transaction under which the Painting was delivered. I am satisfied that the Claimant has a good arguable case that there was a theft of the Painting as opposed to its proceeds, and an extended limitation period would apply. The issues on limitation are more appropriate for trial and I follow the approach of Saini J in *Collier v Bennett* in this respect.

Is there a good arguable case of other wrongs in bailment and unjust enrichment?

67. Given my conclusion that a case in conversion met the standard of good arguable case it was not necessary to assess whether the bailment or unjust enrichment claims would justify an order. However, if I am wrong on that I consider that these claims do not justify an order.
68. In relation to bailment the Claimant's counsel had two lines of argument. He did not press them but I shall deal with them briefly for completeness. The first line of

argument was that any possessor of the Painting who had “*sufficient notice*” of the Claimant’s interest would have owed her the duties of a bailee. Counsel put the following points:

(1) The test of “*sufficient knowledge*” is the relevant test in the context of sub-bailment: see *The Pioneer Container* [1994] 2 AC 324.

(2) a similar test should apply to trigger the duties of a bailee towards third parties outside the situation of sub-bailment: see *East West Corpn v DKBS AF 1912 A/S* [2003] QB 1509 at [25]-[26].

(3) if the possessor of an object should reasonably have foreseen the identity of the person entitled to the object, he will be deemed to hold the object as the bailee of that person. The possessor's imputable knowledge of the existence and identity of the owner implies consent to his or her standing as bailee on that owner's behalf. In *Robot Arenas v Waterworth* [2010] EWHC 115 (QB) Colin Edelman QC (sitting as a deputy) cited with apparent approval the argument in *Palmer on Bailment* that a possessor who should reasonably have been alerted by the condition of the goods, or the circumstances in which the goods are received, to the fact that the goods belonged to another, should be characterised not as a mere "unconscious" bailee, but as an informed and involuntary bailee. Similar reasoning should arguably apply where the choice is between an involuntary bailee and a true bailee. Where the knowing possessor of another's goods could reasonably have taken steps to identify the owner and arrange for the owner to collect them, any retention of the goods in circumstances where the possessor is no longer compelled to retain them should enable the possession to be characterised as voluntary. This makes the possessor party to a normal (that is, voluntary) bailment.

(4) where the bailee is on notice of a third party interest in the goods, the duties of the bailee include a duty to care for the goods and refrain from converting them (*East West Corpn* at [28]) and, further, a duty on the part of the possessor to take reasonable steps to notify the owner of that possession and make the goods available for collection.

69. The second line of argument was based on the law of finding, namely that a finder owes duties to the owner as bailee. It was submitted that a person finding with sufficient notice of a third party’s superior interest will owe bailment duties to such third party.

70. Neither of these two arguments had any better prospect of success than the case on conversion since they depended on the Claimant having property rights in the Painting (as discussed above). As counsel made clear, conversion was an easier case to make since it did not depend on establishing notice of the true owner’s interest.

71. There are substantial difficulties with counsel’s two lines of argument in the context of the purchase of the Painting. There is no evidence that anyone other than, possibly, Mr Sammons took the Painting with sufficient notice of the Claimant’s interest. The information requested will not in itself overcome that hurdle. It remains speculative to suggest that anyone came into possession of the Painting with notice that the

Claimant had a superior interest or as a finder of a lost chattel. There is no evidence that this Painting was mislaid at any stage. There is no evidence that anyone taking possession, whether on the instructions of Mr Sammons or following the sale, had notice that they were acting contrary to her rights. The position of the purchaser (and those holding in relation to the purchase) is quite different to that of a shipowner taking another's goods on board (the situation in the shipping cases), or the proposed unconscious bailee, for example a new landowner finding another person's chattels on their land (the situation in *Robot Arenas*) or Colin Edelman QC's example of someone moving house who finds a piece of valuable jewellery at the back of a cupboard.

72. The Claimant's counsel did not explore in detail the potential claims arising from the breach of fiduciary duty by Mr Sammons, including tracing, knowing receipt and dishonest assistance (as outlined above). He acknowledged that those fiduciary claims required an element of knowledge and recognised that as yet the Claimant made no positive case that third parties had the requisite knowledge (or sufficient notice for bailment). The information requested will not in itself establish such state of mind and I consider that, on the evidence put forward, the Claimant has not established a good arguable case for the wrongs in question. Her case is speculative as to an essential element of the wrongs in question (namely the existence of the requisite knowledge, notice or dishonesty) on the part of anyone other than Mr Sammons.

Are the Defendants mixed up in the alleged wrong and is the order necessary to enable action to be taken to pursue the alleged wrongdoers

73. This condition is satisfied. The Second Defendant has made clear that it acted as agent for a purchaser of the Painting and this transaction is at the very centre of the Claimant's case on conversion (and indeed the other alleged wrongs). It facilitated the sale and is very clearly mixed up in the transaction that, both Defendants argue, transferred ownership.
74. The Defendants expressly accept that the additional information requested can likely only come from them. It is clear that the order is necessary to provide the information required to pursue any claim in conversion.

Overall justice

75. Here the question is whether the disclosure order is an appropriate and proportionate response in all the circumstances of the case, bearing in mind the exceptional but flexible nature of the jurisdiction (*Collier v Bennett*).
76. The Defendants said there were two compelling factors against the exercise of the exceptional *Norwich Pharmacal* jurisdiction: confidentiality and delay.

Confidentiality

77. The Defendants relied on the evidence of Ms Ward to contend that confidentiality remained a paramount reason against disclosure. She says that the well-known custom and practice in the art world is that the identity of a private buyer or owner of a painting is not revealed. This is because fine art is readily moveable and highly valuable. There is a black market in these artworks and a key security protection (particularly for private owners) is the simple confidentiality of the fact of ownership. Further she says that wealthy individuals may wish the fact of buying a high value artwork to remain confidential since it can be embarrassing among peers or employees. In addition, it can reveal the degree of wealth of an individual and have an impact on their security. In the particular case of the buyer of this Painting, the extent of their wealth was not publicly known (despite their status as a public figure) and discretion was of importance to them. Ms Ward also said it was of paramount importance to the Second Defendant's reputation within the industry that it be seen to be able to protect client confidentiality. The Claimant contended that disclosure should be ordered in the interests of preserving the integrity of the art market in London.
78. The general custom of confidentiality relied upon has not been shown to be an absolute obligation. It appears to be a market custom adopted by art dealers regarding voluntary disclosure. There was no basis to suggest that it could preclude compliance with a court order made for the purpose of pursuing a wrong. Accordingly, the Second Defendant's concern that its market reputation would be damaged lacked weight in relation to complying with a court order. The Defendants chose to give some information in this hearing without a court order, primarily with a view to resisting a court order. This suggests that any general custom or obligation of confidentiality is significantly more fluid than is asserted.
79. I am not satisfied that confidentiality is good reason why this order should not be made. Most *Norwich Pharmacal* cases concern information that would otherwise be confidential. Here there is a genuine interest in preserving confidentiality as to the location of the Painting. The privacy of the purchaser, and their concern to avoid publicity as to the extent of their wealth and possessions, is a further consideration. However, these interests do not outweigh the Claimant's interest in pursuing a good arguable claim, especially where she has a realistic competing claim against that purchaser for ownership. As Lord Kerr made clear, the court must carry out a balancing exercise. Here the Claimant has agreed to give undertakings of confidentiality and as to the purpose to which the information may be put. The Claimant has a similar interest in preserving the security of the Painting. There is no reason to consider that the Claimant (and those acting for her) will not respect the sensitivity of the information.
80. Here the Defendants' arguments on confidentiality do not outweigh the interests of justice in allowing the Claimant to make a good arguable case. The Second Defendant's suggestion that disclosure would jeopardize the security of the Painting (and fine art more generally), international market expectations and its own industry reputation did not tip the balance. To the contrary, these matters would tend to point towards requiring cooperation in resolving the Claimant's claims. Fairness points in the same direction. It is common ground that the Claimant is the victim of a convicted thief and fraudster. The evidence suggests he exploited market customs of confidentiality to carry out serial fraud in the international art market. The Claimant

assisted in bringing him to justice and it would be unfair if such market custom prevented her pursuing any further legal recourse.

Delay

81. In relation to delay the Defendants relied on the entire period of delay from 2011 when the Claimant was informed that “Dickinsons” were a potential buyer’s agent up to May 2020 when she provided a draft statement in support of a court application. I consider that the period from May 2015 (when she became aware that the Second Defendant was probably the dealer on the other side) is relevant and requires explanation. I have taken careful account of the periods in question, the criticisms put forward by the Defendant and the explanation put forward by the Claimant. I am satisfied that the delay does not justify refusing the application.

- a) The Claimant repeatedly asked the Second Defendant to provide information both in 2015 and also in 2019. These requests were refused on grounds of confidentiality. There is little evidence to suggest that the Defendants would have offered any cooperation even if the Claimant had served a full statement or issued a court application since they have incurred considerable costs in resisting this action.
- b) The Claimant had good reason for not pressing forward with an expensive court application (for which she would have to pay the costs) when she was still expecting the information in question to emerge from Mr Sammons’ trial, and when those proceedings were the focus of her energies towards recourse. Until Mr Sammons’ conviction her serious claims regarding his wrongdoing were unproven.
- c) Following Mr Sammons’ conviction, the Claimant immediately asked for the information and her delay was not blameworthy.
- d) It is significant that the Defendants have not identified any prejudice that is said to arise out of the delay complained of.

82. I have taken into account the various considerations highlighted by Lord Kerr in the *Rugby Football Union* case, and the arguments on discretion more generally. The order is not unduly wide since it addresses who took possession and the details of the transactions involving the Painting. It is obviously limited to matters of which the Defendants have knowledge. The Defendants questioned the relevance of the information as to commission. I am satisfied that this is a relevant element in understanding the central transaction in dispute. They did not identify a specific difficulty with any other category and acknowledged that the information would likely only come from them. The order should include an undertaking of confidentiality and also identify the purpose for which the information can be used. I am satisfied that the balance of justice favours the making of a *Norwich Pharmacal* order for the information requested.

Relief against the First Defendant

83. The Claimant contended that Mr Dickinson’s precise involvement with the Painting is unknown but he is a director and any order should cover him regardless of his being

personally mixed up in the wrongs relied upon. I do not accept this. If an order is to be made against Mr Davidson personally then it is a threshold requirement that he is mixed up in the wrongdoing so as to have facilitated it. The Claimant relied on *Harrington v Polytechnic of North London* [1984] 1 WLR 1993 where the Court of Appeal found that the court had jurisdiction to make an order against employees of a party. This shows that the court may enjoin an individual to provide information as the agent of a party rather than as the person mixed up in the wrong. However such powers would only be exercised where appropriate and proportionate. *Harrington* is distinguishable because the employees there were the only people who could provide the information. Here it is not necessary to enjoin Mr Dickinson and I am satisfied that no order should be made against him.

The equitable jurisdiction in aid of tracing property

84. The Claimant's position was that the court also had jurisdiction to order the provision of information under a power recognised and described in *Bankers Trust Co v Shapira* [1980] 1 W.L.R. 1274. Counsel submitted that this jurisdiction arises where there is strong evidence that the applicant's property has been misappropriated.
85. In circumstances where the Claimant has justified the requested order under the *Norwich Pharmacal* jurisdiction it cannot be shown that an order is required under this jurisdiction. Accordingly, I am not satisfied that an order should be made under this jurisdiction.
86. If I were wrong in concluding that relief be given under *Norwich Pharmacal* then I would not be satisfied that relief should be given under this equitable jurisdiction. The jurisdiction depends on a party showing a strong case that her property has been misappropriated. Here the Claimant's case as to conversion is a good arguable one but there is no evidence of any risk of dissipation which is ordinarily an element justifying this type of relief. The Claimant's case on misappropriation is not so strong as to justify disclosure solely on the basis of the equitable jurisdiction to preserve her alleged ownership interest. Further, interference with property rights is the very basis for granting the *Norwich Pharmacal* order in this case. If that relief is not available then the equitable jurisdiction described in *Bankers Trust* would similarly not be available. The discretionary factors and the element of necessity are also very similar. If I were wrong as such in allowing *Norwich Pharmacal* disclosure then such factors would probably not justify exercise of the comparable *Bankers Trust* jurisdiction.