

FOONDUN M.S. v. BANQUE DES MASCAREIGNES AND ANOR
[Supreme Court of Mauritius (Commercial Division)]
2019 SCJ 58
SUMMARY

Facts: This is an application before the Judge in Chambers for an order to compel commercial banks (the Respondents) to communicate to the applicant certified copies of the cheques issued by the co-respondent and to compel the Respondents to produce and depone on such cheques in a main case pending before the Commercial Division of the Supreme Court.

The applicant averred that the directors of co-respondent fraudulently misappropriated his share of profits in a construction project. He needs certified copies of cheques which were used to defraud him. Section 60(3), Section 64(10) of the Banking Act and the principles for a Norwich Pharmacal Order have been invoked in support of this application.

Held: The application was set aside because:

- (1) The Applicants were not parties to “legal proceedings” as contemplated by section 60(3) and the application concerns cheques and does not relate to any “entry” in a “banker’s book” within the meaning of section 60(3) & (5) of the Banking Act.
- (2) To issue an order for disclosure pursuant to section 64(10) where the Judge is satisfied that the applicant is acting in his or its duties **and** the conditions set out under either section 64(10)(b) or section 64(10)(c), are satisfied and then only, upon an application by an “applicant” who must be one of the designated authorities listed in section 64(9). This is made explicit by the use of the word **or** which has been inserted only in between (b) and (c). The Applicant did not fulfil the criteria laid down under section 64(9) and section 64(10) of The Act.
- (3) The conditions required for the issue of a Norwich Pharmacal order, were not satisfied inasmuch as the applicant already has the information which he is purportedly seeking to obtain;
- (4) In light of section 64(3)(h) of the Banking Act, the Judge in Chambers cannot be invoked as a parallel jurisdiction with that of the court before which the main case is pending and which has the jurisdiction to pronounce upon the admissibility and production of the cheques.

This summary is provided to assist in understanding the Court’s decision and does not constitute legal advice. The full judgment of the Court is the only authoritative document.

Short Summary

FOONDUN M.S. v. BANQUE DES MASCAREIGNES AND ANOR (2019) SCJ 58

This is an application to order commercial banks (the Respondents) to disclose cheques and depone at trial pursuant to sections 60(3), 64(9) & (10) of the Banking Act and the principles for a Norwich Pharmacal Order. The application was set aside because the conditions under 60(3), 64(9) & (10) of the Banking Act as well as for a Norwich Pharmacal Order were not satisfied.