COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2022/CLE/gen/00120

In the Matter of the Reciprocal Enforcement of Judgments Act, 1924

And

In The Matter of a Judgment of the High Court of Justice of the Federation of Saint Christopher and Nevis dated 16 June, 2020 and obtained on 18 June, 2020, in proceedings numbered NEVHCV2019/141

Entitled

(1) SUNPOWER BUSINESS GROUP PTE LTD
(2) TOURNAN TRADING PTE LTD

Claimants

- and -

(1) AMERICA 2030 CAPITAL LIMTED
(2) MARK SIMON BENTLEY (also known as VAL SKLAROV)
(3) WEISER GLOBAL MARKETS LTD (formerly known as WEISER ASSET MANAGEMENT LTD.)

Defendants

BETWEEN

SUNPOWER BUSINESS GROUP PTE LTD.

First Claimant/Respondent

TOURNAN TRADING PTE LTD.

Second Claimant/Respondent

AND

AMERICA 2030 CAPTIAL LIMITED

First Defendant/Applicant

WEISER GLOBAL CAPITAL MARKETS LTD.

Second Defendant/Applicant

Before:	**Her Ladyship The Honourable Madam Senior Justice Deborah E. Fraser**
Appearances:	**Mr. Colin Jupp and Ms. Tamika Pinder for the First Defendant/First Applicant**
	Mr. Philip McKenzie, Ms. Glenda Roker and Ms. Lynthera Culmer for the Second Defendant/Second Applicant
	Mrs. Courtney Pearce-Hanna and Ms. Raven Rolle for the First and Second Claimants/Respondents
Hearing Date:	**23 April 2024**

Application to Set Aside Judgment granting leave to Register Foreign Judgment – Section 3 of the Reciprocal Enforcement of Judgments Act, Ch. 99 - Rule 13 of the Rules of Court (Reciprocal Enforcement of Judgments), Ch. 77 – Sufficient Reasons to Set Aside Order Granting leave to Register Foreign Judgment – Public Policy – Just and Convenient - Prejudice - Res Judicata – Henderson v Henderson Rule

Service of Documents - Articles 5, 10, 15 and 16 of the Hague Service Convention/Rules of Service, 1965 – Submit to Jurisdiction of Foreign Court – Challenge to Jurisdiction of Court – Validity and Efficacy of Arbitration Clause in Contract

RULING

1. This is an application brought on behalf of the First Defendant/ First Applicant, America 2030 Capital Ltd. requesting the Court to set aside an Order made by this Court on 09 August 2023 ("**the Registration Order**") registering a Judgment Order made by the High Court of St. Christopher and Nevis on 16 June 2020 and filed on 18 June 2020 ("**the Nevis Judgment**").

2. There is another application before the Court brought on behalf of the Second Defendant/Second Applicant, Weiser Global Capital Markets Ltd. requesting the same relief sought by the First Defendant/Applicant.

3. As the applications are similar in nature, this Court heard both at the same hearing.

Background

4. The background to this case is outlined in a judgment made by this Court on 09 August 2023. I merely reiterate the facts here for ease of reference.

5. The Claimants/Respondents, Sunpower Business Group Pte Ltd. ("**Sunpower**") and Tournan Trading Pte Ltd. ("**Tournan**" and collectively, the "**Respondents**") are both Bermudan companies publicly listed on the Singapore stock exchange since 2005.

6. The First Defendant/First Applicant, America 2030 Capital Limited, was an international business corporation incorporated in the island of Nevis operating as an investment company ("**America 2030**"). America 2030 has property in The Bahamas, namely the shares (defined below) held by the Second Defendant/ Second Applicant, Weiser Global Capital Markets Limited, formerly known as Weiser Asset Management Limited, ("**Weiser**") in its capacity as custodian.

7. Weiser is a regulated financial services firm in The Bahamas which, at all material times, acted as depository broker in a transaction involving the Respondents and America 2030.

8. In June of 2018, the Respondents entered into a Master Loan Agreement ("**the MLA**") with America 2030 whereby the Respondents, respectively, would deposit 14,000,000 shares in SBG as collateral ("**the Shares**") in exchange for loans of up to USD$25,000,000.00 from America 2030 ("**the Pledged Collateral**").

9. Custodian Management Agreements provided for Tournan and SBG respectively to deposit the pledged collateral into depository accounts held by Weiser.

10. Materially identical Supplemental Loan Agreements ("**the SLA's**") amended the terms of the MLA's to, inter alia, reduce the loan amount to USD$3,000,000.00 and substituted America 2030 with America 2030 (the Nevis Entity) as the lender. Accordingly, America 2030 was meant to advance loans of USD$3,000,000.00 each to Tournan and SBG and the Shares were to stand as security for repayment.

11. However, no funds were ever advanced and, almost immediately, upon deposit of the Shares (which were to remain in Sunpower and Tournan's respective names via a non-title transfer), America 2030 instructed Weiser to sell a large portion of same.

12. Consequently, the Respondents sought injunctive relief. America 2030 responded by purporting to commence arbitration proceedings in Nevis, relying on arbitration clauses contained in the agreements. The Respondents challenged the validity of the arbitration proceedings in the Nevis court proceedings.

The Singaporean Proceedings

13. The Singaporean proceedings were commenced by way of Summons filed on 05 November 2018. Two sets of proceedings were issued: (a) "under Claim Number "HC/OS 1340/2018 brought by Tournan against America 2030 (SCN); and (b) under

Claim Number "HC/OS 1341/2018 brought by Guo Hong Xin and Sunpower, also against America 2030 (SCN). Weiser is not a party to the Singaporean proceedings.

14. The Singaporean proceedings seek several declarations relating to the MLA's and the SMLA's and an injunction restraining America 2020 from selling, forfeiting, transferring and/or otherwise dealing in the Pledged Collateral (being 13 million shares in Sunpower deposited by Tournan and Weiser).

15. On 08 November 2018, Sunpower and Tournan applied for and were granted injunctions by the High Court of the Republic of Singapore preventing America 2030 from dealing with the Pledged Collateral. Those interim injunction remain in effect.

16. The Singaporean proceedings are currently stayed, but the injunctions remain in place.

The Nevis Proceedings

17. After the Singapore Proceedings and on 10 November 2018, America 2030 attempted to initiate arbitral proceedings in Nevis against the Respondents ("**the Purported Arbitration**"). In response, the Respondents initiated court proceedings in Nevis relating to the alleged improperly constituted arbitration proceedings and for the removal of Ms. Karen Hill-Hector as an arbitrator in those proceedings.

18. Mr. Val Sklarov purported to issue further arbitration proceedings on 27 November 2018 with Ms. Hill-Hector in Nevis claiming, inter alia, that Ma Ming, the director and sole ultimate beneficial owner of Tournan and Executive Director of Sunpower and Guo Hong Xin the Executive Chairman of Sunpower, in their capacities, damages for defamation; namely, ten times the value of the Shares plus a further ten times such value representing punitive damages.

19. On 15 February 2019, the Respondents having objected to the manner in which the arbitrations were purportedly commenced, they commenced a claim in Nevis seeking removal of Ms. Hill-Hector as arbitrator ("**the Fixed Date Claim**"). By order dated 27 February 2019, which was continued by consent, the Nevis Court stayed the purported Arbitral Proceedings pending trial of the Respondent's Fixed Date Claim.

20. Following an investigation into America 2030 and its principal, Val Sklarov (also known as Mark Bentley)("**Sklarov**"), on 05 December 2019, the Respondents initiated court proceedings in Nevis against America 2030, Sklarov and Wieser for fraud ("**the Fraud Claim**") and obtained a worldwide freezing order (on 06 December 2019) against America 2030 and Sklarov and an asset preservation order against Weiser restraining it from dealing with or disposing of the Shares or any sales proceeds of same.

21. The Fraud Claim was served on America 2030, Val Sklarov and Weiser. It was not resisted by any of the defendants and none of them complied with disclosure directions under the aforesaid orders, despite being served with such orders.

22. Accordingly, Judgement in Default was obtained against all of the defendants. An appeal by America 2030 and Sklarov to set aside the Judgment in Default was dismissed by the

Court of Appeal of the Eastern Caribbean Supreme Court. The judgment was served on the attorneys for America 2030 and Weiser as well as the registered offices of the two companies.

23. The Nevis Court ruled that America 2030 carried out a stock loan fraud against each of the Respondents; that all agreements were vitiated due to the fraud; that the Respondents are entitled to the return of the Shares and all proceeds of sale thereof held by Weiser in favor of America 2030; and that America 2030 and Weiser must provide an account to the Respondents of all dealings with the Shares and their sale proceeds.

24. No further appeal was lodged by America 2030 nor Weiser.

The Bahamian Proceedings

25. On 01 April 2019, Weiser initiated proceedings in the Supreme Court of the Commonwealth of The Bahamas and secured an injunction to maintain the status quo of the Shares and their proceeds pending resolution of the dispute between the parties ("**the Bahamian Proceedings**").

26. On 11 November 2020, the Respondents filed an ex-parte application in the Bahamian Proceedings to vary/discharge the freezing injunction made on 01 April 2019. The Summons was subsequently amended to seek additional relief, namely, that the Court recognize the Judgment Order ("**the Amended Summons**").

27. The Amended Summons was initially heard on 30 April 2021. While the Court made an order with respect to certain of the reliefs sought, questions concerning the discharge and recognition of the Judgment Order remained extant.

28. Arguments concerning the extant matters raised in the Amended Summons were heard in July and August of 2021. On 26 April 2022, the Honourable Justice Neil Braithwaite made a ruling ("**the Brathwaite Ruling**") at which time he refused the relief sought by the Respondents and found that recognition by a Bahamian Court of the Nevis Judgment could only be effected by registration under the Act or by initiation of a common law action.

29. The Respondents then made an application under the Reciprocal Enforcement of Judgments Act, 1924 to register the Nevis Judgment. The Respondents also sought an extension of time to make their application for registration as the application has been brought more than twelve months after the Nevis Judgment was made.

30. On 09 August 2023, the Court acceded to the Claimants' applications, thus extending time to make the application and granted leave to register the Nevis Judgment.

31. On 25 October 2023, the America 2030 filed an application to set aside the registration of the Nevis Judgment pursuant to Rule 13 of the Rules of Court (Reciprocal Enforcement of Judgments) and/or Sections 3(1) and/or 3(2) of the Reciprocal Enforcement of Judgments Act and/or the inherent jurisdiction of the Court on the grounds that:

a) the [First] Applicant's previous advisors, Daniel Brantley, notwithstanding the existence of a clear conflict of interest, nonetheless acted against the [First] Applicant and for Respondents in the legal proceedings before the St. Christopher and Nevis Courts. Therefore, registration of the Nevis Judgment was not just and convenient in all the circumstances of the case; and/or

b) the original court, namely the St. Christopher and Nevis Court which rendered the Nevis Judgment, acted without jurisdiction; and/or

c) the Nevis Judgment was granted in respect of a cause of action which for reasons of public policy could not and should not have been entertained by the Bahamian Supreme Court as the registering Court and/or;

d) leave to Register the Nevis Judgment was granted on the assumption that the matter before the Bahamian Court was res judicata, as a result of the proceedings which took place in St. Christopher and Nevis, when it was not res judicata. Therefore, registration of the Nevis Judgment was not just and convenient in all the circumstances of the case and/or;

e) the extension of time granted to the Respondents for seeking leave to register the Nevis Judgment was not just and convenient in all the circumstances of the case.

32. The First Applicant also requests that the Respondents pay the costs for this application.

33. Weiser also filed an application on 25 October 2023 to set aside the registration of the Nevis Judgment on 25 October 2023. It challenges the registration on the grounds the following grounds:

a) the service of the originating documents filed in the High Court of Justice of trhe Federation of Saint Christopher and Nevis in proceedings numbered NEVHCV 2019/141 ("the Nevis Action") on the Second Defendant was not effected in accordance with Order 64 of the Rules of the Supreme Court, 1978, the Hague Service Convention and/or the rules of service generally;

b) the Second Defendant did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of the Federation of Saint Chritopher and Nevis in the Nevis Action;

c) the Second Defendant having not been properly served with the originating documents did not appear in the Nevis Action;

d) the Nevis Judgment which the [Claimants/Respondents] seek to enforce could not be entered by this Honourable Court as the Nevis Judgment speaks to unliquidated damages for inter alia loss of profit, damage to reputation to be assess, moreso, the [Claimants/Respondents] seek to register and enforce extracts of the Nevis Judgment and not the Nevis Judgment in its entirety;

e) the Nevis Judgment which the [Claimants/Respondents] seek to enforce was a default judgment which was not heard on the merits and th Second Defendant is prejudiced having not been heard in the Nevis Action;

f) an application was made by the First Defendant to determine whether the jurisdiction of the Federation of Saint Christopher and Nevis was the fit and proper forum and whether the institution of proceedings in the High Court of Justice in the Federation of Saint Christopher and Nevis as opposed to Arbitration Proceedings was the correct form of conflict resolution and the Nevis Judgment was entered whilst the determination of the First Defendant's application was pending; and

g) the Second Defendant being a non-contentious party to these proceedings instituted action in the Supreme Court of The Bahamas for Protection Orders which were granted in Action No. 2018/CLE/gen/1498 and Action No. 2019/CLE/gen/000376, both actions predated the Nevis Action.

Issue

34. The issue that the Court must decide is whether the registration of the judgment order ought to be set aside?

Evidence

America 2030's Evidence

35. On 25 October 2023, the Applicant filed the Affidavit of Tameka Pinder which exhibited the Affidavit of Val Sklarov ("**Sklarov Affidavit**"). The Sklarov Affidavit provides: (i) that Mr. Val Sklarov is the President, CEO and Operations Manager of America 2030; (ii) a history of the dispute (as mentioned earlier); (iii) the Respondent's filing of a lawsuit against American 2030 in Singapore was prohibited under the terms of the SLA's; (iv) pursuant to clauses 8.1 and 8.2 of the SMLAs executed by the Applicant and the Respondents, the parties agreed that disputes arising in respect of the SMLAs would be referred to arbitration, the governing law of the SMLAs would be the law of St. Kitts and Nevis and the arbitrator of any disputes arising would be The Arbitrator, a conflict resolution service provider in St. Kitts and Nevis, the director of which is Mrs. Karen Hill Hector; (v) the Respondent's injunctive relief application led to the Applicant applying for a stay of proceedings in Singapore, which was granted. The Applicant then initiated arbitral proceedings in St. Kitts and Nevis in or around November 2018 in accordance with the SMLAs; On or around 13 and 29 November 2018, the Arbitrator issued Notices of Arbitration to the Respondents, this was the first time the Applicant was involved in any arbitration involving the Arbitrator. The Applicant was notified of correspondence issued by the Nevis Firm of Messrs Daniel Brantley challenging the composition of the arbitral tribunal, the arbitral procedure, and the jurisdiction of the Arbitrator; and (ix) The Arbitrator refuted that comments made by Daniel Brantley, affirmed jurisdiction and proceeded with the arbitration.

36. The Sklarov Affidavit also states that: (i) the fact that Daniel Brantley took any steps to act contrary to the interests of the Respondent was at all material times extremely improper, unethical and contrary to both applicable law and public policy because doing so represented their acting, notwithstanding the existence of a clear conflict of interest. During the months of May to July 2018, the Applicant corresponded and communicated with attorneys at Daniel Brantley for the purposes of obtaining legal advice concerning, inter alia, expansion of its businesses and representing it in disputes; (ii) Mr. Sklarov disclosed details regarding the Applicant's management and administration, trade secrets and contracts; the lending process, defence strategies and confidential company information. This was disclosed on the understanding that it would be private and confidential and protected from disclosure by attorney-client privilege and he would not have disclosed certain information to attorneys at Daniel Brantley had he not been under the umbrella of the attorney client relationship and the understanding that their interests would be protected; (iii) at no point was there ever consent or waiver of any conflicts that Daniel Brantley had in relation to the Applicant and himself; (iv) on or about 15 February 2019, the Respondents applied for an interim injunction restraining commencement of the arbitration; and (v) the Respondents also filed an application bearing action number NEVHCV2019/0023 ("Fixed Date Claim") seeking the determination of the critical issues, essentially as to whether the arbitration had been validly commenced, the arbitrator validly appointed, jurisdiction, competency and impartiality of the arbitration and whether the Court should stay legal proceedings to allow arbitration to proceed.

37. In addition, the Sklarov Affidavit provides: (i) on 27 February 2019, the Respondents obtained an interim injunction restraining the arbitration; (ii) pursuant to a Consent Order of the St. Kitts and Nevis High Court filed on 03 May 2019, the hearing of the Fixed Date Claim was adjourned until 12 June 2019 and the interim injunction was extended until that time; (iii) shortly before the hearing of the Fixed Date Claim, the Respondents commenced the Fraud Claim and obtained a freezing injunction freezing the Shares held by the Second Defendant; (iv) Mr. Sklarov nor the Applicant were able to file defences due to difference in legal strategies and fee issues. The issues with legal counsel were unable to be resolved and Mr. Sklarov and the Applicant were left with no legal representation during the legal proceedings in St. Kitts and Nevis; (v) Mr. Sklarov and the Applicant were able to secure new counsel and applications to strike out the Fixed Date Claim and Fraud Claim which were dismissed by Moise J who mentioned in his ruling that the injunctive relief in the Fixed Date Claim remained in place and as such the substance of the matter remained unheard; (vi) an ex-parte application was made by the Respondents to obtain default judgment on the Fraud Claim; (vii) Moise J granted the Nevis Judgment ; (viii) Moise J's decision was unsuccessfully appealed.

38. The Sklarov Affidavit also provides: a history of the Bahamian proceedings; and a request that the Court grant the relief sought by the Applicant.

39. America 2030 also filed a second Affidavit of Tamika Pinder on 02 April 2024 which merely exhibits copies of the SLA's.

40. On 27 March 2024, a third affidavit of Tamika Pinder ("**the Third Pinder Affidavit**") which merely exhibits, inter alia, the Master Loan Agreement between Tournan Trading PTE Ltd. and America 2030 Capital Limited dated June 2018 and correspondence between Elizabeth Harper, Nevis counsel for the Respondents and Mrs. Karen Hill-Hector, the arbitrator selected by the America 2030 to address the dispute between the parties relating to the master loan agreement and the SLA's.

41. On 16 April 2024, a fourth affidavit of Tamika Pinder exhibits the affidavit of Frank E. Walwyn ("**the Walwyn Affidavit**"). The Walwyn Affidavit provides expert evidence on the laws of Nevis relating to an inactive company's ability to pursue court proceedings. For the purposes of this application, I will not descend into the opinion provided therein. I, however, confirm that I have had sight of same. The Walwyn Affidavit was subsequently filed on 23 April 2024.

Weiser's Evidence

42. On 26 October 2023, Weiser filed the affidavit of Shelby Brice ("**the Brice Affidavit**") which states that: (i) Weiser instituted Supreme Court Action 2018/CLE/gen/1498 seeking an Order of Protection with respect to a Mater Loan Agreement made between Sun Power and America 2030. The proceedings were instituted following conflicting requests made by Sun Power and America 2030 relating to shares being held by Weiser, as custodian. On 13 February 2019, a Protection Order was granted by the Supreme Court of the Commonwealth of The Bahamas in favor of Weiser (the Protection order is exhibited to the affidavit); (ii) On 22 March 2019, Weiser instituted further court proceedings, Supreme Court Action No 2019/CLE/gen/000376 seeking another Order of Protection relating to a Master Loan Agreement between Tournan and America 2030. Similarly, this action was instituted due to conflicting requests made by Tournan and America 2030 to Weiser, as custodian of certain shares. On 01 April 2019, the Supreme Court granted a Protection Order in favor of Weiser relating to the shares (the Protection Order is exhibited to the affidavit); and (iii) In 2020, Weiser's office was served with a dossier of documents which was not accompanied by a Notice from the Office of the Attorney General of The Bahamas or the appropriate Government Minister as prescribed by the rules.

43. The Brice Affidavit further provides that: (i) since Weiser was not properly served, it did not appear in the Nevis Action. Accordingly, Weiser did not submit to the jurisdiction of the Federation of Saint Christopher and Nevis in the Nevis Action; (ii) Weiser was made aware of an application by America 2030 challenging the jurisdiction of the Federation of Saint Christopher and Nevis in the Nevis Action; (iii) the Nevis Judgment, which the Respondents seek to enforce was a default judgment which was not heard on its merits. Weiser is now gravely prejudiced having not been heard in the Nevis Action. Further, the Nevis Judgment was obtained prior to the determination of America 2030's application; and (iv) the Nevis Judgment which the Respondents seek to enforce speaks to unliquidated damages for, inter alia, loss of profit, and damage to reputation to be assessed. More so, the Respondents seek to register and enforce extracts of the Nevis

Judgment and not the Nevis Judgment in its entirety (a copy of the Nevis Judgment is exhibited to the affidavit).

Respondent's Evidence

44. The Respondents seek to rely on the First Affidavit of Elizabeth Harper filed herein on 23 August 2022 the Second Affidavit of Elizabeth Harper filed herein on 06 March 2024 ("**Harper AF1**" and "**Harper AF2**", respectively) as well as the Affidavit of Desmond Bain filed herein on 06 March 2024.

45. In essence, the affidavits provide: (i) a history of the matter; (ii) by an ex-parte Summons, the Respondents sought an accounting from Weiser setting out all facts within Weiser's knowledge relating to Sunpower and Tournan's shares in Sunpower deposited by the Respondents on or about 16 October 2018 in the depository account owned and/or controlled by the First and Second Defendants/Applicants or any other party within the knowledge of Weiser in connection therewith; and (iii) On 30 April 2021, the parties appeared before Acting Justice Tara Cooper Burnside in Action Number 2018/CLE/gen/01498. By order of even date, the learned judged ordered inter alia: "*The Plaintiff [being Weiser] shall, within 14 days of the date hereof, deliver to the Defendants [being America 2030 and Sunpower] an account, verified by Affidavit, relating to any dealing with the Second Defendant's shares in Sunpower Group Limited (the "Sunpower shares") deposited by the Second Defedant on or about 16 October 2018 in the depository account owned and/or controlled by the Plaintiff and also setting out all monies, including dividends, received by the Plaintiff, or any other party and the details of any sale or disposition of any of the Sunpower shares insofar as it is within the knowledge of the Plaintiff, in connection therewith*." A copy of the order is exhibited.

46. The affidavits further state that: (i) Despite the above order, the Respondents have been deprived of their Shares and any information relating thereto for nearly three (3) years.; (ii) having conducted a company search in Nevis, America 2030 is an inactive company and was struck from the record in Nevis for non-payment of annual fees on 08 June 2022; (iii) the Respondents investigated Ms. Hill-Hector and discovered that she had an ongoing commercial relationship with America 2030. Consequently, the Respondents requested that she recuse herself, however this request was ignored; (iv) on 15 February 2019, the Respondents commenced a claim in Nevis seeking the Court's intervention and relief, including a declaration that the arbitral proceedings had not been validly constituted and/or for an order removing the arbitrator or restraining her from any further involvement with the dispute; (v) America 2030 submitted to the jurisdiction of the Nevis courts by participating in the litigation and even launching unsuccessful appeals; and (vi) by the acts of Weiser, there was an unequivocal submission to the jurisdiction of the Nevis Court (with respect to a striking out application lodged in the Nevis courts). They also provide a plethora of exhibits relating to documents and court filings for all proceedings in the various jurisdictions.

Law

General Law on the Reciprocal Enforcement of Judgments

47. By virtue of **section 3 of the Reciprocal Enforcement of Judgments Act, 1924 ("The Act")**, the Court is permitted to register judgments made outside of the jurisdiction. **Section 3(1) of the Act** provides:

> *"3. (1) Where a judgment has been obtained in a superior court outside The Bahamas the judgment creditor may apply to the Supreme Court, at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the court, to have the judgment registered in the court, and on any such."*

48. The Court must also consider if any of the exclusions under **section 3(2) of the Act** applies. The section reads:

> *"(2) No judgment shall be ordered to be registered under this section if —*
>
> *(a) the original court acted without jurisdiction;*
>
> *(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court;*
>
> *(c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court;*
>
> *(d) the judgment was obtained by fraud;*
>
> *(e) the judgment debtor satisfies the registering court either that an appeal is pending or that he is entitled or intends to appeal against the judgment;*
>
> *(f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court."*

49. **Rule 13 of the Rules of Court (Reciprocal Enforcement of Judgments), 1952** ("**Rules**") states:

> *"13. The judgment-debtor may at any time within the time limited by the order giving leave to register after service on him of the notice of the registration of the judgment apply by summons to a judge to set aside the*

registration or to suspend execution on the judgment and the judge on such application if satisfied that the case comes within one of the cases in which under section 3(2) of the Act no judgment can be ordered to be registered or that it is not just or convenient that the judgment should be enforced in The Bahamas or for other sufficient reason may order that the registration be set aside or execution on the judgment suspended either unconditionally or on such terms as he thinks fit and either altogether or until such time as he shall direct:

Provided that the judge may allow the application to be made at any time after the expiration of the time herein mentioned."

50. The granting of registration of a foreign judgment must be just and convenient. As the Court observed in **The Public Institution for Social Security v Fahad Maziad Rajaan Al-Rajann 2020/CLE/gen/00976**:

> **"The test to be applied in determining whether to register a foreign judgment or order is whether in the circumstances of the case, "it is just and convenient" that the judgment or order be enforced in The Bahamas: section 3 of the [Reciprocal Enforcement of Judgments] Act."**

Just and Convenient – Res Judicata

Just and Convenient – Extension of Time

51. In **Tenaga Nsaional Bhd v Frazer-Nash Research Ltd and another [2019] 1 WLR 946**, factors informing judicial discretion when granting an extension of time under section 9(1) of the English Administration of Justice Act, 1920 are: (i) the length of the delay; (ii) the culpability of the delay; and (iii) whether there is any evidence of prejudice.

Lack of Jurisdiction

52. **Section 3(2) of the Act** reads:

> *"(2) No judgment shall be ordered to be registered under this section if –*
>
> *(a) The original court acted without jurisdiction…"*

53. The learned authors in **Redfern and Hunter on International Arbitration at paragraph 2.13 on page 81** state:

> "A valid agreement to arbitrate excludes the jurisdiction of the national courts and means that any dispute between the parties must be resolved by a private method of dispute resolution – namely arbitration."

54. In the case of **Fiona Trust and Holding Corporation v Privalov [2007] 4 All ER 951** Lord Hoffman made the following pronouncements at page 958:

"The construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal. The clause should be construed in accordance with this presumption unless the language makes it clear that certain questions were intended to be excluded from the arbitrator's jurisdiction."

Public Policy

55. **Section 3(2)(f) of the Act** provides:

"(2) No judgment shall be ordered to be registered under this section if –

(f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court."

Sufficient Grounds to challenge enforcement of a Foreign Judgment

56. In **Marla J. Cramin v Bahama Divers (1976) Company Limited and Another [2018] 2 BHS J. No. 7** ("**Cramin**"), Charles J opined:

"Allen J in Premier Cruise Line Ltd. addressed the issue of natural justice at paragraphs 71-74 of her judgment. In doing so, Allen J referred to the leading authority on the principles of natural justice and how they are to be applied in enforcement of judgments proceedings. She stated:

"71 The principles governing the requirements of natural justice vis a vis the enforcement of foreign judgments and the defence of breach of natural justice were set out in Pemberton v. Hughes [1891] 1 CH. 781 and confirmed by the English Court of Appeal in Adams v. Cape Industries plc. 1990] 1 Ch. 433.

72 At page 566 of the Adams case, the Court said, "In our view, no significant assistance is derived from this case, (speaking of the case of Local Government Board v Arlidge [1915] A.C. 120) or other decisions upon the requirements of natural justice in administrative law cases, where the requirements of substantial fairness depend upon the subject matter and the context. It is sufficient, in our view, to derive the requirements of natural justice for the purposes of enforcement of a foreign judgment and the special defence thereto of breach of natural justice from the principles stated in Pemberton v Hughes [1891] 1 Ch. 781 and relied upon by Scott J., namely: did the proceedings in this foreign court offend against our views of substantial justice?

73 The notion of substantial justice must be governed in a particular case by the nature of the proceedings under consideration."

74 It would appear then that in the case of the enforcement of foreign judgments and by extension, foreign awards, for the defence of breach of natural justice to succeed, the question extends beyond whether there had been a fair hearing, to the question whether the foreign proceedings offended the Court's idea of substantial justice?"

57. The learned judge also made the following pronouncements at paragraphs 47 and 48 of ***Cramin***:

"Grounds on which a foreign award could be challenged

[47] In an action to enforce a foreign judgment in the Bahamas, six possible defences are available to the Defendant namely:

1. the foreign court lacked competent jurisdiction;

2. the rules of natural justice had not been complied with in the foreign proceedings;

3. the foreign judgment was not final and conclusive;

4. the judgment debt was not definite or ascertainable;

5. the foreign judgment was obtained by fraud; and

6. recognition of the foreign judgment would be contrary to public policy in The Bahamas.

[48] The above principles have been recognized in The Bahamas; for example, (1) in a unanimous decision by the Court of Appeal in Irwin Vosko v. The Chase Manhattan Bank (National Association) Civil Appeal No. 29 of 1991, a matter in which Henry P., Melville and Campbell JJA each wrote a judgment and (2) by Allen J (as she then was) in Premier Cruise Lines Ltd. v Treasure Cay Ltd. No. 526 of 1994; [1998] BHS J. No. 86. The latter case concerned the enforcement of an arbitration award. Concerning the grounds available as defences on an enforcement of judgment action, at page 6, paragraph 52 of her judgment, Allen J, said:

"These follow closely the grounds on which a foreign judgment can be impeached at common law and the authorities relative to the impeachment of foreign judgments on these grounds, it is submitted, would be applicable in this case as well.""

Service of Foreign Process

58. **Articles 5, 10, 15 and 16 of the Hague Service Convention/Rules of Service, 1965**, to which The Bahamas is a signatory to, provides:

> *"Article 5*
>
> *The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either –*
>
> *a) By a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or*
>
> *b) By a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.*
>
> *Subject to sub-paragraph (b) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.*
>
> *If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into the official language or one of the official languages of the State addressed.*
>
> *That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document…*
>
> *Article 10*
>
> *Provided the State of destination does not object, the present Convention shall not interfere with –*
>
> *a) The freedom to send judicial documents, by postal channels, directly to persons abroad,*
>
> *b) The freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.*
>
> *c) The freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination…*
>
> *Article 15*
>
> *Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the*

defendant has not appeared, judgment shall not be given until it is established that –

a) *The document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or*

b) *The document was actually delivered to the defendant or to his residence by another method provided for by this Convention, and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.*

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions or fulfilled –

a) *The document was transmitted by one of the methods provided for in this Convention,*

b) *A period of time of not less than six months, considered adequate b the judge in the particular case, has elapsed since the date of the transmission of the document,*

c) *No certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of th State addressed.*

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

Article 16

When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled –

a) *The defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and*

b) *The defendant has disclosed a prima facie defence to the action on the merits. An application for relief may be filed on within a reasonable time after the defendant has knowledge of the judgment. Each contracting State may declare that the application will not be entertained if it is filed after the expiration of a*

time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

This Article shall not apply to judgments concerning status or capacity of persons."

Res Judicata and the Henderson v Henderson Rule

59. **Halsbury's laws of England paragraph 1568** states:

> *"The doctrine of res judicata provides that, where a decision is pronounced by a judicial or other tribunal with jurisdiction over a particular matter, that same matter cannot be reopened by parties bound by the decision, save on appeal. It is most closely associated with the legal principle of 'cause of action estoppel', which operates to prevent a cause of action being raised or challenged by either party in subsequent proceedings where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties (or their privies), and having involved the same subject matter. However, res judicata also embraces 'issue estoppel', a term that is used to describe a defence which may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided, but, in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue."*

60. The Bahamian Court of Appeal provided a thorough exposition on the matter in **Queirazza v Leday** [2017] 2 BHS J. No. 14 ("**Queirazza**"), there the Court made the following pronouncements at paragraph 21:

> "21 He contended that the doctrine relating to raising issues in subsequent proceedings which could have been litigated in earlier proceedings was first addressed in Henderson v Henderson (1843) 3 Hare 100. **The Henderson rule was set out in the Privy Council case of Yat Tung Investment Company Ltd. v. Dao Heng Bank Ltd. [1975] AC 581 where Lord Kilbrandon noted at page 590**:
>
> > "**But there is a wider sense in which the doctrine may be appealed to, so that it becomes an abuse of process to raise in subsequent proceedings matters which could and therefore should have been litigated in earlier proceedings. The locus classicus of that aspect of res judicata is the judgment of Wigram V.C. in Henderson v. Henderson [1843] 3 Hare 100, 115 , where the judge says:**
> >
> > **"…where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might**

> **have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time**."

The shutting out of a "subject of litigation"–a power which no court should exercise but after a scrupulous examination of all the circumstances — is limited to cases where reasonable diligence would have caused a matter to be earlier raised; moreover, although negligence, inadvertence or even accident will not suffice to excuse, nevertheless 'special circumstances' are reserved in case justice should be found to require the non-application of the rule…The Vice-chancellor's phrase "every point which properly belonged to the subject of litigation" was expanded in Greenhalgh v. Mallard [1947] 2 All E.R. 255, 257, by Somervell L.J.:

'…**res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but.., it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them**.

22 **The Henderson rule being wider than res judicata was confirmed in Barrow v. Bankside Agency Ltd. [1996] I WLR 257. At page 260 Bingham MR stated:**

> **"The rule in Henderson v. Henderson … requires the parties, when a matter becomes the subject of litigation between them in a court of competent jurisdiction, to bring their whole case before the court so that all aspects of it may be finally decided (subject, of course, to any appeal) once and for all. In the absence of special circumstances, the parties cannot return to the court to advance arguments, claims or defences which they could have put forward for decision on the first occasion but failed to raise. The rule is not based on the doctrine of res judicata in a narrow sense, nor even on any strict doctrine of issue or cause of action estoppel. It is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on forever and that a defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed'**
>
> [Emphasis added]"

61. The following was also noted in **Thomas v AG** (No. 2)(1988) 39 W.I.R. 383 at page 385 d-f:

> " The principles applicable to a plea of res judicata are not in doubt and have been considered in detail in the judgment of the Court of Appeal. It is in the interest of the public that there should be finality to litigation and that no person should be subjected to action at the instance of the same individual more than once in relation to the same issue. **The principle applies not only where the remedy sought and the grounds therefore are the same in the second action as in the first but also where, the subject matter of the two actions being the same, it is sought to raise in the second action matters of fact or law directly related to the subject matter which could have been but were not raised in the first action**.
>
> [Emphasis added]"

Validity and Efficacy of Arbitration Clauses/Agreements in Commercial Contracts

62. According to the United Kingdom Supreme Court decision of the **Republic of Mozambique (Acting through its Attorney General)(Appellant) v Privinvest Shipbuilding SAL (Holding) and others (Respondents)** – [2023] UKSC at paragraph 46:

> "…is now firmly embedded as part of the law of international commerce…In a substantial majority of all jurisdictions, national law provides that international arbitration agreements should be interpreted in light of a "pro-arbitration" presumption…"

63. Furthermore, Sundaresh Menon CJ in **Tomolugen Holdings Ltd v Silica Investors Ltd** [2015] SGCA; [2016] 1 SLR 373 ("**Tomolugen**") at paragraph 27 opined:

> "…**the Singapore Court must stay court proceedings relating to any matter covered by an arbitration agreement"…the only exceptions are if the Court is satisfied that the arbitration agreement is "null and void", inoperative, or incapable of being performed…the court only need be satisfied to a "prima facie standard**".
>
> [Emphasis added]"

64. The Bahamas' Arbitration Act, 2009 has similar wording. According to **section 9(1) and (4) of the Arbitration Act, 2009**:

> "9. (1) A party to an arbitration agreement against whom legal proceedings are brought (whether by way of claim or counterclaim) in respect of a matter which under the agreement is to be referred to arbitration may (upon notice to the other parties to the proceedings) apply to the court in which the proceedings have been brought to stay the proceedings so far as they concern that matter…

(4) On application under this section the court shall grant a stay **unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed**.

[Emphasis added]"

65. The effect and validity of arbitral clauses were also explored in our jurisdiction. Justice Gray Evans provided the following exposition in **Harcourt Development (Bahamas) Limited v Steel H.Q. (Bahamas) Limited** – [2013] 2 BHS J. No. 100:

> "It seems to me that it would, therefore, be sensible for the matter to be referred to arbitration, particularly as the parties agreed by viture of Clause 19 aforesaid to refer all disputes to arbitration and I agree with counsel for the defendant tha the onus was on the plaintiff, who commenced this action, to comply with the terms of the agreement and refer the matter to arbitration instead of commencing gan action in the Supreme Court. So, in the exercise of my discretion, and under the inherent jurisdiction of the court, I order that this action be stayed so that the parties may proceed to arbitration pursuant to the provisions of Clause 19 aforesaid."

Discussion and Analysis

66. Having considered the submissions of counsel, the relevant law and the evidence before me, I will now address each issue raised by the parties in their respective applications.

The [First] Applicant's previous advisors, Daniel Brantley, notwithstanding the existence of a clear conflict of interest, nonetheless acted against the [First] Applicant and for Respondents in the legal proceedings before the St. Christopher and Nevis Courts. Therefore, registration of the Nevis Judgment was not just and convenient in all the circumstances of the case

67. Based on the evidence before me, there is no clear evidence that there was any breach of any confidentiality or any conflict of interest with counsel for the respective parties. I do not see any prejudice or breach of any code of conduct which directly impacts the validity of any proceedings in Nevis or the registration of the Nevis Judgment.

68. With respect to the argument that it was not just and convenient for the registration relating to this issue, the Court is not satisfied that such involvement by Mr. Daniel Brantly and obtaining certain information from America 2030 rises to the level of any registration not being just and convenient.

69. In my view, this issue is meritless.

The original court, namely the St. Christopher and Nevis Court which rendered the Nevis Judgment, acted without jurisdiction

70. Based on my review and understanding of the evidence, both America 2030 and Weiser participated in Nevis proceedings without, to the Court' knowledge, any challenge to the

jurisdiction of the Nevis Courts or any lodging of a preliminary issue/objection regarding such jurisdiction.

71. In addition, I agree with the Respondents' counsel submissions that the very actions of both Applicants confirm that they had submitted to the jurisdiction of the Nevis Court – particularly America 2030 who lodged unsuccessful appeals and was embroiled in several Nevis court proceedings.

The Nevis Judgment was granted in respect of a cause of action which for reasons of public policy could not and should not have been entertained by the Bahamian Supreme Court as the registering Court

72. Relying on ***Tomolugen***, it appears that the Nevis Court was satisfied that the matter involved a fraudulent scheme perpetrated by American 2030. I believe this falls within the category that the arbitration clause is "incapable of being performed". Though the claims of fraud was not ventilated, it was unchallenged by either applicant and a Judgment in Default was granted to the Respondents. Not only this, but there was an appeal of the Judgment in Default, which was unsuccessful.

73. Accordingly, I interpret this to mean that the matter has been fully adjudicated upon and it has been decided that the Judgment in Default cannot be impeached. Thus, it stands valid, effective, binding and conclusive.

74. Not only this but, based on the evidence before me, Mrs. Hill-Hector's ability to sit as an arbitrator was also challenged by the Respondents. Based on the correspondence provided herein, the Respondents provided evidence confirming that Ms. Hill-Hector had a professional relationship with America 2030. When confronted with this evidence, Ms. Hill-Hector did not respond to it. The arbitration was then halted. In my view, this made the arbitration clause "incapable of being performed". The evidences strongly suggest that Ms. Hill-Hector could not be impartial, thus disqualifying her from being an arbitrator yet she did not see it fit to recuse herself. Consequently, this necessitated the Respondents approaching the courts to resolve the matter as there appeared to be issues with the arbitration process that could not be resolved by the parties without court intervention.

75. I am unable to see how matters of public policy arise where both America 2030 and Weiser had an opportunity to present their respective cases in the matter and failed to do so. In my view, these are matters that ought to have been pleaded and argued at the initial hearing. Bearing in the principle of ***res judicata***, the ***Henderson v Henderson Rule*** and the conduct of the parties, I am of the firm view that these matters should have been addressed at the Nevis Court. To permit America 2030 or Weiss to argue the point would be an abuse of the process of the court and would be tantamount to getting another bite of the cherry. This court is not prepared to entertain any defences or arguments that should have been raised earlier at another forum and prior to any judgment being made.

Leave to Register the Nevis Judgment was granted on the assumption that the matter before the Bahamian Court was res judicata, as a result of the proceedings which took place in St. Christopher and Nevis, when it was not res judicata. Therefore, registration of the Nevis Judgment was not just and convenient in all the circumstances of the case.

76. I merely reiterate my earlier discussion at paragraphs 72 and 73 above. I am not persuaded by America 2030's arguments that the matter is not res judicata. In my view, these issues should have been ventilated at an earlier stage. It is not too late to do so.

The extension of time granted to the Respondents for seeking leave to register the Nevis Judgment was not just and convenient in all the circumstances of the case

77. According to the Harper AF1 at paragraphs 79 to 81:

> "79 The reason for the delay in applying for leave to register the Nevis Judgment was that Sunpower and Tournan made an application in the existing Bahamian Proceedings commenced by Weiser in an effort to have the issue of the ownership of the Shares resolved by way of an Order recognizing the Nevis Judgment as res judicata with respect to the ownership of the Shares referred to at paragraphs 45 to 55 above.
>
> 80 **Sunpower and Tournan's Summonses seeking inter alia recognition of the Nevis Judgment was heard and subsequently dismissed/refused by the Court on 22 April, 2022 after the statutory deadline for registration of the Nevis judgement under REJA had expired**. I am advised by Sunpower and Tournan's Bahamian Counsel, and I verily believe that thereafter, Sunpower and Tournan lodged an application for leave to appeal. I am further advised that the said application for leave to appeal remains extant and has not been moved pending the outcome of this application…
>
> 81 While it has been more than a year since the Nevis Court ordered Judgment in Default of Defence the delay between the conclusion of the Bahamian proceedings by way of the Judgment of Justice Neil Brathwaite and Sunpower and Tournan's subsequent filing of this application is approximately two months.
>
> [Emphasis added]"

78. I accept this evidence as providing a reasonable explanation for the delay in filing the requisite application for registration of the Nevis Judgment with the prescribed time. This necessitated an extension of time application. I believe that the Respondents moved with haste in making applications they believed would swiftly address the matter. It appears that they sought to have the matter adjudicated without delay, however, their applications were dismissed. Thereafter, they moved to have the appropriate application lodged with as little delay as possible.

79. The Respondents acted in a manner they believed was best and acted promptly to correct their errors. I am not prepared to penalize them for a slight delay in making the

appropriate application to the Court. In the premises, I do not believe it was not just and convenient to permit the extension of time to apply for registration of the Nevis Judgment.

The service of the originating documents filed in the High Court of Justice of trhe Federation of Saint Christopher and Nevis in proceedings numbered NEVHCV 2019/141 ("the Nevis Action") on the Second Defendant was not effected in accordance with Order 64 of the Rules of the Supreme Court, 1978, the Hague Service Convention and/or the rules of service generally

The Second Defendant having not been properly served with the originating documents did not appear in the Nevis Action

The Second Defendant did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of the Federation of Saint Chritopher and Nevis in the Nevis Action

80. These three grounds are similar. Accordingly, I will address them all under the same heading.

81. Based on the relevant articles quoted above from the Hague Convention and the evidence before me, it appears that Weiser was very much aware of the Nevis proceedings and, despite having notice of same, chose not to participate in those proceedings. The Respondents also ensured they were served with all the requisite documents and orders prior to and after receipt of the Nevis Judgment. Weiser also could have attempted to appeal that decision on the basis that it was not properly served, if it so chose to do so.

82. To now argue that it did not have an opportunity to be heard due to procedural errors is untenable.

The Nevis Judgment which the [Claimants/Respondents] seek to enforce could not be entered by this Honourable Court as the Nevis Judgment speaks to unliquidated damages for inter alia loss of profit, damage to reputation to be assess, more so, the [Claimants/Respondents] seek to register and enforce extracts of the Nevis Judgment and not the Nevis Judgment in its entirety

83. As the Respondents' counsel correctly submits, the Nevis Judgment can be enforced, despite it not being simply for a liquidated sum. I accept the sage pronouncements of Charles J in the **Public Insititution for Social Security v Fahad Maziad Rajaan Al-Rajaan**, - 2020/CLE/gen/00976 at paragraphs 13 to 17:

"[13] The Reciprocal Enforcement of Judgments Act, Ch. 77 (as amended) ("the Act") is an Act to facilitate the reciprocal enforcement of judgments, orders and awards in The Bahamas and other countries.

[14] Section 3 (1) of the Act gives judgment creditors the right to apply to the Supreme Court of The Bahamas to enforce judgments made outside of The Bahamas. It provides:

"Where a judgment has been obtained in a superior court outside The Bahamas, the judgment creditor may apply to the Supreme Court, at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the court, to have the judgment registered in the court, and on any such application the court may, if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in The Bahamas and subject to the provisions of this section, order the judgment to be registered accordingly."

[15] "Judgment" is defined in section 2 of the Act as:

"judgment means **any judgment or order** given or made by a court in any civil proceedings whether before or after the passing of this Act and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place." [Emphasis added]

[16] The Act was amended in 1999. Two significant amendments were made namely **(i) the removal of the requirement that the judgment to be registered be for a sum of money** and (ii) to include a few designated jurisdictions whose legislature provided for reciprocity with The Bahamas and not just the United Kingdom. Otherwise, where a judgment is obtained from a jurisdiction to which the Act does not apply, it is necessary to utilise the foreign judgment to form the basis of a new or fresh action within The Bahamas.

[17] The intention of Parliament must therefore be given effect. That is to say, to permit a judgment creditor the benefit of enforcing a judgment or order provided that the requirements of the Act have been met. In conformity with the Act, it is therefore only within the express proscriptions of section 3(2) that this Court may deny a judgment creditor the benefit of the registration of a judgment under the Act.

[Emphasis added]"

84. The relevant excerpts of the Nevis Judgment reads as follows:

"…**UPON the court having considered the provisions of section 24(2) and (3) of the UK Arbitration Act of 1950** and being satisfied that there being no response to the allegations contained in the statement of claim, such allegations are now taken to have been established by default, the court is empowered to grant the claimants' request for judgment in default…

…IT IS HEREBY ORDERED THAT

1 As against the First Defendant:

a) Recission of all contractual documents between the Claimants and the First Defendant

b) A declaration that all such documents are void for uncertainty and of no validity or effect.

c) An order that the First Defendant do forthwith return to the Claimants all shares in Sunpower Group Limited deposited by the Claimants.

d) Damages for breach of contract, to be assessed.

2 As against the First and Second Defendants:

a) Damages for deceit, to be assessed.

3 As against the Second Defendant

a) A declaration that such of the shares in Sunpower Group Limited and their traceable proceeds as remain in the possession or control of the First, Second or Third Defendants are held on trust for the Claimants

4 As against all Defendants:

a) A declaration that such of the shares in Sunpower Group Limtied and their traceable proceeds as remain in the possession or control of the First, Second or Third Defendants are held on trust for the Claimants.

b) **An order that the First, Second and Third Defendants do forthwith transfer to the Claimants all such shares and their traceable proceeds as remain within their respective possession or control**.

c) **By 4pm Nevis time, within 14 days of service of this Order on the First, Second and Third Defendants respectively, each of them shall file with the Court and serve on the Claimants an account, verified by affidavit, setting out all their dealings with the shares in Sunpower Group Limited deposited by the Claimants and with all monies received by the First, Second or Third Defendants in connection therewith**.

d) **The First, Second and Third Defendants shall deliver to the Claimants, together with such affidavit, copies of all books, records, vouchers and other documents in their respective possession or control relating to the said account**.

e) The Claimants are to be at liberty to serve notice of objection to the said account within 28 days after service upon them of copies of the said account and affidavit.

f) **In taking such account, the First, Second and Third Defendants are to be charged with compound interest at the rate of 5% per annum on all sums**

received by them from the respective dates of each receipt, with monthly rests.

g) **The First, Second and Third Defendants shall pahy to the Claimants the balance of all sums due to the Claimants upon the taking of said account (due allowance being made for such shares and traceable proceeds already transferred under paragraph 2b above) within 14 days of the amount due being settled by agreement between them. If the amount due is not settled by agreement within 42 days after service upon the Claimants of the said account and affidavit by the First, Second and Third Defendants, the Court Office shall fix a date for determination by the Court of the amount due, to be heard together with the assessment of damages referred to in paragraph 5 below**.

h) The First, Second and Third Defendants shall pay the Claimants' costs of the proceedings to be assessed in accordance with CPR 65.12 if not agreed within 14 days of this Order…

[Emphasis added]"

85. Based on the foregoing, despite the fact that the judgment addresses unliquidated sums, it may still be enforced, so long as it complies with the requirements under the legislation. In my view, the judgment, indeed complies with sections 3(1) and (2) of the Act. It was final and conclusive, just and convenient to register same and there is no issue of public policy or prejudice issues applicable in the circumstances. The language of the Act makes it quite clear that any judgment may be registered and enforced once in compliance with the Act. The highlighted portions of the judgment can be pursued by the Respondents and I believe that it should be permitted to do so.

86. The judge was also satisfied that, due to Ms. Hill-Hector's lack of impartiality, the matter could be adjudicated by the courts in lieu of arbitration (based on the wording of section 24 of the UK Arbitration Act, 1950 - Power of court to give relief where arbitrator is not impartial or the dispute involves question of fraud).

87. Nothing precludes the Respondents from enforcing and registering the Nevis Judgment. They have followed procedural and substantive rules of court and legislation. I am satisfied that the Nevis Judgment is capable of registration based on the terms of the Act.

88. Consequently, I am not persuaded that the Nevis Judgment cannot be registered on the basis that it makes mention of an unliquidated sum or that there is a pending assessment of damages aspect.

The Nevis Judgment which the [Claimants/Respondents] seek to enforce was a default judgment which was not heard on the merits. The Second Defendant is prejudiced having not been heard in the Nevis Action

89. As stated previously in my judgment, Weiser elected not to participate in the initial proceedings. It appears that Weiser has rested on its laurels and now seek to challenge the validity of the Nevis Judgment based on its own inaction.

90. I am not prepared to permit such action. The time to act was sooner, not at this stage.

f) An application was made by the First Defendant to determine whether the jurisdiction of the Federation of Saint Christopher and Nevis was the fit and proper forum and whether the institution of proceedings in the High Court of Justice in the Federation of Saint Christopher and Nevis as opposed to Arbitration Proceedings was the correct form of conflict resolution and the Nevis Judgment was entered whilst the determination of the First Defendant's application was pending; and

g) The Second Defendant being a non-contentious party to these proceedings instituted action in the Supreme Court of The Bahamas for Protection Orders which were granted in Action No. 2018/CLE/gen/1498 and Action No. 2019/CLE/gen/000376, both actions predated the Nevis Action.

91. These two issues touch and concern similar matters. I therefore will address under this heading.

92. The Nevis Court appeared to have accepted the Judgment in Default as final and conclusive. It was also unsuccessfully appealed. It is unclear what the purpose of the America 2030's applications is. The matters seems to have already been decided conclusively.

93. With respect to the Protection Orders, I do not believe the registration of the Nevis Order would offend or negatively impact the Protection Orders. I note that no assets can be distributed until determination of proceedings in the High Court of the Republic of Singapore and the Arbitration proceedings in St. Kitts and Nevis. I believe my order may co-exist with the Protection Orders, so long as none of the orders are contravened.

94. I do, however, note that parties are at liberty to apply to vary the Protection Orders. I say no more on the subject.

Conclusion

95. Despite the myriad of grounds advanced by the Applicants to resist the application and the evidence furnished, it appears that the Nevis Judgment is sound. The Respondents confirm that there was due service of all requisite documents on the Applicant, that it acted within the ambit of the law and that the Applicant was fully aware of all proceedings prior to any judgments being made.

96. I do not believe there are any sufficient or substantial grounds to set aside the registration of the Nevis Judgment. Procedurally, the Respondents seemed to have made all proper applications, followed the law and effected service on all relevant parties.

97. In relation to lack of jurisdiction, from the evidence, all parties appeared to submit to the jurisdiction of the foreign courts – particularly where the Applicant participated in numerous applications and launched a full blown appeal – though unsuccessful. It is curious why lack of jurisdiction is being argued.

98. With respect to the res judicata point, based on the evidence and the judgments, the matters which the Applicant raises appear to be matters that ought to have been advanced in the Nevis proceedings. At this late stage, it does not seem proper to entertain any such defences advanced by the Applicant. Furthermore, the Nevis Judgment was pronounced, there was no application to set it aside and the appeal was dismissed. The matter, therefore, seems adjudicated upon fully and the Nevis Judgment appears to be final in all respects. Accordingly, the matter is res judicata.

99. In relation to public policy considerations, there is no evidence or sufficient reason advanced by the Applicants to rely on this ground to set the registration aside. There does not appear to be anything contrary to public policy which would make the judgment appear unfair or prejudicial. This ground appears baseless.

100. Based on the circumstances of the case and the evidence provided, none of the grounds advanced provide sufficient reason to set aside the registration of the Nevis Judgment.

101. I, therefore, dismissed the respective applications of America 2030 and Weiser. The registration of the Nevis Judgment stands and may be enforced, to the extent that it does not offend or contravene the Protection Orders.

102. America 2030 shall pay the Respondents' costs for its application, fit for two counsel, to be assessed by this Court, if not agreed.

103. Weiser shall pay the Respondents' costs for its application, fit for two counsel, to be assessed by this Court if not agreed.

Dated this 25th November 2024

Deborah E. Fraser
Senior Justice