

**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/Applicants

- and -

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

Defendants/Respondents

BETWEEN

Sunpower Business Group Pte Ltd.

First Plaintiff

Tournan Trading Pte Ltd

Second Plaintiff

And

America 2030 Capital Limited

First Defendant

Weiser Global Capital Markets Ltd

Second Defendant

Before: Her Ladyship The Honourable Madam Senior Justice
Deborah Fraser

Appearances: Mrs. Courtney Pearce-Hanna for the First and Second
Plaintiffs/Applicants

Judgment Date: 09 August 2023

**Registration of a Foreign Judgment – Section 3 of the Reciprocal Enforcement of
Judgments Act, 1924 – Just and Convenient - Extension of Time**

JUDGMENT

1. This is an ex-parte application on behalf of Sunpower Business Group Pte Ltd (“**SBG**”) and Tournan Trading Pte Ltd (“**Tournan**” and collectively “**Applicants**”) pursuant to section 3 of the Reciprocal Enforcement of Judgments Act, 1924 (“**Act**”) to register a Judgment Order made by the High Court of St. Christopher and Nevis on 16 June 2020 and filed on 18 June 2020 (“**Nevis Judgment**”).
2. There is also an application for extension of time to make the application for registration.

Background

3. The Applicants are both Bermudan companies publicly listed on the Singapore stock exchange since 2005.
4. 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 Weiser Global Capital Markets Limited, formerly known as Weiser Asset Management Limited, (“**Weiser**”) in its capacity as Custodian.
5. Weiser is a regulated financial services firm in The Bahamas which, at all material times, acted as depository broker in a transaction involving the Applicants and America 2030.
6. In June of 2018, the Applicants entered into Master Loan Agreement (“**MLA**”) with America 2030 whereby the Applicants, respectively, would deposit

14,000,000 shares in Sunpower Group Limited as collateral ("**Shares**") in exchange for loans of up to USD\$25,000,000.00 from America 2030.

7. Custodian Management Agreements provided for Tournan and SBG respectively to deposit the pledged collateral into depository accounts held by Weiser.
8. Materially identical Supplemental Loan Agreements ("**SMLA'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 (N)(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.
9. 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.
10. Consequently, the Applicants sought injunctive relief. America 2030 responded by purporting to commence arbitration proceedings in Nevis, relying on arbitration clauses contained in the agreements. The Applicants challenged the validity of the arbitration proceedings in the Nevis court proceedings.

The Nevis Proceedings

11. Following an investigation into America 2030 and its principal, Val Sklarov (also known as Mark Bentley)("Sklarov"), the Applicants initiated court proceedings in Nevis against America 2030, Sklarov and Wieser for fraud ("**Fraud Claim**") and obtained a worldwide freezing order 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.
12. The Fraud Claim 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.
13. 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.
14. The Nevis Court ruled that America 2030 carried out a stock loan fraud against each of the Applicants; that all agreements were vitiated due to the fraud; that the Applicants are entitled to 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 Applicant of all dealings with the Shares and their sale proceeds.

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

The Bahamian Proceedings

16. 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 ("**Bahamian Proceedings**").

17. On 11 November 2020, the Applicants 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 ("**Amended Summons**").

18. 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.

19. 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 ("**Braithwaite Ruling**") at which time he refused the reliefs sought by the Applicants 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.

20. The Applicants then made the instant application under the Act to register the Nevis Judgment.

21. The Applicants also seek 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.

Issues

22. The issues that the Court must decide are: (i) Whether the Court will grant an extension of time to make the application for registration of the Judgment Order? (ii) Whether the Court will grant the order sought by the Applicants and register the Judgment Order?

Discussion

Whether the Court will grant an extension of time to make the application for registration of the Judgment Order?

23. By virtue of **section 3 of the Reciprocal Enforcement of Judgments Act, 1924**, the Court is permitted to register judgments made outside of the jurisdiction. Section 3(1) 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.”

24. It is noted that the Nevis Judgment was made on 16 June 2020 and subsequently filed on 18 June 2023. This instant application for registration was made some two (2) years later. The Applicants rely on the case of ***Ogelegbanweir and ors v President of the Federal Republic of Nigeria and ors [2016] WEHC 8*** (“**Ogelegbanweir**”) for the proposition that extension of time can be granted once there is no prejudice caused by such extension. There, an extension of time was granted to make an application for registration where the application was made some seventeen (17) months late.

25. In that case, the Applicants sued the President of Nigeria, the Attorney General and a Major-General of a task force due to the government deploying a military task force against the inhabitants of the Gbaramatu Kingdom of Warri South West Local Government Area of Delata State in Nigeria. The deployment of the military task force caused the decimation of the Applicants’ communities causing destruction of property and displacement of members of the community. As a result, the Applicants brought proceedings in the High Court of Nigeria and were awarded the equivalent of £400 million. They were unable to satisfy the debt in Nigeria and sought to enforce the award in the United Kingdom (as the defendants were known to have assets there). In the circumstances and based on the evidence, the court acceded to the application as against the Major-General only.

26. The ***Ogelegbanweir*** case can, however, be distinguished from the instant case. First, in that case, the defendants who were ordered to make payments to the applicants made a number of assurances for payment, hence why the applicants delayed in pursuing enforcement of the award made. Second, the Court had evidence confirming that the defendants were in a much stronger position than the applicants and were ultimately in charge of any enforcement proceedings that the applicants were able to pursue. The circumstances are not similar in the instant case.

27. The Applicants’ counsel submits that there is no prejudice as an injunction remains in place restraining the Defendants’ access to the Shares or the proceeds of same.

28. The Applicant's counsel contends, however, that there would be prejudice suffered if the Applicants are unable to register the judgment for enforcement as they have been deprived of the value and benefit of the shares for nearly five (5) years while the Second Defendant continues to draw down fees and disbursements from the proceeds of the wrongful sale of a portion of the Shares.
29. It is noted that the Applicants have also brought an application for extension of time under **Order 3 rule 4 of the Rules of the Supreme Court, 1978 ("RSC")**, which provides:
- "4. (1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act in any proceedings.**
- (2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.**
- (3) The period within which a person is required by these Rules, or by any order or direction, to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose"**
30. The rule permits the court to grant an extension of time within which to comply with a rule under the RSC, a judgment, order or direction. The Applicants seek an extension of time to bring this application, which is governed by an entirely different piece of legislation – The Reciprocal Enforcement of Judgments Act, 1924. Accordingly, this excerpt from the RSC does not apply.
31. Section 3(1) of the Act does, however, state that the Court may grant a longer period of time to register the Nevis Judgment. As the Defendants have not attempted to appeal the Nevis Judgment and the Applicants have made several applications attempting to move the Court in as timely a manner as possible to have the Nevis Judgment registered, the Court hereby grants the requested extension.

Whether the Court will grant the order sought by the Applicants and register the Judgment Order

32. In relation to whether the Court will permit the registration of the Nevis Order, **section 2 of the Act** states:

"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;"

33. **Section 6(1) of the Act** provides:

“6. (1) Where the Governor-General is satisfied that reciprocal provisions have been made by the legislature of any country for the enforcement within that other country of judgments obtained in the Supreme Court, the Governor-General may by Order declare that this Act shall extend to judgments obtained in a superior court in that country, and on any such Order being made this Act shall extend accordingly.”

34. Orders under section 6 of the Act include the Leeward Islands of the Caribbean, which includes St. Kitts and Nevis (which is where the Nevis Judgment was made). Accordingly, the Nevis Judgment is deemed a judgment under the Act as it is an order emanating from a court in civil proceedings from one of the Leeward Islands.

35. Based on evidence before the Court, the Nevis Judgment has not been set aside nor appealed and the matter is thus, *res judicata*. The Judgment Order, thus remains valid and enforceable.

36. 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.”

37. Based on the circumstances of the case and the evidence provided, none of the exclusions under section 3(2) of the Act apply to the instant case. The Nevis

Court did have jurisdiction as America 3030 made representations and applications at that time before that court and jurisdiction was not challenged.

38. Further, it was noted at the Court of Appeal in St. Christopher and Nevis that all defendants made certain assertions in the court below and that Weiser was indeed a party to the Fraud Claim. The Court of Appeal in St. Christopher and Nevis also noted that Weiser participated in Striking Out proceedings in the lower court of St. Christopher and Nevis.
39. In addition, the Nevis Judgment was duly served on the First and Second Defendants and none of the Defendants sought to have the Nevis Judgment set aside for fraud.
40. The Court does note, however, that there are presently two separate injunctions over the Shares in differently constituted proceedings. 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.”**
41. The Court relies on the “*just and convenient*” element as expressly stated in section 3(1) of the Act. According to the Affidavit of Elizabeth Harper filed on 23 August 2022, there is presently an injunction over the Shares and its sale proceeds in another court matter before a different judge. The Court notes there are, in fact, two injunctions regarding the Shares and their sale proceeds. The Nevis Judgment, however, covers more than just the Shares and the sale proceeds of same – it also includes, *inter alia*, several awards of damages.
42. I have also reviewed the injunctions. Based on the wording, the injunctions remain in effect to this day and shall remain so until final determination of proceedings in Singapore. It mentions that the injunctions are also subject to the St. Christopher and Nevis proceedings, but that matter has already been determined.
43. As this application is merely to register the Nevis Judgment in this jurisdiction, I am prepared to grant such relief.
44. In the circumstances, I hereby grant leave to register the Nevis Judgment in accordance with the Reciprocal Enforcement of Judgments Act, 1924 and the Rules of Court (Reciprocal Enforcement of Judgments), 1952.

Senior Justice Deborah Fraser

Dated this 09th day of August 2023