COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2022/CLE/gen/00852

B E T W E E N

HERITAGE CRUISE HOLDING LTD

(formerly known as SILVERSEA CRUISES GROUP LTD.)

Applicant

AND

SILVERSEA CRUISE HOLDING LTD.

First Respondent

AND

FRANCESCO LEFEBVRE D'OVIDIO

Second Respondent

BEFORE: The Honourable Madam Justice Simone I. Fitzcharles

APPEARANCES: Mr. Robert K. Adams, KC, with Mr. Miguel Darling for the Applicant

Mrs. Justine Smith with Ms. Ashley Sands for the First Respondent

Mr. Carl W. Bethel, KC, for the Second Respondent

RULING

FITZCHARLES, J.

Introduction

1. This is an application for a stay of proceedings made by Francesco Lefebvre D'Ovidio ("**FL**"), the Second Respondent, in relation to an action commenced against himself and a Bahamian International Business Company ("IBC") Silversea Cruise Holding Ltd., the First Respondent, by Heritage Cruise Holding Ltd formerly known as Silversea Cruises Group Ltd. ("**Heritage**"), the Applicant. In particular, by his Summons filed on 17 February 2023 (the "**Stay Summons**"), FL has applied pursuant to Order 31A, Rule 18(2)(d) of the Rules of the Supreme Court, 1978, ("RSC") for:

    (i) An order that the whole of the instant action be stayed in perpetuity; or alternatively

    (ii) An order that the whole of the instant action be stayed until such time as the Court of Appeal for Bologna, Italy, shall have rendered a revised judgment referred back to it by the Supreme Court of Italy, in accordance with the terms of the judgment of the Supreme Court of Italy;

    (iii) Costs of the application.

2. The grounds of the application, as set out in the Stay Summons, are "(1) *forum non conveniens* and (2) *lis alibi pendens*, due to the fact that the same underlying allegations of fraud and breach of a contractual agreement have been and are being litigated in two other legal jurisdictions to which the contending parties have submitted and [in which they] are resident." In support of the application, FL relies upon the Affidavit of Syann Thompson-Wells filed on 21 April 2023. From the copious legal submissions tendered to the Court both in writing and in oral argument, one may glean that this application was vigorously fought. FL's written legal submissions were given on 3 November 2023, 19 November 2023, 4 December 2023, 23 February 2024, 11 March 2024, and 11 April 2024 in addition to oral arguments.

3. Heritage contests the application and relies upon the Affidavit of McFalloughn Bowleg Jr filed on 6 July 2022, the Affidavit of Samuel Brown and the Supplemental Affidavit of Samuel Brown both filed on 10 October 2023, the Affidavit of Giovanni Frau filed on 18 October 2023, the Third Affidavit of Samuel Brown filed on 28 November 2023 and Submissions dated 15 November 2023, 23 February 2024, 18 March 2024 (a letter) and 24 April 2024 (a letter). Heritage contends that between 2003 and 2018, it owned the entire issued share capital of the First Respondent, Silversea Cruise Holding Ltd. (which shall be referred to as "**Silversea**"). The ownership of the Silversea shares is an issue which is at the root of three sets of proceedings discussed immediately below. Silversea was a holding

company of the Silversea cruise line business and owned various subsidiary companies and physical assets (including ships) ("**the Silversea Assets**").

Background

4. The background facts are taken from the affidavit evidence of the parties. In some respects, the facts are contested, and in this summary, those contentions are indicated where necessary. Three sets of proceedings in three separate jurisdictions are relevant to this application: (1) longstanding and ongoing proceedings in Bologna, Italy ("**the Italian Proceedings**"), (2) proceedings in Florida, United States of America ("**the Floridian Proceedings**"), and (3) the current proceedings in Nassau, The Bahamas ("**the Bahamian Proceedings**").

The Italian Proceedings

5. The genesis of the disputes takes place across the seas in Bologna, Italy, where a longstanding legal battle is being fought amongst the members of the Lefebvre family – but primarily between FL and his brother, Manfredi Lefebvre d'Ovidio ("**ML**"). Other family members in the dispute are/were: (1) Elvira Lefebvre ("EL") who is the sister of FL and ML; (2) Eugenia Beck ("**EB**") who was the mother of FL and ML; and Antonio Lefebvre ("**AL**") the father of FL and ML. EB and AL are deceased, and EL was named as their universal heir.

6. In 1998, FL was the majority owner of Eurosecurities Corp, SA ("**Eurosecurities**"), a Luxembourg holding company, and other shareholders included EL and EB. At that time, Eurosecurities (indirectly) owned 75.41% of the shares in Heritage and Silversea.

7. On 22 December 1998, the Lefebvre family entered into a merger agreement ("**the Merger Agreement**"), which provided that the shares in Eurosecurities, amongst others shares, would be transferred to a new company called Lefco Ltd (Bahamas). Lefco Ltd. was to be owned by four trusts (Aledo A, Aledo B, Aledo C, and Aledo D) of which the beneficiary was the Maruzza Lefebvre Foundation (incorporated under Vatican law), and the protectors were Lefebvre family members. The trusts with FL and ML as protectors were to have 31% interests in Lefco, the trust with EB as protector 24%, and the trusts with EL as protector 14%. Lefco Ltd.'s managers were FL, ML and AL.

8. Due to a family dispute, the Merger Agreement was not executed by all parties. Resultantly, Lefco Ltd., ML, and other Lefebvre family members commenced arbitration proceedings ("**the Arbitration Proceedings**") on 3 May 1999 against FL, seeking an order that FL be compelled to enter into the Merger Agreement. They also obtained an interim seizure of FL's shares in Eurosecurities before the Luxembourg Court. At that time, Lefco Ltd. was owned by the trusts Aledo A, C, and D (trusts of which EB EL and ML were protectors).

9. The Arbitration Proceedings resulted in an award on 4 April 2001 ("**the Award**") in which it was held, *inter alia*, that the Merger Agreement was valid and effective and therefore binding as between the parties. FL was thereby ordered to transfer the Eurosecurities shares in accordance with the Merger Agreement.

10. FL appealed the Award, and the family entered into settlement negotiations. A settlement agreement dated 30 May 2001 was entered into by the Lefebvre family ("**the Settlement Agreement**"). Some terms agreed in the Settlement Agreement were that:

    (i) FL was to transfer ownership of his 52.12% shareholding in Eurosecurities (which indirectly owned 75.41% of SITAV S.p.a., which indirectly owned 100% of Silversea) to a company designated by ML and controlled by Lefco Ltd; and

    (ii) ML was to procure that Lefco Ltd transferred to FL a 48% interest in an entity named COIMAR S.p.a. ("**Coimar**"), which would have provided FL with a 100% interest in Coimar. The Settlement Agreement provided that the entire share capital of Elite Merchant & Finance Co. ("Elite"), which indirectly controlled Coimar, was to be transferred to FL.

11. The Settlement Agreement, by Article 16 thereof, provided that "**any dispute relating to the validity, interpretation and/or execution of [that] agreement shall be assigned to the exclusive jurisdiction of the Civil Court of Bologna.**"

12. FL complied with his obligations under the Settlement Agreement on 11 June 2001 by transferring the 52.12% shareholding in Eurosecurities to a company designated by ML named Triani Corp. SA (Luxembourg) ("**Triani**") controlled by Lefco Ltd. On 21 October 2001, FL also signed a deed of acknowledgement ("**Deed of Acknowledgement**") in which, *inter alia,* the parties recognized that they had fulfilled their respective obligations under the Settlement Agreement.

13. From Triani, the ownership of the shares in Silversea underwent further changes and eventually ended up in the name of Heritage. Heritage then sold the shares it held in Silversea to Royal Caribbean Cruises Ltd ("**Royal Caribbean**"). These transactions are amongst those impugned by FL in various proceedings. Additionally, Eurosecurities was dissolved on 5 May 2004.

14. FL, some seven years after he signed the Deed of Acknowledgement, purported to terminate the Settlement Agreement as a result of ML's alleged breaches of the Settlement Agreement. On 29 February 2008, FL filed a claim against ML in the Civil Court of Bologna, Italy ("the Italian Proceedings"), seeking in summary:

(i) a declaration that ML had not fulfilled certain of his essential obligations under the Settlement Agreement;

(ii) a declaration that the Settlement Agreement and FL's transfer of his 52.12% interest in Eurosecurities (and through it his interest in the Silversea shares) was therefore void ab initio;

(iii) restitution in the form of the return to FL of his claimed 52.12% interest in Silversea plus the value of other assets that FL transferred to ML pursuant to the Settlement Agreement; and

(iv) in the alternative, damages from ML in the amount of the value of these assets.

15. In or about April 2008, and after FL brought the action in Bologna, ML and the other members of the Lefebvre family purported to sign the Deed of Acknowledgement in relation to the Settlement Agreement.

16. On 9 November 2009, FL applied to the Bologna Court for injunctive relief in the form of seizure of inter alia Silversea shares and Silversea Assets. The application was brought to obtain advance protection of FL's alleged rights to restitution against ML by reason of the termination of the Settlement Agreement. The Bologna Court refused such injunctive relief as it found in part that the entities that held the shares and assets claimed (such as Eurosecurities, Silversea, and others) were not parties to the proceedings brought by FL. The court was not prepared, at that time, to assume there was an abuse of the legal personality of those companies by their shareholder, ML. Such abuse appeared to the court to be the assumption undergirding the bid for the injunction, although FL did not make an application for the court to assess whether the companies were only fictitious owners of the shares and assets. The court referred to such companies as "independent legal subjects distinct from" ML.

17. Further, in the substantive action, the Bologna Court of first instance ruled in favour of ML and other members of the Lefebvre family and rejected all of FL's claim. In summary, the court held that:

(i) ML had not breached his obligations under the Settlement Agreement as alleged by FL; and

(ii) the Deed of Acknowledgement signed by FL was binding on him notwithstanding that it had only been signed by ML seven years later, including because the parties' intention to be bound to the Settlement Agreement could be inferred from their conduct; and

(iii) ML and EL had provided evidence that ML fulfilled his obligations under the Settlement Agreement both as regards the transfer of the Elite shares in FL's possession and of the waiver of SITAV's liability action against FL.

18. FL appealed the first instance decision to the Bologna Court of Appeal, which, on 8 January 2015, upheld the first instance decision. FL then appealed to the Italian Supreme Court.

19. On 21 June 2018, the Italian Supreme Court gave its decision in relation to nine grounds of appeal that were advanced by FL. The Supreme Court upheld the appeal of FL in relation to a majority of the grounds upon which it was based, annulled various parts of the ruling of the Court of Appeal, and remitted the case back to the Bologna Court of Appeal for consideration by a new panel. According to a translation of the ruling produced on behalf of FL, the Supreme Court of Italy, in part, stated:

> "2. …There is no doubt that Manfredi Lefebvre D'Ovidio and other family members signed the agreement proposal of October 2001 for acceptance only on April 17, 2008, as declared by the respondent in his statement of defense before the court in the first instance.
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> "Since Francesco Lefebvre D'Ovidio, …on January 29, 2008, declared that he wished to avail himself of the express termination clause contained in the deed of May 30, 2001, and then, with a deed served on March 4, 2008, … initiated the related proceeding for a termination judgment, the acceptance of the agreement by which the parties should have settled the issues … is certainly late.
>
> "Indeed, the settlement proposal (of October 2001) to which Manfredi Lefebvre D'Ovidio did not reply for almost seven years must undeniably be considered revoked and superseded by the appellant's [FL's] exercise of the termination clause due to non-compliance with the contract, whose performance constituted the subject of the proposal itself.
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> "4.4. …[T]he part of the judgment in the first instance, that affirms the delay of the signature of the October 2001 deed (which took place only on April 17, 2008, after Francesco Lefebvre D'Ovidio declared that he wished to avail himself of the express termination clause contained in the contract of May 30, 2001, and after the filing for judicial termination for non-fulfilment) has not been appealed. Therefore, the issue of the inadequacy of such signature alone to determine the conclusion of the settlement agreement constitutes now internal *res judicata*."

20. Shortly after the hearing of oral submissions in this application for a stay of the Bahamian proceedings concluded, there were significant developments of which Counsel requested permission in 2024 to apprise this Court. Amongst those developments was the ruling of the Bologna Court of Appeal on 20 December 2023. In brief, that court upheld certain findings of fact of the first instance Court of Bologna and found that there was no breach of the Settlement Agreement by ML. Consequently, the court decided that the claims of FL should be dismissed as was the result in the original decision of the first instance Court of Bologna. FL indicated that he did not accept this result and asserted that he had a right to appeal this decision to the Supreme Court of Bologna on the basis of the several errors contained in the decision of the Bologna Court of Appeal. He highlighted the alleged failure of the Bologna Court of Appeal to follow the guidance given by the Bologna Supreme Court, amongst other arguments. He lodged an Appeal Petition to the Italian Supreme Court on 13 March 2024. As such, as far as this Court is aware, the parties to the Italian Proceedings await the outcome of that appeal.

The Floridian Proceedings

21. As stated above, Heritage sold the shares it held in Silversea to Royal Caribbean. The transaction took place in two tranches pursuant to a Share Purchase Agreement ("the SPA") dated 13 June 2018 by which Royal Caribbean on 31 July 2018 purportedly purchased the legal title to 66.7% of the issued shares and assets of Silversea, with the remaining 33.3% being transferred to Royal Caribbean on 9 July 2020.

22. FL states that by his attorneys, Foley & Lardner in Florida, Royal Caribbean was made aware, before it made the first payment and before its completion of the SPA, of the ruling of the Supreme Court of Bologna and the underlying claim for restitution *ab initio* made by FL in the Italian Proceedings. For this reason, FL believes that Royal Caribbean cannot claim to have been an innocent or bona fide purchaser for value without notice in respect of the shareholding in Silversea it accepted from Heritage.

23. Based on the affidavit evidence of the parties, the first relevant foray into the Florida legal system was an application by FL for an ex parte order pursuant to 28 U.S.C. §1782 to obtain discovery from Royal Caribbean, which FL wished to use in the Italian proceedings. The application was opposed by Royal Caribbean, and ML intervened in the Floridian Proceedings. By an Omnibus Report and Recommendation dated 29 July 2020, the application for discovery was denied mainly because the time for allowing new evidence to be adduced in the Italian Proceedings had elapsed and, as such, FL did not satisfy any of the statutory grounds in Florida law for obtaining such discovery.

24. On 23 May 2022 a complaint was filed on behalf of FL against Royal Caribbean ("**the South Florida Complaint**") in which it was stated that "this case arises out of Royal Caribbean's role in a scheme to wrongfully divest Francesco Lefebvre of his majority share

of the cruise line Silversea Cruise Holding Ltd., its subsidiaries, and its assets." The acquisition of the shares and assets of Silversea by Royal Caribbean is a key reason for the bringing of the Floridian Proceedings by FL, who seeks to contest the SPA and the title of Royal Caribbean to the shares and assets of Silversea. In the South Florida Complaint, FL has applied for, amongst other things:

(i) an order prohibiting Royal Caribbean from transferring 52.12% of the Silversea Assets and avoiding the transfer as fraudulent;
(ii) a declaration that FL is entitled to 52.12% of the Silversea Assets; and
(iii) damages for breaches of various torts, including unjust enrichment and conversion.

25. In the Floridian Proceedings, Royal Caribbean made a Motion to Dismiss the case brought by FL. This relief was denied by the South Florida Court. On 21 March 2024, the South Florida Court held a hearing on a Motion for Reconsideration of its previous refusal to dismiss brought by Royal Caribbean. The Motion for Reconsideration of Royal Caribbean was denied in its entirety. The South Florida Court concluded by ordering a Stay in full of any further proceedings in South Florida, until the Supreme Court of Italy reaches a final disposition.

26. In response to the Bologna Court of Appeal ruling of 20 December 2023, Royal Caribbean has filed a further Motion to Dismiss FL's claim in the Floridian Proceedings, or alternatively, to have it stayed indefinitely. This Court is not aware of any outcome of the renewed Motion to Dismiss.

The Bahamian Proceedings

27. Heritage asserts that it was constrained to commence the Bahamian Proceedings seeking declaratory relief relative to the shares and assets of Silversea and the SPA because of the claims FL has made regarding those shares and assets in the Italian and Florida proceedings. Significant to the claim of Heritage in the Bahamian Proceedings is, amongst other things, certain fundamental warranties given by Heritage to Royal Caribbean in the SPA including that Heritage [was at the time it entered the SPA] the sole legal owner of, and that there were no encumbrances over, the Silversea shares.

28. By an Originating Summons filed on 31 May 2022 Heritage applied for the following relief against Silversea (which it referred to as "**the Company**") and FL:

(i) A declaration that as at the date of the Agreement for the Sale and Purchase of Shares in the capital of the Company ("**the SPA**") dated 13 June 2018 between Silversea Cruises Group Ltd

(i.e. Heritage), as seller and Royal Caribbean Cruises Ltd. ("RCCL") as Purchaser, Heritage was the sole legal owner of 100% of the issued shares (and assets) of the Company.

(ii) A declaration that the Company was legally entitled to recognize Heritage as the sole legal owner of 100% of the issued shares (and assets) of the Company as at 13th June 2018.

(iii) A declaration that Heritage was entitled to sell the legal title of the issued shares (and assets) of the Company to RCCL as set out below at paragraphs 4 and 5 free from any encumbrance or otherwise.

(iv) A declaration that on 31 July 2018 RCCL as Purchaser acquired the legal title to 66.7% of the issued shares (and assets) of the Company ("the First Transfer") from Heritage, as Seller for good and valuable consideration free from any encumbrances or otherwise.

(v) A declaration that on 9 July 2020 RCCL as Purchaser acquired the legal title of the remaining 33.3% of the issued shares (and assets) fo the Company ("the Second Transfer") from Heritage, as Seller for good and valuable consideration free from any encumbrance or otherwise.

(vi) A declaration pursuant to Section 28 of the International Business Companies Act, 2000 ("the IBC Act") that the share certificates of the Company are prima facie evidence of the legal and beneficial title of the member to the shares specified therein.

(vii) A declaration pursuant to Section 29 of the IBC Act that the Share Register of the Company as at 18 July 2020 was prima facie evidence of the title to the issued shares of the Company.

(viii) A declaration that the First and Second Transfers were valid and in accordance with Section 31(1), (3) and (4) of the IBC Act.

(ix) A declaration pursuant to Section 5(1) of the Limitation Act, 1995 and/or otherwise that any claim by or on behalf of FL as against Heritage relative to the Company's shares and assets and/or the First and Second Transfers is statute-barred.

(x) An order that FL do pay the costs of this action, to be taxed if not agreed.

(xi) Such further or other relief as the Court deems fit.

29. On 6th July 2022, Heritage filed a Summons which was supported by three Affidavits of McFalloughn Bowleg Jr filed on 6 July 2022, 30 August 2022 and 13 February 2023, respectively, to obtain leave pursuant to Order 11 Rules 1 (1) (J) and 8 of the RSC to serve FL with process out of the jurisdiction. By an Order dated 23 September 2022, Heritage obtained leave from the Registrar of the Supreme Court to issue and serve a Notice of Originating Summons and Concurrent Originating Summons and any further documents out of the jurisdiction on FL. The Registrar also ordered that FL was required to enter an appearance to the action within 21 days of service of the documents on him.

30. On 8 August 2022, Silversea entered a Memorandum of Appearance and Notice of Appearance.

31. By Summons of 31 January 2023, FL sought relief pursuant to Order 12 rule 7(1) and (2) of the RSC, amongst other things, to set aside the service of the Originating Summons. This was eventually not pursued as, on 1 February 2023, FL entered a Memorandum of Appearance and Notice of Appearance (unconditionally) in the current action, and on 17 February 2023, lodged his application for a stay of these proceedings..

Legal Principles

32. By Order 31A, rule 18(2)(d) of the RSC, the Court has the power by way of case management to "stay the whole or part of any proceedings generally or until a specified date or event." Under the Supreme Court Civil Procedure Rules (the "CPR"), specifically CPR 26.1(2)(q), the Court is similarly empowered. As this application for a stay was filed on the cusp of the implementation of the CPR, it was appropriately brought pursuant to Order 31A, rule 18(2)(d) of the RSC.

33. The time-honoured principles which apply to an application for a stay of proceedings on the basis of *forum non conveniens* were set out in the English House of Lords decision of ***Spiliada Marine Corp v Cansulex Ltd*** ("**The Spiliada**") [1986] 3 All ER 843 in the speech of Lord Goff of Chievely. These principles were handily distilled by St Rose-Albertini J [Ag] in the decision of ***Bancroft Life & Casualty, ICC, Ltd v Telebrands Insurance Company IC, Limited***, Claim No SLUHCV 2015/0992 in the Commercial Division, Eastern Caribbean Supreme Court of St Lucia at paragraph 33 as follows:

> "(i) A stay of proceedings will only be granted on grounds of forum non conveniens where the court is satisfied that there is some other available forum having competent jurisdiction, which is the

appropriate forum for the trial of the action, i.e. a forum in which the case may be more suitably tried, in the interest of all the parties and the ends of justice.

"(ii) The burden of proof rests on the defendant (applicant) seeking the stay to persuade the court to exercise its discretion to grant the stay. If the court is satisfied that there is another forum which is prima facie more appropriate the burden will shift to the claimant (respondent) to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this jurisdiction.

"(iii) Lord Goff noted the approach of the courts in the USA and Canada where these courts are hesitant to disturb a claimant's choice of forum unless the balance of factors weighs **strongly** in favour of the defendant. In contrast English law has no presumption or extra weight in favour of a claimant where the claimant has founded jurisdiction as of right. It is only in cases where no particular forum can be described as the natural forum and there are pointers to a number of different jurisdictions that the English court would refuse to grant a stay.

"(iv) The burden on the defendant is to show that there is an alternative forum for the trial and that the forum is clearly or distinctly more appropriate than the forum where the stay is sought.

"(v) In considering whether a stay should be granted the court must examine what is the "natural forum". A concept described by Lord Keith of Kinkel in **The Abidin Daver** [[1984] 1 Lloyd's Rep. 339] as "that with which the action has the most real and substantial connection". The court must look for connecting factors which will include matters affecting convenience or expense such as availability of witnesses, the law governing the relevant transactions or to which the fructification of the transaction might be subject, the place where the parties reside or carry on business, the languages that they speak, in tortious claims the place where it is alleged that the tort took place and the list can go on. These factors are not intended to be exhaustive but rather indicative of the nature of the issues that a court should consider when exercising its discretion.

> "(vi) If after considering these factors the court concludes that there is no other available forum which is clearly more appropriate for trial of the action, it will ordinarily refuse a stay. Conversely if the court concludes that there is some other available and prima facie more appropriate forum it will ordinarily grant a stay. However, there may be occasions where justice requires that in the circumstances a stay should nevertheless not be granted. For instance if it can be shown that the claimant will not obtain justice in the foreign (appropriate) jurisdiction. This fact must be established objectively, on cogent evidence, which must be adduced by the claimant."

34. As espoused by St Rose-Albertini J [Ag] at paragraph 34 –

> "[34] …The common thread in the leading cases in which a stay has been granted, is that there has always been another clearly more appropriate forum, where the interest of the parties and the ends of justice could best be served, without incurring any injustice or disadvantage to a claimant."

Issues

35. The Court must decide:

(1) whether the courts of Italy or Florida are available and a more appropriate forum than The Bahamas for the trial of the issues in this action having regard to the interests of all the parties and the ends of justice; and if so,

(2) whether there are circumstances by reason of which justice requires that a stay should nevertheless be refused.

The Arguments and Analysis

36. The Second Respondent, FL, represented by Mr. Bethel, KC, seeks to discharge the burden of proving that there is an alternative forum for the trial and that the forum is clearly or distinctly more appropriate than the forum where the stay is sought – The Bahamas. Heritage, represented by Mr. Adams, KC, opposes the application for a stay of the Bahamian Proceedings.

Overlap in Issues

37. Mr. Bethel, KC submits that the claims in Italy, Florida and The Bahamas are interconnected. He reasons that FL was sued in The Bahamas solely because of the underlying legal dispute in Italy, which led to the filing of the Complaint by FL in South

Florida. FL contends that if his claims are fully and finally dismissed in the pending Italian Proceedings, then his action filed in the Floridian Proceedings will be unnecessary. This is the reason why the court in South Florida stayed the action pending the outcome of the pending action in the Italian Proceedings. Further, Mr. Bethel, KC, states that if FL's action in the Floridian Proceedings is fully and finally dismissed (because, for example, the Italian Proceedings are fully and finally dismissed), this action in the Bahamian Proceedings will be unnecessary because its sole purpose is to address issues that are already being litigated in South Florida. Counsel contends that these facts serve to show the connection of the Bahamian action with those pre-existing actions in Italy and Florida, the inefficiency of proceeding with this action in parallel to the other two actions, and the risk of inconsistent rulings across jurisdictions that proceeding with the Bahamian Proceedings would create.

38. Mr. Bethel, KC, therefore submits that South Florida is the *forum conveniens* for the determination of the validity of the transaction between Heritage and Royal Caribbean – that is, the purchase of the Silversea shares and Silversea Assets ("Silversea Shares and Assets"), because that is the place where the impugned purchase took place, the place where the contract was executed by the parties and the place where Royal Caribbean conducts and manages all of its business. Counsel further contends that the Court of Bologna in Italy is the most appropriate forum for the airing of the underlying Lefebvre family legal dispute especially because the cardinal document in dispute is the Settlement Agreement which is governed by Italian law and in respect of which the Courts of the City of Bologna, Italy have exclusive jurisdiction. He emphasizes that the underlying dispute over the Settlement Agreement calls into question the validity of both the transaction involving the Silversea Shares and Assets in Florida as well as the transaction referred to in the Bahamian Proceedings – which are both voidable. Italy, it is asserted, is the most natural, appropriate, and convenient forum to resolve the underlying dispute concerning the Settlement Agreement.

39. On the other hand, Mr. Adams, KC, argues that FL's attempt to present the action in the Bahamian Proceedings as closely related to the Italian Proceedings is misconceived. He states that the Italian Proceedings concern claims arising from an alleged breach of contract between FL and members of his family; the Italian Court has not been and is not being asked to decide any issues concerning Heritage or the transfer to it of the shares in Silversea. Counsel emphasizes that there is no claim pending against Heritage in any jurisdiction. Moreover, the issues to be decided in the Bahamian Proceedings concern the ownership of shares in a Bahamian IBC by a Bahamian IBC, including any potentially related issues such as whether it might be appropriate to "pierce the corporate veil" and limitation periods. He states that it is well-established that a dispute in relation to the ownership or transfer of shares in a company is governed by the law of the place in which that company is incorporated.

40. The Court observes that in both the Italian Proceedings and the Floridian Proceedings, FL alleges that he has been wrongfully divested of his majority shareholding in Silversea by a

dishonest scheme. In the Florida Proceedings he alleges that the scheme involved Royal Caribbean. In Italy, FL claims that ML and other parties are liable to return to him by way of restitution his shareholding in Eurosecurities (and as such, the Silversea Shares and Assets) in the same factual and legal state in which they were transferred by him. FL also claims in damages the proceeds generated by those shares in the meantime. He accuses ML and others of engaging in a dishonest scheme to strip, amongst others, Eurosecurities of its assets and conceal the ownership of those assets, which included the Silversea Assets, by incorporating new companies and transferring to them in a series of transactions the sought after Assets. In The Bahamas, the Silversea Shares landed in the corporate hands of Heritage, which then purported to sell them to Royal Caribbean in Florida. Heritage has not been sued by Royal Caribbean. Heritage has not been sued by FL in any jurisdiction. However, Heritage seeks declarations from this Court, amongst others, that it was the sole legal owner of 100% of Silversea; that Heritage was entitled to sell the legal title of the Silversea Shares and Assets to Royal Caribbean; and that Heritage's sale of the shares to Royal Caribbean was free from any encumbrances and valid.

41. It is clear that a portion of the subject matter of the Italian Proceedings, and the entire subject matter of the Floridian Proceedings and the Bahamian Proceedings, is common – the Silversea Shares and Assets. Further, the issues in play in the three jurisdictions pertain to, amongst others but mainly, the true ownership of the Silversea Shares and Assets and the validity of purported transfers of those Shares and Assets. The very first transfer by which the Silversea Shares and Assets left the ownership of FL is questioned and is the subject of mature litigation in Italy. FL seeks to have that root transaction declared void *ab initio* and to recover the Shares and Assets in the same form in which he first transferred them pursuant to the Settlement Agreement. Obviously, if he is successful in the Italian Proceedings, the ultimate effect may be to unravel the transaction between Heritage and Royal Caribbean. If FL is successful in the Floridian Proceedings, it will have a direct bearing on the purported sale to Royal Caribbean, which directly overlaps issues subsequently brought and packaged as statutory relief by Heritage before this Court.

42. FL has indicated that if this Court accepts jurisdiction, he will seek to join Royal Caribbean and others in the Bahamian Proceedings and rely on the fact that he has pleaded claims of fraud in the Floridian Proceedings. An enquiry into the validity of the ownership of Heritage of the Silversea Shares and Assets may give rise to an investigation by the Court of the chain of transfers through which those Shares and Assets came to pass through the corporate hands of Heritage. In the circumstances, although Heritage is not involved in the Italian Proceedings or the Florida Proceedings, and the reliefs sought in each jurisdiction are differently-worded (enabling Heritage to submit that the proceedings involve different parties and questions), I agree with Mr. Bethel, KC, that there is a significant overlap in the subject matter and the core issue of the true ownership of the Silversea Shares and Assets in the Italian Proceedings, Floridian Proceedings and Bahamian Proceedings. Moreover, as it pertains to the validity of the ownership and transfer of the Silversea Shares and Assets, there is duplication of issues in the Floridian Proceedings brought by FL in 2022 and the

Bahamian Proceedings brought by Heritage in 2023. Certainly both claims involve the same events – primarily the sale of the Silversea Shares and Assets which took place in Florida. In the circumstances, I am of the view that there is a risk that inconsistent decisions could be made as a result of the overlap in issues across jurisdictions. This is a strong factor which supports a stay of proceedings as prayed for.

Availability and Appropriateness of Italy and Florida

43. Mr. Adams, KC, argues that the Court must first consider whether the Italian Court or the Florida Court is an 'available' forum. If FL fails to show that they are available then the jurisdiction challenge falls at the first hurdle and the stay application must also fail. This is the approach propounded by the court in ***Re Harrington & Charles Trading Company Ltd (in liquidation) v Mehta and others*** [2023] EWHC 307 (Ch). Heritage contends that while the Italian Courts have personal jurisdiction over FL who ordinarily resides there, Heritage and Silversea are incorporated in The Bahamas under the IBC Act. Similarly, it is asserted that the Florida Court does not have personal jurisdiction over Heritage as it is not present or ordinarily resident in Florida and FL has provided no evidence that Heritage has submitted to the Florida jurisdiction. Further, it is argued that the substance of the Bahamian Proceedings concerns the rights and assets of Heritage – i.e. its legal and beneficial ownership of shares in a Bahamian IBC, Silversea. Questions as to the ownership and transfer of shares must be decided in accordance with the law of the company's country of incorporation. Further, the Applicant contends that FL has not given evidence as to how Italian law or Florida law would deal with this issue or whether the courts of these countries would accept jurisdiction to determine it. Heritage therefore contends that the Bahamian Court has subject-matter jurisdiction over this dispute, and the Italian and Florida Courts are not available fora for Heritage to institute proceedings against FL and Silversea.

44. Heritage argues that FL therefore fails to demonstrate that either Italy or Florida is an available forum and therefore his application for a stay must be dismissed. If the Court disagrees, then it must decide whether there is an alternative forum that is clearly or distinctly more appropriate than The Bahamas.

45. The Applicant contends that Italy is not clearly and distinctly the more appropriate forum for the hearing of this dispute, having regard to the connecting factors. The Heritage action involves Bahamian questions regarding Bahamian IBCs, which must be determined by Bahamian law using the IBC Act. Shares in a company are situate where they can be effectively dealt with as between owner and company. Florida has no equivalent of the IBC Act, and Italy's civil law system is "very different" than that of The Bahamas.

46. Further, Heritage submits that FL has not particularized or adequately pleaded allegations of fraud in the Bahamian proceedings. Further, no allegations of fraud have been made in the Italian proceedings. There would be difficulty in pleading the same because of the lapse in time of over 2 years between FL's purported termination of the Settlement Agreement and

the transfer of Silversea shares to Heritage. Even if those allegations are made, it is appropriate that they be determined by the Bahamian Court.

47. Mr. Adams, KC, argues that FL has not identified any of the witnesses whom he says will have to travel to The Bahamas. FL is based in Italy. ML is based in Monaco. Directors (during 2003 to 2018) of Heritage and Silversea are based in Monaco, USA, and The Bahamas. Any inconvenience and costs associated with potential witnesses having to travel to The Bahamas ought to have been contemplated by FL when he took on ownership of shares in a Bahamian IBC. It is a consideration but must not be overstated. The same may be said of the expense or need for an Italian translator (for FL) if the action were heard in The Bahamas. The same would also be required if the case were to be conducted in Florida. Lastly, due to technological advancements in having trials by video link, little weight should be placed on the location of potential witnesses as a connecting factor when choosing a forum for the hearing of this dispute.

48. Heritage finally submits that *lis alibi pendens*, a factor the court takes into account when considering whether to exercise its discretion to stay proceedings on the ground of forum non conveniens, does not apply because there are insufficient similarities between the parties, who are not the same in the Bahamian Proceedings, the Italian Proceedings and the Floridian Proceedings. Further, the causes of action, and reliefs sought are different across the three jurisdictions.

49. Mr. Bethel, KC, asserts for FL that notwithstanding the place of incorporation of Heritage (The Bahamas), the very nature of its applications – to validate the sale and purchase of Silversea Shares and Assets to a Florida-based (Liberian) company, Royal Caribbean – inextricably connects the entire transaction to the action in South Florida, which existed before the Bahamian action. Because the South Florida action has its roots in the legal dispute in Italy, this also inextricably ties the just resolution of the principal questions in the Bahamian proceedings to court decisions, already made, or to be made, in the Republic of Italy. FL submits that the ends of justice cannot be attained in the Commonwealth of The Bahamas without the due resolution of the underlying legal disputes in Italy and Florida. In the Floridian proceedings, in granting a stay of those proceedings, the court stated: "*No final resolution of the claims nor order on final summary judgment will occur until final resolution in the Italian Courts.*"

50. It is submitted that depending on how the Italian Courts rule, the underlying disputes that affect the Bahamian and Floridian actions may be decided. Mr. Bethel, KC, contends that the Florida Court has accepted jurisdiction to determine the validity of the transfer by Heritage – a Bahamian IBC – to Royal Caribbean, a company governed by Florida law.

51. FL further contends that the SPA was drawn up and executed in Florida. It provides for the transfer of assets to Florida, which are now held by Royal Caribbean. Although the governing law of the SPA is English law, a non-contractual party (FL) on ordinary legal

principles would be able to rely upon the law of the place of contracting, namely Florida law. Further, it is asserted that the connection of Heritage to its place of incorporation (The Bahamas) is more tenuous since all the business decisions, activities, and working assets of Heritage are now conducted in, from, or located in South Florida (formerly Europe). Moreover, Silversea does no business in The Bahamas, a factor which goes to its tenuous connection to the jurisdiction. Royal Caribbean and the Silversea Shares and Assets are subject to the Court of lorida since that is the place of Royal Caribbean's corporate residence and the place where the SPA was entered into. FL further submits that the Florida Court's exercise of its discretion to stay the action pending the resolution of the underlying ownership dispute by the Courts of Italy is recognition that justice cannot be done in Florida without the resolution of the underlying dispute. He argues that the Court of South Florida has 'the most real and substantial connection' for the purpose of determining whether a fraudulent transfer occurred, contrary to Florida law.

52. Mr. Bethel, KC, argues that the very same core issues brought in the Florida Proceedings by FL were subsequently brought by Heritage in the Bahamian Proceedings – for example – a determination on the question whether Royal Caribbean as purchaser acquired the legal title to the Silversea Shares and Assets from Heritage as seller for good and valuable consideration free from any encumbrances or otherwise. It is therefore submitted that there is no basis for the parties and the respective courts to undertake the burden, expense, and risk of inconsistent judgments that would result from Heritage's demand that this Court adjudicate this action in parallel to the overlapping Florida Proceedings and the underlying Italian Proceedings.

53. Mr. Bethel, KC, has also argued that the reliance by Heritage on the IBC Act does not make The Bahamas an available or the most appropriate forum. He submits that the IBC Act is not entirely suitable to determine a dispute arising from a sale or transfer of shares. Even though there are provisions for rectification of the share register by an aggrieved party in section 30 of the IBC Act, it prescribes no grounds upon which one may make the application and the question whether such claim can be made out is left to the common law. FL also views the Bahamian Proceedings as a collateral attack on the Florida Proceedings, as he argues that the former proceedings were only taken out in The Bahamas in 2018 after Royal Caribbean lost an application in the Florida Proceedings seeking to have FL's claim in Florida dismissed.

54. Counsel referred to the House of Lords decision in ***The Abidin Daver*** [1984] 1 All ER 470, which, amongst other portions, highlighted the danger of allowing concurrent actions to proceed. At page 485, in the speech of Lord Brandon of Oakbrook, the following was stated:

> "...Mere balance of convenience cannot, of itself, be decisive in tilting the scales; but strong, and a fortiori overwhelming, balance of convenience may easily, and in most cases probably will, be so. Similarly, the mere disadvantage of multiplicity of suits cannot of itself

> be decisive in tilting the scales; but multiplicity of suits involving serious consequences with regard to expense or other matters, may well do so. **In this connection it is right to point out that if concurrent actions in respect of the same subject matter proceed together in two different countries, as seems likely if a stay is refused in the present case, one or other of two undesirable consequences may follow: first, there may be two conflicting judgments of the two courts concerned; or, second, there may be an ugly rush to get one action decided ahead of the other, in order to create a situation of res judicata or issue estoppel in the latter.**" [Emphasis added].

55. FL contends that if the Bahamian Court were to accept jurisdiction to hear the claim brought by Heritage, he would immediately counterclaim by seeking rectification of the share registers of Heritage and Silversea as an aggrieved person under section 30 of the IBC Act. This would then require him to join Royal Caribbean as a party to the Bahamian Proceedings. This would mean that the same parties in parallel litigation would necessarily be brought into the Bahamian Proceedings. Similar claims of fraud would perhaps have to be pleaded and particularized against other parties as well. This would necessitate expert evidence on relevant provisions of Italian law. Further, the protagonists as well as all necessary witnesses, expert witnesses (in light of the underlying fraud) and language translators would have to travel to The Bahamas to testify in re-opened legal proceedings. The Court ought not to allow this because the incidents relevant to the determination of the Italian family's legal disputes have no connection to the Commonwealth of The Bahamas. There are persons in Italy, Monaco, Florida, and perhaps other jurisdictions who would have to be involved. The undertaking would be a re-trying of issues already being dealt with in the Italian Proceedings and the Florida Proceedings. The issue as to limitation of actions against Heritage is academic at this time, since no party has brought a claim against Heritage.

56. The Court considers that the case for allowing Heritage to proceed with its application in this jurisdiction hangs primarily upon the fact that Heritage and Silversea are Bahamian IBCs, and Heritage has brought before this Court questions that it contends are governed by Bahamian law. However, these factors cannot be considered in a silo. In fact, it would be a wholly incorrect approach to consider this application in isolation from the broader context of the dispute. It ought to be recognized by the parties that while there are other issues before this Court, based upon the Originating Summons the main issue is the legal efficacy or validity of the sale and transfer of shares from Heritage to Royal Caribbean, the crux of which is the determination of the ultimate beneficial ownership of the Silversea Shares and Assets. All other issues before this Court are repetitive of or overlap the core question, are secondary in nature, and/or the determination of the same will not resolve the core issues. An example of this third category of issue is the declaration sought by Heritage that pursuant to section 28 of the IBC Act, the share certificates of Silversea are prima facie evidence of the legal and beneficial title of the member to the shares specified therein. It is

trite that prima facie evidence may be rebutted by the production of evidence to the contrary, which meets a sufficient standard of proof.

57. As pointed out by the Second Respondent, the Court of South Florida has assumed jurisdiction to decide upon the validity of the transfer of shares from Heritage to Royal Caribbean. The very first transfer of shares and assets as a result of the Settlement Agreement is at the root of the matter and has a bearing on whether Heritage lawfully held and transferred the shares to Royal Caribbean free from encumbrances.

58. Heritage has advanced alluring arguments, but the Court is not convinced that they do not break down on a closer analysis. FL is a common party to the three sets of proceedings discussed in this ruling. He and his brother, ML, have respectively sought to vindicate their rights to, amongst other assets, the Silversea Shares and Assets in Italy, and they have been long at it. FL has had to appear in the Florida Proceedings to stop the further onward transfer or disposal of the Silversea Shares and Assets he claims belong to him. He claims ML has, by dishonest means and schemes, caused them to be transferred through third parties, which are actually family members or family-owned companies, including Heritage. The battle in Italy is not over but nearly so, given the parties' projection of 3 or 4 years. There is certainly no guarantee Bahamian litigation of the issues which are before this Court and which, if it accepts to hear this dispute, will be pleaded by FL, will be over in less than 3 or 4 years. In fact, it is unlikely to happen in that space of time.

59. The Court accepts that the Italian proceedings and the Court of Bologna have carriage of the issues at the root of the dispute of beneficial ownership and entitlement to transfer the Silversea Shares and Assets. I, therefore, see the force of the decision made by the Court of South Florida to await the outcome of that dispute. The wisdom of preventing a multiplicity of proceedings and contradictory results, having regard to the circumstances of this case, is apparent. As FL is a common party to the three sets of proceedings, if they are all to continue simultaneously, he would have "to account for his behaviour in them all." It was found by Hariprashad-Charles J in Pacific Electric Wire & Cable Company Limited v Texan Management Limited et al, Claim No. BVIHCV2005/0140 that "[a] party should not be subjected to multiple sets of proceedings over the same issues." This British Virgin Islands first instance decision in which a stay was granted for reasons given therein was upheld by the Privy Council in ***Texan Management Limited et al v Pacific Electric Wire & Cable Company Limited*** [2009] UKPC 46 on appeal from the Eastern Caribbean Court of Appeal.

60. Going further, I accept that if the Court agrees to, at this time, proceed with Heritage's application, it would, by reason of FL's commitment to seeing that his purported rights are vindicated, involve an expansion of the proceedings with a counterclaim and joinder of parties as foreshadowed by Mr. Bethel, KC. This is likely to involve the necessity for FL, ML, and other witnesses, translators, experts, and others from multiple jurisdictions and potentially speaking multiple languages to be involved in the Bahamian Proceedings. There

is likely to be a significant ballooning of expenses, costs, and time. Dangerously, it will involve an overlap with the Florida Proceedings, which has been discussed

Special Circumstances

61. Heritage further submits that if the Court finds that FL has established one or both of the proposed alternative fora are clearly or distinctly the more appropriate forum for the resolution of the instant dispute, the burden shifts to Heritage to demonstrate any circumstances by reason of which justice requires that a stay should nevertheless not be granted.

62. Heritage claims it would not obtain justice in Italy or Florida. It seeks statutory relief pursuant to the IBC Act, so Heritage argues that The Bahamas would be best placed to give it the relief sought. The other jurisdictions would not be able to grant such relief. It is contended that there would be an extreme delay in Heritage's action being heard in Italy and/or Florida. The nature of the Italian Proceedings is complex and may go on for another 3 or 4 years. If a stay were granted, Heritage's application would not be heard until the resolution of the Italian Proceedings. Heritage would be deprived of substantial justice.

63. I am persuaded that the Florida Proceedings have the most real and substantial connection to the core dispute as to the validity of the transfer of the Silversea Shares and Assets as between Heritage and Royal Caribbean for all of the reasons put forth by Mr. Bethel, KC. Further, Heritage no longer has a purported interest in the Silversea Shares and Assets it transferred to Royal Caribbean. The Silversea Shares and Assets reside with Royal Caribbean (whether legitimately or not) – a company subject to the jurisdiction of Florida. The SPA – the transaction which gave rise to the application of Heritage took place in Florida. The connection of the core issues concerning ownership of the Silversea Shares and Assets to Florida is stronger than any connection to The Bahamas. The only connection to The Bahamas is the fact that Heritage and Silversea are domiciled in this jurisdiction. The framing of the issues in terms of statutory relief does not prevail over the recognition that the core issues as to the true beneficial ownership of the Silversea Shares and Assets and validity of their transfer brought in The Bahamas overlap and/or are identical to those sought to be determined in the earlier-brought Floridian Proceedings.

64. The Court has addressed the issue of a delay in the Italian Proceedings above. There is no surety that the Bahamian Proceedings, if allowed to go on, will not outlast the final resolution of the Italian Proceedings and/or the Florida Proceedings if the projection is 3 or 4 years. Therefore, as to special circumstances, I am not convinced that the justice of the case requires that a stay be refused.

65. The Court must decide which forum is more suitable to try the core issues, in the interest of all the parties and the ends of justice. Taking all relevant factors into consideration, I am of the view that FL has established that Italy is clearly or distinctly the more appropriate forum

for the resolution of the underlying Lefebvre family dispute concerning the true ownership of the Silversea Shares and Assets; further, Florida, on the basis it has a more real and substantial connection to the dispute as to the validity of the transfer of the Silversea Shares and Assets from Heritage to Royal Caribbean, is the more appropriate forum for the airing of such dispute which significantly overlaps the questions sought to be determined in the subsequently filed Bahamian Proceedings.

66. In the circumstances, I grant the order staying the Bahamian Proceedings with costs to the Second Respondent. The parties shall lay over submissions on costs within 30 days of this decision, inclusive of a schedule of costs from the Second Respondent.

Dated this 9th day of April 2025.

Simone I Fitzcharles

Justice