

SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

IN THE HIGH COURT OF JUSTICE

CLAIM NO. NEVHCV2024/00832

BETWEEN:

[1] LUMINASTRA LTD
[2] ANDREW N MART

Claimants

And

[1] JTC SKYWAVE INVESTMENTS LTD
[2] HARALD MCPIKE

Defendants

Appearances:

Ms. Kayla Theeuwen with Aymah George for the Claimants; and
Ms. Joia Reece for the Defendants

2025: November 10
December 15

JUDGMENT

[1] **SAUNDERS, M:** The Claimants' claim against the Defendants is in breach of an oral agreement later allegedly reduced into writing on 27 September 2019 in a document headed "Call Option Agreement". I will refer to the Call Option "Agreement" as "*the Call Option Document*", because the undisputed evidence is that it was never signed by the Defendants. Clause 5.2 of the Call Option Document contains a "Governing Law Clause" which the Claimants rely on to found jurisdiction in this matter. The clause provides as follows:

"Choice of Law; Venue. This Call Option, and all matters arising out of or relating to this Call option, whether sounding in contract, tort, or statute

will be governed by and construed in accordance with the internal laws of St. Kitts and Nevis, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of St. Kitts and Nevis.”

[2] The substance of the Claimants’ claim, in summary, is that the Defendants breached the alleged agreement by failing to provide required due diligence and "Know Your Client" information, which prevented the issuance of shares in the 1st Claimant (“*Luminastra*”) and resulted in the 1st Defendant (“*JTC*”) losing its option rights. Against the 2nd Defendant (“*McPike*”), it is also alleged that, as the alter ego and ultimate beneficial owner and controlling mind of JTC, he is responsible for JTC's breach.

[3] By two applications issued 25 November (“*the 1st Application*”) and 12 December 2024 (“*the 2nd Application*”) the Defendants have disputed the Court’s jurisdiction and sought relief under CPR 9 and 26.2(q) on several bases. Having, among other things, considered the evidence supplied and heard the oral submissions in respect of the applications, I have decided to dismiss the 1st Application and have refused most of the relief sought in the 2nd Application for the reasons which follow.

The 1st Application

[4] The 1st Application seeks, a declaration that the Court has no jurisdiction or must not exercise its jurisdiction in respect of the claim, that the claim be struck out, or, that the matter be stayed pending the hearing of an appeal concerning the parties before the United States Court of Appeals for the Eleventh Circuit (“*the US Proceedings*”).

[5] The grounds of the 1st Application are, in summary, that:

- a. JTC took no part in any dealings in St. Christopher and Nevis relevant to the alleged agreement and that the company is in fact domiciled in the British Virgin Islands (this I take to be a challenge in respect of the Court’s *in personam* jurisdiction).

- b. JTC did not sign the Call Option Document and is therefore not bound by its terms.
- c. There are pending proceedings in the United States of America, the main issues in contention therein relating to the same parties, cause of action and subject matter as are presently before this Court, including:
 - i. Whether the Claimants used the Option Agreement to defraud the Defendants; and
 - ii. The most appropriate forum for the dispute.

It is contended that considering the foregoing, the Claim is an abuse of process which is likely to result in conflicting judicial decisions, duplication of costs and a waste of judicial resources; and

- d. St. Christopher and Nevis is not the appropriate forum for the resolution of the dispute.

The Court's Jurisdiction to hear the case against JTC

- [6] As flummoxing as it may seem, it is settled that questions regarding the Court's *in personam* jurisdiction are, generally speaking, issues of procedural law. See e.g. **John Russell & Co Ltd v Cayzer, Irvine & Co Ltd** [1916] 2 AC 298 where Viscount Haldane made the following statements at 302:

"The whole question is one as to the construction of the rule, and in order to construe the rule it is necessary to see upon what jurisdiction depends apart from the rule. Now, my Lords, it is quite true that jurisdiction can be given by accepting service, that is to say, by consent. The root principle of the English law about jurisdiction is that the judges stand in the place of the Sovereign in whose name they administer justice, and that therefore whoever is served with the King's writ, and can be compelled consequently to submit to the decree made, is a person over whom the Courts have jurisdiction".

- [7] Under the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 CPR (*"the CPR"*), a Claimant no longer needs Court permission

to serve Court process outside the jurisdiction (CPR 7.2). So long as a certificate in compliance with CPR 7.6 has been filed, as one has been in these proceedings, the Court process is listed in CPR 7.3, as is the Claimants' claim in contract and the Court documents were served consistently with the CPR, the Court is entitled to exercise its jurisdiction over a defendant.

- [8] JTC was personally served in the British Virgin Islands at its registered address and it has filed an acknowledgment of service without complaint regarding the method of service. In those circumstances it cannot be reasonably argued that JTC is not subject to the Court's jurisdiction. The issues raised in the 1st Application regarding the jurisdiction of the Court, at their highest, can relate only to whether St. Christopher and Nevis is the most appropriate forum for the determination of the dispute and whether JTC should be struck from the claim for want of a cause of action.

The cause of action against JTC

- [9] JTC has complained that the Call Option Document was not signed by any of the Defendants and there is therefore no cause of action against it. I have decided, however, that the fact that the Call Option Document was not signed by the Defendants is not fatal to the Claimants' claim. The consequence of the alleged oral agreement which has been pleaded is that the Claimants are entitled to give evidence at trial in support of that agreement. In other words, the Court need not be overly concerned with the proof of the oral agreement at this stage and the Call Option Document, at worst, is allegedly material in evidence of it. In respect of the Call Option Document's status as a contractual instrument, the specific jurisprudence regarding oral contracts being supplanted by written ones, is not relevant to the dispute as the Call Option Document was never signed by the Defendants¹.

Nevis is the most appropriate forum

- [10] In **Spiliada Maritime Corporation v. Cansulex** [1987] AC 460, which has been applied by the Court of Appeal on numerous occasions, the following statements

¹ **J Evans & Son (Portsmouth) Ltd v Andre Merzario Ltd** [1976] 1 WLR 1078 at 1083

are made regarding the applicable principles when considering a defendant's Application premised on *forum non conveniens*:

“(a) The basic principle is that a stay will only be granted on the ground 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. in which the case may be tried more suitably for the interests of all the parties and the ends of justice.

(b) As Lord Kinnear’s formulation of the principle indicates, in general the burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay.

...

(c) there are cases where no particular forum can be described as the natural forum for the trial of the action. Such cases are particularly likely to occur in commercial disputes, where there can be pointers to a number of different jurisdictions... I can see no reason why the English court should not refuse to grant a stay in such a case, where jurisdiction has been founded as of right.

...

It is significant that, in all the leading English cases where a stay has been granted, there has been another clearly more appropriate forum . . . In my opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum. In this way, proper regard is paid to the fact that jurisdiction has been founded in England as of right.

....

(d) Since the question is whether there exists some other forum which is clearly more appropriate for the trial of the action, the court will look first to see what factors there are which point in the direction of another forum.

...

So it is for connecting factors in this sense that the court must first look; and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction . . . and the places where the parties respectively reside or carry on business.

...

(e) If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay.

...

(f) If however the court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted."

[11] A stay of the claim against JTC based on *forum non conveniens* is not merited and Nevis is the most appropriate forum for the resolution of the dispute, for the following reasons:

- a. This Court is seised of jurisdiction;
- b. The US Proceedings have since concluded with the dismissal of the Defendants' appeal. The appeal, in fact, concerned the Defendants' (the plaintiffs in the appeal) challenge of the Judge's refusal to entertain their claim based on *forum non conveniens*;
- c. The purport of clause 5.1 of the Call Option Document is that all matters arising out of, or, relating to the alleged agreement between the parties will be governed by and construed in accordance with the internal laws of St. Christopher and Nevis. Although JTC contends that it never signed or agreed to the Call Option Document, a defence on that basis would still leave, as a distinct possibility, that any Court which is to decide that issue may find that it is the laws of St. Christopher and Nevis that govern the action. If such a finding were to be made in the

Bahamas, now the only option left besides St. Christopher and Nevis, the Bahamas Court would, at a minimum, require expert evidence regarding the laws of St. Christopher and Nevis. A trial in St. Christopher and Nevis obviates any potential need for evidence of foreign law and thereby reduces the expense and complexity of the trial. In my view, that fact alone suggests that St. Christopher and Nevis is the natural forum for the trial of the action;

- d. The Claimants ground the declarations which they seek on, among other things, JTC and McPike's alleged failure to provide due diligence required under Nevis law which prevented the issuance or transfer of shares to them by Luminastra. Given that allegation, a consideration of Nevis law, even apart from Clause 5.1, is necessary for a resolution of the matter; and
- e. The dispute between the parties concerns one which is intrinsically about the internal governance of Luminastra and its compliance with Nevis law. That fact counts in favour of St. Christopher and Nevis being the most appropriate forum².

[12] McPike has filed an affidavit of 17 December 2024 in which he exhibits a declaration of the 2nd Claimant ("*Mart*") filed 7 May 2024 in the US Proceedings ("*the Declaration*"), stating, among other things, that:

- a. There are at least 23 witnesses relevant to the matter located in the Bahamas whereas there are only 10 witnesses located in Nevis.
- b. All of his agreements with McPike were negotiated or performed and ultimately breached in the Bahamas; and
- c. The Bahamas is where substantial discovery is located including.

[13] I do not believe the Declaration to be very helpful in deciding the issue regarding the appropriate forum as it was made in respect of the US Proceedings, the substance of which is different from the proceedings before this Court. The US Proceedings were initiated by McPike and apparently concerned fraud whereas

² *Nilon Limited v Westminster Investments S.A. and others* [2015] UKPC 2

these proceedings, according to Mart and Luminastra's amended Statement of Claim, are in contract. The usefulness, therefore, of Mart's acknowledgments in relation to discovery and the location of witnesses for the purpose of JTC's forum challenge is questionable. In any event, I am of the view that the considerations at "12" above (particularly "(c)-(e)") outweigh those considered by Mart in the Declaration and summarised above.

The 2nd Application

[14] The 2nd Application is in respect of relief that, among other things, McPike be removed from the suit, he be granted summary judgment, service on him be set aside, or, for re-service of the Claim.

[15] The grounds of the 2nd Application are as follows:

- a. That McPike was not a party to the Call Option Agreement and there is therefore no cause of action against him;
- b. That McPike was not personally served as alleged and that the documents were in fact given to someone else to give to him;
- c. That McPike has no connection to St. Christopher and Nevis (this I take to be a challenge in respect of the Court's *in personam* jurisdiction); and
- d. That the most appropriate forum is the United States of America and that St. Kitts and Nevis is not the most appropriate forum.

Should McPike be joined to the Claim

[16] McPike contends that the claim against him should be struck out as the Call Option Document does not record him as a party. The Claimants have pleaded that either, or, both of the Defendants were parties to the oral agreement which was reduced to the Call Option Document. It is therefore somewhat curious that the Call Option Document, as the alleged record of the oral agreement, does not include McPike as a party. Had the matter ended there, I would have felt confident in striking out the claim against McPike. The Claimants' claim, however, is in respect of declarations only and in my view McPike may justifiably be a party to the claim, even though no cause of action in contract is pleaded against him, under the principles discussed most recently by Webster J (Ag) in **Nabil Marc Abdul-Massih v Ryan Paul Jarvis** BVIHC(COM) 2023/0243 and

by Aikens LJ in the English decision **Rolls-Royce plc v Unite the Union** [2010] 1 WLR 318.

[17] Considering the principles set out in the aforesaid jurisprudence, particularly those which support that a claimant does not need a subsisting cause of action against a defendant to seek a declaration and that there should be a real dispute between the parties as to the existence or extent of a legal right, McPike should not be struck out as a party arising from the following features of the claim:

- a. The action would clarify McPike's rights to Luminatra's shares. If it is decided that McPike is not a party to the alleged agreement, then he cannot seek to enforce it against the Claimants. McPike's joinder assists in resolving the question: "*who owns Luminatra?*"
- b. McPike's joinder prevents future litigation as it would provide finality. A declaration from this Court (the alleged contractually stipulated forum) that the option was rejected by the Defendants and that Luminatra should retain its shares would estop a re-litigation by McPike of the issue in another jurisdiction.
- c. The Claimants have alleged that McPike is the alter ego of JTC. The declaration sought against McPike would require the Court to examine and make a finding in respect of that relationship and if the Court agrees with the Claimants, it could justifiably pierce the corporate veil of JTC, making the declaration directly binding on McPike³. Even if the Court disagrees that McPike is the alter ego of JTC, the declaration may still be useful in confirming that only JTC (a company McPike controls) had any potential rights under the alleged agreement between the parties.

[18] In summary, even if the breach of contract claim against McPike fails due to lack of privity, the Claimants are entitled to argue that the declarations are sought against him on different, yet equally valid, grounds:

³ See e.g. **Golden Meditech Stem Cells (BVI) Company Limited v Blue Ocean Creation Investment Hong Kong Ltd et al** BVIHCP2023/0022

- a. The essence of the claim is that it is a dispute between Mart and McPike, as the ultimate beneficial owner and controlling mind of JTC. JTC is merely a nominee according to the Claimants. The declarations sought against McPike, if the allegation regarding alter ego is upheld, would assist in binding McPike, the alleged real party in interest; and
- b. On the basis of a negative declaration: The Claimants have, in essence, contended for a declaration (55(c) of the statement of claim) that McPike, in his personal capacity, has no legal or beneficial right to the shares in Luminastra by virtue of the Call Option Document. That declaration directly addresses the real and present dispute about corporate control between all the parties.

Service of the Claim on McPike and Jurisdiction

- [19] McPike has given evidence that on 4 November 2024 at 9:45AM (when he was allegedly served), he was not at the Eastern Section of Bay View Lane, Paradise Island, Bahamas as stated by the process server, Mr. Stanley Michael Knowles. Furthermore, Michael Paddon, an employee of the McPike Global Family Office, gives evidence that he was the one who received the documents from Mr. Knowles. He states that when Knowles approached him, he informed him that McPike was not available. Knowles then allegedly left the documents with Paddon. That evidence is, of course, contrary to Mr. Knowles' evidence that he served McPike "personally" at the Eastern Section of Bay View Lane. Mr. Knowles' affidavit notes that he identified Mr. McPike using a photograph and by calling out his name, to which he responded.
- [20] There have been various technical arguments by McPike, arising from the foregoing facts and the rules regarding personal service in the CPR, that service on him should be set aside. It seems to me, however, that at best, service on McPike may have been defective but that it was personal service that was attempted and that method of serving McPike is a permitted one under the CPR. It is also the case that the claim form and other Court documents were brought to McPike's attention during the period permitted for service of the claim out of the jurisdiction (12 months). I say so because, since the documents were

allegedly left with Paddon, McPike's legal team promptly issued the 2nd Application and McPike has actively participated in the proceedings ever since.

[21] This Court may retrospectively dispense with service pursuant to CPR 7.11⁴ (even where service is necessary to found *in personam* jurisdiction) if, there has been defective service by a permitted method of service and the Court documents came to the defendant's attention prior to the period for the service of the claim expiring. It seems to me, from the evidence supplied in these applications, that such an application would have significant merit as there does not appear to be any prejudice to McPike given his participation in the proceedings thus far and he has even sought an Order that the Court documents be served on him again.

[22] CPR 7.11 provides that an application to dispense with service must be moved by a party failing which the Court's only recourse is to make an order on its own initiative under CPR 26.2. That rule mandates that for the Court to do so, the parties must be given a formal opportunity to make representations. I will therefore give the parties the chance to make whatever submissions they wish in relation to whether service may be dispensed with in relation to McPike under CPR 7.11.

Forum

[23] Nevis is the appropriate forum in respect of the claim against McPike for the same reasons discussed above in respect of the appropriate forum for the claim against JTC.

My Order

[1] The 1st Application is dismissed and the 1st Defendant shall file its Defence on or before 19 January 2026.

[2] The relief sought in the 2nd Application concerning setting-aside service is adjourned pending the Court's consideration of the parties' representations on

⁴ Under such principles as those applied by the Court of Appeal in **Flavio Maluf v Durant International Corp** BVIHCMA2021/0025 and the England and Wales Court of Appeal in **Anderton v Clwyd County Council (No 2)** [2002] 1 WLR 3174.

dispensing with service on the 2nd Defendant. All other relief sought in the 2nd Application is refused.

- [3] The parties shall exchange any written submissions in respect of whether the Court may dispense with service on the 2nd Defendant on or before 30 January 2026.
- [4] The parties shall attempt to agree the costs of the 1st Application failing which the Court shall make an order in respect of the same at the next hearing of the matter.
- [5] The 1st Defendant shall file this Order.

Yuri Saunders

Master

Registrar