

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Common Law & Equity Division**

**2016/CLE/gen/01223**

**BETWEEN**

**NANLANN INC**

**Plaintiff**

**-AND-**

**THE VUE HOLDINGS INC**

**Defendant**

**Before:** The Honourable Madam Justice Indra H. Charles

**Appearances:** Mrs. Giahna Soles-Hunt for the Plaintiff  
No appearance for the Defendant although properly served.  
Defendant has also never appeared

**Hearing Date:** 8 October 2020

**Foreign Judgment – Default judgment – Company – Struck off – Switzerland not a prescribed country - registration of foreign judgment – Enforcement of Foreign Judgment- grounds upon which foreign award could be challenged- Reciprocal Enforcement of Judgments Act, 1999**

The Plaintiff, a US company, was the assignee of a Loan Note dated 11 September 2008 by which The Vue Holdings Inc (the “Defendant”) borrowed and promised to repay USD\$2,000,000.00. In breach of the terms of the Loan Note, the Defendant failed to repay the amount due. The Plaintiff commenced an action in Lausanne Switzerland, the jurisdiction of the Loan Note, and obtained final judgment in its favour.

As the Reciprocal Enforcement of Judgments Act, Ch. 77 does not apply to Switzerland, the Plaintiff, a foreign judgment creditor, commenced a common law action in The Bahamas to enforce the foreign judgment. In the absence of the Defendant entering an appearance, notwithstanding having notice of the proceedings, the Plaintiff applied for default judgment.

While the Plaintiff had commenced legal proceedings on 15 August 2016, the hearing of application for default judgment was heard on 8 October 2020. In the interim the

Defendant company had been struck off the Register. The Plaintiff submitted that the Court had the jurisdiction to order default judgment notwithstanding the Defendant company's removal.

The Plaintiff also applied for a receiver to be appointed over the assets of the Defendant company.

**HELD: Leave is granted to enter final judgment in default of appearance against the Defendant with interest and costs. The Court also appoints a receiver over the assets of the Defendant for the purpose of enforcing the judgment.**

1. Foreign judgments are routinely enforced in The Bahamas, either by statute under the Reciprocal Enforcement of Judgments Act, 1999 or by an action at common law based on the jurisdiction in which the foreign judgment was obtained: **Cablevision Systems Development Co. v Shoupe** No. 1093 of 1984 applied.
2. At common law, a foreign judgment constitutes a cause of action which can only be opposed on limited grounds: **Cramin (as Personal Representative of the Estate of Jeffery D. Cramin, deceased) v Bahama Divers (1976) Company Limited and another** [2018] 1 BHS J No. 161.
3. Where the Defendant has failed to enter an appearance, judgment in default of appearance may be entered where, after the prescribed time, the Plaintiff, adduces affidavit evidence that the Defendant has been served with the Writ of Summons. Order 13 rule 6 and Order 13 rule 7 of the Rules of the Supreme Court.
4. While the Defendant company had been struck off the Register at the time of the hearing, the action had been commenced prior to its striking off; therefore, falling within the exceptions particularized in section 167 of the International Business Companies Act, CH 309. The Court may render its determination of the continued proceedings notwithstanding the Defendant company's removal.
5. The Plaintiff applied to have a receiver appointed pursuant to sections 21 and 64 of the Supreme Court Act, CH 51. The Court may appoint a receiver to enable a judgment creditor to obtain payment out of property available for the same: **Cummins v Perkins** [1899] 1 Ch 16, 20.
6. The Plaintiff has satisfied the requirements of the enforcement of the final judgment of the Swiss Court.

# JUDGMENT

**Charles J:**

## **Introduction**

- [1] On 8 October 2020, this Court granted to Nanlann Inc (“the Plaintiff”), the relief sought in its Amended Specially Indorsed Writ of Summons and promised to reduce to writing the reasons for doing so. The following represents my reasons.
- [2] The Plaintiff claimed the following relief against The Vue Holdings Inc (the “Defendant”) namely:
- (i) Payment of the sum of USD\$2,000,000.00 due in accordance with the Loan Note dated 11 September 2008 and the Swiss Judgment dated 19 December 2018;
  - (ii) Payment of the interest and costs ordered by the Swiss Judgment;
  - (iii) The appointment of a receiver over the Defendant, with specific authority to deal with the shares of the Defendant including the sale thereof or exercising the voting powers thereof;
  - (iv) Damages for breach of contract;
  - (v) Interest;
  - (vi) Costs and;
  - (vii) Further or other relief as deemed just and appropriate by the Court.

## **Background Facts**

- [3] By a specially indorsed Writ of Summons filed on 15 August 2016, the Plaintiff commenced this action against the Defendant for breach of a Loan Note dated 11 September 2008 and damages in the amount of \$2,000,000.00.
- [4] The Writ of Summons was served on the registered office of the Defendant, Greg Cottis of Cottis Law, No. 3 Caves Village Professional Centre, Nassau, The

Bahamas (“Cottis”) on 21 October 2016 as evidenced by an Affidavit of Service filed on 7 October 2020.

[5] On 2 November 2016, pursuant to an application filed and served on Cottis on 19 October 2016, and the Defendant having not appeared, the Plaintiff obtained an order from this Court granting the following relief relevant to this application:

1. Upon the Plaintiff providing an undertaking as to damages, until trial, the Defendant be restrained from removing assets from the jurisdiction, transferring, assigning mortgaging, charging, diminishing, disposing of or otherwise dealing with in any matters its assets within the jurisdiction including but not limited to the parcel of land containing approximately 22,977 square feet East of the Sandyport Service Station and West of Jacaranda Close located in Sandyport, New Providence, The Bahamas (“Property”) insofar as the value of the same exceeds the sum of Two Million (US\$2,000,000.00) US Dollars;
2. The Defendant do all that is necessary to perfect its interest in the Property including, but not limited to, attending to the stamping and recording of the deed of conveyance for the Property;
3. The Defendant do pay all stamp tax and penalties now due and owing on the said deed of conveyance; and
4. Liberty to the Defendant and any Third Party affected by this Order to apply on three clear days’ notice to the Plaintiff’s attorneys to set aside or vary this order.

[6] A return date for the order was fixed for 1 December 2016. Despite having been served with the order on 11 November 2016 (pursuant to an Affidavit of Service filed on 6 October 2020), the Defendant did not appear on the return date. The order granted on 2 November 2016 was extended until further order of this Court and the Defendant was given liberty to apply on three clear days’ notice.

## **The Swiss Proceedings**

[7] Pursuant to the subject Loan Note, the parties had agreed to submit to the jurisdiction of Lausanne, Switzerland in the event of a dispute. On 30 November 2016, the Plaintiff commenced an action against the Defendant in the Cantonal Patrimonial Chamber Court of Lausanne, Switzerland (“the Swiss Action”). Like the Bahamian proceedings, the Defendant did not appear.

[8] In the Swiss Action, the Plaintiff claimed damages for the Defendant’s breach of the Loan Note by its failure to repay the sum of \$2,000,000.00. Upon taking viva voce evidence, on 19 December 2018, the Delegated Judge of the Cantonal Patrimonial Chamber ordered as follows (“the Swiss Judgment”):

1. The Defendant is the debtor of the Plaintiff and owes it the immediate payment of the sum of USD2,000,000.00 (Two Million American Dollars) with interest at 5% per annum with effect from 3 October 2015;
2. The judicial costs set at CHF15,671(Fifteen Thousand Six Hundred and Seventy-One Francs) shall be charged to the Defendant; however, if the grounds for the present decision are not requested, the judicial costs shall be reduced to CHF 12,582(Twelve Thousand Five Hundred and Eighty-Two Francs);
3. The judicial costs are to be offset against the advance on expenses paid by the Plaintiff;
4. The Defendant shall settle the said costs by paying to the Plaintiff the said judicial costs;
5. The judicial costs of the conciliation proceedings set at CHF5,000 (Five Thousand francs) shall be charged to the Defendant;

6. The Defendant shall refund the Plaintiff the sum of CHF5,000(Five Thousand Francs) paid by way of judicial costs for the conciliation proceedings; and
  - a. The Defendant shall pay the sum of CHF7,350 (Seven Thousand Three Hundred Fifty Francs) to the Plaintiff by way of expenses.

[9] It was further ordered that, “*the parties may ask for grounds for the decision to be provided within a time limit of 10 days of receipt of this decision, failing which the decision shall become final.*” The Swiss Judgment was certified by the Swiss Registrar as final and enforceable on 12 January 2019.

[10] Upon receipt of the Swiss Judgment in The Bahamas, the Plaintiff amended its specially indorsed Writ of Summons on 30 October 2019. Of significance in the Amended Statement of Claim indorsed on the Amended Writ and reflected in the correspondence between the Plaintiff’s Swiss Attorneys and the Cantonal Court, is the fact that between the commencement of the Swiss and Bahamian proceedings and the handing down of the Swiss Judgment, it was discovered that the correct name of the Defendant is The Vue Holdings Inc. and not The Vue Holdings Ltd, the name wrongly used in the Loan Note. The Swiss Court allowed the amendment which became necessary as a result of the Plaintiff learning that information and the Swiss judgment was correctly handed down against The Vue Holdings Inc.

[11] The Plaintiff also discovered that the Property that was purchased with the proceeds of the loan to the Defendant, was purchased by a wholly owned subsidiary of the Defendant known as The Vue Properties Ltd (“VPL”). This was despite repeated assurances given to the principal of the Plaintiff by the principals of the Defendant that the Defendant had purchased the land in its own name.

[12] The Plaintiff also learned that the name of the Defendant, an International Business Company (“IBC”), had been struck off the Register on 18 January 2017.

[13] Upon service of the Amended Writ of Summons on 31 October 2019 and the absence of the receipt of any intention to defend this action, on 19 December 2019, the Plaintiff applied to this Court for leave to enter judgment in default of appearance and the appointment of a receiver to control the assets of the Defendant and in particular the shares of the VPL. The Plaintiff's application is supported by Affidavit of Glenn Curry (in support of the Default Application), Affidavit of Glenn Curry (of search) and Supplemental Affidavit of Glenn Curry (of Search).

## **The Law Jurisdiction**

[14] The Court has the jurisdiction to grant a default judgment in the circumstances of the instant case.

[15] However, a foreign judgment is not automatically enforceable in The Bahamas. It must be registered pursuant to the Reciprocal Enforcement of Judgments Act, 1999 ("REJ Act") or an action may be commenced at common law: see **Cablevision Systems Development Co. v Shoupe**, No 1093 of 1984; 1986] BHS J No 41; (1986) 39 WIR 1]. Section 3(1) of the REJ Act provides that a foreign judgment which relates to a sum of money from a prescribed country may be registered pursuant to the REJ Act, in the following circumstances:

**"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 application the court may, if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in The Bahamas and subject to the provisions of this section, order the judgment to be registered accordingly."**

[16] The prescribed countries to which the REJ Act applies are: Barbados, Bermuda, Jamaica, Leeward Islands, St. Lucia, and Trinidad, British Guiana, British Honduras, Australia and United Kingdom. In all other cases, an action must be commenced at common law for summary judgment.

[17] In the case of **Cramin (as Personal Representative of the Estate of Jeffery D. Cramin, deceased) v Bahama Divers (1976) Company Limited and another** [2018] 1 BHS J No. 161, this Court held that a foreign judgment may be challenged only by the following defences:

- a. "The foreign court lacked jurisdiction;
- b. The rules of natural justice had not been complied with in the foreign proceedings;
- c. The judgment debt was not final and conclusive;
- d. The judgment debt was not definitive or ascertainable;
- e. The foreign judgment was obtained by fraud; and
- f. Recognition of the foreign judgment would be contrary to public policy in The Bahamas."

[18] In the absence of such defences, summary judgment may be obtained. Order 14 Rule 1 of the Rules of the Supreme Court, 1978 ("the RSC") provides the procedure by which a plaintiff may obtain summary judgment. It is as follows:

**"Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against the defendant."**

[19] However, in the instant case, despite the Defendant having been served with the court documents, the Defendant failed to enter an appearance.

[20] Order 13 rule 6 of the RSC provides:

**"(1) Where a writ is indorsed with a claim of a description not mentioned in rules 1 to 4, then, if any defendant failed to enter an appearance, the Plaintiff may, after the time limited for appearing and upon filing an affidavit proving due service of the writ, upon serving a statement of claim on him, proceed with the action as if that defendant had entered an appearance."**

[21] Order 13 Rule 7 further provides that judgment shall not be entered under this order unless -



**“(a) An affidavit is filed by or on behalf of the plaintiff proving due service of the writ or notice of the writ on the defendant; or**

**(b) The plaintiff produces the writ indorsed by the defendant’s attorney with a statement that he accepts service of the writ on the defendant’s behalf.”**

### **Judgment against a company struck off the Register**

[22] The Court’s jurisdiction to enter judgment against a company is not fettered by the fact that it had been struck off the Register provided the action had been commenced prior to the removal of the company from the Register.

[23] Section 167(2) of the International Business Companies Act Ch, 309 of the Statute Laws of The Bahamas (“the IBC Act”) provides that:

**“Notwithstanding subsection (1), where the name of the company has been struck off the Register, the company, or the director, member, liquidator or receiver thereof, may –**

**(a) Make application for restoration of the name of the company to the Register;**

**(b) Continue to defend proceedings that were commenced against the Company prior to the date of striking off; and**

**(c) Continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of strike off.”**  
[Emphasis added]

[24] Further, pursuant to section 166 of the International Business Companies (Amendment) Act, 2010, (“the IBC Amendment Act”), the Registrar has the jurisdiction to restore to the register, an IBC that has been struck off. Section 166 provides:

**(1) If the name of a company has been struck off the Register under section 165(2), the company, or a creditor, member or liquidator thereof, may 'within five years immediately following the date of the striking off, apply to the Registrar to have the name of the company restored to the Register.**

**(2) If upon an application under subsection (1) the Registrar is satisfied that it would be fair and reasonable for the name of the company to be restored to the Register, the Registrar shall restore the name of the company to the Register and upon restoration of the name of the company to the Register, the name of the company shall be deemed never to have been struck off the Register.**

**(3) If the name of the company has been struck off the Register under section 165(3B), the company, or a creditor, member or liquidator thereof, may within five years immediately following the date of the striking off, apply to the Registrar to have the name of the company restored to the Register, and upon payment to the Registrar of-**

**(a) the restoration fee specified in the First Schedule;**

**(b) the licence fee stated in the notice referred to in section 165(3A); and (c) the licence fee in the amount stated in the notice referred to in paragraph (b) for each year or part thereof during which the name of the company remained struck off the Register,**

**the Registrar shall restore the name of the company to the Register an upon restoration of the name of the company to the Register, the name of the company shall be deemed never to have been struck off the Register.”**

[25] Section 169 (1) of the IBC Amendment Act also states:

**“If the name of a company has been struck off the Register under section 165 and remains struck off continuously for a period of 5 years, the company shall be deemed to have been dissolved, but the Registrar may, if he determines that it is in the best interest of the Crown to do so, apply to the court to have the company put into liquidation and a person shall be appointed as the official liquidator thereof.”**

[26] Section 166 of the IBC Act is clear: a company may continue to defend itself in an action commenced prior to its removal from the Register. It follows that the Court may render its determination of the continued proceedings notwithstanding the IBC’s removal.

## Appointment of Receiver

[27] The Plaintiff has applied to have a receiver appointed over the Defendant's assets. The Court has the jurisdiction to appoint a receiver upon judgment being granted in favour of the Plaintiff. Pursuant to Section 21 of the Supreme Court Act, CH 51 ("SCA"):

- (1) **"The Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court to be just and convenient to do so.**
- (2) **Any such order may be made either unconditionally or on such terms and conditions as the Court thinks fit."**

[28] Section 64 of the SCA further provides:

- (1) **"The power of the Court to appoint a receiver by way of equitable execution shall be extended so as to operate in relation to all legal estates and interests in land.**
- (2) **The said power shall be in addition to and not in derogation from any power of the Court to appoint a receiver in proceedings for enforcing such a charge."**

[29] The Court may appoint a receiver to enable a judgment creditor to obtain payment out of property available for the same. In the case of **Cummins v Perkins** [1899] 1 CH 16, 20, the Court of Appeal held that the Court has the jurisdiction to:

**"protect that share and to preserve it, in order that it may be applied in accordance with the judgment which the defendants obtained...the Court settled that a person who had a right to be paid out of a particular fund could obtain an injunction (and if an injunction, it followed on principle that he could obtain a receiver) in a proper case to protect the funds from being misapplied. This is the principle on which the learned judge has acted here- a perfectly sound principle, even without invoking the aid of s.25 of the Judicature Act. But the introduction of that section does not curtail the power of the Court to grant injunctions or to appoint receivers: it enlarges it..."**

## Analysis and Conclusion

[30] The Plaintiff has claimed the following relief:

1. Payment of the sum of USD\$2,000,000.00 due in accordance with the Loan Note dated 11 September 2008 and the Swiss Judgment dated 18 December 2018;
2. Payment of the interest and costs ordered by the Swiss Judgment.
3. The appointment of a receiver over TVH, with specific authority to deal with the shares of TVP including the sake thereof or exercising the voting powers thereof;
4. Damages for breach of contract;
5. Interest;
6. Costs;
7. Further or other relief as deemed just and appropriate by the Court.

[31] The Defendant's Registered Office/ Registered Agent has been served with the relevant court documents ("Court Documents"); namely:

1. Writ of Summons filed on 15 August 2016 and served on 21 October 2016;
2. The McKelvey Affidavit filed on 18 October 2016 and served on 21 October 2016;
3. Order (Ex parte Injunction) dated 02 November 2016 and served on 11 November 2016;
4. Amended Writ of Summons filed on 30 October and served on 31 October 2019;
5. Summons for Default Judgment filed on 18 December 2019 and served on 19 December 2019;
6. The Glenn Curry Affidavit filed on 18 December 2019 and served on 19 December 2019;
7. Notice of Adjourned Hearing filed on 09 July 2020 and served on 13 July 2020; and

8. The Glenn Curry Affidavit filed on 30 September 2020 and served 01 October 2020.

[32] Despite service of the Court Documents, as I stated earlier, the Defendant has not entered an appearance or given any indication that it intended to defend against the Plaintiff's claim.

[33] While I am aware that a judgment in default of appearance may be what has been considered an "over-the-counter" judgment, learned Counsel for the Plaintiff, Mrs. Hunt provided brief submissions on the challenges that may have arisen to the enforcement of the Swiss Judgment.

[34] Mrs. Hunt submitted that even if the Defendant had responded, no defence could have been successfully argued. To the extent that she could, Mrs. Hunt submitted that, further to the Swiss Judgment:

1. There is no evidence that the foreign court lacked jurisdiction. The governing law provisions of the Loan Note expressly provide that:

“11. The agreement is submitted to Swiss law.

12. In case of dispute the ordinary courts of Lausanne, Switzerland shall be competent.”

2. There is no evidence that the rules of natural justice had not been complied with in the foreign proceedings;

3. The Swiss Judgment provides that the judgment debt is final and conclusive (See page 35 of the Affidavit of Glenn Curry);

4. The judgment debt is definitive and ascertainable as pursuant to the judgment USD\$2Million is owed plus interest at 5% per annum and judicial costs of CHF28,021.

5. There is no evidence that the Swiss Judgment was obtained by fraud; and

6. There is no public policy reason as to why this judgment ought not be recognized.

[35] The Defendant did not participate in the Swiss proceedings, just as it did not do so in these proceedings. Despite having been served, the Defendant has taken no action to protect its rights. The Swiss Judgment was made final on 12 January 2019 and the Defendant was served with the Amended Writ of Summons on 31 October 2019 and the application for Default Judgment on 19 December 2019.

[36] I accept Mrs. Hunt's submissions that despite the Defendant's removal from the Register, Default Judgment may be entered against the Defendant as this action was commenced on 15 August 2016 prior to its removal on 18 January 2017.

[37] The Plaintiff has satisfied the requirements for enforcement of the Swiss Judgment and leave may be granted as prayed in the Amended Statement of Claim.

#### **Other matters**

[38] In the circumstances of the present case, it is also just and convenient to appoint a receiver over the assets of the Defendant including the shares of the landholding company of the Vue Properties Limited.

[39] In the order granted on 02 November 2016 and continued on 01 December 2016, I ordered the following:

1. The Defendant be restrained until trial or further Order whether by itself its servants or agents or otherwise howsoever from removing from the jurisdiction, transferring, assigning, mortgaging, charging, diminishing, disposing of or otherwise dealing with in any manner its assets within the jurisdiction including but not limited to the parcel of land located in Sandypoint, New Providence referred to in the Affidavit of Andrew McKelvey filed herein save insofar as the value of the same exceeds the sum of Two Million US dollars (US\$2,000,000.00).
2. The Vue Holdings Ltd. do all that is necessary to perfect its interest in the lot of land in Sandypoint, New Providence, including but not limited to,

attending to the stamping and recording of its Deed of Conveyance for the said lot of land.

3. The Vue Holdings Ltd. pay all stamp tax and penalties now due and owing on the said Deed of Conveyance.
4. Liberty to the Defendant and any Third Party affected by this Order to apply on three clear days' notice to the Plaintiff's attorneys to set aside or vary this Order.
5. A return date for this Order is set for 1 December 2016 at 3:00 PM."

[40] In furtherance of the Orders, as it was discovered after the commencement of this action, that VPL is the owner of the Property. In order to comply with the Orders, the Registered Agent and Registered Office, Greg Cottis and Cottis Law; respectively, are ordered to turnover to the Plaintiff, the corporate records of the Defendant and its wholly owned subsidiary, VPL.

[41] The Registered Agent and Office of the Defendant are ordered to provide to the Plaintiff a copy of the conveyance of the Property.

### **Conclusion**

[42] In the premises, I hereby order that:

1. Leave to enter final judgment in default of appearance against the Defendant is granted as prayed and in particular:
  - i. Payment of the USD2,000,000.00 in accordance with the Swiss Judgment with interest at 5% per annum awarded by the Swiss Court with effect from 3 October 2015 and continuing until this judgment;
  - ii. Reimbursement to the Plaintiff of the judicial costs in the Swiss proceedings at CHF15,671;

- iii. Reimbursement to the Plaintiff of the judicial costs of the conciliation proceedings at CHF5,000; and
  - iv. Reimbursement of the sum of CHF7,350 to the Plaintiff by way of expenses.
2. Interest on this judgment pursuant to the Civil Procedure (Award of Interest) Act, 1992 at a rate of 6.25% until payment;
3. The Registered Agent and Registered Office, Greg Cottis and Cottis Law; respectively, are ordered to release to the Plaintiff, the corporate records of the Defendant and its wholly owned subsidiary, the Vue Properties Limited.
4. The Registered Agent and Office of the Defendant are ordered to provide to the Plaintiff a copy of the conveyance of the Property.
5. A receiver is to be appointed over the assets of the Defendant for the purpose of enforcing this judgment; the parties are to return to this Court on 10 December 2020 for the continuation of receivership application.
6. Costs of these proceedings and this application to the Plaintiff to be taxed if not agreed.

**Dated this 31<sup>st</sup> day of March, A.D., 2021**

**Indra H. Charles  
Justice**