

COMMONWEALTH OF THE BAHAMAS

2018/CLE/GEN/01498

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

IN THE MATTER OF a Custodian Management Agreement
Between Sunpower Business Group Pte Ltd. and America
2030 Capital Limited AND Weiser Asset Management Ltd.
AND

IN THE MATTER OF a Master Loan Agreement dated 4th June, 2018 between Sunpower
Business Group Pte Ltd. And America 2030 Capital Limited

AND

IN THE MATTER OF a Supplement Agreement to Master Loan Agreement dated 3rd
September, 2018 between Sunpower Business Group Pte. Ltd. and America 2030 Capital
Limited

BETWEEN

WEISER ASSET MANAGEMENT LTD.

Plaintiff/Respondent

AND

AMERICA 2030 CAPITAL LIMITED

1ST Defendant

AND

SUNPOWER BUSINESS GROUP PTE LTD.

2ND Defendant/Applicant

Before The Hon. Mr. Justice Neil Brathwaite

Appearances: Raven Rolle for the Plaintiff

Martin Lundy for the Plaintiff

Date of Hearing: 13th July, 2021

DECISION

1. By Order dated 30th April 2021, and filed 28th May 2021, Her Ladyship Justice Tara Cooper-Burnside ordered that the Plaintiff, within 14 days of the date of the Order, “deliver to the Defendants an account, verified by Affidavit, relating to any dealings with the Second Defendant’s shares in Sunpower Group Limited (the Sunpower shares) deposited by the Second Defendant on or about 16th October 2018 in the depository account owned and/or controlled by the Plaintiff and also setting out all monies, including dividends, received by the Plaintiff, or any other party and the details of any sale or disposition of any of the Sunpower shares insofar as it is within the knowledge of the Plaintiff, in connection therewith.”
2. The Second Defendant/Applicant has now moved the court by Ex Parte Summons filed 25th June 2021, supported by the 3rd Affidavit of Ian Cargill, filed on the same date, seeking leave to endorse the Order made 30th April 2021 with a penal notice, and for further directions. Exhibited to the Affidavit is a letter from the attorneys for the 2nd Defendant/Applicant, to the attorneys for the Plaintiff/Respondent, dated 19th May 2021, pointing out that the required accounting had not been provided, and demanding that the same be provided by the following day.
3. There is also exhibited a letter from attorneys for the Plaintiff/Respondent, dated 27th May 2021, providing information on the receipt of shares on 16th and 17th October 2018, the lending of securities to other parties on 19th October 2018, the transfer of shares on 1st November 2018 to another party, and a demand on 16th November 2018 for the stoppage of the transfer or sale of securities. The letter also encloses what purports to be two Client Account Interim Valuations.
4. Following receipt of the May 27th letter, counsel for the 2nd Defendant/Applicant again wrote to counsel for the Plaintiff/Respondent by letter dated 31st May 2021, opining that the Order of the court had not been complied with, setting out a long list of what they considered to be the inadequacies of the information required, and again demanding a full account in compliance with the Order by 7th June 2021. As of the filing of the present Ex Parte Summons, there was no response to that letter.
5. Having reviewed the initial Order of 30th April 2021, and the eventual response to the same, it is immediately apparent that the required account was not verified by affidavit, as required by the Order. Without more, the Plaintiff is therefore in breach of the Order. What is also apparent is that the response provided does not set out “all monies, including dividends, received by the Plaintiff or any other party, and the details of any sale or disposition of any Sunpower shares...” The letter is completely silent on the subject of monies or dividends received by the Plaintiff, and, while it speaks to the transfer for 14,000,000 from the accounts of Sunpower and Tournan which America 2030 transferred to another party, it gives no adequate details of that disposition.

6. In the circumstances, I find that the Plaintiff/Respondent is in breach of the Order made by Cooper-Burnside J on 30th April 2021. I therefore grant leave to endorse the Order with a penal notice, to be served on Davis & Co, as Counsel of Record for the Plaintiff, and on Keith Kelty, Director and Secretary, Jamaal Stubbs, Chief Executive Officer, and Shelby Brice, Chief Compliance Officer. The date for the Plaintiff's compliance with paragraph 2 of the Order is hereby extended. The Plaintiff/Respondent is ordered to comply with paragraph 2 of the Order within seven days of the date of this Order. If the Plaintiff fails to comply, Sunpower is at liberty to apply for an Order of Committal against any of the directors and/or officers of the Plaintiff, and may apply for a writ of sequestration.

Costs to the Applicant.

Dated this 22nd day of July A.D., 2021



Neil Brathwaite
Justice