IN THE COMMONWEALTH OF THE BAHAMAS

Common Law & Equity Division

Claim No.2025/CLE/gen/00668

IN THE MATTER OF THE WINTER TRUST, THE SUMMER TRUST AND THE SPRING TRUST

AND IN THE MATTER OF AN ARBITRATION

AND IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 35 OF THE ARBITRATION ACT 2009

BETWEEN:

GABRIELE VOLPI

Claimant/Applicant

- and –

(1) DELANSON SERVICES LIMITED

(2) MATTEO VOLPI

(3) SIMONE VOLPI

(4) ISABELLA VOLPI

Defendants/Respondents

Before:	Hon. Chief Justice Sir Ian R. Winder
Appearances:	Elspeth Talbot Rice, KC with Richard Horton and Wynsome Carey for Gabriele Volpi
	Brian Simms KC, with Marco Turnquest and Wilfred Ferguson Jr for Delanson Services Limited
	John Wilson KC, with Michelle Deveaux and Berchel Wilson for Matteo Volpi
	Janet L.R. Bostwick-Dean for Simone Volpi

14 October 2025

WINDER, CJ

This is my decision on the Claimant's (Gabriele's) application for a stay of arbitration proceedings which are set to commence on 20 October 2025. Gabriele seeks an order that the arbitration proceedings be stayed pending the hearing of his claim in this action, which seeks the removal of the Arbitral Tribunal pursuant to section 35 of the Arbitration Act 2009 (the Removal Claim).

[1.] This is the latest in a series of disputes between these parties in The Bahamian courts concerning three Bahamian trusts namely, the Winter, Spring, and Summer Trusts (the Trusts) of which Gabriele was the economic settlor. Gabriele's son, Matteo, challenges the distribution by the Trustee (Delanson) of all the assets of the Trusts to Gabriele in 2016. The Trusts were subject to an exclusive arbitration clause and therefore the dispute was ultimately referred to arbitration.

[2.] The three-member Arbitral Tribunal (the Tribunal), made up of the Rt. Hon. The Lord Neuberger of Abbotsbury, Dr. Georg von Segesser, and Professor Avv. Alberto Malatesta, determined that the claim would be bifurcated into a *liability* phase and a *quantum and valuation of the assets* phase. On 13 June 2020 the Tribunal, by majority verdict in Phase I, found, in a Partial Award, that the distributions had been made in breach of trust and that Gabriele knew that when he received them.

[3.] On 9 July 2020, both Gabriele and Delanson commenced proceedings in the Supreme Court challenging and appealing the Partial Award (the Consolidated Action). On their applications, the arbitration was stayed pending the determination of the Consolidated Action, by order of the Tribunal dated 28 July 2020 and by order of the Supreme Court dated 3 March 2021. The challenges and appeals to the Phase I Partial Award were ultimately dismissed by the Supreme Court. Applications for leave to appeal were denied by the Supreme Court and this denial was confirmed by the Court of Appeal.

[4.] Phase II of the Arbitration commenced following the dismissal of the appeals and is now ongoing. Pleadings have been closed, and a pre-hearing Case Management Conference was held on 1 October 2025. A two-week trial is listed to be heard over the course of 20 – 31 October 2025 with a further two weeks reserved for trial in February 2026.

[5.] In respect of the Arbitration, Gabriele says, that:

> *"The Tribunal has made a number of decisions which have given rise to serious, justifiable doubts as to their impartiality, and evidence a refusal or failure to conduct the Arbitration properly such that substantial injustice has been or will be caused to Gabriele if they remain in post."*

Gabrielle further says that:

> *"Chief amongst these decisions is the Tribunal's refusal to deal appropriately, or at all, with Matteo's extraordinary, brazen and contumelious breach of without prejudice privilege, by his deployment in the Arbitration, now on multiple occasions, of without prejudice, and therefore privileged, material on which material Matteo is continuing to rely to support his claims in the Arbitration and on the basis of which he is asking the Tribunal to determine his claims in the Arbitration."*

[6.] Gabriele has commenced this action by Originating Application seeking an order pursuant to s. 35(1)(a) and/or (d) of the Arbitration Act 2009 (the "Act") for the removal of the Tribunal on the grounds that substantial injustice has been or will be caused to Gabriele due to the fact that:

(i) Circumstances exist that give rise to justifiable doubts as to the Tribunal's impartiality; and/or

(ii) The Tribunal has refused and/or failed properly to conduct the proceedings.

[7.] The Originating Application is supported by the affidavit of Michael Bray, which identifies five aspects of the Tribunal's management of the Arbitration with which Gabriele is dissatisfied. Matteo's submissions provide a helpful summary of these five aspects of Gabriele's complaints concerning the Tribunal's management as follows:

(a) The Recusal Decision: Gabriele complains that the Tribunal denied his request for its recusal dated 23 June 2025 on the grounds that (i) Matteo referred in his Phase II Statement of Claim dated 9 June 2025 to an engagement letter between Lazard S.r.l. and Orlean Invest Holding SA regarding the proposed sale of Intels Nigeria Limited (an asset previously held indirectly by the Winter Trust); (ii) the Lazard Engagement Letter was subject to without prejudice privilege; and (iii) the Tribunal reviewed the Lazard Engagement Letter despite being informed by Gabriele that it was allegedly privileged.

(b) The Disclosure Decisions: The Tribunal, in Procedural Order No. 22 dated 14 February 2025, ordered Gabriele to produce many of the documents requested by Matteo in his Redfern Schedule dated 3 December 2024. Gabriele complains that it was impossible for him to produce these documents on the basis they are purportedly not in his possession, custody or control. His dissatisfaction also arises from the fact that certain of Matteo's document requests, he alleges, were ill-defined and wide-ranging; that he (as well as all the other parties) were only afforded three days to consider questions posed by the Tribunal in Procedural Order 21 before a disclosure hearing on 7 February 2025; and that the extension granted to Gabriele to provide disclosure was limited.

(c) The Confidentiality Decisions: Gabriele complains that the Tribunal has not made any orders against Matteo because Matteo allegedly shared details of the Arbitration with his wife and told his mother and a friend about the status of the Arbitration.

(d) The Isabella and Sofia Decisions: Gabriele complains that the Tribunal dismissed two applications from the Fourth Defendant, Matteo's eldest daughter, Isabella, to stay the Arbitration. Isabella's applications were made on the grounds that she required time to consider her position in respect of the Arbitration following her 18th birthday. The Tribunal held in Procedural Order No. 25 dated 3 June 2025, that 'the current circumstances [do not] justify a stay of the arbitration'. Gabriele has also suggested that the Tribunal's maintenance of their decision in Procedural Order No. 6 dated 6 May 2019 ("Procedural Order 6") that Sofia Volpi (Matteo's youngest daughter, who is not yet 18) continue to be represented by Matteo is an example that the 'Tribunal is favouring, and will continue to favour, Matteo over the Respondents at every turn.'

(e) The Delanson Removal Decisions: Gabriele complains that it was "procedurally unfair" of the Tribunal to not dismiss outright Matteo's application to replace Delanson as trustee of the Trusts and instead make directions regarding responses to this application.

[8.] Gabriele has applied for a stay of the Arbitration pending the determination of his claim to remove the Tribunal, to prevent, he says,

> *"Having to defend the claim in which Matteo refers to and relies on privileged material on the basis only of the privileged material Matteo has produced, in flagrant breach of privilege, and without being able to produce further evidence of the without prejudice discussions in which that material was produced; and*
> *Very substantial and unrecoverable costs being incurred in the Arbitration going forward under the conduct of this Tribunal which costs will be wholly wasted if the Tribunal is later removed. The costs will be wasted because any procedural order or award delivered by a tribunal which is subsequently removed would be set aside, and the parties would have to recommence Phase 2 of the Arbitration under a newly constituted tribunal, thereby duplicating their costs of Phase 2; Gabriele's wasted costs will be irrecoverable because it is abundantly clear that Matteo would be unable to pay them (or indeed any other party's costs) if ordered to do so."*

[9.] Gabriele says that any prejudice to Matteo caused by the Arbitration being stayed pending determination of Gabriele's claim is well outweighed by the prejudice to Gabriele if the Arbitration is not stayed. Gabriele points out that, by the Arbitration, Matteo is not seeking relief which will put money in his pocket; he is asking for the reconstitution of assets to Trusts of which he is merely one of a number of objects of the trustee's discretionary dispositive powers. Matteo has no entitlement to benefit from those Trusts; he only has a mere hope that, at some stage in the future,

the Trustee might exercise its discretionary dispositive powers in his favour. There is therefore no real prejudice to Matteo in a decision as to the reconstitution of assets to the Trusts awaiting the determination of Gabriele's claim to remove the current Tribunal.

[10.] Delanson says that while it remains neutral on the Removal Claim in the action, it supports the application for a stay. Simone and Isabella Volpi also support the application for a stay.

[11.] Matteo opposes the application for a stay and says that Gabriele has made the Removal Claim and the stay applications with the objective of derailing the Phase II Hearing, and indefinitely postponing an award requiring him to replenish the Trusts. Matteo says that the Removal Application has no prospects of succeeding and that he will suffer great prejudice if the Arbitration is stayed and further delayed. He says:

a) The previous stay of the Arbitration pending resolution of the Consolidated Action resulted in a delay of almost four years. Since the Arbitration commenced in November 2018, seven years ago, the only sum he has received in reimbursement for the millions of pounds of legal costs he has expended is B$394,000.00, derived from Delanson's and Gabriele's payment to the Court by way of security for Matteo's costs of the Consolidated Action.
b) Gabriele and Delanson's ongoing challenges to Klein J's dismissal of the Consolidated Actions, including a pending application before the Privy Council for leave to appeal to the Privy Council, prevents the costs already awarded to Matteo in respect of the Consolidated Action from being recovered.
c) Granting the Stay Application would further delay an award concerning Matteo's Phase I costs which have been due to him following his resounding success in the Phase I Award, which was made over five years ago.
d) Even a short stay would cause a delay of many months to the Arbitration. In Procedural Order 28, the Tribunal directed that "*The Removal and Replacement of Trustee Issue shall be addressed through further submissions following the October 2025 hearing, in accordance with directions to be issued by the Tribunal*" and that the parties "*continue to reserve the dates of 2-6 and 9-12 February 2026 for a potential hearing in this arbitration, including for any further oral submissions by Counsel as instructed by the Tribunal, as well as for the potential examination of relevant candidates in connection with the Removal and Replacement of Trustee Issue*". Granting the Stay Application would inevitably mean the Phase II Hearing would be lost. The earliest the substantive hearing of Phase II matters could take place, assuming the Removal Application was addressed before then (which is unlikely), would then be the dates reserved in February 2026. The "*Removal and Replacement of Trustee Issue*", however, would then need to be addressed at an even later date, the fixing of which would require the availability of counsel for all parties to the Arbitration, consisting of over a dozen barristers, including the Head of Chambers of XXIV Old Buildings and a member of the House of Lords. It will further require the availability of the members of an eminent and busy Tribunal. This, plainly, will be extremely difficult,

and will likely lead to a delay of at least another year before Matteo sees a penny of the costs due to him.

e) Many of the costs associated with the Phase II Hearing have already been incurred by the parties to the Arbitration. On Matteo's part, these include legal costs, encompassing brief fees for counsel and fees incurred to his solicitors (which together currently stand at over £1 million), as well as expenditure on practical matters, including venue costs (approximately £25,000) and engaging Opus2 (software allowing for the transcription of the hearing, production of the trial bundle and electronic production of evidence.) These costs will have been entirely wasted if the Arbitration is stayed and will need to be incurred again once it is restarted once the Removal Application inevitably fails.

f) Matteo continues to have no visibility over the Trust Assets. Yet further delay, during which time Delanson will remain as trustee of the Trusts, risks the Trust Assets (including such trust assets which remain in the hand of Gabriele) being further dissipated.

g) Even if the Removal Application *were* successful (which it will not be), the Court has a power pursuant to s.35(4) of the Arbitration Act to order repayment of the Tribunal's fees. Gabriele's concern that costs incurred with respect to the Tribunal's fees will have been wasted accordingly falls away.

[12.] Gabriele applied unsuccessfully to the Tribunal for a stay of the Arbitration pending the outcome of this stay application. In its reasons, the Tribunal stated:

> 261. The Tribunal begins by recalling that, pursuant to Section 45(1) of the Bahamian Arbitration Act, which governs these proceedings, "[it] shall be for the tribunal to decide all procedural and evidential matters, subject to the right of the parties to agree any matter." In addition, Article 17(1) of the UNCITRAL Arbitration Rules, also applicable to this arbitration, provides that "[s]ubject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute."
> 262. Further, with respect to the Second Respondent's challenge to the Tribunal under Section 35 of the Bahamian Arbitration Act, Section 35(3) makes clear that: "The arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending."
> 263. Having considered the Parties' respective submissions and relying on the above-referenced provisions of the Bahamian Arbitration Act and the UNCITRAL Arbitration Rules, the Tribunal determines that the Second Respondent's application for a stay of proceedings is to be rejected. <u>The Tribunal is under a duty to proceed with all reasonable despatch and there have already been very substantial delays in this arbitration; accordingly, we will continue with the arbitration.</u> Therefore, notwithstanding the Second Respondent's pending court application challenging the continued service of the Tribunal, the proceedings shall continue, and the Tribunal reserves the right to render an award. However, should the Supreme Court of The

Bahamas ultimately grant the Second Respondent's application for a stay, the Tribunal would of course comply with any such ruling."

Emphasis added

Law, Discussion and Analysis

[13.] Section 16(3) of the **Supreme Court Act** provides that:

> "*Nothing in this Act shall affect the power of the Court to stay any proceedings before it, where it thinks fit to do so, either of its own motion or on the application of any person whether or not a party to the proceedings*".

[14.] Rule 26.1(2)(q) of the **Supreme Court (Civil Procedure) Rules** provides for the Court's general case management powers which include the ability of the Court to:

> "*Stay the whole or part of any proceedings generally or until a specified date or event*".

[15.] Section 45(1) of the **Arbitration Act** provides:

> "45. (1) It shall be for the tribunal to decide all procedural and evidential matters, subject to the right of the parties to agree any matter."

[16.] Article 17(1) of the **UNCITRAL Arbitration Rules**, pursuant to which the Arbitration is conducted, states:

> *"[s]ubject to these Rules, the arbitral tribunal* ***may conduct the arbitration in such manner as it considers appropriate****, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings* ***so as to avoid unnecessary delay and expense*** *and to provide a fair and efficient process for resolving the parties' dispute."*
>
> [Emphasis added]

[17.] I accept Gabriele's submission that there is some distinction between an application for a stay pending appeal and a stay pending the hearing of a removal claim. In the case of the former there is a judgement against the applicant whilst this is not the case with the latter. I accept nonetheless that those principles relative to a stay pending appeal are instructive in considering whether to grant a stay pending the determination of the Removal Claim. In **Delanson Services Limited v Matteo Volpi & ors** (2020/CLE/gen/00632), Klein J provided a helpful discussion of the principles governing the stay of arbitration proceedings pending appeal. At paragraph 76 of the decision, the Learned Judge stated:

> [76] I agree that the principles governing the grant of a stay of arbitration proceedings pending appeal are the conventional common law principles, but these old principles must now be poured into the new wineskin of a modern arbitration artifice. At the risk of seeking to gild the lily, I would venture that the main principles, irradiated against the context of international commercial arbitration, may be distilled as follows:
> (i) A stay pending appeal is not automatic; it has to be justified, and it is often said to be the exception rather than the rule;
> (ii) The court, however, has a wide if not unfettered discretion to grant a stay, and must take into account all the circumstances of the case;
> (iii) A party contending that his appeal will be rendered nugatory failing a stay must produce cogent evidence of the reasons why a stay should be given;
> (iv) A hopeless or weak appeal will never justify a stay, and a party seeking a stay should adduce strong grounds of appeal, as the prospect of the appeal succeeding may be a determining factor where the balance of harm appears to be even;
> (v) Fifthly, and perhaps most importantly, the court should conduct a balancing exercise to determine which party would be irremediably harmed by the grant or refusal of a stay; and
> (vi) Sixthly, in the application of the above principles, the court has to take into consideration the specific features of international arbitration.

[18.] I do not accept Gabriele's submission that the strength of the removal claim has no bearing on the decision to grant a stay. This cannot be right. I fully accept and endorse the position of Klein J (albeit in the context of an appeal) that a hopeless or weak claim ought never to justify a stay. Gabriele must adduce good and sustainable grounds to support the Removal Claim. I also accept the view of Klein J that the prospects of the claim succeeding may be a determining factor in tipping the balance of harm, where the balance of harm appears to be even.

[19.] Having heard and given careful consideration to the submissions of the parties I decline to grant an order for the stay of the Arbitration.

[20.] I am satisfied that both Gabriele and Matteo can each demonstrate prejudice or harm if the application to grant a stay does not end in their favor. The issue which tips the scale in Matteo's favor, in my view, is that Gabriele's claim does not appear to have particularly strong prospects of success. I find that the claim does not rise to a level to warrant the stay of arbitration proceedings which began in 2018 and have already been delayed some four years as a result of stays pending challenges and appeals by Gabriele and Delanson.

[21.] The impugned decisions of the Tribunal, on their face, reflect fair reasoning and not a cursory treatment of which Gabriele alleges. This is seen from the Tribunal's comprehensive Decision on Gabriele's application for recusal in Procedural Order No. 26. At paragraphs 29 and 30 the Tribunal stated:

29. Assuming then, that without prejudice privilege would apply to Exhibit C-260, and has not been waived, mere exposure, without more, is not enough to warrant recusal of the Tribunal. As outlined above, it is a feature of international arbitration, including under the UNCITRAL Rules, that a tribunal may, in the course of ruling on admissibility, encounter documents that are potentially privileged. Accordingly, the mere fact that the Tribunal has been made privy to privileged material does not, without more, provide a valid ground for challenging its continued role in the proceedings. The Second Respondent has not identified what further substantiating circumstances exist in the present case, other than the Tribunal having had access to Exhibit C-260.

30. In any case, the Tribunal, having conducted a review of the document, finds it to be *prima facie* irrelevant and immaterial. Given that liability and breach by the First and Second Respondents have already been determined in Phase I of the arbitration, the document, on its face, does not appear to have any meaningful bearing on the remaining issues of quantum. The document in question contains no reference to quantum, nor does it include any figures that could reasonably be interpreted as concessions by the Second Respondent or any other Respondent. Notably, the Second Respondent has indicated that they consider the document to be irrelevant and immaterial. The Second Respondent claims that the document does not concern a Trust Asset, and has previously stated, in the context of document production, that he has no control over Trust Assets or subsidiaries of Trust Assets. The Tribunal notes the inconsistency in the Respondent's position: on the one hand, asserting that the document does not concern a Trust Asset, while on the other, contending that the Tribunal's exposure to it compromises its ability to fairly adjudicate the Claimant's claim. In light of its *prima facie* irrelevance and immateriality, Exhibit C-260, even if it were to be assumed to be protected by without prejudice privilege, is not reasonably capable of affecting the Tribunal's ability to decide the remaining issues impartially and independently or lead a fairminded and informed observer to conclude that there is a real possibility of bias.

[Emphasis added]

[22.] Each of the impugned decisions reflects similar and detailed reasoning.

[23.] Being required as I must, to assess the strength of the Removal Claim at this preliminary stage, for the purpose of determining whether to grant a stay, my assessment is that the Removal Claim is indeed a weak one. The arbitration record does not, on its face, make the case for actual or apparent bias on the part of the Tribunal, so as to sustain the claim of a lack of impartiality. The test for apparent bias is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased against Gabriele. Gabriele, as I see it, will have an uphill battle, at the hearing of the Removal Claim, to persuade the Court of this. On the contrary, the Tribunal's several rulings, which Gabriele

complains of, appear in my view merely to demonstrate active case management on the part of the Tribunal. The rulings are not demonstrably unfair, simply because they went against Gabriele.

[24.] Indeed, there were rulings by the Tribunal, which could have been given in favor of Matteo, such as the costs in Phase I under the normal rules of costs following the event, but were withheld until the determination of Phase II. The Tribunal, well within its discretion, determined that they wish to see the entire picture before determining the costs issue for Phase I. This goes against Gabriele's complaint that the Tribunal is set against him.

[25.] The potential for wasted costs and the likelihood of it being unrecoverable by the Gabriele is significant. Matteo's acknowledged financial challenges, and the fact that the prosecution of his claim is said to be funded by a third party, are also relevant. The record does however reflect that Matteo has been granted costs orders in his favor, from which Gabriele could possibly recover wasted costs should the Removal Claim end in his favor.

[26.] Gabrielle also says that while the resolution of this dispute in Matteo's favor could result in the reconstitution of the fund, it will not put money in his pocket, as a mere discretionary beneficiary. While the reconstitution of the fund does not guarantee any payment to Matteo, the restoration of his right to be considered for benefit, to a substantial fund, is not insignificant, considering his financial constraints. Indeed, Gabriele's open offer of settlement in considerable terms reflects this.

[27.] I bear in mind, as the Tribunal has emphasized, that the liability phase of the proceedings have already been concluded against Gabriele and Delanson and that what remains are decisions affecting quantum. I am satisfied that the balance of harm and the interests of justice favors the refusal of the grant of a stay.

[28.] In the circumstances therefore I dismiss the application for a stay.

[29.] I will hear the parties, by way of written submissions, as to the appropriate order for costs.

Dated this 16th day of October 2025

Sir Ian. Winder
Chief Justice