

**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 and Isabella Volpi

Claimants submissions 30 October 2025, Submission of Matteo Volpi 29  
December 2025; Reply Submission of the Claimant 27 February 2026

Heard on the papers

## WINDER, CJ

This is my decision on the Claimant's (Gabriele's) application for leave to appeal and on Costs following the 16 October 2025 decision refusing to stay arbitration proceedings which were set to commence on 20 October 2025.

[1.] Gabriele had sought 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).

[2.] The underlying dispute concerns 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.

[3.] 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.

[4.] Following failed challenges to the Phase I verdict before Klein J in the Supreme Court, and the inability to secure leave to appeal, Phase II of the Arbitration commenced. In the 16 October 2025 decision the court took into account that the liability phase of the proceedings had already been concluded against Gabriele and Delanson and that what remained were decisions affecting quantum. The Court was satisfied that the balance of harm and the interests of justice favored the refusal of the grant of a stay. The Court invited the parties, by way of written submissions, to make appropriate order for costs. Gabrielle indicated an intention to appeal the decision and the Court also that submission on the same could likewise be determined on the papers.

### Leave to Appeal

[5.] Gabrielle's Notice of Motion, filed on 30 October 2025, is settled in the following terms:

1. Gabriele Volpi ("**Gabriele**"), the Claimant/Applicant applies pursuant to section 11(f) of the Court of Appeal Act for leave to appeal from the judgment of the

Honourable Chief Justice Sir Ian Winder, Kt, handed down and made on the 16th day of October 2025, by which the Court dismissed Gabriele's application to stay the arbitration pending determination of his claim under section 35 of the Arbitration Act, 2009 to remove the Arbitral Tribunal; and for an order that the Second Respondent do pay the Claimant's/Applicant's costs of this application, such costs to be taxed if not agreed.

2. The grounds for this application are that the Chief Justice should not have dismissed the application for a stay of the Arbitration because:
  - (a) The Chief Justice erred in law by failing to apply the correct principles to an application for a stay of the Arbitration pending determination of a claim to remove an arbitral tribunal pursuant to s. 35 of the Arbitration Act 2009.
  - (b) The Chief Justice erred in law by descending into a consideration of the merits of the Removal Claim: provided that the Removal Claim was not demurrable, the Chief Justice should not have tried to prejudge it, and should instead have dealt with the Stay Application on the basis that the Removal Claim was disputed and that he was not in a position to take a view on its merits one way or the other.
  - (c) Further or alternatively, in reaching his conclusion that Gabriele's claim to remove the Tribunal was a weak one, the Chief Justice operated under an error of law as to the applicable test under s.35 of the Arbitration Act and a misapprehension as to the facts, namely that the Tribunal had given detailed reasoning in relation to each of the decisions impugned in the Removal Claim, when it had not.
3. A draft Notice of Appeal is attached.
4. The Third Affidavit of Darzhon J. R. Rolle sworn on 30 October 2025 and filed on 30 October 2025 will be used at the hearing of this application.
5. A draft of the order that Gabriele seeks is attached.

[6.] In his draft notice of appeal Gabrielle cites the following grounds of appeal as the basis for his appeal:

- (1) The Chief Justice erred in law by failing to apply the correct principles to an application for a stay of the Arbitration pending determination of a claim to remove an arbitral tribunal pursuant to s. 35 of the Arbitration Act 2009.
- (2) The Chief Justice erred in law by descending into a consideration of the merits of the Removal Claim: provided that the Removal Claim was not demurrable, the Chief Justice should not have tried to prejudge it, and should instead have dealt with the Stay Application on the basis that the Removal Claim was disputed and that he was not in a position to take a view on its merits one way or the other.

- (3) Further or alternatively, in reaching his conclusion that Gabriele's claim to remove the Tribunal was a weak one, the Chief Justice operated under an error of law as to the applicable test under s.35 of the Arbitration Act and a misapprehension as to the facts, namely that the Tribunal had given detailed reasoning in relation to each of the decisions impugned in the Removal Claim, when it had not.

[7.] The test for determining whether leave to appeal ought to be granted is well known. In the case of **Smith v Coalition to Protect Clifton Bay** SCCivApp. No. 20 of 2017 Isaacs JA stated at paragraphs 23-27 as follows:

23. The test on a leave application is whether the proposed appeal has realistic prospects of success or whether it raises an issue that should in the public interest be examined by the court or whether the law requires clarifying: per Lord Woolf in *Smith v Cosworth Casting Process Ltd.* [1997] 4 All ER 840.

...

27. The approach of the English courts has generally been followed by the courts of The Bahamas when considering applications for leave to appeal and for leave to appeal out of time. I have been unable to find a local authority generally discussing the issue of leave to appeal to this Court but I am confident that the factors which call for consideration are much the same as those considered in leave to appeal out of time applications, of which there are many determined by the Court. In *AWH Fund Limited (In Compulsory Liquidation) v ZCM Asset Holding Company (Bermuda) Limited* 2014 2 BHSJ No. 53 it was held by this Court, differently constituted, that:

"The Court will refuse an application for an extension of time if satisfied that the applicant has no realistic prospect of succeeding on the appeal. Further the court can grant the application even if it not so satisfied where the issue raised may be one which the court considers should in the public interest be examined by the court or where, the court takes the view that the case raises an issue of law which requires clarifying."

In summary, to satisfy the test intended appellant by demonstrate that the proposed appeal has a *realistic prospect of success or raises an issue that should in the public interest be examined by the court or whether the law requires clarifying*".

[8.] Gabrielle says that he has a realistic prospect of succeeding in the appeal:

- (1) In considering whether or not to grant a stay of the Arbitration, his Lordship failed to consider the principles applicable in the context of a removal claim under s. 35 of the Arbitration Act 2009.
- (2) Further, when considering the merits of the underlying claim, the Chief Justice misapplied the applicable legal principles. S. 35(1)(a) of the Arbitration Act 2009, requires an applicant to show that "*circumstances exist that give rise to justifiable doubts as to his [the arbitrator's] impartiality*". His Lordship did not analyse the

Removal Claim by reference to that statutory test but instead by reference to the common law test for apparent bias: he stated that “*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*” (Judgment at [23]). S.35 of the Arbitration Act only requires justifiable doubts as to the arbitrator’s impartiality to be shown; it does not require a concluded view of a real possibility of bias.

- (3) Further, the Chief Justice’s finding that “*Each of the impugned decisions reflects similar and detailed reasoning*” as its handling of the Privileged Information (in Procedural Order No. 26) was wrong: a number of the decisions which form the heart of Gabriele’s Removal Claim either had no reasons at all or the reasoning was confined to a single sentence.

[9.] Finally Gabrielle says that, had the Court considered the full nature of Gabriele’s Removal Claim and the evidence of the Tribunal’s decision-making, he would not have found that Gabriele’s Removal Claim was weak.

[10.] Gabriele also submits that, in any event, his appeal raises a number of questions of public importance including the proper principles governing a stay of an arbitration pending a claim to remove an arbitrator under s. 35 and the principles relevant to such a removal claim. These are important questions in relation to which there is limited Bahamian (and insofar as it is analogous) English authority. It would clearly be of benefit to the wider public for these questions to be considered and the law to be clarified by the Court of Appeal.

[11.] Mateo opposes the application for leave. He says that Gabriele has no prospects of succeeding on any of his grounds of appeal and there is no public policy reason why the Court should hear the appeal.

- (1) The Court did not err in law by failing to apply the correct principles to an application for a stay of the Arbitration pending determination of a claim to remove an arbitral tribunal pursuant to S.35 Arbitration Act 2009. S.35(3) Arbitration Act 2009 states: “The arbitral tribunal may continue the arbitral proceedings and make an award while an application to the court under this section is pending”. This statutory wording speaks for itself. It does not say: “The arbitral tribunal may, in exceptional circumstances, continue the arbitral proceedings and make an award while an application to the court under this section is pending.” In any event, S.35(3) concerns the capacity of the arbitral tribunal to continue arbitral proceedings whilst a removal application is pending; it does not relate to the Court’s power to stay arbitral proceedings (other than clarifying that an arbitration should not be stayed purely by virtue of an application pursuant to S.35(3) having been made.

- (2) The Court did not err in law by descending into a consideration of the merits of the Removal Claim. The judgment applied the correct test when considering the merits of the Removal Application as one factor in exercising his discretion to refuse the Stay Application. Gabriele appears to be contending for a threshold (of either “demurrableness” or “fancifulness”) beyond which the Court should not consider the merits of the underlying claim in considering whether to grant or refuse a stay of arbitral proceedings. The Court, however, is invariably required to form a preliminary view of the merits of the underlying claim in order to ascertain whether this threshold test is met.
- (3) Chief Justice Winder was not wrong in finding that “Each of the impugned decisions reflects” the “similar and detailed reasoning” in the Tribunal’s handling of the Recusal Decision in Procedural Order 26 ([22] Winder J Judgment). The extent of the reasoning given with respect to the Disclosure Decisions, the Confidentiality Decisions, the Isabella and Sofia Decisions and Delanson Decisions was entirely appropriate in the context of the issues before the Tribunal. None of the specific complaints made at paragraph 27(c) of Gabriele’s Consequential Submissions could possibly justify removal of the Tribunal, on the basis of bias, a lack of impartiality or otherwise.

[12.] Matteo also says, that there is no other public policy reason why leave to appeal should be granted. The proper principles governing a stay of an arbitration pending a claim to remove an arbitrator under S.35 and the principles relevant to such a removal claim are, contrary to what Gabriele suggests, clearly and correctly set out in the Winder J Judgment. There is no need for the law to be clarified by the Court of Appeal because, Gabriele’s submissions in relation to the applicable principles are clearly wrong.

[13.] I have given careful and anxious consideration to the submissions made on behalf of the parties. While I am not completely satisfied that there are real prospects of success on the appeal, I do believe that this is a matter which could benefit from the consideration of the higher court. There is a dearth of local learning on the issue of the proper test to be applied and the divergence of the submissions by the parties is a testament to this fact.

[14.] In the circumstances I will grant Gabriele’s leave to appeal.

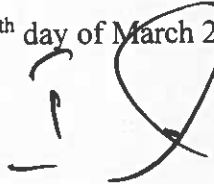
### **Costs**

[15.] Gabriele says that the costs of the Stay Application should abide the result of the Removal Claim and the Costs Appeal, alternatively that there should be no order as to costs and in the further alternative, that any costs order in Matteo’s favour should be limited to 70% of his costs, assessed on the standard, not the indemnity basis.

[16.] Matteo says that Gabriele should be ordered to pay 100% of his costs of the Stay Application and that such costs should be assessed on the indemnity basis.

[17.] Having considered the submissions of the parties, it does seem prudent to temporarily delay a determination of the entire issue of costs until a decision is rendered in the Costs Appeal by the Court of Appeal. That application having already been heard and reserved for decision by the Court of Appeal.

Dated this 26<sup>th</sup> day of March 2026

A handwritten signature in black ink, consisting of a stylized 'I' followed by a large, sweeping loop that ends with a horizontal stroke.

Sir Ian. Winder  
Chief Justice