COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2022/CLE/GEN/00474

B E T W E E N

ISAAC DANIEL PICCIOTTO KASSIN

Claimant

AND

J.P. MORGAN TRUST COMPANY (BAHAMAS) LIMITED

(As Trustee of the Cabo Verde Trust)

Defendant

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Giahna Soles-Hunt, Nastassia Rigby & Dwayne Whylly for the Claimant
N. Leroy Smith & Kimberleigh Turnquest for the Defendant

Hearing Date: 24th February, 2026

Submissions received: 18th February, 2026 and 19th February, 2026

Civil Procedure — Leave to appeal — Interlocutory ruling — Strike out — Summary judgment — Threshold defences — Statutory immunity — Automatic Exchange of Financial Account Information Act, 2016, s.14(5) — Confidentiality override, s.14(1) — Contractual exculpatory clauses — Act of state doctrine — Foreign revenue rule — Remoteness of loss — Summary judgment test under Bahamian CPR Part 15 — Stay pending appeal — Interests of justice — Risk of nugatory appeal

RULING

Darville Gomez, J

[1.] By Notice of Application filed on 29 December 2025 (the "Application"), the Defendant, J.P. Morgan Trust Company (Bahamas) Limited applied for:

(i) Leave to appeal my ruling dated 18 December 2025, by which I dismissed the Defendant's application to strike out the Claimant's action and/or for summary judgment; and

(ii) a stay of all further proceedings in this action pending the determination of the intended appeal.

[2.] The Application is supported by the Third Affidavit of Montgomery Moree filed on 29 December 2025. The Application exhibited a draft Notice of Appeal setting out the proposed grounds of appeal and a Draft of the Order sought.

[3.] The Claimant, Isaac Daniel Picciotto Kassin opposed both the leave and the stay. The Claimant submitted that the Defendant's proposed appeal is, in substance, an attempt to reargue an interlocutory case-management decision and that none of the proposed grounds have a realistic prospect of success. Further, that the Defendant has not shown any real risk of injustice sufficient to justify a stay.

[4.] For the reasons that follow, I have granted leave to appeal. I also grant a stay of these proceedings pending determination of the intended appeal. I had previously delivered my decision orally and indicated that I would provide my reasons in writing. I now do so.

Background

[5.] The action arose out of the Common Reporting Standard ("CRS") under the Automatic Exchange of Financial Account Information Act, 2016 ("the AEOFAI Act") in relation to the Cabo Verde Trust. The Claimant was, at the material time, a tax resident of Colombia and settlor and beneficiary of the Trust. The Defendant was formerly trustee of the Trust and a Bahamian financial institution within the statutory reporting framework.

[6.] The Claimant alleged, in summary, that the Defendant failed to update its internal records to reflect that the Trust was an Active Non-Financial Entity and not reportable for CRS purposes. The Defendant thereafter reported values for the Trust to the Bahamas Competent Authority, which information was exchanged with the Colombian tax authority, the DIAN. The Claimant alleged that this caused him to incur penalty tax, additional wealth tax, professional costs, interest, and related losses.

[7.] The Defendant denied liability. It submitted among other things, that the claim is barred by statutory immunity under section 14(5) of the AEOFAI Act; that section 14(1) of the Act disapplied confidentiality-based claims; that contractual exculpatory provisions defeat the claim; that the claim is non-justiciable or contrary to public policy by reason of the act of state doctrine and/or the foreign revenue rule; and that the pleaded losses are too remote and irrecoverable.

[8.] By Notice of Application filed on 11 April 2024, the Defendant sought to strike out the Claimant's Writ and Statement of Claim under Part 26.3 of the Supreme Court Civil Procedure Rules, 2022

(the "CPR"), and/or summary judgment under Part 15. I dismissed that application by ruling dated 18 December 2025 and awarded costs to the Claimant, to be assessed if not agreed.

[9.] The present application concerns only whether leave should be granted to appeal that interlocutory ruling and whether the proceedings should be stayed pending appeal.

Law and Analysis

[10.] Section 11(f) of the **Court of Appeal Act, Ch. 52** provides that no appeal lies, without leave of the Supreme Court or of the Court of Appeal, from an interlocutory order or interlocutory judgment made or given by a Justice of the Supreme Court, save for the specified exceptions. The ruling of 18 December 2025 was interlocutory. Leave is therefore required.

[11.] The applicable test is well established. In **Smith v Cosworth Casting Processes Ltd** (1997) 4 All ER 840, Lord Woolf MR stated that leave will be refused only where the proposed appeal has no realistic prospect of success; a fanciful prospect is insufficient. Leave may also be granted where the proposed appeal raises an issue which should, in the public interest, be examined by the appellate court or where the law requires clarification.

[12.] The Court of Appeal adopted that approach in **Keod Smith v Coalition to Protect Clifton Bay** SccivApp No. 20 of 2017, where it was stated that the test 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. The same approach was applied by Charles J (as she then was) in **In the Matter of the Petition of Scott E. Findeisen and Brandon S. Findeisen (as Trustees of the Stephen A. Orlando Revocable Trust)** [2020] 1BHS J No. 24.

[13.] I readily accept the proposition highlighted by Lewison LJ in **Broughton v Kop Football (Cayman) Ltd.** [2012] EWCA Civ 1743 which has been applied in other cases **including Maria Iglesias Rouco et v Juan Sanchez Busnadiego et al Court of Appeal** SCCiv APP 147 & 148 of 2021 that, where the decision sought to be appealed is a discretionary interlocutory decision, the appellate court will not lightly interfere. In those circumstances, an applicant must usually show an arguable error of principle, a failure to take account of relevant matters, reliance on irrelevant matters, or a decision outside the generous ambit within which reasonable judges may disagree. That said, where the proposed appeal raises a question of statutory construction, jurisdiction, public policy, or the correct procedural test to be applied, the appellate court's review may not be confined to a narrow merits disagreement.

[14.] In considering leave, the Court should not conduct a full rehearing of the application below. The question is whether at least one proposed ground is properly arguable with a realistic prospect of success, or whether there is another compelling reason for appellate consideration.

[15.] The Court has jurisdiction to grant a stay pending appeal. The discretion is broad and must be exercised in accordance with the interests of justice.

[16.] The classic principle is that the Court should act, so far as justice permits, to ensure that an appeal, if successful, is not rendered nugatory. In **Hammond Suddards Solicitors v Agrichem International Holdings Ltd** [2001] EWCA Civ 2065, the English Court of Appeal stated that the essential question is whether there is a risk of injustice to one or both parties if a stay is granted or refused. In **Leicester Circuits Ltd v Coates Brothers plc** [2002] EWCA Civ 474, the Court explained that the proper approach is to make the order which best accords with the interests of justice, balancing the alternatives and choosing the course least likely to cause injustice.

[17.] The normal rule is that an appeal does not operate as a stay and a successful party is not lightly deprived of the benefit of the order obtained below. But the rule is not inflexible. Where an appeal concerns whether proceedings should exist at all, and where substantial litigation steps would be taken before the appeal is determined, the risk of wasted costs, procedural prejudice, and the appeal being rendered substantially nugatory are relevant considerations.

The Proposed Grounds of Appeal

[18.] The Defendant's draft Notice of Appeal advanced fifteen proposed grounds as follows:

Misapplication of CPR 26.3

1. **Ground One**: The learned Judge misapplied CPR 26.3 and therefore erred in law by asking only whether the Respondent's pleading disclosed legally recognizable causes of action (negligence/fiduciary duty) [paras. 82-85, 96 of the Relevant Judgment], without conducting the required integrated assessment of legal viability against the threshold defences, *viz.*: statutory immunity (AEOFAI Act s.14(5)), confidentiality override (AEOFAI Act s.14(1)), contractual exculpation, and act-of-state/public policy. CPR 26.3(1)(b)/(c) requires the court to strike out where, assuming the facts, the case is legally untenable or abusive. The Judge ought to have proceeded on assumed facts and tested the claim's sustainability against each pleaded bar. If any defence rendered the claim hopeless, the court ought to have struck out in whole or part, or at minimum narrowed the pleadings. By failing to perform this holistic test, the Judge erred in principle and allowed a case to proceed despite *prima facie* threshold bars squarely raised.

Erroneous Application of English Summary-Judgment Criteria

2. **Ground Two**: At paras. [93]–[95] of the Relevant Judgment, the learned Judge misdirected herself by applying the English CPR 24 test, which includes the additional limb permitting refusal of summary judgment where there is "*some other compelling reason for a trial.*" To wit:- Her Ladyship expressly invoked the need for "mature consideration" and a "compelling reason for trial" as justification for deferring dispositive law points and in so doing took into consideration irrelevant factors; as the Bahamian rule on summary judgment (CPR Part 15) contains no such limb; it provides only that summary judgment may be

granted where the claimant has no real prospect of succeeding on the claim or issue. By importing an extraneous criterion from English practice, the Judge applied the wrong legal test under Bahamian law.

The learned Judge (i) ought to have applied the Bahamian CPR 15 test strictly: determine whether, on assumed facts, the claim had a real prospect of success. If not, grant summary judgment and (ii) should not have relied on "compelling reason for trial" or "mature consideration," which are irrelevant under Bahamian procedure. It is submitted that this misdirection warrants appellate intervention and reversal of the refusal to grant summary judgment.

Misstatement of EasyAir/Lewison Summary-Judgment Guidance

3. **Ground Three**: The learned Judge cited EasyAir Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch) (via Pinewood Technologies Asia Pacific Ltd. v Pinewood Technologies PLC [2023] EWHC 2506 (TCC) (at para. [74] of the Relevant Judgment) but reproduced only the cautionary elements (i.e. items. (i) – (iii) and (v)), omitting Lewison J's core principle (i.e. item (vii) that courts must '**grasp the nettle**' and decide short points of law or construction where no further evidence is needed. By truncating EasyAir and ignoring this requirement, the Judge demonstrably did not consider or apply the test for summary judgment in its complete and correct form, misdirected herself and thus erred in law. Her Ladyship should have acknowledged the full EasyAir framework, including the obligation to resolve pure law points on assumed facts.

Misapplication of EasyAir: Unwarranted Deferral of Pure Points of Law

4. **Ground Four**: The learned Judge declined to determine discrete, dispositive questions of law, *viz.* s.14(5) immunity, s.14(1) override, exculpation clauses, act-of-state/public policy, and remoteness, stating they were 'not suitable' or required 'mature consideration' (paras. [93]–[99] of the Relevant Judgment), despite no material factual controversy being identified. Treating pleaded allegations as sufficient to justify trial, rather than asking whether those allegations could overcome the defences, was a failure to grasp the nettle. Summary judgment exists to prevent claims proceeding where, even assuming the facts, they cannot succeed. The Judge should have applied EasyAir properly: assume the facts, decide each short legal point, and if dispositive, grant summary judgment or narrow issues.

Assumed-Facts Rule Recited but Not Applied to Defences

5. **Ground Five**: The learned Judge acknowledged that strike-out requires assuming pleaded facts are true (paras. [78]–[81] of the Relevant Judgment), yet in applying Citco (paras. [82]–[85] of the Relevant Judgment) and dismissing the application (para. [96] of the Relevant Judgment), Her Ladyship did not carry that assumption forward to test the claim against the defences. Similarly, on summary judgment she recited some (but crucially not all) of the EasyAir principles but deferred all threshold bars as 'not suitable'. This inconsistency is a misdirection. The Judge should have asked: even if the facts are true, do s.14(5), s.14(1), exculpation clauses, or public-policy bars defeat the claim? If those questions fell to be answered in the affirmative, strike out or summary dismissal should follow.

Failure to Give Adequate Reasons for Deferring Pure Law Issues

6. **Ground Six**: At paras. [92]–[99] of the Relevant Judgment, the learned Judge invoked conclusory labels, *viz.* 'mini-trial,' 'not suitable,' 'requires evidentiary resolution,' 'mature consideration' to avoid deciding pure points of statutory and contractual construction, without identifying any specific factual dispute preventing determination as required by the case law. The Relevant Judgment lacks a rational connection between alleged factual controversies and deferral, breaching the duty to give adequate reasons. The Judge should have either decided the law points on the assumed/admitted record or identified concrete factual disputes and explained their materiality.

Statutory Immunity (AEOFAI Act s.14(5)): Wrongly Deferred Despite Admitted Chronology

7. **Ground Seven**: The learned Judge erred in law by deferring the statutory immunity defence under section 14(5) of the AEOFAI Act, despite the admitted chronology showing that the disclosures were made "in the course of attempting to comply with and discharge statutory duties". Section 14(5) provides that *"No action, suit, prosecution or other proceedings shall be brought or instituted against the Competent Authority or a* ***Bahamas Financial Institution****... in respect of any lawful disclosure done bona fide in pursuance... of this Act."* That prohibition is not merely declaratory; it reflects Parliament's clear intendment that such claims should not proceed to trial. Where proceedings are nonetheless brought in breach of this statutory bar, they are perfectly suited for summary disposal. By postponing determination and invoking generic labels such as "not suitable" and "requires evidentiary resolution" (paras. [93], [98]–[99] of the the Relevant Judgment) without identifying any material factual dispute relevant to construction or application of s.14(5), the Judge frustrated the *prima facie* legislative purpose. The proper course would have been to construe section 14(5) on assumed facts and, if immunity applied, strike out the claim under CPR 26.3(1)(b) or dismiss it summarily under CPR 15.

Mischaracterization of Defendant's Status as Reporting Financial Institution

8. **Ground Eight**: The learned Judge erred in her factual and legal characterisation of the Appellant's status when setting out the facts. At para. [16] of the Relevant Judgment, the Judge stated that *"the Defendant, outside of its capacity as trustee of the Trust, was a designated Reporting Financial Institution under the Act."* And, this characterisation subsequently undergirded the Judge's reasoning that statutory immunity and fiduciary duties were conceptually separate thereby justifying deferral of immunity analysis.

However, the aforementioned (mis)characterisation was incorrect and apt to lead into error for at least two reasons. First, it is the Appellant's role as a professional trustee maintaining Trust accounts that for Common Reporting Standard/AEOFAI Act purposes made it a Reporting Financial Institution (i.e. "a Bahamas Financial Institution that is not a Non-Reporting Financial Institution"). Therefore, the Appellant's reporting obligations under the AEOFAI Act arose precisely because of its trustee capacity, not independently of it. Second, the Appellant is a "**Bahamas Financial Institution**" for the purposes of Section 14(5) of the AEOFAI Act which **does not** refer to "Reporting Financial Institutions" at all.

The learned Judge ought to have (a) recognized that the Appellant's designation as an "RFI" was not germane to the question of immunity and (b) acknowledged that the Appellant is a "Bahamian Financial Institution" for the purposes of s. 14(5) of the AEOFAI Act and (c) applied the statutory immunity

accordingly. On assumed facts, the immunity defence was dispositive and should have been determined at the interlocutory stage.

Mischaracterising AEOFAI Act s.14(5) statutory immunity as a 'Capacity' Dispute

9. **Ground Nine**: The learned Judge wrongly treated the issue as a factual contest of 'capacity' (trustee vs. RFI), deferring immunity (paras. [93], [98]–[99] of the Relevant Judgment) and in so doing (at para. [55] of the Relevant Judgment) also materially misapprehended/mischaracterized the Appellant's actual submissions on this point. Classification and portal reporting are statutory compliance functions under the AEOFAI Act (paras. [16]–[20], [54]–[56] of the Relevant Judgment). Immunity under s.14(5) of the said Act attaches to bona fide disclosures by **Bahamas Financial Institutions** in pursuance of the Act, regardless of any fiduciary role. The learned Judge should have decided s.14(5) on assumed facts; if immunity applied, the claim should have been struck out or dismissed summarily.

Confidentiality Override (AEOFAI Act s.14(1)): Pure Law Question Deferred Without Identifying Factual Dispute

10. **Ground Ten**: The Appellant invoked s.14(1), which disapplies confidentiality laws to information in an Information Return (paras. [33(iv)], [52], [79]). However, the learned Judge incorrectly deferred this short statutory point (paras. [93]–[99] of the Relevant Judgment) without explaining any factual controversy. Her Ladyship should have applied s.14(1) on assumed facts and struck out confidentiality-based heads or narrowed the case accordingly.

Contractual Exculpation/Exclusion Clauses: Pure Law Question Deferred Without Identifying Factual Dispute

11. **Ground Eleven**: Relevant exculpatory/exclusion clauses were squarely raised by the Appellant. At paras. [92], [99] of the Relevant Judgment, the learned Judge characterised clause construction as a 'mini-trial' and 'not suitable for interlocutory determination,' despite not identifying any factual controversy as required by law. However, (as per Pinewood Technologies) contractual clause construction is a legal question apt for summary resolution on assumed facts. Her Ladyship should have construed those clauses and, if they excluded liability, struck out or narrowed the claim.

Even Assuming 'Gross Negligence,' the Threshold Bars Apply: Bad Faith Not Pleaded

12. **Ground Twelve**: The learned Judge treated allegations of gross negligence as a reason to defer threshold defences (paras. [93], [98] of the Relevant Judgment), but ignored that even if gross negligence were assumed, (in light of, *inter alia*, Spread Trustee Company Limited v Sarah Ann Hutcheson et al [2011] UKPC 13) the claim, absent pleaded bad faith, is barred by s.14(5) of the AEOFAI Act and/or exculpation clauses. Bad faith was not pleaded (paras. [49]–[51] of the Relevant Judgment), and the Judge accepted reporting occurred in pursuance of the Appellant's statutory duties (paras. [54]–[56] of the Relevant Judgment). Her Ladyship ought to have decided immunity and clause construction on assumed facts and dismissed the claim.

Act of State / Foreign Revenue Rule Non-Justiciability: Pure Law Question Deferred

13. **Ground Thirteen:** The Appellant argued non-justiciability/public policy because the pleaded losses are exclusively and directly referable to foreign tax assessments/penalties alleged to have been incorrectly/improperly levied by the Colombian Tax Authority (DIAN) (paras. [28], [62]–[64] of the Relevant Judgment). However, the learned Judge addressed abuse only generally (paras. [86]–[89] of the Relevant Judgment) and stated that the act-of-state doctrine 'does not necessarily require' adjudicating Colombian acts (para. [100] of the Relevant Judgment), without deciding whether foreign tax heads are irrecoverable/non-justiciable on assumed facts. Her Ladyship should have ruled on this threshold bar and struck out those heads.

Remoteness/Irrecoverability of Foreign Tax Heads: Pure Law Question Deferred

14. **Ground Fourteen**: The learned Judge declined to decide whether foreign tax liabilities are irrecoverable or too remote (paras. [98]–[99]) of the Relevant Judgment, despite loss heads being pleaded (paras. [28], [62]–[64] of the Relevant Judgment) and the Appellant's defence raising remoteness (paras. [33(v)], [79] of the Relevant Judgment). However, no factual dispute was identified. Her Ladyship should have addressed remoteness and struck out or dismissed those damages if barred.

Costs: Unfair to Award Costs While Threshold Bars Remained Undecided

15. **Ground Fifteen**: After declining to decide dispositive law points, the learned Judge awarded costs to the Respondent (paras. [100]–[101] of the Relevant Judgment). However, it is submitted that penalising the party pressing proper threshold bars such as AEOFAI Act, s. 14(5) (***"No action, suit, prosecution or other proceedings shall be brought or instituted...)*** when deferral was judicially imposed is wrong in principle and contrary to the overriding objective. Costs should have been reserved or ordered 'in the cause' pending resolution of such threshold issues.

[19.] The grounds of appeal may be grouped as follows:

(i) alleged misapplication of CPR Part 26.3 and Part 15, including the alleged failure to determine threshold bars on assumed facts;

(ii) alleged misdirection in the summary judgment test, including reliance on the English "some other compelling reason for trial" formulation and an alleged incomplete application of **EasyAir Ltd v Opal Telecom Ltd** [2009] EWHC 339 (Ch);

(iii) alleged failure to decide short points of statutory construction, contractual construction, and public policy, including section 14(5) statutory immunity, section 14(1) confidentiality override, contractual exculpation, act of state/foreign revenue rule, and remoteness;

(iv) alleged mischaracterisation of the Defendant's capacity as trustee, Bahamas Financial Institution, and/or Reporting Financial Institution;

(v) alleged inadequacy of reasons for deferring determination of the Defendant's threshold defences;

(vi) alleged error in awarding costs to the Claimant after declining to determine the Defendant's threshold bars.

[20.] I do not consider it necessary, for present purposes, to determine whether every proposed ground is equally strong. The question is whether the proposed appeal as a whole, or any material ground within it, meets the threshold for leave. For consideration of whether to grant leave, I have further condensed the grounds into three as follows: (i) statutory immunity and the proper stage for determination; (ii) summary judgment and short points of law; and (iii) act of state, foreign revenue rule and remoteness.

(i) Statutory Immunity and the Proper Stage for Determination

[21.] I will address what I will refer to as the central proposed ground relating to section 14(5) of the AEOFAI Act. That provision states, in substance, that *no 'action, suit, prosecution, or other proceedings shall be brought or instituted against the Competent Authority or a Bahamas Financial Institution, its employees, agents, or assigns, in respect of any lawful disclosure done bona fide in pursuance, execution, or intended execution of the Act"*.

[22.] The Defendant submitted that this is not merely an ordinary defence to liability, but a statutory immunity from proceedings being brought at all. It says that, if the immunity applied, the litigation burden itself is the mischief Parliament intended to avoid. The Claimant however, submitted that the immunity cannot be determined without trial because the case concerned the Defendant's alleged gross negligence and breach of trustee duties in failing to maintain accurate records and failing to correct the Trust's CRS classification, and not merely the act of disclosure.

[23.] In my judgment, this is a properly arguable point. The intended appeal raises a real question as to the scope and timing of section 14(5): whether, on assumed facts, the statutory bar can or should be determined at an interlocutory stage, or whether the factual and fiduciary context requires trial before the statutory protection can be applied.

[24.] I remain of the view expressed in my earlier ruling that the Claimant's pleaded case raised issues which are capable of trial. However, the leave threshold is materially different. It is at least arguable that a provision framed in terms that "*no action, suit, prosecution or other proceedings shall be brought or instituted*" may require early determination where the relevant facts are admitted or assumed. It is also arguable that postponing the question to trial may diminish the practical value of the statutory protection if the protection is properly characterised as immunity from suit rather than immunity only from ultimate liability.

[25.] This issue also has a dimension beyond the immediate parties. The statutory reporting regime under the AEOFAI Act applies to financial institutions operating within The Bahamas and to the Competent Authority. The proper construction of section 14(5), and the circumstances in which it

may be invoked at a preliminary stage, are matters of continuing practical importance to the operation of that regime.

(ii) Summary Judgment and Short Points of Law

[26.] The Defendant also submitted that the ruling applied, or appeared to apply, an incomplete or incorrect summary judgment analysis. In particular, the Defendant relied on **EasyAir Ltd v Opal Telecom Ltd**, where Lewison J stated that where an application gives rise to a short point of law or construction, and the Court has before it the evidence necessary for its determination and the parties have had an adequate opportunity to address it, the Court should "*grasp the nettle*" and decide it.

[27.] However, the Claimant correctly submitted that summary judgment remains inappropriate where factual investigation may alter the evidential picture, and that the Court must avoid conducting a mini-trial. Further, the Claimant submitted that the issues here are mixed questions of fact and law, including whether the Defendant was acting qua trustee, whether its conduct amounted to gross negligence, whether the exculpatory clauses apply, and whether the pleaded loss is too remote.

[28.] Those submissions may ultimately prevail. Nevertheless, I am satisfied that it is properly arguable that at least some of the issues raised by the Defendant — particularly statutory immunity, the confidentiality override, and aspects of contractual construction — may be characterised as short legal or construction points capable of determination on assumed facts. Whether I was correct to defer all such issues to trial is therefore a point with a realistic prospect of appellate consideration.

[29.] I also accept that the distinction between the CPR Part 15 and the English CPR Part 24, including the "*some other compelling reason*" language, is an arguable procedural point. I do not determine that it was decisive in my ruling. But the Defendant's complaint that an extraneous criterion may have informed the analysis is not fanciful.

(iii) Act of State, Foreign Revenue Rule, and Remoteness

[30.] The Defendant submitted that the Claimant's pleaded heads of loss are, in substance, Colombian tax penalties and tax-related liabilities, and that recovery would require the Bahamian court to examine, or proceed upon the alleged incorrectness of, the DIAN's tax determinations. The Claimant responded that the case concerned the Defendant's conduct in The Bahamas and does not require any challenge to the validity of Colombian sovereign acts.

[31.] On the pleaded case, the losses complained of do appear to be confined to foreign tax liabilities and penalties. There is therefore an arguable point that such heads of loss may be barred by principle or, at the very least, too remote to be recoverable.

[32.] I am not persuaded that this ground alone would necessarily justify leave. However, viewed together with the statutory immunity ground, the foreign tax and public policy issues reinforce the conclusion that the proposed appeal raises points which are at least arguable and which merit appellate scrutiny.

Disposition

[33.] Accordingly, for the above reasons, I am satisfied that the proposed appeal has a realistic, as opposed to fanciful, prospect of success.

[34.] I am also satisfied that the proposed appeal raises issues of wider public importance concerning the operation of statutory immunity under the AEOFAI Act and the relationship between domestic trust duties, CRS reporting obligations, and claims arising from foreign tax consequences.

[35.] Leave to appeal is therefore granted.

[36.] I turn to consider whether these proceedings should be stayed pending determination of the intended appeal.

[37.] The Defendant submitted that a stay should follow because, if the appeal succeeds, the action may be struck out or summarily dismissed in whole or in material part. Further, that absent a stay, the parties will incur substantial costs in preparing for trial, and the appeal may be rendered nugatory because the Defendant will be required to undergo the very litigation burden which section 14(5) allegedly seeks to prevent.

[38.] The Claimant on the other hand has submitted that a stay should be refused on the basis that the normal rule is no stay, that a successful litigant should not be deprived of the benefit of the ruling, that no exceptional prejudice to the Defendant has been shown, and that delay would be prejudicial to the efficient resolution of the claim.

[39.] I accept that the grant of leave does not automatically entitle the Defendant to a stay. The Court must balance the competing risks of injustice. The Claimant is entitled to have his claim progress without unnecessary delay. The proceedings were commenced in 2022 and the underlying events are older still. That is a significant factor.

[40.] However, the appeal to be pursued is not a peripheral appeal about a procedural timetable. It goes to whether the action should proceed at all, or whether it is barred in whole or in part by statutory immunity amongst other things. If the Court of Appeal accepts the Defendant's position, further pre-trial steps taken in the meantime may be wasted.

[41.] The point is made particularly in relation to section 14(5). If the Defendant is right that the statutory language creates protection from the institution or maintenance of proceedings themselves, then compelling the Defendant to proceed with disclosure, witness evidence, expert evidence, trial preparation, and case management while the appeal is pending would risk undermining the very protection asserted. In that sense, refusal of a stay could render the appeal substantially nugatory.

[42.] The prejudice to the Claimant from a stay is delay and while that prejudice is real, the prejudice to the Defendant if no stay is granted includes wasted costs and the loss, in practical terms, of the

benefit of an immunity from proceedings if the Court of Appeal later holds that such immunity applies.

[43.] In the circumstances, the balance of justice favours a stay.

[44.] For the reasons set out above, I make the following orders:

(i) The Defendant is granted leave to appeal the ruling dated 18 December 2025 to the Court of Appeal.

(ii) All further proceedings in this action are stayed pending the determination of the intended appeal.

(iii) Costs of the present application shall be costs in the appeal.

Dated the 1st day of June, 2026

Camille Darville Gomez
Justice