IN THE COMMONWEALTH OF THE BAHAMAS

Appeals Division

Consolidated Appeals 2020/APP/sts/00013, 2020/APP/sts/00018, 2020/CLE/gen/00632

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 89, 90 and 91 OF THE ARBITRATION ACT 2009

BETWEEN:

GABRIELE VOLPI

Claimant/Applicant

- and –

(1) DELANSON SERVICES LIMITED

(2) MATTEO VOLPI

(3) SIMONE 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 Berchel Wilson for Matteo Volpi
	Janet L.R. Bostwick-Dean for Simone and Isabella Volpi
Hearing date(s):	16 July 2026

WINDER, CJ

This is my decision on the Claimant's (Gabriele's) application for a stay of costs orders made by Klein J. in these proceedings orally on 6 February 2024 in this action pending the determination of a claim lately commenced in Claim Number 2026/CLE/gen/00426.

[1.] 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.

[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. An additional award was subsequently made by the Tribunal.

[3.] Challenges were brought to the awards which were heard in a consolidated action (the Consolidated Acton) before Klein J in the Supreme Court. On 28 December 2023 the trial judge, dismissed the challenges.

[4.] On 6 February 2024, Klein J, made (inter alia) orders for costs of the proceedings brought by Gabriele and Delanson. These orders were:

(a) Gabriele and Delanson shall pay to Matteo:(i) the costs of the Consolidated Action, (ii) the consequential application and (iii) the costs of Stay Applications (which by the Stay Ruling dated 13 June 2022 were directed to abide the outcome of the Consolidated Action); such costs to be taxed if not agreed.

(b) The applications of Gabriele and Delanson for an order staying the taxation and payment of costs pending the determination of any appeal to the Court of Appeal and Delanson's application that the costs of the consequential hearing be cost in the appeal, are refused and dismissed.

(c) The application by Delanson to adjourn any payment to Matteo on account of costs until the lifting of the order staying the arbitration, is refused and dismissed.

(d) Gabriele and Delanson shall make an interim payment on account of the costs awarded to Matteo in the Consolidated Action only in an amount to be determined by the Court.

(e) The sum of $400,000.00 and $150,000.00 paid into court by Gabriele and Delanson pursuant to the Court's security for cost order made on 13 June 2022, is hereby released to Matteo in part payment of the interim payment on account ordered at paragraph (d) above.

[5.] In a subsequent application, Klein J, on 22 May 24, refused leave to appeal and fixed an additional $400,000 in interim payment payable within 21 days. On 5 June 24, Gabriele filed a Notice of Application seeking leave to appeal the costs orders and seeking stay of execution. On 13 June 24 Klein J granted a *pro tem* stay of execution which was extended until the determination of the application for leave to appeal.

[6.] The challenge to the costs orders was based upon a newspaper article which alleged that Matteo had spent $12 million to advance his claim and that he had been largely financed by a Dutch firm "specialising in litigation and which expects to be reimbursed 3.5 times the advance in the event of Matteo Volpi's victory." The challenge was supported by the affidavit filed by Simone Volpi that Matteo had told Simone that he had engaged a litigation funder who would share any profits of the litigation. The claim therefore was that the costs orders would condone or endorse the illegal funding of litigation (maintenance and champerty) and / or would be in breach of the indemnity principle of costs and ought not to have been made.

[7.] Klein J refused the application for leave to challenge the costs orders. At paragraphs 62 and 63 of his 29 October 2024 decision Klein J acknowledged that any assessment on the questions of maintenance and champerty and the indemnity principle of costs was fact sensitive and there was "no evidence before the court of the precise nature of the agreement that would facilitate this assessment." He concluded that "… inviting the Court to enter into the realm of speculation and inference by asking it to conclude that the funding arrangement savours of maintenance and/or champerty, simply on the basis of what was reported …" in the newspaper article.

[8.] Gabriele and Delanson appealed the decision of Klein J to the Court of Appeal, during which time a stay of execution pending an appeal was sought and obtained. In the appeal Gabriele also sought leave to adduce new evidence. The new evidence was intended to bolster the claim that the litigation was being funded by a third-party funder, now identified as Omni Bridgeway (Fund 5) Cayman Invt. Limited.

[9.] On 10 December 2025 the appeals were heard by the Court of Appeal which issued a comprehensive judgment (the Court of Appeal Judgment) on 30 April 2026, dismissing the appeals. The Court of Appeal held that the issues raised, concerning maintenance and champerty, the indemnity principle of costs, abuse of process, and related public policy considerations, require a full factual inquiry and are not suitable for determination in collateral proceedings or on appeal. The proposed "new evidence" did not advance the matter, as it merely added to unresolved factual and policy disputes and would in any event necessitate further inquiry. Leave to appeal was refused and the Intended Appellants were ordered to pay Matteo's costs of the motions

[10.] On May 2026 Gabriele commenced a new action in the Supreme Court, Claim Number 2026/CLE/gen/00426. In the new claim, Gabriele sought:

(1) Declaratory relief that Matteo's funding arrangements are champertous and therefore tortious, unlawful and contrary to public policy;
(2) Declaratory relief that reimbursing costs which have been paid for by Omni and in respect of which they are liable constitutes a breach of the indemnity principle;

(3) Declaratory relief that Matteo is not entitled to enforce any costs orders made in his favour in connection with the Consolidated Action, or any application arising out of it, where those costs have been paid for pursuant to these funding arrangements; and
(4) An injunction restraining Matteo from enforcing any costs order made in his favour arising out of the Consolidated Action where those costs have been paid for pursuant to these funding arrangements.

[11.] Gabriele's application was brought by Notice of Application filed on 19 May 2026. The Notice of Application seeks the following relief:

(a) An order pursuant to CPR Rule 43.12 and/or section 16(3) of the Supreme Court Act and/or CPR Rule 26.1(2)(q) and/or the inherent jurisdiction of the Court that paragraphs 3(a) and (d) of the order (the "Costs Orders") made by the Hon. Mr Justice Klein in these proceedings orally on 6 February 2024 and formalized in an order dated 6 March 2024, be stayed pending final determination of the claim brought by Gabriele by a Standard Claim Form in Case Number 2026/CLE/gen/00426 filed 18 May 2026 (the "Champerty Claim").
(b) An order that the costs of and occasioned by this application be paid by the Second Respondent, Matteo Volpi, such costs to be taxed if not agreed.

[12.] The grounds identified in the Notice of Application are as follows:

(a) By a written ruling dated 30 April 2026 the Court of Appeal held that the issue whether Matteo's funding arrangements with Omni Bridgeway (Fund 5) Cayman Invt. Limited ("Omni Bridgeway") are champertous (and therefore constitute the commission of a crime and are tortious and are otherwise unlawful and against the public policy of The Bahamas) was an issue which required the presentation of evidence and determination after a full hearing in proceedings which are not ancillary to other proceedings.
(b) Gabriele has therefore brought the Champerty Claim for that determination.
(c) By the Champerty Claim, Gabriele seeks declarations that Matteo's funding arrangements with Omni Bridgeway are champertous, that any reimbursement of costs which have been paid for by Omni Bridgeway and for which Omni Bridgeway is liable constitutes a breach of the indemnity principle and that Matteo should not be entitled to enforce any costs orders made in his favour in, and arising out of, these proceedings in respect of costs paid pursuant to the funding arrangements.
(d) Evidence of the champertous nature of Matteo's funding arrangements only came to light after the Costs Orders were made and, whilst Gabriele tried to challenge the Costs Orders once such evidence started trickling out, by way of appeal, the Court of Appeal held that the issue of champerty and the associated issues needed to be determined at a trial after the presentation of evidence.

(e) In those circumstances, Gabriele has brought the Champerty Claim and seeks a stay of the Costs Orders pending final determination of the Champerty Claim. Such a stay would be in the interests of justice as Gabriele would suffer irremediable prejudice if a stay is not granted and Matteo would not suffer prejudice if a stay is granted.

(f) Gabriele would suffer irremediable prejudice if a stay is not granted because enforcement of the Costs Orders prior to determination of the Champerty Claim will render the Champerty Claim nugatory:

    (i.) If Matteo enforces the Costs Orders prior to determination of the Champerty Claim and the Court determines in the Champerty Claim that the funding arrangements with Omni Bridgeway render the Costs Orders unenforceable, Gabriele and the First Respondent (Delanson Services Ltd.) will have satisfied unenforceable Costs Orders;

    (ii.) Furthermore, there is no prospect of Gabriele or Delanson being able to recover such payments back from Matteo as Matteo's consistent evidence, in these proceedings and more generally, is that he is personally impecunious.

    (iii.) Recovering such payments back from the third-party funder, Omni Bridgeway would be fraught with difficulty, expense and delay: Omni Bridgeway is not a party to these proceedings and is out of the jurisdiction of this Court. It will have no obligation or incentive to reimburse any costs paid pursuant to the Costs Orders.

(g) Matteo on the other hand would suffer no injustice if the stay was granted:

    (i) The costs the subject matter of the Costs Orders were paid by Omni Bridgeway, not by Matteo, meaning that Matteo is not out of pocket in respect of them such that a stay of the Costs Orders would not deprive him of the fruits of the Costs Orders. It is Omni Bridgeway, not Matteo, who would be reimbursed if the Costs Orders were enforced. That would be manifestly unjust if the Court determines that the funding arrangements pursuant to which Omni has paid such costs render the Costs Orders unenforceable.

    (ii) In any event Matteo has already received, on 16 April 2024, an interim payment of B$400,000 (less banking charges) on account of his costs.

    (iii) Reimbursement of costs pursuant to the Costs Orders should not be to meet Matteo's family financial commitments and in any event, those family financial commitments have, since 2022, largely been financed by Gabriele, particularly by the payment by Gabriele for Matteo's children's educations and medical and other living expenses.

(h) As a matter of principle, it would be wrong to refuse the stay in Matteo's favour when it is Matteo's conduct which has led to the Champerty Claim being necessary: Matteo refused to disclose the nature of his financial arrangements, including by opposing an application for interrogatories within these proceedings. The nature of his funding arrangements only started trickling out after it featured in a press article after the Costs

Orders were made. Had Matteo been transparent about the nature of his arrangements, the Costs Orders would have been opposed at the time they were applied for on the grounds now contained in the Champerty Claim.

[13.] Gabriele's application is supported by the affidavit of Darzhon J. R. Rolle sworn and filed on 19 May 2026. Matteo opposes the application and filed the affidavit of Gabrielle Wilson in support of that opposition.

Law analysis and disposition

[14.] Matteo raised the preliminary objection, seeking that Gabriele be barred from pursuing his application for a stay, on the basis that he is in breach of orders made by the Court. At the hearing, relying on the Court of Appeal decision in **The Confederation of North, Central America and Caribbean Association Football v Lisle B Austin** SCCiv App & CAIS No. 90 of 2011 (**CONCACAF**), I heard the preliminary application *de benne esse* along with the application for the stay.

[15.] In **CONCACAF**, the Court of Appeal considered the position of a contemnor who was a party to proceedings before the Court. The Court held, at paragraph 44:

> 44 Contempt of Court is, a grave matter with serious consequences for the contemnor; but the law requires that proof of it be established by clear evidence beyond reasonable doubt. Other than a manifest and clear contempt in the face of the Court, contempt of Court is not to be inferred or assumed. It must be established by clear evidence so as to make the court feel sure that there has been an irrefutable disobedience of its Orders**.**

I was not satisfied that Gabriele was in deliberate and contumelious disobedience of the orders of the court. At each instance, as soon as practicable, Gabriele sought a stay of the Order, and in these circumstances I will not bar him from making the application.

[16.] Gabriele's case on the application is set out at paragraphs 3-7 of his written submissions, which provide as follows:

> 3. After the Costs Orders were made, evidence began to emerge, on a piecemeal basis, which started to reveal that Matteo's costs which are the subject matter of the Costs Orders had been paid not by Matteo, but by a third party commercial funder ("Omni") pursuant to champertous arrangements which are criminal, tortious, unlawful and contrary to Bahamian public policy. Enforcement of the Costs Orders would therefore involve the Court in aiding and abetting a crime and a tort, and generally supporting an illegal arrangement and requiring a payment which in breach of the indemnity principle.

4. As soon as Gabriele discovered that a third party funder was funding Matteo's costs for profit he immediately sought leave to appeal the Costs Orders on the basis of the fresh evidence as to the champertous funding arrangements, but in a judgment handed down on 30 April 2026 (the "CoA Judgment") the Court of Appeal determined that the question whether or not the funding arrangements with Omni were champertous was a fact specific question which should be determined in separate (not ancillary) proceedings after a full trial.
5. Pursuant to that finding, Gabriele brought the Champerty Claim seeking declarations that Matteo's arrangements with Omni are champertous, that the requirement to reimburse Matteo in respect of any costs which have been paid by Omni and for which Omni is liable would constitute a breach of the indemnity principle, and that Matteo should not be permitted to enforce any such costs orders.
6. At all material times until the CoA Judgment, the Costs Orders were stayed by orders of the Hon. Mr Justice Klein. For the same reasons as justified those stays, and for the further reasons of preventing triplication of costs, unnecessarily burdening the Court's resources and the risk of inconsistent judgments, it is respectfully submitted that the stay now sought (pending determination of the Champerty Claim) should be granted. In summary:

(a) The Champerty Claim will determine whether Matteo's funding arrangement with Omni is champertous and illegal and whether he should not be permitted to enforce the Costs Orders. The determination of those issues in the Champerty Claim would be rendered nugatory from a practical point of view if the Costs Orders have already been satisfied.

(b) If the Costs Orders are not stayed, there will be a triplication of costs and burden on the Court's resources and the risk of inconsistent judgments because Gabriele will have to run the same arguments as are raised in the Champerty Claim,

   (i.) In response to enforcement proceedings commenced by Matteo in respect of the Costs Orders, and

   (ii.) On the taxation of Matteo's costs the subject matter of the Costs Order in addition to running them in the Champerty Claim. This is not only inappropriate from a Court resource and risk of inconsistent judgments point of view, and contrary to the Overriding Objective, but it would also be inappropriate given that the Court of Appeal has held that the champerty issues which arise need to be determined in non-ancillary proceedings after a full hearing. The Champerty Claim is therefore the appropriate vehicle through which these issues should be determined.

(c) Refusing a stay would cause Gabriele serious, irreparable prejudice: Matteo has consistently said, in these proceedings and elsewhere over a number of years, that he is impecunious. Therefore if Gabriele were to pay Matteo anything pursuant to the Costs Orders and was successful in the Champerty Claim, he would not recover anything he had paid to Matteo pursuant to the Costs Orders. The seriousness of this irreparable prejudice is exacerbated having regard to the sums involved: Matteo has submitted a bill for taxation in the staggering sum of $4,253,681.18 in respect of his costs of the Consolidated Action.

(d) Granting a stay, on the other hand, would cause Matteo no prejudice or injustice: he is not being deprived of the fruits of the Costs Orders because it is

Omni, not Matteo, who has paid these costs: Matteo is not therefore out of pocket in respect of them.

(e) Matteo's inability to provide for his family is not a reason to refuse the stay which is sought and even it were, it is not a reason in this case because Matteo's family financial responsibilities are being (and have, since 2022 been) met by Gabriele. Furthermore, it is Matteo who is responsible for his financial situation: he has launched a worldwide campaign of litigation against his father and he has steadfastly refused to provide any details of his funding arrangements. Had he disclosed his funding arrangements when first asked about them, the champerty issues would have been litigated and determined long ago.

7. In the premises, the interests of justice and the balance of prejudice overwhelmingly favour granting a stay, as the Court decided when the champerty issues were first raised. The triplication of costs, burden on Court resources and the risk of inconsistent judgments present even more reasons why the Costs Orders should be stayed.

[17.] Gabriele relies on the provisions of Rule 43.12 of the **Supreme Court (Civil Procedure) Rules 2022** (the **CPR**), Rule 26.1(2)(q) of the **CPR**, Section 16(3) of the **Supreme Court Act** and the inherent jurisdiction of the Court.

[18.] Rule 43.12 of the **CPR** provides:

> Without prejudice to rule 48.1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

[19.] Rule 26.1(2)(q) of the **CPR** provides that:

> [T]he Court may stay the whole or part of any proceedings generally or until a specified date or event;"

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

> 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.

[21.] Relying on the dicta at paragraph [73]in **Maurice O. Glinton & Co. (a Firm) v Robert K. Adams** [2024] 1 BHS J No. 34 Gabriele contends that the principles under these provisions are the same:

(a.) The test under s. 16(3) of the Supreme Court is "*simply what is required by the interests of justice in the particular case*".
(b.) Under CPR 26.1(2)(q), the Court may stay the proceedings "*where it would promote the overriding objective*".
(c.) The question as to whether to grant a stay is discretionary and the "*stay must be justified taking into account the relevant factors on the facts*".

Gabriele also relies on the dicta of Fraser J in the case of **The Committee to Restore NYMOX Shareholder Value, Inc (CRNSV) et al v Paul Averback et al** 2023/COM/com/00057. Gabriele surmises that the relevant principles are as follows:

(a.) The question is whether a stay ought to be granted in the interests of justice.
(b.) There needs to be a good reason to grant a stay, given that the starting point is that a party ought not to be deprived from obtaining the fruits of his judgment unless there is good reason to do so.
(c.) The court is likely to grant a stay where the appeal [or action] would otherwise be rendered nugatory, or the appellant [or claimant in the action] would suffer loss which could not be compensated in damages.

[22.] The Court of Appeal Judgment provides a helpful discussion on the law of champerty and maintenance in The Bahamas. According to Smith JA:

> (a) *Does the prospective appeal have realistic prospects of success?*
> (i) Maintenance and Champerty
> **32.** The law of maintenance and champerty in the Bahamas has been expounded upon and clarified in the Privy Council decision **Massai Aviation Services and Another v The A.G. and Bahamasair Holdings Ltd** [2007] UKPC 12.
> **33.** At paragraph 12 of the decision, the following is stated:
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> > "At common law, maintenance and champerty are both crimes and torts. In England and Wales both the crime and the tort have been abolished by ss 13(1) and 14(1) of the Criminal Law Act 1967. This was as a result of a recommendation of the Law Commission (see Law Com No 7, Proposals for Reform of the Law relating to Maintenance and Champerty, 1966) The Law Commission defined maintenance as:
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> > > 'the giving of assistance or encouragement to one of the parties to an action by a person who has neither an interest in the action nor any other motive recognised by the law as justifying his interference' (para 3) and champerty as:

> > ‘a particular kind of maintenance, namely maintenance of an action in consideration of a promise to give to the maintainer a share of the subject matter or proceeds thereof, if the action succeeds’ (para 4).’”

34. Further as their Lordships noted:

> “12. A contract involving maintenance or champerty is (and this remains the law in England and Wales) unenforceable and void.” [Emphasis Added]

35. At paragraph 13, their Lordships stated the original objects of the law of maintenance and champerty:

> “13. The original object of the law was to protect vulnerable Defendants, who might be unable to resist unmeritorious claims which were being pursued against them with the help of the rich and powerful: see Giles v Thompson [1994] 1 AC 142, [1993] 3 All ER 321, [1993] 2 WLR 908, per Lord Mustill at 153. A later object was to protect vulnerable Plaintiffs, who might be induced to part with some of the proceeds of their action in return for assistance in pursuing it: hence both contingency and conditional fee arrangements with legal advisers were prohibited. However, just as the need to protect vulnerable Defendants has receded, so too have we come to appreciate that ‘treating such arrangements as criminal was also, before the introduction of legal aid, an effective way of preventing poor people from obtaining legal redress’: see Norglen Ltd v Reeds Rains Prudential Ltd [1999] 2 AC 1, [1998] 1 All ER 218, [1998] 1 BCLC 176, per Lord Hoffmann at 11.”

36. However, it was noted at paragraph 14 that the crimes of maintenance and champerty had fallen into disuse long before they were abolished in England and Wales:

> “14. The crimes had fallen into disuse long before they were abolished in England and Wales. In relation to the torts, the Law Commission observed that ‘the trend of judicial decisions has been to increase the number of interests which the courts are prepared to accept as lawful justification’ (para 10) and that it would usually be almost impossible to prove that any loss had been suffered as a result of the maintenance (para 11). In policy terms, now that a great volume of litigation was supported by trades unions, insurance companies or legal aid, the Commission commented (para 15):
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> > ‘The truth is that today the great bulk of the litigation which engages our courts is maintained from the sources of others, including the state, who have no direct interest in its outcome but who are regarded by society as being fully justified in maintaining it.’[Emphasis Added]

37. At paragraphs 15–18 of the decision, their Lordships discussed the change in attitude toward maintenance and champerty. The discussion related to an argument as to whether the assignment of a bare cause of action was void as being contrary to the law of maintenance and champerty. Due to its importance to the discussion and conclusion in this case, I cite from those paragraphs, duly highlighted:

“15. One aspect of the rule (which also remains part of the law of England and Wales) is that the law will not recognise the assignment of a ‘bare right of action’ on the ground that such a transaction savours of maintenance or champerty. As Steyn LJ explained in the Court of Appeal in Giles v Thompson [1994] 1 AC 142, [1993] 3 All ER 321 at 328, [1993] 2 WLR 908:

> ‘… it seems that one of the abuses which afflicted the administration of justice was the practice of assigning doubtful or fraudulent claims to royal officials, nobles or other persons of wealth an influence, who could in those times have expected to receive a very sympathetic hearing in the court proceedings. The agreement often was that the assignee would maintain the action at his own expense, and share the proceeds of a favourable outcome with the assignor.’

16. However, as Lord Roskill observed in Trendtex Trading v Credit Suisse [1982] AC 679, at 702-703, [1981] 3 All ER 520, [1981] 3 WLR 766:

> ‘… just as the law became more liberal in its approach to what was lawful maintenance, so it became more liberal in its approach to the circumstances in which it would recognise the validity of an assignment of a cause of action and not strike down such an assignment as one only of a bare cause of action.’

Lord Roskill went on to say at 703:

> ‘But it is today true to say that in English law an assignee who can show that he has a genuine commercial interest in the enforcement of the claim of another and to that extent takes an assignment of that claim to himself is entitled to enforce that assignment unless by the terms of that assignment he falls foul of our law of champerty, which, as has often been said, is a branch of our law of maintenance.’

17. Later English cases have developed the concept of a genuine commercial interest. Thus in Brownton v Edward Moore Inbucon Ltd [1985] 3 All ER 499, the Court of Appeal held that a Defendant who had settled with the Plaintiff had a genuine commercial interest in taking an assignment of the Plaintiff’s claim against the other Defendant who was denying liability. The court refused to limit the concept to cases in which the assignee would recover no more than his commercial interest. Making a profit on the transaction did not automatically render it void. …

…

18. The buying and selling of choses in action is, of course, commonplace. Debts are regularly traded at a discount so that the creditor can obtain some of what he is entitled to while passing on the risks of litigation to others. Businesses are regularly sold with the benefit of their claims as well as their liabilities. …’” [Emphasis added]

38. At paragraph 19, their Lordships concluded that the decision on the issue of maintenance and champerty was fact specific since it involved a more detailed examination of the circumstances surrounding the transaction as a whole. The ancient revulsion of shock and horror at the mention of maintenance and champerty is no longer applicable in The Bahamas. Again, because of its importance to the decision, I cite from paragraph 19 of the **Massai Aviation Services** case:

> "19. But 'trafficking' is a pejorative term which takes the debate no further: it simply means trading in something (be it drugs or people) in which it is not permissible to trade. In order to decide whether the particular transaction is permissible, it is essential to look at the transaction as a whole and to ask whether there is anything in it which is contrary to public policy. When one looks at this transaction as a whole, it is clear that there was nothing objectionable about it at all." [Emphasis added]

39. This is the law of The Bahamas. However, I note that this is not much different to the law in England and Wales. Even though the crimes and torts of maintenance and champerty have been abolished in the U.K., costs may be disallowed in cases where they have been proved to be contrary to the doctrines of maintenance and champerty. The Courts of England and Wales also treat the issue of maintenance and champerty as fact sensitive and dependent upon the surrounding circumstances and also upon contemporary public policy considerations. This is on par with the position in the Bahamas as expounded in the **Massai Aviation Services** case.

[23.] I accept that this Court has jurisdiction to stay the costs orders pending the determination of the Champerty Claim. I also accept that the jurisdiction is discretionary and that in exercising that discretionary jurisdiction the Court will act in the interests of justice by balancing the prejudice to the applicant in not granting a stay against the prejudice to the respondent in granting a stay.

[24.] I am not satisfied that this a proper case for the exercise of my discretion and that the interests of justice would be served by the imposition of a stay.

[25.] While the Court of Appeal was careful not to make a finding as to whether the arrangement was champertous or not, there were significant statements made by the Court which are, if not binding, highly persuasive:

(1) Smith JA indicates that while a proper investigation was necessary he was of the view that the funding arrangements were not abusive having regard to the unequitable allocation of resources between the parties and the assertions that Mateo was being starved of resources from the Trust Fund and deprived of pursuing a just legal cause. At paragraphs 40, 41 and 54 of the judgment, Smith JA states:

> **40.** In the intended appeal in this case, the Intended Appellants want to contend that the "evidence" they wish the Court to consider shows that Matteo's funding arrangements are champertous.
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> **41.** On the other hand, Matteo forcefully contends that he has successfully established a wrongful dissipation of the trust funds by the Intended Appellants in the Arbitration proceedings since 2020. However, the constant, protracted and expensive legal skirmishes instigated by the Intended Appellants have left him financially embarrassed. Therefore, he has been forced to resort to commercial litigation funding to pursue his partially successful litigation to a proper conclusion. There is therefore no abuse of the court or litigation processes, but rather this is a case of obtaining necessary commercial funding to facilitate the proper litigation of a just cause.
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> …
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> **54.** While I am of the view for similar reasons as mentioned at paragraph 41 above that Matteo's funding arrangements are not an abuse of the processes of litigation, it is unnecessary to reach this conclusion upon this appeal, and again I refrain from so doing. This question of alleged abuse must be left to be conducted in other fully litigated procedures.

(2) According to Smith JA, champertous arrangements were only unenforceable between the parties to the arrangements. It was therefore a matter between Matteo and his Funder not a matter for Gabriele or Delanson who were not parties. At paragraphs 50-51, Smith JA states:

> **50.** Even where funding arrangements were champertous, the law in the U.K. before it was decriminalized and made non-tortious was that an action being illegally maintained did not necessarily render the underlying proceedings an abuse. If such proceedings were not abusive, the orders made in those underlying proceedings were enforceable. Further, a champertous arrangement was neither a defence to that underlying action nor grounds for a stay of that action.
>
> **51.** Rather, the champertous arrangement was only unenforceable between the parties to that agreement. …

[26.] In **Massai Aviation Services v Attorney General** 2007 UKPC 12, the appellants were aggrieved by the decisions of the lower courts in The Bahamas which found that the assignment of a cause of action (Massai Aviation Services' lawsuit against the Government of The Bahamas and Bahamasair) offended the principles of champerty and maintenance and was void. This occurred in circumstances where the remaining assets of the original company were sold to a third party with no interest in pursuing the claim. The Privy Council upheld the validity of the assignment of the cause of action from the company in which the cause of action was vested to another company formed and owned by the shareholders of the original company. The court emphasised that the transaction must be examined, as a whole, to determine whether it contravenes public policy. According to Lady Hale:

> "[i]n order to decide whether the particular transaction is permissible, it is essential to look at the transaction as a whole and to ask whether there is anything in it which is contrary to public policy. When one looks at this transaction as a whole, it is clear that there was nothing objectionable about it at all."

As Smith JA rightfully points out, in the Court of Appeal Judgment, "the ancient revulsion of shock and horror at the mention of maintenance and champerty is no longer applicable in The Bahamas".

[27.] In balancing the prejudice to Gabriele, in not granting a stay against the prejudice to Mateo in granting a stay, I acknowledge that these costs are costs which Gabriele has caused to be expended by Mateo (or his Funder) as a result of litigation, which the Supreme Court, the Court of Appeal and the Privy Council (in refusing to grant special leave) have all determined were unnecessarily brought against him. Ultimately, if what Gabriele asserts is correct and that he can escape paying for costs he has caused to be incurred, it is a windfall for him. It is not a case of his being deprived of his assets.

[28.] It also cannot be ignored that the Supreme Court and the Court of Appeal have all determined, and ordered, that Matteo should be paid these interim sums, which Gabriele now seeks to have stayed. These sums were payable since February 2024 and have been stayed since that date in circumstances where it is now clear Matteo ought not to have been deprived of his monies.

[29.] In all the circumstances, I am not satisfied that the matters raised by Gabriele, including the triplication of costs, his potential success on the Champerty Claim or any burden on the courts' resources ought deprive Matteo of his costs until the determination of the Champerty Claim. These costs have been outstanding since 2024 and this action, which will call for the expenditure of new costs, will not be concluded for some time to come.

[30.] I will therefore dismiss Gabriele's application for a stay. Matteo shall have his costs to be assessed in default of agreement.

Dated this 30th day of July 2026

Sir Ian. Winder
Chief Justice