



In The Supreme Court of Bermuda

CIVIL JURISDICTION

(Commercial Court)

2024 No: 11

BETWEEN:

FRONT STREET RE (CAYMAN) LIMITED

Plaintiff

v

(1) WINCHESTER GLOBAL TRUST COMPANY LIMITED

(2) CASTLE RE INSURANCE LIMITED

Defendants

RULING

Hearing Dates: Friday 27 March 2026 and Wednesday 1 April 2026

Date of Ruling: Wednesday 22 April 2026

Plaintiff: Mr. Jonathan O'Mahony (Conyers Dill & Pearman Limited)

Defendants: Mr. John Hindess (Wakefield Quin Limited)

*Application to set aside interim injunctive relief – Commercial Injunctions – Quia timet injunctions
Duty to make full and frank disclosure to the Court in an ex parte application*

Introduction

1. This is an application to set aside interim injunctive relief.
2. On 24 February 2026 I granted the Plaintiff, Front Street Re (Cayman Island) Limited (the “Plaintiff” or “Front Street Re”) its *ex parte* application (on notice) (the “*ex parte* application”/ the “*ex parte* summons”) for interim injunctive relief against the First Defendant, Winchester Global Trust Company Limited (“Winchester”) and the Second Defendant, Castle Re Insurance Limited (“Castle Re”) (collectively, the “Defendants”). The *ex parte* summons was supported by the Plaintiff’s Chief Financial Officer, Mr. George Nicholson.
3. On 9 March 2026 the Defendants filed a summons (the “set aside summons”) seeking to set aside the interim injunctive relief granted. The set aside summons was supported by affidavit evidence sworn by Mr. Neil De Ste Croix for Winchester and by Mr. Peter Moison, the President of Castle Re, and Castle Re’s actuary, Mr. Larry Stern.
4. Opposing the Defendants’ application to set aside the interim injunction, the Plaintiff filed further evidence from Mr. Nicholson. The Plaintiff also objected to the admissibility of a large portion of Mr. Moison’s first affidavit sworn on 5 March 2026 and the entire of his second affidavit sworn on 25 March 2026.
5. Having heard the arguments and received written submissions from Counsel for both sides, I reserved my ruling which I now provide together with these reasons.

The Relevant Background

The Parties

6. Front Street Re is a Cayman Islands reinsurance company. Winchester describes itself as a local Bermuda company which provides trust and administration services. Castle Re is a registered Turks & Caicos segregated accounts company which provides long-term insurance policies.

The Plaintiff's Claim for Breach of the Trust Agreement

7. These proceedings commenced by a Specially Indorsed Writ of Summons (the "Writ") filed on 16 January 2024.
8. The Plaintiff's pleaded case alleges contractual breaches of a Trust Agreement of the Castle Custody Trust Account dated 17 March 2015 (the "Trust Agreement")¹ to which each of the parties to this action are privy.

The Coinsurance Agreement

9. The Trust Agreement comprises a family of other agreements, one such agreement being the Annuity Coinsurance Agreement, also dated 17 March 2015 (the "Coinsurance Agreement"). The Coinsurance Agreement is an agreement to which only the Plaintiff and the Second Defendant, Castle Re, are privy.
10. Castle Re, having entered into annuity contracts with another party, ceded 100% of the risk on each annuity contract to Front Street Re on a quota share basis in accordance with the Coinsurance Agreement. The premiums received by the annuitants is said to have been paid to Front Street Re with a requirement for the premiums to be deposited into the Castle Custody Trust Account (the "CCTA"). As required by the Trust Agreement, the CCTA was established in order to achieve a legally segregated asset portfolio and is said to have been set up by Front Street Re as a Bermuda grantor trust account.
11. The premiums paid into the CCTA (the "CCTA assets") were held by Winchester as the trustee account holder. For this purpose, Winchester set up an online brokerage account with Fidelity (the "CCTA Fidelity Account").

The Management Agreement

12. Front Street Re and Winchester entered into a discretionary Investment Management Agreement (the "Management Agreement") with one another to govern the management and administration of the assets held in the CCTA Fidelity Account. The Plaintiff says that the central commercial purpose for these contractual arrangements with the Defendants was the Plaintiff's entitlement to a return on the premiums held in the CCTA assets. The Plaintiff's pleaded case is that under the Trust Agreement it was implicitly empowered to discretionarily manage the CCTA assets in accordance with the Coinsurance Agreement and that Castle Re and Winchester would reasonably cooperate with Front Street Re for this purpose. The

¹ See *Front Street Re (Cayman) Limited v Winchester Global Trust Company Limited and Castle Re Insurance Limited* [2024] SC (Bda) 37 Civ. (5 August 2024) at paras [18]-[26]

Plaintiff's case is that Winchester was under no obligation to invest the CCTA assets but that all interest or dividends received by Winchester were to be deposited into the CCTA Fidelity Account.

The Plaintiff's Allegations of Breach against the Defendants

13. At paragraph 6 of the Statement of Claim ("SOC"), the Plaintiff alleges that Castle Re breached the terms of the Trust Agreement as follows:

- i. *Obstructed Front Street from discretionarily managing the Assets in the CCTA with the terms of the Coinsurance Agreement and/or the Discretionary Management Investment Agreement;*
- ii. *Failed reasonably to cooperate with Front Street and/or Winchester in causing or permitting Front Street to discretionarily manage the assets in the CCTA in accordance with the terms of the Coinsurance Agreement and/or the Discretionary Management Investment Agreement.*
- iii. *Prevented the withdrawal by Front Street of excess assets in the CCTA as permitted by the Coinsurance Agreement.*

14. At paragraph 7 of the SOC it is claimed that Winchester breached the terms of the Trust Agreement as follows:

- i. *Prevented Front Street from discretionarily managing the Assets in the CCTA account with the terms of the Coinsurance Agreement and/or the Discretionary Management Investment Agreement;*
- ii. *Failed reasonably to cooperate with Front Street in causing or permitting Front Street to discretionarily manage the assets in the CCTA in accordance with the terms of the Coinsurance Agreement and/or the Discretionary Management Investment Agreement.*

...

15. As goes the story told on the pleadings before the Court, the corporate relationship between the parties broke down because Castle Re preferred the CCTA assets to be invested in US Treasury securities which were less risky than the investment approach favoured by Front Street Re.

16. The principal allegation made on the Plaintiff's claim is that the Defendants deprived it of its contractual right to manage the investment and reinvestment of the CCTA assets at its

discretion. The Plaintiff's case is that this resulted in its loss and damage measured by the profits it estimates it would have seen from a portfolio of investment grade bonds with floating interest rates.

The Defence and Counter Claim

17. On their Defence, the Defendants say that Front Street Re breached its contractual obligations. The particulars of contractual breach are pleaded in the Defence and Counterclaim as follows [7]:

“... ”

- a. *From the execution of the Agreements until approximately August 2020, Front Street Re kept the funds in a money market type of account;*
- b. *During the same period, Front Street Re also breached the Agreements by failing to use the aforementioned funds to make annuity payments to Castle Re but rather, made such payments from Front Street Re's general account;*
- c. *Unilaterally and without notice, terminating the investment manager for the Trust account;*
- d. *Failing to provide proper or correct quarterly accounting in accordance with US general accepted accounting principles;*
- e. *Failing at all times to invest the Trust funds as set forth in the Agreements; and,*
- f. *Failing to pay Winchester for its fees in a timely manner or for its legal fees at all.”*

18. The Defendants further state on their pleadings [11]:

“Further, by making payments from its general account from 2015 to 2020, Front Street Re has created a liability from the Trust to Front Street Re which has put them in breach of section 6.3 of the Coinsurance Agreement. In other words, the required reserve in the CCTA Account is underfunded, the details of which can only be determined by a proper accounting with information that only Front Street Re can provide.”

19. The Defendants' case is that Front Street Re, in committing these contractual breaches, relinquished its rights to invest the CCTA assets and provided Castle Re with a basis to enforce the recapture provisions .

The Archipelago Acquisition

20. It is stated in the SOC [14] that Front Street Re was acquired by Archipelago Lexa on 31 May 2021.
21. The Defendants' case is that section 16 of the Management Agreement required Front Street Re to obtain the written consent of Winchester prior to the acquisition. Section 16 of the Management Agreement provides:

*“16. Binding Effect; Assignment. This Agreement shall be binding upon, and inure to the benefit of, the Trustee and Front Street, and their respective successors and permitted assigns. Any person that is not a signatory to this Agreement but is nevertheless conferred any rights or benefits hereunder (e.g., partners of Front Street and others who are entitled to exculpation hereunder) shall be entitled to such rights and benefits as if such person were a signatory hereto, and the rights and benefits of such person hereunder may not be impaired without such person's express written consent. **Neither Party may assign (as such term is defined in connection with the Investment Advisers Act of 1940, as amended) or delegate, by operation of law or otherwise, all or any portion of its rights, obligations or liabilities under this Agreement without the prior written consent of the other Party;** [my emphasis] provided, however, that Front Street may assign all or any portion of its rights, obligations or liabilities as investment manager under this Agreement to an affiliate or affiliates without the consent of the Trustee, provided that such assignee agrees to be bound by the obligations of Front Street under this Agreement (in which case, unless the context otherwise requires, references herein to Front Street shall thereafter be deemed to be references to such assignee).”*

22. The Defendants allege that the Front Street Re breached section 16 in proceeding with the Archipelago Lexa acquisition (the “acquisition”). In the Defence and Counterclaim, the Defendants state [21]-[22]:

“21. Further Front Street Re's failure to obtain Winchester's written consent pursuant to Section 16 of the Management Agreement means Front Street Re is no longer the discretionary investment manager. As such, Front Street Re's own actions caused it to lose the ability to direct how the CCTA assets are to be invested.

22. In response to paragraph 14, Front Street Re failed to inform either Castle Re or Winchester of their acquisition prior to its occurrence. Front Street Re's personnel were listed as authorized personnel on the CCTA Fidelity Account prior to said acquisition.”

23. By way of a counterclaim, the Defendants assert an entitlement to enforce the recapture provisions of the Coinsurance agreement on account the alleged breaches. The recapture provisions are contained under Article VII of the Coinsurance Agreement and section 7.1 provides a “Company recapture event” is constituted where there is (i) a material breach committed by Front Street Re or (ii) insolvency on the part of the Front Street Re. The Defendants assert their entitlement to recapture on the grounds of a material breach as defined under section 7.1(a) which provides:

“(a) Material Breach. A material breach shall occur if (i) the Company does not receive when due any Reinsurance Liability payment for any Reinsured Contract; (ii) the Reinsurer fails to pay any amount required to be funded by the Reinsurer into the Castle Custody Trust Account pursuant to Section 6.3; or (iii) the Reinsurer fails to invest the assets in the Castle Custody Trust Account in Permitted Assets. The Company may only recapture the Reinsured Contracts as a result of such material breach if the Reinsurer has not made any such payments or cured such other material breaches within 10 Business Days of receipt of written notice from the Company of such failure. Failure of the Company to provide such notice shall not be deemed a waiver of any breach of this Agreement by the Reinsurer.”

24. Also relevant to the Defendants’ counterclaim for recapture are sections 7.2, 7.3(a) and 8.4 which provide:

7.2 Notice of Recapture.

Upon the occurrence of any Company Recapture Event, the Company shall have the right at any time during the continuation of the events which resulted in such Company Recapture Event to recapture in full the Reinsurer's liability for the Reinsured Liabilities upon no less than 10 days prior written notice to the Reinsurer. Any notice of recapture shall state the effective date and time of the recapture (the "Recapture Effective Time") which shall be no less than 10 days following the Reinsurer's receipt of such notice.

7.3 Recapture Accounting and Settlement.

(a) Following any notice of recapture pursuant to Section 7.2, the Reinsurer shall not engage in any activity that would have the effect of prohibiting, hindering or delaying the Trustee from distributing to the Company an amount equal to the Recapture Amount with respect to each Reinsured Contract. The recapture payment (the "Recapture Amount") for each Reinsured Contract shall equal to Required Reserve Amount for such Reinsured Contract set forth in the Maintenance Spreadsheet, as then most recently amended or updated pursuant to Section 6.3. The payment of the aggregate Recapture Amount for all Reinsured Contracts upon a recapture in full shall constitute a complete and final release of each Party hereto in respect

of any and all known and unknown present and future obligations or liability of any nature to the other Party under this Agreement

8.4 Termination of Liability.

The Reinsurer's liability with respect to any Reinsured Contract will terminate on the earlier of: (i) the date the Company's liability with respect to such Reinsured Contract is terminated or expired, (ii) the date this Agreement is terminated by mutual written consent of the Company and the Reinsurer, or (iii) the Recapture Effective Time, if the Reinsurer's liability for the Reinsured Contracts is recaptured in accordance with Article VII, [my emphasis] in each case following payment by the Reinsurer of all amounts due the Company from the Reinsurer with respect to such Reinsured Contract(s) or under this Agreement, as applicable.

The Application to Set Aside

25. The set aside summons is principally grounded on an assertion that the Plaintiff failed to discharge its duty to give the Court full and frank disclosure.
26. Mr. Hindess accused the Plaintiff of addressing the existence and impact of the recapture provisions in the Management Agreement with silence. The Defendants say that section 16 required Front Street Re to have obtained the consent of Winchester before proceeding with the archipelago acquisition. Mr. Hindess argued that the Court was not made aware that Castle Re was contractually entitled to recapture the CCTA assets in the event of a material breach by Front Street Re. The Defendants say that Front Street Re breached its contractual obligations by offending the investment guidelines insofar as it kept the CCTA funds in a single cash account for the entire duration of the contractual period. The Defendants also say that Front Street Re was also in breach by unilaterally terminating the Fidelity broker which in turn hampered its ability to properly invest the CCTA assets. The Defendants' case is that these events triggered Castle Re's recapture right and that the Court ought to have been provided that information before the *ex parte* Order was made.
27. More so, the Defendants' case is that Front Street Re were under a contractual obligation to refrain from impeding the recapture process. However, in seeking the interim injunctive relief, the Defendants say it did exactly that. They say that Front Street Re effectively obstructed Castle Re's contractual right to recapture the CCTA funds and that this Court, had it been properly made aware of those facts, would not have granted the *ex parte* order of injunction.
28. Mr. Hindess also submitted that the Plaintiff failed in its duty to make it known to the Court that the CCTA funds are purposed to discharge Castle Re's obligations to Havelet and the underlying annuitants. The Defendants say the Court should have been told that the injunctive

relief would adversely impact the entitlements of third parties whose structured settlements depend on those payments.

29. However, Mr. Hindess, via both his written and oral submissions, sought to introduce factual details unsupported by the Defendants' pleaded cases. In doing so he was confronted with the inadmissibility objections fiercely made by Mr. O'Mahony. A sample of the controversial factual assertions and inferences are as follows:

- (i) The various contract agreements were created after negotiations between the parties lasting approximately eight months from July 2014.
- (ii) *“On or around July 2020 Castle was informed there might be a potential sale of Front Street. Castle immediately requested: (1) all filings with the Cayman Islands FSC regarding the sale; (2) the 2018 and 2019 required regulatory filings in Cayman; (3) a copy of the sales documents; (4) audited year-end financial statements, licences, and incorporation documents; and (5) a certificate of good standing for the Malaysian insurance company that was said to be the potential acquirer. Front Street did not provide the requested information.”* (See “The Defendants’ Skeleton Argument to Set Aside Injunction” [paragraph 17]).
- (iii) A written \$100,000.00 offer (the “\$100K offer”) from Front Street Re, in the form of a novation letter to the Defendants in May 2021, was made to invite the Defendants to waive their rights and consent to the archipelago acquisition.
- (iv) *“The novation letter itself acknowledged in terms that Castle’s consent was required. Front Street understood perfectly well that Castle could block the sale. Castle declined, in the absence of the information it had requested. The matter appeared to have died.”* (See “Oral submissions of the Defendants on the Summons to Set Aside the Injunction” [paragraph 11]).
- (v) *Both [Castle Re and Winchester] immediately requested further information about the change. The requested information was never provided. Castle and Winchester were not informed whether the transaction was structured as an asset sale or stock sale, who the incoming owner was, or what disclosure had been made to the acquirer about the terms of the reinsurance arrangements.* (See “The Defendants’ Skeleton Argument to Set Aside Injunction” [paragraph 21]).
- (vi) *Winchester did not consent, as required under Section 16 of the Discretionary Investment Management Agreement, to Front Street continuing to manage the Trust funds following the change of ownership. That consent was never sought by either the*

prior owner or the new owner Front Street and was never given by Winchester. Instead, as stated above, the sale was concealed by both the old and new owners of Front Street until months after the sale was completed. Front Street's continued assertion that it has authority to manage the CCTA assets is therefore itself without merit. (See "The Defendants' Skeleton Argument to Set Aside Injunction" [paragraph 22]).

- (vii) *"Castle and Winchester immediately requested, upon being informed of the acquisition, the same categories of information they had consistently sought on each prior occasion: copies of the sale documents, details of the incoming owner, regulatory filings, financial statements and accountings, and evidence that the necessary consents and disclosures had been obtained.*

Front Street, through Mr Nicholson, refused to provide any of this information. That refusal was not an administrative oversight. It was a continuation of a deliberate policy of non-disclosure that has characterised Front Street's conduct throughout.

The pattern is plain. Front Street: knew Castle could block a consensual sale; attempted to obtain Castle's consent by offering a financial inducement; failed to obtain that consent; and then proceeded by way of a stock sale in the hope that the consent requirements could be avoided." (See "The Defendants' Skeleton Argument to Set Aside Injunction" [paragraphs 26-28]).

- (viii) *"Searches of the documentary record have revealed no evidence that Mr Nicholson was copied on the relevant negotiation emails or was otherwise directly involved in the substantive terms of those negotiations. His own July 1, 2021 email confirms he did not know who Mr Moison or Mr Goodwin were, or how to contact them, until shortly before sending that email. This is inconsistent with the role he claims in relation to the negotiations and the oversight he claims to have exercised over the Treaty arrangements." (See "The Defendants' Skeleton Argument to Set Aside Injunction" [paragraph 35]).*

Decision on Admissibility Objections

30. In my judgment, items (i)-(vii) listed above are unsubstantiated by the Defendants' pleaded case and supporting evidence. On that basis, those factual assertions and related inferences of fact ought to be struck out.
31. Insofar as the admissibility objections made by Mr. O'Mahony against the evidence sworn by Mr. Moison, I also find against the Defendants as the subject statements made by Mr. Moison

constitute inadmissible opinion evidence as to the meaning and effect of the relevant contractual provisions.

The Relevant Law

Duty to make full and frank disclosure:

32. The duty on an applicant to provide the Court with full and frank disclosure in the course of an *ex parte* application is an uncompromising one. The principle is so widely known and accepted that it is now a matter of trite law. In such cases, the applicant is expected to take a proactive role in equipping the Court with all the relevant factual information and legal issues to be considered. That means that the applicant is required to properly position the Court to have a real sense on what each opposing and interested party would say as to:

- (i) the merits and weaknesses of the underlying causes of action
- (ii) the relevant evidence and how it should be weighted in the context of the particular case and
- (iii) the application and significance of full suite of legal issues at play

33. It thus follows that it is incumbent on the applicant to be fully informed before embarking on the domain of the Court for *ex parte* injunctive relief.

34. To that end, the following extract from *Gee on Commercial Injunctions* (7th Edition) [9-006] is of assistance:

“It is of the utmost importance that the applicant carefully considers the nature of the cause of action and the facts on which it is based before formulating the application. Facts relevant to the strength or weakness of the case on the merits should be put before the court. A thorough check should be made to ensure that all defences actually raised by the defendant are identified and fairly summarised in the affidavit.

Furthermore, on the hearing of the without-notice application it is the duty of counsel to ensure that defences and evidence in support of them are specifically drawn to the attention of the judge. Merely mentioning the existence of such material without showing it to the judge may in itself be misleading, or give the case a different flavour. Counsel has a personal duty to the court to ensure that the judge sees all the relevant material.

It is usual for the skeleton argument to be used on an application of any complexity. If a skeleton argument is used, it will be one of the primary documents used by the judge in hearing

the application and it is very important that it is an entirely fair document. It must not, by failing to mention matters, divert the judge's attention away from material which he should have in mind if he is to have a fair view of the case."

35. On the strength of Bell JA's judgment for the Court of Appeal in *Minister of Finance v AP* [2016] Bda LR 117, Mr. Hindess correctly submitted that the Court is entitled to discharge an injunction on the grounds of material non-disclosure. Paragraphs [19]-[20] of Bell JA's judgment is illustrative of the point:

"...Mr. Elkinson advised that there had been seventy-seven requests between 2013 and 2014, suggesting that the Minister could not be expected to focus on the earlier application and by means of a comparison conclude that the latter application was inaccurate, insofar as it failed to refer to the 2012 production and the matters which arose in consequence of that.

To my mind, that submissions seems to miss the point of the obligation of full and frank disclosure of all material matters, and the consequences which fall to be considered when there is non-disclosure of material matters. This is not a question of determining fault as between the Minister and the Requesting Government. What matters is that misleading [in]formation was presented to the judge on an ex parte application. I therefore agree with the judge when he stated at paragraph 22 of his ruling that "It is no answer to an allegation of non-disclosure that the applicant did not disclose such matters to the court because the requesting party did not disclose them to the applicant." Where, as in this case, the misinformation and omissions were highly material, it is hard to see what alternative the judge could have had but to set aside the ex parte order."

36. Notwithstanding, each case will turn on its particular facts. Ultimately, the Court will be primarily concerned to determine whether it would have indeed refused the injunctive relief had all of the subsequently revealed information been made known to it at the *ex parte* stage of the application. The appropriateness of continued injunctive relief is not simply determined the fact of a prior non-disclosure to the Court. The pivotal question will rest on the materiality of that non-disclosure and its true impact in the case.

The American Cyanamid Guidelines:

37. The Court's broad discretionary powers to grant injunctive relief is prescribed by sections 18 and 19(c) of the Supreme Court Act 1905. Section 19(c) provides:

"an injunction may be granted ... by an interlocutory order of the court in all cases in which it appears to the Court to be just and convenient that such order should be made; and any such

order may be made either unconditionally or upon such terms and conditions as the court thinks just...”

38. On the principles established by The House of Lords decision in *American Cyanamid v. Ethicon* [1975] 1 All ER 505 an applicant seeking interim injunctive relief must show that:

- (i) the evidence before the Court discloses that there is a serious issue to be tried in the substantive action;
- (ii) damages would be an inadequate remedy for the respondent’s breach of the applicant’s legal rights (meaning irreparable harm would be suffered without the grant of injunctive relief);
- (iii) the balance of convenience lays in favour of the injunction being granted; and
- (iv) it is just and convenient in all circumstances to grant the injunctive relief sought.

39. The House of Lords also envisaged the Court’s granting of injunctive relief would be premised on preserving the position or establishing the proper holding ground pending a trial. Otherwise put, injunctive relief under the *American Cyanamid* principles is available only as an interim measure to a plaintiff who can demonstrate a real intention to progress the matter to trial. The relief ought not operate as a denial of a defendant’s right to a trial.

40. However, as I recently observed in *Ernest McQueen v The Attorney General* [2026] SC (Bda) 20 civ. (23 February 2026), the *American Cyanamid* test is not exhaustive. The principles operate more so as a set of guidelines which leaves room for any number of other factors to be considered under the Court’s broad discretionary powers to decide the application principally on whether it is just and convenient to grant the relief. (See Snell’s Equity (35th Edition) “*The limits of the Cyanamid guidelines*” [18-057]- [18-060]).

Quia timet injunctions:

41. A quia timet injunction is appropriate in circumstances where it is established that the Court’s intervention is necessary to prevent the occurrence or repetition of an actionable wrong. In Gee on Commercial Injunctions (7th Edition) “*The limits of the Cyanamid guidelines*” [18-057]- [18-060] it is said:

“...that an injunction would do no harm is not a justification for granting it. Usually this will be by evidence that the defendant has threatened to do the particular wrongful act: “no-one can obtain a quit timet order by merely saying ‘Timeo’.”

Analysis and Decision

42. The relief prayed in the *ex parte* summons was sought in the following terms:

“...

1. *The Defendants, or each of them, shall nor cause or procure that the monies in the Castle Custody Trust Account ("the CCTA") be paid to the Second Defendant in purported compliance with the recapture provisions of the Annuity Coinsurance Agreement dated 17 March 2015 pending further order, and*
2. *The Defendants or each of them shall not cause or procure the payment of \$2,686,108.96, or like sum, from the CCTA to the Second Defendant pending further order.”*

43. The *ex parte* application was supported by the third affidavit of Mr. Nicholson. In his evidence he summarized the relevant background facts and the parties’ respective cases on the pleadings. As to the evidence underlying the need for *ex parte* injunctive relief, he provided the following sworn statement [9]-[11]:

“9. The need for interim injunctive relief is straightforward. On 10.24am Bermuda time on (Friday) 20 February 2026, Wakefield Quin (for the Defendants) sent Conyers (for the Plaintiff) an email containing their client's latest settlement offer. As the email is marked "Without Prejudice", I am told by Conyers that its contents in relation to settlement cannot be revealed. However, I am told by Conyers that the last two sentences of the penultimate paragraph of the email can be revealed and as they contain the following threat in relation to the settlement proposal: "We believe this is a fair settlement and one FrontStreet should accept. If this matter cannot be settled by Feb 24, 2026, we will request Winchester to send us the recapture amount of \$2,686, 108.96." For the avoidance of doubt, Front Street does not accept the settlement proposal.

10. This is nothing more than a unilateral declaration that unless its settlement offer is accepted by 24 February 2026, Castle Re will instruct Winchester (as trustee of the CTA) to send Castle Re what Castle Re considers It is entitled to under the recapture provisions in the Coinsurance Agreement. It is clear that to do so would be (i) to pre-empt the outcome of its counterclaim and (ii) to render Front Street's defence of the counterclaim nugatory.

11. I am told by Conyers that the need for an ex parte application for injunctive relief arises because of the imminence of the threat. Not only was the threat made on Friday (20 February) but Jonathan O'Mahony of Conyers was away on annual leave dealing with family matters in the UK. I am told by Conyers that Mr O'Mahony emailed [emailed] John Hindess of Wakefield Quin requesting a week's extension to the 24 February deadline but no response has been

received. In the premises Mr O'Mahony has in difficult circumstances prepared this application over the 21-22 February weekend. Lastly Wakefield Quin has been put on notice of this application, principally In order that they tell their client that they should not seek to undermine the application once notice has been given."

44. The Plaintiff's *ex parte* application was fixed to be heard via a remote hearing. However, this Court, of its own motion, determined and granted the the application on the papers. Subsequently, it came to be known that Mr. O'Mahony had prepared a skeleton argument but errantly omitted to provide a copy to the Court prior to my granting of the *ex parte* application. During the course of Mr. O'Mahony's oral submissions, he explained that the *ex parte* application, if it had been supplemented by his oral and written submissions, would have more fully addressed the facts and evidential materials underlying the Defendants' defence and counterclaim.
45. The fact of the matter is that the material facts were put before the Court in abbreviated form. One might say that the "full" lagged behind the "frank" because the Court was made to understand the core aspects of the competing claims short of the illustrative detail. Mr. Hindess correctly pointed out that the Plaintiff's evidence did not direct the Court's attention to the suite of recapture provisions nor did the evidence outline to the Court that the CCTA funds are purposed to discharge Castle Re's obligations to the underlying annuitants in accordance with the related settlement agreements.
46. However, the material facts forming the basis for Castle Re's counter claim asserting its recapture entitlements are that the Management Agreement required Front Street Re to have obtained Winchester's consent before proceeding with the archipelago acquisition and that Front Street Re failed to obtain any such consent. The Defendants also say that Front Street Re failed in its contractual duties to act in accordance with the investment guidelines between the parties, thereby breaching its duty and triggering Castle Re's recapture rights to the CCTA assets. Those material facts were stated in Mr. Nicholson's evidence addressing the Defendants' pleaded case as follows:

"...

ii. Castle Re/Winchester's Defence: Castle Re/ Winchester's primary defence is derived from the Management Agreement. It is claimed that Archipelago Lexa failure to obtain Winchester's written consent to the 2021 assignment of Front Street's shares, the Management Agreement was never assigned to Front Street with the result that Front Street does not have the right to discretionarily manage the assets in the CCTA. In addition Castle Re/Winchester deny Front Street's allegations of breach and deny that its entitlement to damages.

iii. Castle Re/Winchester's Counterclaim: Castle Re/Winchester counterclaim that, In

addition to the failure in relation to the 2021 share assignment, Front Street is in material breach of a number of provisions in all three of the agreements at paragraph 4 above thereby entitling Castle Re to engage the "recapture" provisions in the Coinsurance Agreement. This is termination mechanism by which, on breach by Front Street, Castle RE can "recapture" or terminate the CCTA and split the assets in the CCTA according to a predetermined formula. Importantly (for the purposes of this application) the counterclaim seeks an account, a determination of the recapture amount and termination of the agreements."

47. Taking the position as a whole, however, I do not find that the effect of the Plaintiff's coverage on Castle Re's contractual claims under the recapture provisions was to mislead this Court in any material way. That is premised on my conclusion that this Court would not have refused the injunctive relief even if I had been more fully addressed on (i) the consent issue in relation to the acquisition of Front Street Re's shares, (ii) the relevant recapture provisions of the Management Agreement and its foreign law governance (iii) the specifics of Castle Re's obligations and the potential impact on the underlying annuitants or (iv) the Defendants' allegations in relation to the termination of the Fidelity broker relationship.
48. The Defendants complain that the Plaintiff's pursuit of interim injunctive relief before this Court constituted a further contractual breach on the Plaintiff's part in that it amounted to the Plaintiff impeding on the recapture process. However, Mr. O'Mahony flagged various other procedural pathways that might have been embarked on by the Defendants to seek the Court's sanction of its withdrawal of the CCTA funds, the most obvious applications being a strike out application or an application for summary judgment, whether under RSC Order 14 or 14A.
49. All that said, in my judgment the injunctive relief granted was warranted under the quia timet principles. In this case, the threatened wrong was the removal and dispensing of the CCTA assets, albeit that it was proposed to be carried out in accordance with the Defendants' asserted contractual rights. Effectively, the CCTA assets are the subject of a proprietary claim in the underlying action envisaged to proceed for trial. Had the injunctive relief been refused it would have rendered the trial nugatory.
50. As a final point, I would add that I was not persuaded to discharge the injunction on the basis of a risk of underfunding for the outstanding reinsured annuity contracts. Considering the passage of time since these proceedings were commenced and the absence of any complaint by the Defendants of actual underfunding, I see no merit in this point.
51. For these reasons I find that the interim injunction ought to remain in place.

Conclusion

52. For all of these reasons the Defendant's set aside summons is refused.

53. Either party may be heard on the issue of costs upon filing a Form 31TC within 21 days of the date of this Ruling. Otherwise, costs of this application should follow the event and be granted in favour of the Plaintiff on a standard basis to be taxed if not agreed.

Dated this 22nd day of April 2026



**HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT**