THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2026/0215

BETWEEN:

JOEL SANTOS TOBIO
(As a Director of BOI BANK CORPORATION, (in Administration) suing on behalf of himself and all other Directors and Officers of BOI Bank Corporation, (in Administration))
Applicant/Claimant

and

FINANCIAL SERVICES REGULATORY COMMISSION
Respondent/Defendant

CHRISTOPHER SAMBRANO
(Official Administrator of BOI Bank Corporation)
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Interested Party

Appearances:

Mr. Hugh Marshall Jr. with Mrs. Andrea Smithen-Henry and Mrs. Chantal Marshall for the Applicant/Claimant
Mr. Kendrickson Kentish KC with Ms. Kathleen Bennett for the Respondent/Defendant
Mr. Satcha Kissoon with Ms. Jenell Gibson for the Interested Party

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2026: June 17th
23rd.

Ruling
(Application for Interim Relief)

Introduction

[1] **WILLIAMS, J.:** This is the claimant's urgent application for interim relief pending the determination of his claim for judicial review. The claim challenges the decision of the Financial Services Regulatory Commission ("the Commission") to appoint Mr. Christopher Sambrano as Official Administrator of BOI Bank Corporation ("the Bank") with effect from 7th May 2026.

[2] The Claimant, Mr. Joel Santos Tobio, is a director of the Bank. He brings the claim on behalf of himself and the other directors and officers of the Bank. The Defendant is the Commission. Mr. Sambrano, the Official Administrator, is the interested party.

[3] The Claimant seeks the following relief on this application:

1. Pursuant to CPR 56.1 (4) and 17.1(1)(b), by interim injunction and pending the determination of these proceedings or further Order of the Court, the Respondent/Defendant, The Financial Services Regulatory Commission, whether by itself, its officers, agents, or servants, be restrained from:

   a. taking any further steps to implement or give effect to the appointment of the Interested Party as Official Administrator of BOI Bank Corporation made on 7th May 2026;

   b. directing or authorising any further investigative or operational steps by the Interested Party in respect of the Bank or its assets;

   c. taking any steps toward receivership or winding-up of the Bank under Parts IX or XI of the International Banking Act 2016 (as amended); and

   d. issuing any directions, notices, or correspondence premised upon the validity of the said appointment.

2. Pending the hearing and final determination of these proceedings or further Order of the Court, a stay of the implementation and operation of the administration of BOI Bank Corporation, pursuant to the Defendant's purported appointment of the Interested Party as Official Administrator.

3. Pending the determination of these proceedings or further Order of the Court, the powers of the Board of Directors and Officers of BOI Bank Corporation purportedly vested in the Interested Party pursuant to section 114(1) of the International Banking Act 2016 (as amended) be restored to the said Board of Directors and Officers.

4. Costs of this Application be paid by the Defendants.

5. Such further or other relief as this Honourable Court deems fit.

[4] After the earlier filing of evidence and submissions, the Claimant filed an affidavit of Mr. Canice James, an IT specialist, together with his report and exhibits. That evidence arose from an ex parte order made on 11th June 2026, by which the Claimant was permitted to instruct an independent Information Technology (IT) expert to attend at the Commission's premises and examine electronic records and metadata relating to the licence document, the Commission's letter dated 7th May 2026 and Invoice No. 24/26 said to relate to Licence No. IB2367/26.

[5] I have considered that evidence for the limited purpose of this interim application. However, I do not make final findings on the validity of the licence, the authenticity of the documents or the full legal consequences of the metadata. Those are matters for the substantive hearing. Despite this new material is relevant to the strength and seriousness of the Claimant's jurisdictional challenge.

[6] In practical terms, the Claimant asks the court to suspend the official administration and prevent the Interested Party-Mr. Sambrano from exercising the statutory powers of Official Administrator until the lawfulness of his appointment has been determined. The Commission and the Interested Party oppose the application. They say that the Bank was a licensed financial institution on 7th May 2026. Thus, the appointment was lawfully made pursuant to the **International Banking Act 2016**.[1]

Background

[7] The Commission appointed the interested party as Official Administrator of the Bank on 7th May 2026. The appointment was said to be made pursuant to **section 104(d)** of the **International Banking Act 2016** (as amended). The Claimant's central case is that

[1] Act No. 6 of 2016

section 104(d) applies only to a licensed financial institution. He says that the Bank was not licensed on 7th May 2026. He further relies on the fact that the last licence previously identified by the Commission was for the period 14th March 2023 to 13th March 2024.

[8] The Commission answers that case by relying on Licence No. IB2367/26. It says that the licence was issued on 7th May 2026 and was expressed to be valid from 14th March 2026 to 13th March 2027. It says that the Bank was therefore licensed when the Official Administrator was appointed. The Interested Party adopts the same position. He also says that he has acted in good faith and that his work has been directed to securing the Bank's property, books, records and affairs and not for any improper or destructive purpose.

The IT evidence

[9] The Claimant now relies on the affidavit and report of Mr. Canice James. Mr. James describes himself as a software engineer and information technology specialist with experience in digital evidence collection and preservation, electronic document examination and metadata analysis.

[10] Mr. James states that he attended at the Commission's premises on 11th June 2026 pursuant to an order of this Court. His instructions were to identify, preserve and examine electronic documents relevant to the order, to extract and analyse metadata associated with those documents and to prepare an objective report.

[11] According to Mr. James the search was conducted in the presence of Ms. Mandi Thomas as supervising attorney, Mr. Jonathan Marshall and staff of the Commission. He says he adhered to accepted forensic principles, including the preservation of data integrity and avoiding alteration of original files.

[12] His report records that the devices examined were the laptops of Ms. Linda Hughes-Richards and Mr. Morvin Williams. The documents and emails examined included the licence document relating to Licence No. IB2367/26, the Commission's letter dated 7th May 2026, and Invoice No. 24/26 dated 7th May 2026.

[13] The report records that, on Ms. Hughes-Richards' laptop, a file named "BOI Annual Licence Certificate 2026-2027.pdf" was created on 18th May 2026 at 10:02 a.m. and modified on 18th May 2026 at 9:24 a.m. A Microsoft Publisher version named "BOI Bank Certificate of Banking License 2026-2027.pub" was created on 18th May 2026 at 9:12:52 a.m. and modified on 18th May 2026 at 9:12:35 a.m.

[14] The report also records that the cover letter file and invoice files found on Ms. Hughes-Richards' laptop were created and modified on 18th May 2026. The invoice Word document was created on 18th May 2026 at 9:28 a.m. and modified at 9:35 a.m. The invoice PDF was created on 18th May 2026 at 9:29 a.m. and modified at 9:35 a.m. On Mr. Williams' laptop, the report records that the cover letter PDF was created and modified on 18th May 2026 at 9:29 a.m. and that the Word version was created on 18th May 2026 at 9:20 a.m. and modified at 9:28 a.m.

[15] The report further identifies email correspondence on 18th May 2026. In particular, it records an email entitled "BOI in OA" sent by Mr. Morvin Williams to Ms. Hughes-Richards at 9:08 am on 18th May 2026. This email reads as follows:

> "Dear Ms. Hughes Richards,
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> Effective May 7,2026 BOI Bank Corporation was placed in Official Administration pursuant to section 104(d) of the IBA 2016 as amended. As per the requirement of the legislation, I would welcome if the 2026/2027 licence certificate can be prepared and have it dated May 7, 2026 as that is the date when the bank was placed in OA.
>
> Regards,
> Morvin G Williams
> Director of International Banks and Non Banks
> Financial Services Regulatory Commission."

[16] The significance of this evidence for present purposes, is not that it conclusively proves that no licence existed on 7th May 2026. It is accepted that the metadata may show the creation or modification of electronic files examined on particular devices. However, in

this context it does not necessarily prove when the decision to place the Bank into official administration was made.

[17] Nevertheless, the evidence is important. The Commission's opposition to the interim application relies heavily on the assertion that Licence No. IB2367/26 existed and was issued on 7th May 2026. The metadata and email correspondence now before the court could mean that the electronic licence certificate, cover letter and invoice materials made available to the expert were created or modified on 18th May 2026, after the appointment of the Official Administrator by letter dated 7th May 2026. This would give additional force to the Claimant's submission that there is a real question to be tried as to whether the Bank was licensed at the time of appointment.

Applicable Law

[18] The principles upon which interim relief is granted in the public law context were considered by the Privy Council in **Belize Alliance Conservation of Non-Governmental Organizations v. Department of the Environment**[2] where Lord Walker stated at paragraph 36 of the decision as follows:

> *"[36] The Court's approach to the grant of injunctive relief in public law cases was discussed (in particularly striking circumstances) by Lord Goff of Chieveley in R v Secretary of State for Transport, ex parte Factortame Ltd (No 2) [1991] AC 603 at 674. The whole passage calls for careful study. Lord Goff stated (at p 672) that where the Crown is seeking to enforce the law, it may not be thought right to impose upon the Crown the usual undertaking in damages as a condition of the grant of injunctive relief. Lord Goff concluded (at p 674):*
>
> > *'I myself am of the opinion that in these cases, as in others, the discretion conferred upon the court cannot be fettered by a rule; I respectfully doubt whether there is any rule that, in cases such as these, a party challenging the validity of a law must – to resist an application for an interim injunction against him, or to obtain an*

[2] [2004] UKPC 6

interim injunction restraining the enforcement of the law – show a strong prima facie case that the law is invalid. It is impossible to foresee what cases may yet come before the courts; I cannot dismiss from my mind the possibility (no doubt remote) that such a party may suffer such serious and irreparable harm in the event of the law being enforced against him that it may be just or convenient to restrain its enforcement by an interim injunction even though so heavy a burden has not been discharged by him. In the end, the matter is one for the discretion of the court, taking into account all the circumstances of the case. Even so, the court should not restrain a public authority by interim injunction from enforcing an apparently authentic law unless it is satisfied, having regard to all the circumstances, that the challenge to the validity of the law is, prima facie, so firmly based as to justify so exceptional a course being taken.'

[19] In that case, the Privy Council confirmed that the principles in **American Cyanamid Company v Ethicon Limited**[3] (with the necessary modifications) applied to interim injunctions in the public law sphere. Thus, the issues to be considered are:

1. Whether there is a serious issue to be tried;
2. Where does the balance of convenience lie;
3. Whether damages would be adequate.

[20] The Court of Appeal in **Beryl Isaac** v. **The Grenadian Hotel**[4] summarized the relevant principles as follows:

(a) In considering an application for an interim injunction in which there is a public law element in issue, the approach to be adopted is the application of the guidelines outlined in American Cyanamid with the necessary modifications appropriate to the public law element.

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[3] [1975] AC 396

[4] GDAHCVAP2017/0002 decided 15th December 2017 per Thom JA at paragraph 12 (unreported)

(b) The public law element is a special factor in considering the balance of justice and the court has a wide discretion to take the course which seems most likely to minimize the risk of an unjust result.

(c) Where the dispute is between a public authority and a quasi-public authority, an injunction may be granted to the quasi-public body without any undertaking in damages.

(d) It is an exceptional course for the court to restrain a public authority from enforcing an apparently valid law. A court would only take such course where having regard to all of the circumstances of the case the court is satisfied that the challenge to the validity of the law is prima facie firmly based and adoption of such an exceptional course is justified.

(e) A public authority acting within the law should be permitted to exercise its functions and duties for the benefit of the public.

[21] The court must also consider the public interest. The challenged decision is a regulatory decision affecting an international bank. Thus, there is a public interest in protection of the Bank's customers and depositors and Antigua and Barbuda's reputation as a well-regulated jurisdiction. These must be weighed against the Claimant's right to effective judicial protection if the statutory power was exercised without jurisdiction.

[22] In **Series 5 Software** v. **Clarke,**[5] Laddie J. made the following observations:

> "It appears to me that what is intended is that the court should not attempt to resolve difficult issues of fact or law on an application for interlocutory relief. If, on the other hand, the court is able to come to a view as to the strength of the parties' cases on the credible evidence, then it can do so."

[23] Thus, the Court will be careful not to determine disputed issues of fact or law finally on an interim application. Any observations of fact made in this decision must therefore be treated as being provisional.

Serious issue to be tried

[5] [1996] 1 All ER 853

[24] **Section 104(d)** of the **International Banking Act** pursuant to which the Commission purported to act the provides as follows:

> "The Commission, under its own authority and sole discretion, may appoint an official administrator for a licensed financial institution where:
>
> .....(d) the Commission determines that the **<u>licensed financial institution</u>** is in an unsafe or unsound condition to transact business and the licensed financial institution or licensed financial holding company or its directors or officers are unable to promptly improve such condition;" **(my emphasis)**

[25] The central issue is whether the Bank was a "licensed financial institution" at the time the Commission appointed the interested party as Official Administrator on 7th May 2026. If the Bank was not licensed at that time, there is a serious argument that the statutory precondition for the appointment was absent.

[26] Before the IT evidence, that issue was already arguable because the Claimant relied on the Commission's earlier correspondence indicating that the Bank's last licence was for the period 14th March 2023 to 13th March 2024. The Commission answered that by producing or relying on Licence No. IB2367/26 said to have been issued on 7th May 2026.

[27] The IT evidence materially affects the interim analysis. It raises an evident question as to whether the documents relied on by the Commission as evidencing a licence on 7th May 2026 were in fact generated or transmitted after that date. The fact that the files identified by the expert on the Commission's devices bear creation and modification dates of 18th May 2026 is capable of supporting the claimant's argument that the Commission's reliance on a 7th May 2026 licence requires careful examination.

[28] It would be wrong at this stage to find that the licence was not valid, or that it did not exist on 7th May 2026. The Commission and the interested party must have an opportunity to explain the metadata, the document-generation process, the records of the licensing decision and the legal basis on which the licence was said to be effective from 14th March 2026.

[29] But it would be equally wrong to treat the Claimant's case as speculative or weak. The new evidence gives the Claimant's jurisdictional challenge real substance. The first limb of the interim relief test is therefore clearly satisfied.

Adequacy of damages

[30] At the hearing of this application, Mr. Marshall on behalf of the Claimant submitted that there was a real danger that having been placed in official administration, the Commission could then proceed to wind-up the Bank or appoint a Receiver. In the case of a winding-up, the Bank would simply cease to exist. Similarly, the appointment of a Receiver could lead to irreparable reputational harm to the Bank. In either case damages would be inadequate to compensate the Claimant and persons he represents. Although there is no evidence that the Commission intends to take either step, nothing prevents it from doing so.

[31] Apart from this, it should be noted that **section 114(3)** of the **International Banking Act** confers extensive powers on the Official Administrator. These include the power to remove directors and appoint replacement directors. The Official Administrator may also issue and/or cancel shares. It is therefore arguable that if any of these powers are later found to have been exercised by an improperly appointed administrator, damages would be inadequate to compensate the Claimant. The Claimant has therefore satisfied this aspect of the **American Cyanamid** guidelines in that damages appear to be an inadequate remedy should injunctive relief be denied. The balance of convenience now falls to be examined.

Balance of Convenience

[32] In **National Commercial Bank v. Olint**[6] the Privy Council outlined the balance of convenience as follows:

> "It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial. The court may order a defendant to do something or not to do something else, but

[6] [2009] UKPC 16

> such restrictions on the defendant's freedom of action will have consequences, for him and for others, which a court has to take into account. The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result."

[33] On this issue the Claimant submits that the status quo is the position before 7th May 2026, when the Bank was under the control of its directors and officers. He says the court should restore that position because the appointment was arguably made without jurisdiction. The IT evidence strengthens the Claimant's case that there is a serious issue as to jurisdiction. It also weakens the force of the Commission's submission that the licence point is a complete answer at the interim stage.

[34] The Commission and the Interested Party for their part submit that the present status quo is the official administration which has been in place since 7th May 2026. They say that suspending it would create regulatory uncertainty and may expose customers, creditors and the jurisdiction to risk.

[35] The court must avoid two forms of injustice. The first is the injustice of allowing a possibly unlawful administration to continue in a manner that causes irreversible harm before trial. The second is the injustice of suspending a regulatory administration of a bank where the regulator asserts serious concerns as to the Bank's ability to conduct banking business safely.

[36] Both the Commission and the Interested Party referred the Court to **section 183** of the **International Banking Act**. It is necessary to quote this section in full:

> "(1) In any court proceedings under this Act, the Court shall take into consideration the public interest.
>
> (2) In considering the public interest, the court shall have regard to:
> (a) the critical importance of financial stability to the public interest;
> (b) the importance of permitting the Commission to discharge its functions in an expeditious and efficient manner in the interest of maintaining financial stability.

> (3) Any action under this Act by the Commission or receiver that is the subject of any court proceedings shall be allowed to continue unrestricted notwithstanding the challenge or review before the Court.
>
> (4) Where the Court is satisfied in any proceedings under this Act that:
> (a) a remedy in damages is available to the person who seeks relief; and
> (b) it would be just in all the circumstances, having regard to the public interest, to limit relief to an award of damages, the Court shall limit relief in such proceedings to an award of damages."

[37] Mr. Kentish KC on behalf of the Commission focussed on **section 183(1)** of the **International Banking Act** namely the public interest in protecting the customers of a financial institution which appears to be experiencing difficulties. He also urged the Court to take the reputation of Antigua and Barbuda into account in terms of the jurisdiction's ability to regulate its licensed entities.

[38] Mr. Kissoon on behalf of the Interested Party, adopted a slightly different approach. He relies on **section 183(3)** of the Act quoted above and states that its effect is that the Court is precluded by **section 183(3)** from granting injunctive relief but is confined to an award of damages. This is however undercut by **section 183(4)** which permits the Court to take into account whether it would be "just in all the circumstances" to limit relief to an award of damages.

[39] Further, I interpret **section 183(3)** of the Act as protecting actions of the Commission which are within its jurisdiction. This interpretation is consistent with how the courts have regarded statutory ouster clauses. In **HMB Holdings** v. **Cabinet of Antigua and Barbuda** Lord Hope giving judgment of the Privy Council stated:

> "As Lord Wilberforce explained in *Anisminic v Foreign Compensation Commission* [1969] 2 AC 147, 207D-F, however widely the field in which a decision-maker operates is defined by statute, there are always certain fundamental assumptions which necessarily underlie the remission, or delegation, of a power to decide such as the requirement that a decision must be made in good faith. An examination of its proper area is not precluded by a clause which confers finality on its decisions. Clauses of that kind can only relate to decisions which have been given within the field of operation that has been entrusted to the decision-maker. This means that

> all three grounds for judicial review which Lord Diplock identified in *Council of Civil Service Unions v Minister for the Civil Service* [1985] 1 AC 374, may be invoked – illegality, irrationality and procedural impropriety."

[40] In this case, the Claimant is primarily arguing that the statutory precondition to exercise of powers under **section 104(d)** of the **International Banking Act** did not exist. Therefore, the appointment of the Official Administrator was ultra vires the Commission's powers. This must be contrasted with the Claimant's secondary submission that in exercising its powers the Commission acted unreasonably and irrationally. In short, **section 183(3)** does not prohibit injunctive relief where the Commission has acted outside of its powers conferred by statute, but could apply where the Commission is alleged to have exercised its powers irrationally.

[41] The Court has found that it is arguable that the Commission acted ultra vires its powers by appointing an Official Administrator when no licence was in place and that damages may not be an adequate remedy. Therefore, interim injunctive relief is in principle available.

[42] In my judgment, the public interest does not justify the broad relief sought by the Claimant. The relief as sought would effectively reverse the Commission's regulatory intervention and restore control to the former management before the Court has heard the substantive claim. Given the nature of international banking regulation and the Commission's evidence of operational concerns, this would go too far at this stage.

[43] However, the recently acquired IT evidence does justify more than a simple refusal of relief. The court should impose protective conditions to preserve the subject matter of the claim and ensure that if the Claimant succeeds, final relief is not rendered nugatory. The appropriate balance is therefore to permit the Commission and the Interested Party to continue performing protective and preservative functions. However, the Court will restrain steps which would irreversibly alter the Bank's position unless there is a further order of the court and sufficient prior notice to the Claimant.

Costs

[44] The Claimant has been largely successful in this application and is therefore entitled to costs. Mr. Marshall had mentioned that costs should be assessed on an indemnity basis should the Claimant be successful. However, this is not the usual practice in public law matters.[7] The Claimant will therefore be awarded costs to be assessed if not agreed within twenty-one (21) days of this order.

Order

[45] The Court therefore orders as follows:

1. The Defendant, the Financial Services Regulatory Commission is hereby prohibited from taking any steps toward receivership or winding-up of the Bank pursuant to Parts IX or XI of the International Banking Act 2016 (as amended) pending determination of this claim without leave of the Court;
2. Pending determination of this claim the Interested Party Mr. Christopher Sambrano is prohibited from exercising any of the powers conferred by section 114(3) of the International Banking Act without leave of the Court;
3. Costs to the Claimant to be assessed if not agreed within twenty-one (21) days of this order.
4. The matter is adjourned to 8th July 2026 for case management.
5. The Claimant shall have carriage of this order.

Rene Williams
High Court Judge

By the Court

Registrar

[7] BVIHCVAP2017/0003 Friar Tuck Ltd. v. International Tax Authority decided 12 March 2019 (unreported) per Michel JA at paragraph 27