APPROVED **[2026] IEHC 459**

THE HIGH COURT

COMMERCIAL

Record No.: 2025/265 S

Between

FW AVIATION (HOLDINGS) 1 LIMITED

Plaintiff

-and-

VIETJET JOINT STOCK AVIATION COMPANY

Defendant

JUDGMENT of Mr Justice Rory Mulcahy delivered on 14 July 2026

Introduction

1. In these proceedings, the plaintiff ("**FWA**") seeks recognition and enforcement of judgments obtained in the English courts.

2. On 14 July 2025, the High Court (O'Donnell J) made an *ex parte* order pursuant to Order 11, rule 1 of the Rules of the Superior Courts ("**the Rules**") granting liberty to FWA to issue proceedings against the defendant ("**VietJet**") and to serve notice of the summons on it outside the jurisdiction, in Vietnam, where it is domiciled ("**the service out order**").

3. This judgment concerns VietJet's application to discharge the order granting FWA liberty to issue the proceedings and serve notice of them outside the jurisdiction ("**the jurisdiction challenge**").

4. Following the making of the service out order, on 3 November 2025, the court (Barr J) made an order for substituted service of the proceedings on the defendant ("**the substituted service order**"), permitting service by courier and email on VietJet's English solicitors. VietJet was served in accordance with the terms of that order. A separate application by VietJet to set aside service ("**the service motion**") has been rendered moot because the parties agree that service was subsequently effected in accordance with the requirements of the Hague Convention. There remains a dispute between the parties regarding the costs of that application. I will address that question in the final sections of this judgment.

The jurisdiction motion

5. The parties are agreed that the net issue in the jurisdiction motion is whether FWA has discharged the burden of demonstrating that it is likely to obtain a practical benefit from the Irish proceedings. The legal principles are not in dispute. What is in question is whether the evidence before the court establishes the likelihood of a practical benefit. In substance, FWA asserts that VietJet has, or is likely to have, assets in the jurisdiction against which it may be able to enforce its English judgments if they are recognised by the Irish courts. VietJet contends that it has no assets here, or at least none which are amenable to any available enforcement mechanism, and, accordingly, recognition of the judgments will be of no benefit to FWA and jurisdiction should be discharged.

Background

6. The English proceedings concern four Airbus aircraft owned by FWA and leased to VietJet, an international airline incorporated under the laws of the Socialist Republic of Vietnam. In oral argument, FWA, which forms part of the FitzWalter Group, was characterised by the defendant as a vulture fund, specialising in the acquisition of distressed assets following the Covid pandemic. FWA objects to the description 'vulture fund', but a specialisation in the acquisition of distressed assets is consistent with its description in the judgments of the English courts. The FitzWalter Group has a subsidiary, FWCAS, which is involved in aircraft leasing.

7. FWA sought possession of the aircraft together with amounts owing alleged due under various lease agreements for unpaid rent and termination fees. VietJet ultimately consented to orders pursuant to which possession of the aircraft was transferred to FWA.

8. Following a trial in June 2024, the English High Court (Picken J), in a judgment delivered on 31 July 2024, determined that VietJet was liable to FWA for various termination sums ("**the liability judgment**").

9. A second trial on the issue of quantum took place in January 2025. Following a second judgment ("**the quantum judgment**") dated 17 April 2025, FWA was granted judgment in sums totalling US$181,529,550 ("**the quantum orders**"). On 19 May 2025, VietJet paid the sum of US$2 million in partial satisfaction of the quantum orders.

10. VietJet sought a stay on the quantum orders, which was refused by order dated 2 May 2025. It is not in dispute that VietJet's rights of appeal against the judgments and orders have been exhausted.

11. There was a third trial in the English proceedings regarding other issues outstanding between the parties. It took place in March 2026. Judgment is awaited.

12. On 4 July 2025, FWA applied in England for a worldwide freezing order of the assets of VietJet up to the amount of the quantum orders plus interest. The application was refused by the High Court (Picken J) on the basis that FWA had not established a real risk of dissipation of assets by VietJet.

13. In addition, FWA sought and obtained a disclosure order in the English proceedings in aid of execution in that jurisdiction. On 11 December 2025, VietJet was ordered to provide an asset affidavit listing all its assets worldwide with a value exceeding US$250,000 together with additional information. The additional information to be disclosed included details about VietJet's maintenance reserves, including which lessors held them and the terms upon which VietJet was entitled to reimbursement. It was agreed that the disclosure required by the order would be within a confidentiality ring. The disclosure affidavit was sworn on 10 March 2026. In the final affidavit sworn on behalf of VietJet in these proceedings, it is averred that this information was disclosed to FWA within the confidentiality ring on 8 April 2026.

14. FWA has sought recognition of the English judgments and orders in other jurisdictions, including Malaysia, Singapore, France and, notably, Vietnam. The application for recognition in Vietnam was refused. That refusal is the subject of an appeal. VietJet has indicated that if these proceedings are permitted to continue it will argue that the Irish court should refuse to recognise the quantum orders because, *inter alia*, they represent a penalty rather than compensation for loss and are, therefore, contrary to public policy.

15. In the numerous affidavits exchanged on the jurisdiction and service motions, there is significant argument regarding the progress and conduct of the English proceedings, and the merits of the judgments in those proceedings. None of this appears to be relevant for the purpose of determining the issues on the motions the subject of this judgment, and I do not, therefore, propose to engage further with those exchanges.

Applicable principles

16. Order 11, rule 1(q) provides:

Save as otherwise provided for in Orders 11A, 11B, 11C, 11D and 11E, service out of the jurisdiction of an originating summons or notice of an originating summons may be allowed by the Court whenever:

…

(q) the proceeding is brought to enforce any foreign judgment…

17. Order 11, rule 5 provides:

5. (1) Every application for leave to serve a summons or notice of a summons on a defendant out of the jurisdiction shall be supported by affidavit, or other evidence:

(i) identifying the particular sub-head of sub-rule (1) under which leave is sought and setting out and verifying the facts which it is alleged establish that the provisions of the sub-head concerned are engaged;

(ii) stating that in the belief of the deponent the plaintiff has a good cause of action, and

(iii) showing in what place or country such defendant is or probably may be found, and

(iv) stating whether in the belief of the deponent such defendant is a citizen of Ireland or not, and

(v) where leave is asked to serve a summons or notice thereof under rule 1 stating the particulars necessary to enable the Court to exercise a due discretion in the manner specified in rule 2.

(2) No leave shall be granted unless it is made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.

18. Although this is the defendant's application to set aside the service out order, the plaintiff accepts that, as with the original *ex parte* application, the obligation remains on it to demonstrate that the service out order was properly granted.

19. The leading case on such applications in the context of proceedings to enforce foreign judgments is *Albaniabeg Ambient Sh.p.k. v Enel Sp.A and Ors* [2018] IECA 46.

20. In those proceedings, the plaintiff, an Italian registered company, had obtained judgment from an Albanian court in the sum of €433 million against the defendant, also an Italian company. As here, all rights of appeal had been exhausted.

21. The plaintiff sought enforcement of the Albanian judgment in a number of jurisdictions, including Ireland. It did not seek enforcement in Italy, where it had earlier lost a claim against the defendant arising out of the same factual matrix as the Albanian judgment.

22. Leave to issue the proceedings in Ireland was granted on an *ex parte* basis in July 2014. The defendant entered a conditional appearance for the purpose of contesting jurisdiction and then issued a motion to have the *ex parte* order set aside.

23. The High Court (McDermott J) set aside the order granting leave to issue the proceedings ([2016] IEHC 139 at §43):

"*… I have taken into account the fitness, propriety and suitability of this case for hearing in this jurisdiction. The contracts and issues which led to the judgment in the Tirana District Court have no connection with Ireland. There are no assets of the* *defendants in Ireland. There is no reasonable prospect or possibility that there will ever be any assets of the defendants in Ireland. Consequently, I am not satisfied that there is any "solid practical benefit" to be gained by the plaintiff…*"

24. The Court of Appeal (Hogan J) dismissed the plaintiff's appeal, endorsing (at §34) the following statement of principle from McDermott J's judgment:

"*23. The Court in exercising its discretion on this application must take into account a number of relevant factors. The Court must consider whether there is some other available forum which has competent jurisdiction and is appropriate for the trial of the action. It must consider whether the case may more suitably be tried there in the interests of the parties. It must take a broad view of this issue and take account of the relevant factors including convenience, expense, the availability of witnesses, the governing law and the place of residence and business of the defendants. There must be a sound basis for the hearing of the proceedings in Ireland and the application should not be granted if the initiation of proceedings in this jurisdiction is a "mere device" to ensure that the defendants are brought before Irish courts. In summary, the Court must be satisfied that the case is a fit, proper and suitable one for determination in this jurisdiction.*"

25. Hogan J continued (at §35):

"*… The real question in this appeal comes down to this: would the enforcement of the Albanian judgment in this jurisdiction serve any useful purpose given the absence of any assets on the part of ENEL in this jurisdiction? Is it sufficient for this purpose that there is a possibility – even if that possibility is a remote one – that such assets might be moved here at some stage in the future? Alternatively, would the fact that an Irish court was prepared to recognise the Albanian judgment and perhaps thereby prompt courts in other jurisdictions to follow a similar path suffice for this purpose? Or should the courts take the view that enforcement proceedings should only be commenced where there is at least some prospect of recovery, as otherwise scarce court time and resources (along with associated costs for the litigants) is likely to be wasted on a fruitless exercise?*"

26. The court answered the questions it had posed as follows:

"*68. First, there is no* ex ante *rule which requires the presence of assets within the jurisdiction before leave to commence enforcements proceedings under Ord. 11, r. 1(q) can be granted. Any other conclusion would fly in the face of modern realities in terms of globalisation, communications and the speed of banking transactions.*

69. Second, a plaintiff must demonstrate the existence of a good arguable case prior to obtaining leave. As the plaintiff is the beneficiary of an as yet unsatisfied final judgment from the Albanian courts, this test is clearly satisfied.

70. Third, the judgment creditor must nonetheless generally show some prospect of securing a material benefit, even if that benefit is indirect and prospective only. There are no assets of the defendants in Ireland and there is no evidence to demonstrate that there is such a reasonable prospect or possibility that there will ever be any assets of the defendants in Ireland. The plaintiff cannot therefore satisfy this test.

71. Fourth, while the court may well have a jurisdiction to grant leave for Ord. 11, r. 1(q) purposes where the sole *purpose of the application is to ensure the* imprimatur *of the foreign judgment by an Irish court, even if there is no actual material benefit, cases of this kind are likely to remain unusual, even exceptional. Leave should not normally be granted in such cases where enforcement proceedings have already been determined or are pending in other third country jurisdictions.*

72. Fifth, regard must be had to the issues of comparative cost and convenience in the manner required by Ord. 11, r. 2. The proceedings have no connection with Ireland and enforcement proceedings would require the Irish courts to embark upon complex and potentially lengthy and costs enforcement proceedings without any obvious material benefit to the plaintiff, however indirect or prospective."

27. Hogan J summarised the three-part test which must be satisfied to establish that a service out order was properly granted (at §30):

28. "*… one may agree with McDermott J. when he stated that a plaintiff such as the present one must generally establish (i) that it has a good arguable case; (ii) that it is likely to obtain a practical benefit from the proceedings and (iii) that it satisfies the comparative cost and convenience requirements of Ord. 11, r. 2.*"

29. The requirement to demonstrate a likely practical benefit was also considered by Roberts J in *Petersen Energia Inversora SAU v Argentine Republic* [2025] IEHC 463.

30. The parties agreed that the only aspect of the three-part test which is in dispute for the purpose of the jurisdiction challenge is whether the requirement to show a likely practical benefit has been satisfied.

31. In *Fonu v Demirel* [2007] 1 WLR 2508, the English Court of Appeal referred, by reference to the judgment of Lord Mustill in *Insurance Corporation of Ireland v Strombus International Insurance Co* [1985] 2 Lloyd's Rep 138, to the requirement for a "*solid practical benefit*". It went on (at p. 2516):

> "*… we accept that the court should not automatically exercise its discretion in favour of permitting service out of the jurisdiction unless it is just do so, and that it will ordinarily not be just to do so unless there is a real prospect of a legitimate benefit to the claimant from the English proceedings. We see no reason why that benefit should not be indirect or prospective*."

32. The decision in *Fonu* was cited with approval in *Yukos Capital SARL v OAO Tomskneft VNK* [2014] IEHC 115, described by Hogan J in *Albaniabeg* as being, at that time, "*the leading Irish authority*" on this type of application. In *Yukos*, the court (Kelly J) stated (at §101):

> "*In the context of considering whether the case is a proper one for this Court to assume jurisdiction, it is equally reasonable to ask what the prospect of recovery against assets within this jurisdiction might be*."

33. The court also observed (at §128) that although "*enforcement usually takes place against assets, the seeking of recognition and enforcement of an award in a country where* *the losing party may have no assets in order to obtain the* imprimatur *of a respected court upon the award is acceptable.*"

34. Finally, in *Albaniabeg*, Hogan J observed (at §49):

> *"… While, as Clarke J. said in [IBRC v Quinn* [2016] 3 IR 197*], the bar regarding the grant of leave under Ord. 11 is a low one, it is nonetheless not asking too much of that litigant to demonstrate that it stands to obtain some practical benefit from those enforcement proceedings, even if that benefit is an indirect or prospective one.*"

35. As observed in the case law, it must be supposed that a party seeking recognition and enforcement of a judgment in another jurisdiction perceives that there is some benefit in so doing. However, the court is nonetheless entitled to assess whether that perception has an evidential basis avoid wasting court time and resources and causing the parties to incur unnecessary cost.

36. Thus, the question to be determined on this application is whether the plaintiff has met the "low" bar of establishing that it is likely to obtain a practical benefit from the proceedings. The different characterisations in the case law of the nature of that benefit as '*real*', '*solid*', or '*some*' do not appear to reflect any underlying difference in principle between those authorities. All the cases make clear that a plaintiff must establish a realistic, though potentially indirect or prospective, benefit.

37. In the circumstances of this case, the question of whether there is likely to be any practical benefit to FWA from these proceedings turns on whether VietJet has or is likely to have assets within the jurisdiction against which FWA may be able to seek enforcement. Although FWA identifies, correctly, that the authorities support the contention that recognition of a judgment can, of itself, afford a practical benefit in certain circumstances (see *Yukos* at §128), no case was advanced that the recognition of a final judgment of the English courts by the Irish courts could, in this case, be said to confer a practical benefit.

Likelihood of a practical benefit

38. At the time of the *ex parte* application, FWA identified the following assets of the defendant which are, or may be, within the jurisdiction against which FWA could seek to enforce the quantum orders if they are recognised by the Irish courts:

(1) Receivables from maintenance reserves;
(2) Receivables from lease deposits;
(3) Shares in Irish domiciled subsidiaries;
(4) Monies owed to it by Irish entities.

39. At the hearing of the jurisdiction motion, FWA focused on the first three of these. In its submissions, FWA identifies various enforcement mechanisms under Irish law which are "*capable of attaching VietJet's assets in favour of FWA*". These include the appointment of a receiver by way of equitable execution, a garnishee order pursuant to Order 45 of the Rules, and a share charging order pursuant to Order 46. It submits, *inter alia*, by reference to the decision in *ACC v Rickard* [2019] 3 IR 557, [2019] IESC 29, that VietJet's interest in maintenance reserves and lease deposits is capable of being attached by appointing a receiver by way of equitable execution, notwithstanding VietJet's entitlements may only arise in the future. It also contends in reliance on *ACC v Rickard*, that an order appointing a receiver could accompany an order under Order 46 to facilitate the realisation of VietJet's interest in shares in Irish companies.

40. It is not necessary for the purposes of this judgment to determine whether any of those enforcement mechanisms would be effective. VietJet does not dispute that those mechanisms are available in principle, it disputes only whether there are any assets against which they could actually be deployed.

41. FWA's basis for contending that there are assets of VietJet within the jurisdiction was set out in the affidavit of Mark McNicholas, a director of FWA, grounding the application for leave to issue the proceedings.

42. The jurisdiction and service motions then saw the exchange of no less than twelve affidavits together with, in the service motion, four expert reports. The evidence in the jurisdiction motion was provided by Donal Boylan on behalf of VietJet, and Mr McNicholas and John Clear for FWA. Mr Clear is a senior vice president of FWCAS, a company within the FitzWalter Group, of which FWA is also a part. Both parties referred to evidence from the English proceedings.

43. Mr Boylan describes himself as an adviser to VietJet, and was a non-executive member of its board from 2019 to May 2025. He says that he has over 35 years' experience as an executive in the industry, specifically in aircraft financing and leasing. Though his experience and expertise are not disputed by FWA, the nature of his evidence is. In particular, FWA contends that Mr Boylan is not an expert witness and disputes the admissibility of certain of his evidence, an issue which I will address below.

44. The parties agreed that FWA bears the burden of establishing that it is likely to obtain a practical benefit from these proceedings. However, because VietJet was the moving party on the application to set aside the service out order, it addressed the court first and explained why, in its submission, FWA was unlikely to obtain such a benefit.

45. The evidence is more readily understood by considering each class of assets separately. I will first set out FWA's evidence and submissions concerning each class, followed by VietJet's response, before applying the legal principles identified above. The primary facts are largely undisputed; the parties disagree principally about the interpretation of those facts.

The evidence

Maintenance Reserves

46. FWA places greatest emphasis on VietJet's contractual entitlements to reimbursement from maintenance reserves, which it contends are assets within the jurisdiction against which it may be able to enforce the quantum orders.

47. To explain, when an airline leases an aircraft, it is typically required to pay an amount to the lessor towards the future maintenance of the aircraft. These sums are then held by the lessor and the cost of any required maintenance is paid out of these sums. Again, typically, the lessee pays the maintenance contractor and the monies are reimbursed, but in some cases the lessor pays the contractor directly. The payments made are described as 'maintenance reserves' or, sometimes 'supplemental rent', reflecting the fact that it is a sum required to be paid under the lease in addition to rent.

48. FWA accepts that the maintenance reserves are not assets of the lessee, they belong to the lessor. However, it contends that the contractual right to be paid out of those reserves, a chose in action, is an asset. The asset is the right to receive payment, subject to compliance with lease requirements, not the sum itself. Critically, it says, maintenance reserves are described as receivables in the audited accounts of VietJet.

49. FWA says that it has examined publicly available information regarding the aircraft leased by VietJet. Mr McNicholas exhibits a schedule which it has prepared of VietJet's apparent lessors and their countries of domicile. The schedule identifies 97 aircraft, belonging to approximately 50 lessors. From this FWA has determined that approximately two-thirds of VietJet's lessors are domiciled in Ireland. This is not disputed by VietJet, though not expressly confirmed.

50. In Mr McNicholas's first affidavit, he refers to the second witness statement of Sarah Yasmin Walker, a solicitor for VietJet, made in the English proceedings in support of VietJet's application to stay execution of the judgment on the grounds of its inability to pay. In her witness statement, Ms Walker explains why the assets of VietJet were not available to satisfy the judgment. She refers to the maintenance reserves under the heading '*short-term receivables*' and states:

> *The sum of US$229.26m represents credits which VietJet has built up for the purpose of aircraft maintenance, to take place this calendar year, including shop visits for engines and aircraft auxiliary power units. These sums have already been paid and will be held in reserve by the lessors, until the conclusion of the respective maintenance cycles, to ensure the terms of the aircraft leases are not breached.*

51. The maintenance reserves are reflected in VietJet's audited accounts as receivables.

52. The audited accounts for the year ended 31 December 2025 record "*short term receivables*" exceeding 33 trillion Vietnamese dong (VND). There are also figures for "*other short term receivables*" of approximately VND 16 trillion, and provision for "*doubtful short term receivables*" of VND 153 billion.

53. In addition, there are figures for "*long term receivables*" of VND 28 trillion, and "*other long term receivables*", of nearly VND 19 trillion.

54. The notes to the accounts show that the figure for other short term receivables includes a figure of VND 7.5 trillion (calculated by the plaintiff at US$288 million) for maintenance reserves of leased aircraft. The figure for other long term receivables includes a figure of over VND 10 trillion for maintenance reserves, calculated at approximately US$400 million.

55. The notes to the accounts also explain the accounting treatment of receivables. The notes state:

> *Receivables are presented at their book value, less provision for doubtful debt. Provision for doubtful debt is made for each receivable that is considered doubtful, based on the estimated potential loss.*

56. There is an explanation of the accounting treatment of maintenance reserves:

> *Under the terms of aircraft operating lease agreements, the Group is legally and contractually responsible for maintenance and repair of aircraft during the term of the lease. It is also required to contribute maintenance reserves with lessors.*
>
> *These contributions are recognized as other receivables when it is certain that the Group will utilize them for periodic maintenance and repair of the aircraft in accordance with the operating lease agreements. Contributions to the maintenance reserve are calculated based on performance measures, such as flight hours or the number of takeoffs and landings.*

> *According to the agreements, the Group utilizes the fund by requesting reimbursements when it incurs costs for periodic maintenance and repairs of the aircraft…*
>
> *Maintenance reserves of leased aircraft are classified into long-term and short-term receivables on the consolidated balance sheet based on the estimated time that the Group could utilise maintenance and repair expenses from the maintenance reserves as at the consolidated balance sheet date.*

57. In Mr McNicholas's fourth affidavit, he avers that the above treatment is consistent with the generally accepted accounting treatment of receivables. He refers to the International Financial Reporting Standard (IFRS 9), pursuant to which receivables are financial assets representing contractual rights to receive cash or other financial assets from another entity. They are classified as receivables, he says, when the right to receive the consideration arises unconditionally under a contract. Receivables are usually classified as current assets on a company's balance sheet.

58. VietJet's response is contained in the several affidavits sworn by Mr Boylan. In his affidavit grounding the service motion, relied on for the purpose of the jurisdiction motion, he makes a number of observations on how the operation of maintenance reserves can "*generally speaking*" be described, "*based on [his] expertise and experience in the leasing industry*".

59. He says that maintenance reserves paid by airlines to a lessor are the property of that lessor, and can be commingled by the lessor as it sees fit. They are not held as security or, usually, in a segregated bank account. They are often pledged by the lessor.

60. Reimbursement from maintenance reserves is conditional on completion of specific maintenance events and subject to verification *and* subject to there being no event of default by the lessee. Despite being classed as receivables in a lessee's accounts, they cannot be used to satisfy judgment debts as "*they are not an asset that the airline can realise at will*". Any remaining portion of maintenance reserves can be retained by the lessor at the end of a lease. At that point they form part of the value of the aircraft. Mr Boylan says that this is reflected in VietJet's accounts. When an aircraft is traded, the maintenance reserve associated with that aircraft is included as part of the purchase price.

61. Mr Boylan says that the classification of VietJet's entitlements in respect of maintenance reserves as receivables in its accounts reflects the expected reimbursement of future maintenance costs when various conditions are satisfied: a qualifying maintenance event occurs, the maintenance contractor is paid by VietJet, and a valid claim is submitted. He avers that in some circumstances a lessor will pay the contractor directly. He then makes the argument which is central to VietJet's case on this issue.

62. He contends that an Irish court order recognising or enforcing the English quantum orders "*would count as an event of default under any lease agreement"*. He says that in such circumstances, "*as a matter of basic commercial reality*" a lessor will only pay funds to the maintenance contractor, not the lessee, to avoid any risk to the proper maintenance of the aircraft. Seeking enforcement of the quantum orders by targeting the maintenance reserves is, therefore, "*entirely pointless and self-defeating*".

63. In his third affidavit, he returns to this point, stressing that a lessor would never reimburse maintenance costs to a judgment creditor as this would derail the maintenance reserve structure and run the risk of its aircraft not being properly maintained. He says that there are no examples of debtors seeking to enforce against such funds and FWA's suggestion of same "*demonstrates their lack of experience in the industry*".

64. He also provides an example of a typical event of default under an operating lease. Oddly, even though this does not purport to be a clause from any identified lease, still less one of VietJet's leases, it is provided in quotation marks. In substance, the event of default identified is a final judgment of a court or tribunal above a certain threshold which is not satisfied within a specified period. Mr Boylan's affidavit does not include a similar sample clause setting out the *consequences* of such an event of default. Rather, on the basis of his sample clause, Mr Boylan draws the conclusion that "*any equitable receiver standing in the shoes of VietJet would have no entitlement to demand [payments in respect of maintenance reserves], if lessors choose not to make them*."

Lease deposits

65. The evidence in relation to lease deposits is more straightforward.

66. Lease deposits are payments made by lessees when taking a lease of an aircraft. As set out in Mr McNicholas' second affidavit, they may be provided in the form of cash or letters of credit. Mr McNicholas refers to evidence in the witness statement of Ms Walker to the effect that VietJet has allocated US$101 million across 96 aircraft (one aircraft less than the number identified by FWA through its enquiries) for the period 2025 to 2036, that the deposits are only refundable at the end of the lease term and that the earliest expiry date for VietJet's leases is 2029 (see Ms Walker's witness statement at §20.8).

67. On the basis that two-thirds of the lessors to VietJet are domiciled in Ireland, Mr McNicholas says that it is likely that a significant proportion of the deposits are owned by Irish companies and are susceptible to enforcement here.

68. In response, Mr Boylan says that lease deposits, similar to maintenance reserves, are not held separately by lessors and can be co-mingled. He says that lease deposits cannot be accessed during the term of the lease and will only be repaid once all lease obligations are discharged. Lessors will typically offset deposits against outstanding lease obligations. In many cases, he says, the lessee will have to make a balancing payment to the lessor at the end of a lease term rather than receive some or all of the lease deposit. Though he accepts that lease deposits are, in principle, repayable at the termination of a lease, Mr Boylan appears to suggest that where there is an event of default, a lessor's obligation to refund becomes purely discretionary.

69. As noted above, the audited accounts treat lease deposits as long term receivables.

Share in subsidiaries

70. It is not disputed that VietJet has four wholly-owned Irish subsidiaries. These are:

- VietJet Air Ireland No 1 Limited ("**VietJet Ireland**")
- Apricot Aircraft Company (Ireland) 8592 Limited ("**Apricot 8592**")
- Apricot Aircraft Company (Ireland) 8577 Limited ("**Apricot 8577**")
- Apricot Aircraft Company (Ireland) 8605 Limited ("**Apricot 8605**")

71. The three Apricot companies are each special purpose vehicles ("**SPVs**") for the purpose of leasing one aircraft to a Thai company, Thai VietJet Joint Stock Co ("**Thai**

VietJet"), through a structure referred to as a Japanese Operating Lease with Call Option ("**JOLCO**") structure. In simple terms, each SPV leases an aircraft from VietJet (which leases the aircraft from a head lessor) and then sub-leases the aircraft to Thai VietJet. According to Mr Boylan's second affidavit, because of the sub-lease structure, rent is paid directly to VietJet or the head lessor.

72. In respect of two of the Apricot companies, Apricot 8592 and Apricot 8577, the aircraft have been repossessed by FWA: they are two of the four aircraft the subject of the English proceedings. There is a disputed issue between the parties about whether any assets remain vested in those companies. Rather than seek resolution of this dispute, FWA confirmed that it was not asking the court to make a determination in its favour on this issue for the purpose of the jurisdiction motion (Transcript, Day 2, p. 85).

73. Neither VietJet Ireland nor Apricot 8605 has filed accounts since 2022.

74. The most recent filed accounts of VietJet Ireland are for the year ended 31 December 2022. These explain that the business of the company is to lease ten aircraft from VietJet and sub-lease those aircraft to Thai VietJet.

75. The accounts show assets of almost US$178 million, and liabilities of a little over US$175 million, *i.e.* a net asset position in excess of US$3 million. The assets are the rental payments due from the Thai company to whom it leases its aircraft, recorded as lease receivables. The liabilities are the payments of the receivables it is required to make to its parent, VietJet. The accounts explain that the difference between the two figures arises from the fact that the sub-lessee has not been in a position to settle its lease liabilities.

76. A similar structure is in place in respect of Apricot 8605. It leases one aircraft from VietJet and then sub-leases that aircraft through the JOLCO structure. Its only income is the lease income, all of which is payable to VietJet.

77. In his second affidavit, Mr Boylan explains that in relation to both VietJet Ireland and Apricot 8605, the rental income goes directly from the Thai company to VietJet or the head lessor, *i.e.* it is never paid to VietJet Ireland and Apricot 8605 and, accordingly, there is nothing against which enforcement would be possible.

Discussion

78. In this application, FWA is seeking neither enforcement nor recognition of the quantum judgment and orders. It contends, therefore, that it does not need to establish that it will, in fact, be able to enforce against assets which it identifies in the jurisdiction. The potential difficulties that VietJet identifies in enforcement are, it says, a matter for another day.

79. This is correct up to a point. In order to show that there is likely to be a practical benefit to it from the proceedings, it is not necessary for FWA to show that it will successfully enforce its judgment. However, the mere existence of assets within the jurisdiction would not, of itself, enable FWA to obtain a practical benefit from these proceedings. There must be a prospect that those assets will be capable of being subjected to some enforcement mechanism. Accordingly, FWA needs to show both that assets exist or are likely to exist in the jurisdiction, *and* that there is a realistic prospect that it will be able to enforce against those assets. It remains the case that the threshold FWA must meet is a low one, analogous to establishing an arguable case.

80. FWA says that it has identified assets in the jurisdiction. This cannot seriously be disputed. On the basis of the evidence, FWA has comfortably met the threshold of establishing that there are likely assets within the jurisdiction, contractual entitlements to be paid out of maintenance reserves and to the return of lease deposits, and VietJet's shareholdings in VietJet Ireland and Apricot 8605.

81. The audited accounts of VietJet treat maintenance reserves as receivables, *i.e.* assets. This reflects the parties' evidence of the contractual operation of maintenance reserves, which represent a contractual entitlement on the part of a lessee to reimbursement of monies paid out in respect of specified maintenance of leased aircraft. VietJet's suggestion, in its submissions, that its accounts are not prepared according to IFRS does not provide an alternative basis for interpreting those accounts. In its oral submissions, FWA stressed that VietJet should not be permitted to deny the evidence of its own audited accounts, published shortly before the hearing of the jurisdiction motion. I agree. Where those accounts treat the entitlement to reimbursement from maintenance reserves as receivables, or assets, it would require something compelling to persuade a court to conclude that that entitlement should not be regarded as assets *at all*. VietJet has offered nothing compelling in this regard. It is clear that those contractual entitlements *are* assets. VietJet does not suggest that it is under no obligation to maintain the aircraft it leases. If it carries out the maintenance work that is required of it, it has a contractual entitlement to be reimbursed by its lessors. The maintenance reserves represent sums paid to lessors which VietJet is entitled, in effect, to apply to the cost of maintaining its leased aircraft, *i.e.* to discharge potential liabilities. As a matter of plain common sense, that entitlement could only be regarded as an asset.

82. Even more compelling is the evidence in relation to lease deposits, which are also treated as receivables within the accounts. VietJet offers no argument that these should not be considered as assets of VietJet. Mr Boylan points out that the lease deposits are not realisable until termination of a lease and notes that there may be cases where a lessee owes the lessor more than the lease deposit amount at that time, and therefore is not entitled to the return of any amount. None of his evidence suggests that an entitlement to be repaid the lease deposits should not be considered as an asset.

83. The evidence regarding the domicile of VietJet's lessors is not disputed. It is, as FWA suggests, likely that VietJet's entitlement to be paid out of the maintenance reserves and its entitlement to the return of lease deposits under the majority of its leases are contractual rights capable of being enforced in Ireland. VietJet's contractual right to receive payments out of maintenance reserves paid to lessors in Ireland and to the return of lease deposits upon termination of leases are, therefore, likely assets within the jurisdiction.

84. In addition, VietJet has shareholdings in two Irish companies, VietJet Ireland and Apricot 8605, which are involved in leasing and sub-leasing aircraft. These shareholdings are *prima facie* assets of VietJet. The fact that there may be nothing in those companies against which enforcement may be possible is a consideration which is addressed below.

85. Accordingly, this case is readily distinguishable from *Albaniabeg* and *Petersen*, In those cases, no assets were shown to exist within the jurisdiction and no realistic prospect of future assets was established. A separate issue arises, therefore, and it is necessary to consider VietJet's argument that, given the nature of the assets identified here, there is no realistic prospect of enforcement against them.

86. It is worth highlighting that it is not necessary for FWA to show that there are sufficient assets within the jurisdiction to enable it to satisfy the quantum orders, it need only show that there is likely to be a practical benefit. In this case, that means identifying assets which may contribute to satisfaction of VietJet's debt. Accordingly, FWA need only show that there is a prospect of successfully enforcing against one of the classes of assets on which it relies.

87. I should first address FWA's argument that Mr Boylan's evidence is not admissible. Mr Boylan does not give evidence regarding the contents of VietJet's leases, he gives evidence, based on his experience and expertise, of what such leases typically contain, and how those involved in the industry typically operate. Notably, Mr Boylan never expressly avers that any of VietJet's leases contain such provisions. As FWA points out, this is, in substance, expert evidence. But Mr Boylan is not presented as such, rather he is presented as a witness of fact. Although FWA does not spell this out in its submissions, it is clear that Mr Boylan is not sufficiently independent to be an acceptable expert witness (see, by analogy, the disclosure requirements at Order 39, rule 57(2) of the Rules which require disclosure of connections far more tenuous than Mr Boylan's connection with VietJet).

88. However, Mr Boylan's evidence regarding the typical contents of aircraft leases is not seriously disputed by Mr McNicholas or Mr Clear. Nor is his evidence in this regard remotely surprising; it is entirely within the scope of normal commercial transactions. It is evidence that, given his experience, Mr Boylan could reasonably be expected to give. In the circumstances, I do not propose to reject as inadmissible Mr Boylan's evidence regarding typical contractual terms, but to have regard to it as evidence of a factual witnesses industry experience.

89. It does not follow that I must accept that VietJet's leases contain such typical clauses or, more importantly, that even if they do, the inclusion of such clauses has the implications for which Mr Boylan and VietJet contend.

90. Turning to the evidence regarding the availability of the assets within the jurisdiction as a target for enforcement, I propose to consider each class in turn. I will address the lease deposits first, as they present the most straightforward case.

Lease deposits

91. There is really no plausible argument that the entitlement of VietJet to be repaid lease deposits are not assets that will likely be available within the jurisdiction against which FWA may be able to enforce the quantum orders. The evidence of Mr Boylan, given by reference to the witness statement of Ms Walker, goes no further than suggesting that those assets are not immediately available and may, in certain cases, not become available at all, for example, where contractual conditions are not satisfied by the lessee or where the lessee owes the lessor more than the lease deposit sum.

92. There is a suggestion (also made, more forcefully, in relation to the maintenance reserves) that where there has been an event of default by a lessee, such as the failure to discharge the English quantum orders, this might entitle lessors to withhold payment of lease deposits at the end of a lease. In Mr Boylan's third affidavit, he puts the matter as follows when discussing lease deposits:

> *In addition during the lease, each lessor in respect of Supplemental Rent where VietJet may have reimbursement claim rights, again has extensive direct rights to retain those amounts even up until the lease terminates and all redelivery conditions and obligations are met in a number of situations, including where there is a (material) adverse change in VietJet circumstances, a legal judgement (such as the English Quantum Orders) which are in effect and open, or a payment default or indebtedness of VietJet (usually if above a nominal threshold well below the English Quantum Order). All of these are entirely at the discretion and option of each lessor.*

93. It is unclear what Mr Boylan means by this last sentence. Not only is it unclear to what "*all of these*" refers, nothing elsewhere in his evidence supports the contention that anything in VietJet's leases, or aircraft leases generally, is entirely at the discretion or option of a lessor, other than, perhaps, an option to terminate in the event of default.

94. Overall, Mr Boylan's evidence on this issue is opaque. It should, of course, be recalled that his averments are made without reference to any particular lease agreement. His references to payment default or indebtedness of VietJet are, therefore, a curious and confusing mix of the general and the particular.

95. Mr Boylan does not make clear in the passage quoted above whether he is referring to the consequences of payment default or indebtedness of VietJet *generally*, or *vis-à-vis* the lessor holding a particular lease deposit at the end of a lease. If the latter, one can readily understand why a lease deposit would be offset against any liability and would not be returned in full or in part, if the lease so permitted. But if the former, it is difficult to see what possible relevance liability to *a third party* could have to the entitlement of VietJet to the return of lease deposits. It may be, as VietJet contends, that it is a typical term of an aircraft lease that where judgment is entered against a lessee above a certain amount, that constitutes an event of default. It may further be the case that an event of default would entitle a lessor, at its option, to terminate a lease. But, unsurprisingly, nowhere does Mr Boylan suggest that it is a typical term of an aircraft lease that an event of default under a lease entitles a lessor to repudiate *some* of the obligations under that lease but not others, still less that it creates an entitlement not to return a lease deposit (or reimburse maintenance costs properly expended by the lessee).

96. As counsel for FWA submitted, a commercial contract will often provide for termination at the option of the non-defaulting party in the event of default. VietJet's submissions appear to be based on a different, and apparently novel, proposition: that aircraft leases generally, and therefore by implication VietJet's leases with Irish lessors, contain clauses by which an event of default could have the consequence, even where a lessor does *not* terminate the lease, it is no longer bound by its contractual obligations under the lease to repay the relevant lease deposits, or to reimburse maintenance costs.

97. Mr Boylan's affidavit evidence does not support that proposition at all. He makes no averment that leases typically contain such a clause. Insofar as his statement that "*all of these are entirely at the discretion and option of each lessor*" is relied on to support such a proposition, it is, in effect, a *non sequitur* and cannot stand as evidence that, notwithstanding the contents of VietJet's audited accounts and a general understanding of how commercial contracts operate, the lease deposits paid by VietJet should not be regarded as assets within the jurisdiction simply because the English quantum orders may constitute an event of default.

98. The only remaining argument available to VietJet on the basis of the evidence regarding the lease deposits is that no right to the return of a deposit will become available for enforcement until 2029, the earliest contractual expiry date of VietJet's current leases, according to Ms Walker's witness statement in the English proceedings. It is clear from the case law that it is not necessary to show that there are assets currently within the jurisdiction, only that there will likely be assets within the jurisdiction. The authorities cited by the parties do not indicate that there must be an expectation that assets will be within the jurisdiction imminently. Rather the test remains whether the proceedings are likely to provide a practical benefit. The fact, if fact it be, that no lease deposits may become available enforcement of the quantum orders until 2029 does not rob these proceedings of any practical benefit to FWA. It may well be that the sums due will have been discharged by then, but if not, then the potential availability of the lease deposits to, for instance, a receiver by way of equitable execution, would clearly provide a real benefit to FWA.

99. The conclusion regarding lease deposits is sufficient to dispose of the jurisdiction motion. For completeness, I will consider the position in relation to the other classes which VietJet also contends are not assets against which a judgment creditor could ever hope to enforce.

Maintenance reserves

100. VietJet pursues the same argument regarding events of default in relation to the maintenance reserves as it does in relation to the lease deposits. The argument provides, if anything, a less plausible basis for seeking to set aside the service out order than it was in relation to the lease deposits. Assuming for present purposes that VietJet's leases contain the typical clauses described by Mr Boylan, the rights to return of those deposits are likely only exercisable at the end of a lease. Thus, it is conceivable that provision could be made that termination by a lessor due to an event of default carries with it an entitlement to withhold a lease deposit (though there is no evidence that this is so). The maintenance reserves, however, require to be paid throughout the term of the lease, whenever VietJet pays for specified maintenance work and seeks reimbursement. In other words, when the lease remains in force. It is fanciful to suggest that an event of default which does not trigger termination of the lease would nonetheless trigger an entitlement to refuse to reimburse maintenance costs.

101. If, as seems likely, the recognition of the English quantum orders by the Irish courts would constitute an event of default, it is overwhelmingly likely that there has already been an event of default, the English quantum orders themselves. There is no suggestion that the existence of those orders has caused lessors to terminate leases, still less that it has caused any of them to assert that the leases continue but they are no longer obliged, other than on an *ex gratia* basis, to pay for maintenance in accordance with their obligations under those leases. As FWA points out, in VietJet's application seeking to stay the English judgment, Ms Walker asserted in her witness statement that enforcement of the judgment in that jurisdiction would lead to leases being terminated (at §44). There is no evidence that this occurred.

102. Notably, Ms Walker did not suggest that a possible consequence of enforcement of the English quantum orders was that lessors would seek to continue the leases in force but repudiate *some* of their contractual obligations.

103. There is no basis to conclude that contractual entitlements in relation to maintenance reserves would not be available for the purpose of enforcement because of an event of default. Had this occurred following what it is likely to have been an already existing event of default, one can only suppose that VietJet would have said so. Since it has not, and has not deposed to the existence of a (wholly remarkable) contractual clause which would allow this to happen, the available evidence is that there is likely a practical benefit, and VietJet has failed to displace FWA's evidence that that is so. This does not, to be clear, involve placing any onus of proof on VietJet. However, where a plaintiff has adduced prima facie evidence of a practical benefit, as FWA has, it remains open to a defendant to show by evidence that there is no such potential benefit. VietJet has failed to do so, at least not by reference to recognition and enforcement of the quantum orders in this jurisdiction being an event of default.

104. VietJet argues that the burden of proof is on FWA in this application and that FWA has not discharged that burden in relation to maintenance reserves. In this respect, VietJet argues that, by reason of the disclosure order in the English proceedings, FWA could have obtained copies of the leases for the purpose of showing that pursuant to the terms of those leases, the entitlement to be reimbursed for maintenance were assets against which it could seek enforcement. VietJet accepts that FWA's deponents are not within the confidentiality ring and that, in any event, FWA would have had to apply to the English courts for permission to rely on any disclosed documents in the Irish proceedings, but argues that this is what FWA should have done if it "*wanted to say what Mr Boylan said was wrong*" (Transcript, Day 1, p. 42). FWA argue that the steps required to obtain this evidence which became available very shortly before the hearing of these motions was not warranted.

105. VietJet's criticism is difficult to reconcile with its own evidential approach. It chose to adduce evidence from a witness of fact concerning the terms typically found in aircraft leases without identifying the terms actually contained in its leases, yet now criticises FWA for not placing those leases before the court. It is unnecessary, however, to resolve that criticism. Nothing in VietJet's evidence required FWA to go beyond the material it had already adduced in order to establish a realistic prospect of obtaining a practical benefit. In particular, Mr Boylan has not identified any provision in VietJet's leases that would make enforcement against its contractual rights to reimbursement from maintenance reserves impossible. VietJet's criticism is also difficult to sustain given that the relevant disclosure occurred in separate proceedings when this application was already well advanced.

106. I should observe, for completeness, that VietJet's explanation for not putting any of its aircraft leases in evidence, or even giving evidence as to their contents, was unconvincing. VietJet explained that the leases were confidential and that it could not risk upsetting its relationship with its lessors by breaching that confidence. Having given evidence of what aircraft leases typically contain, it is difficult to see what breach of confidence would be involved in confirming that such typical clauses were contained in some or all of VietJet's leases. Even assuming that VietJet's leases contain the typical clauses described by Mr Boylan, there remains a prospect of a practical benefit to FWA from these proceedings.

107. VietJet makes a separate but related argument that the commercial reality is that there is no prospect that a lessor would pay money to VietJet to reimburse it for maintenance fees when that money could end up in the hands of FWA. It says that lessor will instead pay any fees due directly to the maintenance contractor.

108. Although the evidence supports the contention that lessors do, in certain circumstances, pay directly for maintenance, the evidence is also that it is more typical for the lessee to pay for maintenance and seek reimbursement. There was no evidence that under a typical lease clause a lessor could be *obliged* to pay a maintenance contractor directly, still less that that obligation is contained in VietJet's leases. Moreover, where the lessee pays for specified maintenance, it is clear that any sums falling due from maintenance reserves would necessarily be payable to the lessee. Though VietJet says that it would derail the maintenance reserves structure and risk aircraft not being properly maintained if, instead of reimbursing VietJet, a lessor was required to pay that sum to FWA, it is not apparent why this is so. On VietJet's case, lessors are only required to reimburse VietJet for maintenance works actually completed and paid for. If the lessor does not reimburse VietJet but is required to pay the equivalent sum to FWA instead, that would not retrospectively undermine maintenance works already completed.

109. Accordingly, VietJet's argument resolves to this: in order to *avoid* any monies becoming available to FWA in satisfaction of the quantum orders, the court must assume that VietJet will arrange its affairs in a manner which will frustrate FWA's efforts by, in effect, colluding with its lessors so that they all agree to pay maintenance contractors directly and no obligation to reimburse VietJet ever arises.

110. There is no evidential basis for assuming that each of the lessors would co-operate in such a scheme solely for the purposes of defeating FWA's efforts at enforcement. In any event, as FWA argues, it would be inappropriate for a court to decline jurisdiction on the assumption that if jurisdiction is accepted, and the English quantum orders are recognised, VietJet will successfully take steps to frustrate enforcement of those orders. Whether VietJet can resist enforcement in the event that the judgments are recognised is a matter the court dealing with any application to enforce.

111. Accordingly, the potential availability of this class of asset, VietJet's contractual entitlement to reimbursement from maintenance reserves, which could be the subject of enforcement in this jurisdiction, is sufficient to establish that the service out order was properly made.

Shares in subsidiaries

112. It is clear that the two Irish companies, VietJet Ireland and Apricot 8605, are entitled to receive rental income from Thai VietJet company to which they sub-let aircraft. That income stream is might ordinarily be capable of being made the subject of enforcement action. FWA suggests the making of a share charging order pursuant to Order 46, and the appointment of a receiver to give effect to that order. VietJet does not, at this stage, dispute that such a mechanism is available in principle.

113. VietJet submits, however, that due to the "*sub-lease structure*", this income stream is never received by the Irish companies. If that is so, then it may well be that the shares in the Irish companies are not assets against which FWA could seek enforcement, and therefore, could not provide the practical benefit necessary to justify service out order. However, the evidence that this is so is slight. It consists of bare assertions by Mr Boylan, unsupported by any documentation, or, indeed, a clear means of knowledge. On the other hand, VietJet Ireland's most recent accounts, albeit out of date, appear to suggest that the rental income *is* required to be paid to those companies: the accounts are prepared on the basis that the companies will receive the rental income and then pay it, in turn, to VietJet.

114. In the circumstances, FWA has identified the existence of assets within the jurisdiction, namely the shareholdings in Irish companies, against which it might seek enforcement and obtain a practical benefit, and VietJet's evidence is not sufficient at this stage to show that a practical benefit is not likely.

Conclusion on the jurisdiction motion

115. FWA has met the threshold of showing that recognition of the English quantum orders is likely to afford it a practical benefit. The identified assets comprise VietJet's contractual rights to repayment of lease deposits, its rights to reimbursement from maintenance reserves and its shareholdings in Irish companies. There is a realistic prospect that one or more of those classes of assets may be amenable to enforcement following recognition.

116. It may well be that some or all of the obstacles identified by VietJet will prevent effective enforcement by FWA if the quantum orders are recognised. However, based on the evidence to date, the prospect of FWA obtaining a benefit is sufficient to entitle it to continue these proceedings. I will, accordingly, dismiss VietJet's jurisdiction motion.

The service motion

117. VietJet's second motion sought to set aside the substituted service on the ground that no exceptional circumstances justified the making of the substituted service order. Service was subsequently effected in accordance with the Hague Convention, and the parties agree that the motion has therefore become moot. Each party nevertheless seeks its costs.

Background

118. The service out order was made on 14 July 2025. No mode of service was prescribed in that order, but FWA indicated that it would seek to effect service in accordance with the requirements of the Hague Convention.

119. On 1 August 2025, FWA submitted a request for service under the Hague Convention to the Central Authority in Vietnam, the Ministry of Justice. As explained in the affidavits, the procedure in Vietnam then involves the Central Authority sending a request to the relevant official, in this case the Hanoi People's Court, to serve the notice of the summons. Under Vietnamese law, the relevant official has 90 days from receipt of that request to effect service. If it fails to do so, it must notify the Ministry and provide an explanation. The request was received by the Hanoi People's Court on 2 October 2025.

120. In addition to making that request of the Central Authority, FWA made several unsuccessful attempts to serve VietJet by registered post in August and September 2025. Whether registered post would have been a permissible form of service under the Hague Convention is disputed by the parties but it is no longer necessary to resolve that dispute.

121. On 3 November 2025, FWA sought and obtained an order permitting substituted service, by courier and by email to VietJet's solicitors in the English proceedings. FWA contended that attempting service through the Central Authority was "*unlikely to be successful*" and, if successful, was likely to be significantly delayed. Its application was supported by expert evidence. FWA accepted that an order for substituted service of proceedings in a foreign jurisdiction required it to show exceptional circumstances, but contended that it had shown them in this case because there was likely to be a reduction of assets available to meet a judgment if enforcement was significantly delayed.

122. Notice of the proceedings was served in accordance with the substituted service order on that date. VietJet's solicitors proceeded to engage with FWA's solicitors and its Irish solicitors were provided with full copies of all papers on 12 November 2025.

123. On 10 December 2025, VietJet delivered a notice pursuant to Order 12, rule 26 of the Rules notifying FWA that it was contesting service.

124. The jurisdiction and service motions issued on 27 January 2026 in accordance with the directions of the Commercial Court.

125. On 30 January 2026, solicitors for FWA wrote to the solicitors for VietJet to state that on 28 January 2026 they had received an Article 6 certificate from the Vietnamese Central Authority confirming that service had been effected on 31 December 2025. The letter noted that the certificate "*constitutes formal proof of service under the Hague Service Convention*". The letter suggested that the service motion was, therefore, moot. It called on VietJet to withdraw its motion within one week of the date of that letter and confirmed that if it did, FWA would agree to no order for costs on the service motion.

126. In their reply dated 6 February 2026, VietJet's solicitors did not dispute that the motion was moot, but argued that their client was entitled to its costs of the motion.

127. FWA's solicitors repeated the offer on 10 February 2026. It was again rejected on 13 February 2026.

128. Both parties now seek the costs of the motion.

Applicable principles

129. Though the parties referred to a number of authorities addressing the issue of how costs should be addressed on a moot, they appear agreed that the approach advocated in *Hughes v Revenue Commissioners* [2023] 3 IR 393, [2021] IECA 5 should be applied. In *Hughes*, the court made clear that the focus in such applications should not be on the merits of the underlying proceedings (or application), but on the cause of the mootness:

> "*39. In seeking first to resolve these issues on the basis of Cunningham, the approach suggested by that case requires the Court to answer four questions:*
>
> *(i) What was the specific event that resulted in the action becoming moot?*
>
> *(ii) Was that event the result of an occurrence outside the control of either party?*
>
> *(iii) Was that event caused by the unilateral actions of one of the parties?*
>
> *(iv) If the answer to (iii) is in the affirmative, has the person responsible for the mootness established that their actions were not undertaken in response to the proceedings?*"
>
> *40. Subject to the general intervention of the Court's discretion to which I have referred earlier, if the answer to (ii) is in the affirmative, the default position is that no order for costs should be made. If the answer to (iii) is in the affirmative and to (iv) is in the negative, the default position is that costs should be awarded against the party whose action caused the mootness. But all of this depends on characterising the event that gives rise to the action becoming moot in the first place.*

Arguments

130. VietJet argues that it is entitled to the costs of the motion because it was FWA which caused the motion to become moot. The motion is moot because service has been certified by the Central Authority on foot of FWA's request, *i.e.* by the unilateral action of FWA. In accordance with established principles, FWA should bear the costs of the motion.

131. In the alternative, VietJet argues that in the particular circumstances of this case, even if the court considers that it was not the unilateral act of FWA which caused the motion to become moot, the balance of justice favours an award of costs to VietJet. In substance its argument is the following. It challenged service on the basis that it disputed FWA's contention that service via the Central Authority was likely to be difficult and significantly delayed. As a matter of fact, it has been vindicated in its view, because service *has* been effected through the Central Authority without any undue delay.

132. If a defendant were not entitled, in those circumstances, to the costs of the motion challenging service, it would be left in an invidious, or "Catch-22" position. If it did not challenge service, it would have to accept a form of service which fell short of the requirements of the Hague Convention. If, as here, it challenged service and events proved it to be correct, it would not recover its costs.

133. Finally, it argues that if the court rejects the above, it has raised important issues and that, in those circumstances, no order as to costs would be appropriate.

134. FWA argues that the service motion became moot because of events outside the control of the parties, service and certification by the Central Authority in Vietnam. In those circumstances, it appropriately offered that there be no order as to costs. That offer having been rejected, it is entitled to the costs incurred, at least after the date of that offer.

135. FWA contends that VietJet's argument in the alternative invites the court to engage with the merits of the service motion, which both parties agree that the court should not do. In any event, it argues, the fact that service had been effected more efficiently through the Central Authority than it had anticipated based on expert advice, did not mean that it was not entitled to seek substituted service in the circumstances in which it did.

136. FWA also advanced an argument at the hearing which does not appear to have been raised previously. It contended that although *FWA* discovered that the proceedings had been served by the Central Authority when it received the Article 6 certificate on 28 January 2026, *VietJet* must have known that it had been served in accordance with the Hague Convention before it issued its service motion challenging substituted service, *i.e.* when it was actually served on 31 December 2025. In other words, the motion was moot before it was ever commenced and, accordingly, VietJet could not possibly be entitled to its costs.

137. In response, VietJet noted that this was this argument had not previously been raised, even though FWA had known since it received the certificate that service had been effected on 31 December 2025. Counsel for VietJet pointed out that it was certification rather than actual service which rendered the service motion moot, since it was the Article 6 certificate which, as FWA's correspondence noted, constituted formal proof of service under the Hague Convention. Since VietJet understood that it was the parties' agreed position that it was the certification which rendered the service motion moot, VietJet had never addressed the apparent allegation that it had issued a motion without purpose, which, counsel asserted, was inherently improbable.

Discussion

138. In *Slabu v Chief Appeals Officer* [2026] IEHC 292, the court (Simons J) rejected an argument that proceedings were moot in circumstances where an intervening decision of the Supreme Court had determined the legal issue in dispute. In circumstances where the answer to the legal controversy between the parties had now been determined by judicial decision, the court *knows* how the proceedings would have been decided had proceeded to determination (at §34). Accordingly, the costs of such proceedings did not fall to be determined on the basis that they were moot.

139. There are some similarities with the position here. The factual premise underlying the plaintiff's application for substituted service, that service via the Central Authority in Vietnam would not be effective, has not been borne out. However, there has been no judicial determination regarding whether, at the time of the order for substituted service, there existed exceptional circumstances justifying the making of that order. Thus, although we 'know' that service through the Central Authority has been successful, it may not be possible to say that VietJet would necessarily have succeeded on the motion. For the reasons set out below, it is not in any event necessary to determine the costs of this application by reference to the question of whether the application is truly moot, or to invite the parties to address the implications of *Slabu*.

140. Dealing with the last issue raised by FWA first, I accept counsel for VietJet's submission that it was the agreed position of the parties that it was the Article 6 certificate which constituted proof of service for the purposes of the Hague Convention, and thus rendered the service motion moot, but also, that it would be unfair to determine the costs of this motion on the basis of an issue not previously raised and which VietJet had never had an opportunity to answer.

141. Had it been established in evidence that VietJet issued the motion in full knowledge that the requirements of the Hague Convention had been satisfied, then this would likely have had a significant bearing on the question of costs. But that has not been, and I propose to treat the cause of the mootness as the certification by the Central Authority in Vietnam, first notified to FWA on 28 January 2026, just as the parties had until the hearing of the motion.

142. In those circumstances, I can only conclude that the service motion was not rendered moot by an occurrence outside the control of the parties, but rather it was by the action of FWA. It is true that, having made the request of the Central Authority, it had no control of when and how the Central Authority gave effect to that request, but it was FWA who set the Central Authority in motion. A party cannot ask a third party to complete a task and then disown responsibility when that third party does as it was asked. Put otherwise, the motion would not have been rendered moot had FWA never made the request of the Central Authority.

143. FWA's responsibility for the occurrence which rendered the motion moot is all the greater in this case, because the service motion would not have arisen if FWA had not sought substituted service. It sought substituted service because it believed that the request of the Central Authority may not be effective. It set in train both processes for service and it must or should have been within its contemplation that if its request to the Central Authority came to fruition, reliance on its order for substituted service would be rendered unnecessary.

144. The final question posed in *Hughes* is whether the person responsible for the unilateral occurrence which caused the proceedings to be moot has established that its action was not undertaken in response to the proceedings. Clearly, the request to the Central Authority was "*in response to the proceedings*". However, FWA argues that in this instance, it has shown that the occurrence, certification of service, or even the request of the Central Authority, was not in response *to the motion* and therefore it should not have to the costs of the motion.

145. Although it is undoubtedly correct that the request to the Central Authority was not in response to the service motion, it must, as noted above, have been within FWA's contemplation that if its request were fulfilled, the substituted service order would be rendered superfluous. It is because FWA no longer needs to rely on its substituted service order that the service motion has been rendered moot.

146. Where the consequence of the step taken by FWA was foreseeable, the fact that its actions took effect *after* the service motion issued does not absolve it of liability for costs in this instance. The only reason that the service motion issued, and the only reason it became moot is because FWA opted to pursue two alternative means of service. Though FWA's action was not in direct response to the service motion, it was not an action *independent* of the proceedings, or of the issues in the service motion. Rather, it was so closely related to the issues which gave rise to the service motion that the default rule identified by Murray J in *Hughes*, that costs should be awarded against the party who caused the matter to be moot, should apply. Accordingly, VietJet is entitled to the costs of the service motion.

147. That being so, VietJet was entitled to reject FWA's offers that there be no order as to costs. It is very unfortunate that additional costs may have been incurred by both parties due to the failure to agree the costs issue as soon as it became apparent that the service motion was moot, but it is not apparent that VietJet can be said to have caused any unnecessary costs to arise by asserting its entitlement to costs, which FWA had denied.

Conclusion on the service motion

148. I propose to award the costs of the service motion to VietJet. I propose placing a stay on the execution of that order pending determination of these proceedings. The order will also record that the service motion was heard together with the jurisdiction motion and did not require any hearing days over and additional to those required for the jurisdiction motion.

Overall conclusion

149. I I will dismiss the jurisdiction motion. Subject to hearing the parties, my provisional view is that FWA is entitled to the costs of that motion. Execution of any such costs order should be stayed pending final determination of the substantive proceedings. I will give the parties an opportunity to contend for a different form of costs order should they wish to do so.

150. I will also strike out the service motion, with costs to VietJet to be adjudicated in default of agreement on the terms indicated at §148 above.

151. I will list these motions for mention at 10.30 am on Tuesday, 28 July 2026 for the purpose of making final orders on the motions and giving further directions if required.