

Précis pursuant to Rule 20(1)(f), PD 5.9¹

1. The Appellant is a company incorporated for the purpose of carrying on the business of restoring, managing and operating Paradise “Hog” Island Lighthouse & Beach Club, a resort in the Bahamas.
2. The Respondent was sued pursuant to section 12 of the Crown Proceedings Act, as the proper party to civil proceedings against the Crown viz. the Minister Responsible for Lands and Surveys (“the Minister”).
3. After some 7 years of negotiations for the grant of a lease, under cover of a letter dated 7 January 2020 the Acting Director of the Department of Land and Surveys sent to the Appellant a lease for execution: see **[EB 131 §53; EB 306]**.
4. The question in this case is whether the letter of 7 January 2020 **[EB 399]** evidenced a binding agreement between the Appellant and the Minister for the grant of a lease, i.e. was the Respondent under a binding legal obligation to grant a lease to the Appellant in the terms of the lease sent under cover of letter dated 7 January 2020.
5. At first instance **[EB 14]**, and by a majority in the Court of Appeal, **[EB 115]**, that question was answered “no”.
6. The Appellant’s case is that, on a proper understanding of the law, the correct answer to the question is “yes” as per the dissenting Judgment of The Honourable Sir Michael Barnett, President, in the Court of Appeal, who would have ordered specific performance **[EB 115, 148 §92]**. An agreement for a lease is as good as a lease, see *Walsh v Lonsdale* (1882) 21 Ch D 9: **[EB 124 §19; EB 138 §64]**.

¹ “Rules”: Judicial Committee (Appellate Jurisdiction) Rules 2024; “PD”: The Judicial Committee Of The Privy Council, Practice Directions, December 2024.

Statement of Facts and Issues pursuant to Rule 28 and PD 5.9

1. The facts are stated in the decision of the majority of the Court of Appeal, [EB119-124 §5-18]. Without prejudice to the rights of both parties to further elaborate in their Cases, they can be summarised as follows.
2. In April 2012, Toby Smith applied to the Minister for Land and Department of Lands and Surveys to lease 17 acres of Crown Land at Paradise Island for development for the restoration and up-keep of the Lighthouse: [EB 119 §6].
3. Between 2012 and 2018, Mr Smith engaged with various government departments and officials resulting in a letter from the Bahamas Investment Authority (“BIA”) dated 23 May 2018 [EB 120 §8; EB 370]. Said letter included the following:
 - i. An agreement to recommend to the Minister responsible for Lands to approve the Appellant to acquire a 21 year Crown Land Lease for five (5) acres of Crown Land immediately adjacent to the property on which situate the Paradise Island Lighthouse and Keepers Quarters and also comprising land in the vicinity of the Colonial Beach and to include a portion of the seabed situate at the west Paradise Island, for the purposes of constructing and operating recreational and entertainment facilities offered to Bahamians and tourists; and
 - ii. Agreement approving the Antiquities, Monuments and Museum Corporation ("AMMC") to negotiate with Mr Smith the terms of a public private partnership arrangement for the renovation, maintenance and operation of the Paradise Island Lighthouse and Keeper's Quarters and construction and operation of recreational and entertainment facilities.
4. On 4 June 2018 Mr Smith caused the Appellant company to be incorporated to be the vehicle to receive the lease if granted: [EB120 §7].
5. On 2 October 2018, a Memorandum of Understanding was signed between the Appellant and the AMMC with respect to the proposed development: [EB121 §9]

6. On 7 January 2020 the Acting Director of The Department of Lands & Survey wrote to the Appellant **[EB 399]**, enclosing a lease (“the Lease”) for execution. The letter stated:

“Captain Toby C.S. Smith
Paradise Island Lighthouse and
Beach Club Company Limited
P.O. Box EE-15718
Nassau, Bahamas

Dear Sir,

APPROVAL FOR CROWN LEASE - FIVE (2+3) ACRES AT THE WEST END
OF PARADISE ISLAND - PARADISE ISLAND LIGHTHOUSE AND BEACH
CLUB COMPANY LIMITED

Reference is made to the above subject.

Enclosed are the Lease and Counterpart for Lessee signing, dating, sealing
witnessing and notarizing.

The date at the top of page 1 should be left blank and it will be inserted at the time
of Lessor signature.

Please also note that the Lease Diagrams require signature.

After the above, please return both documents to the Department. Following Lessor
execution, one document will be sent to you for safekeeping.

Yours faithfully,

R.S. Hardy,

ACTING DIRECTOR”.

7. The Appellant executed the Lease and returned it to the Department of Lands and
Surveys on 9 January 2020: **[EB 124 §15; EB 400]**. The Lease is at **[EB 306]**.
8. On 12 February 2020, the Appellant wrote to the Prime Minister, who was the
Minister responsible for Crown Lands, asking for a “Comfort Letter” **[EB 121 §11;
EB 405]**. The Board is invited to read the letter in full.

9. Following that letter, to which there was no written reply, the Appellant met with the Attorney General and others on 27 February 2020, at which time Mr Smith was told that there was no agreement between the Appellant and the Minister: **[EB 124 §16]**.
10. On 19 March 2020 the Appellant tendered to the Minister a cheque for \$29,254.40 which was the rent stated under the Lease: **[EB 132, §59]**.
11. The Appellant commenced the claim on 18 May 2020 **[EB 9]** seeking (a) a declaration that there was a “concluded agreement for a lease” between the parties or (b) in the alternative damages for breach of said agreement **[EB 10]**. The Appellant sought “such further or other relief” as the Court might deem just.
12. The Honourable Chief Justice Sir Ian R. Winder dismissed the claim by a Judgment dated 16 February 2023: **[EB 14ff]**. He considered the central issue to be whether there was an agreement for a lease between the parties and “therefore an enforceable lease” **[EB 24, §15]**. He held that there was no such agreement as it was subject to execution and/or there was no part performance **[EB 28, §30]**.
13. By a majority, the Court of Appeal dismissed the Appellant’s appeal by a judgment dated 14 March 2024 **[EB 115ff]**. Smith JA found no fault with the Chief Justice’s assessment of the evidence and agreed with his reasons for dismissing the claim. There was no requirement to use the words “subject to contract” **[EB 127, §§31-35]**. Furthermore, section 54 of the Conveyancing and Law of Property Act restricts the power of the Crown to divest itself of Crown Lands, requiring a grant under seal; this was not done. **[EB 128, §36]**. Turner JA agreed that the appeal should be dismissed.
14. Sir Michael Barnett dissented **[EB130, §47]**. He considered there to be nothing further to negotiate or agree. All of the requirements of a lease had been agreed. All that was left was for the Respondent to sign and seal the Lease. **[EB 141, §76]**. They did not do so because the Respondent determined that it had “found a better deal” **[EB141, §76]**. The issue was whether, as a matter of law, he was entitled to do so **[EB 141 §77]**.
15. There was no suggestion that there were any terms not yet agreed or which required further discussions. This was “completely inconsistent” with a continuing or ongoing negotiation as pleaded in paragraph 12 of the Defence. **[EB 147, §86]**. Sir Michael

also disavowed the relevance of section 54 of the Conveyancing and Law of Property Act [EB 147, §§89-90].

16. On 11 July 2025 the Court of Appeal granted leave to appeal on the usual condition of the provision of security: [EB 156].

ISSUES

17. The issue in the appeal is as follows:

a) Whether the Courts below were correct, or entitled to hold / rule, that there was no agreement for a lease between the Appellant and the Minister responsible for Crown Lands (including for any of the reasons or any of the bases given by the Courts below)?

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Rowan Pennington-Benton

Counsel for the Respondent

Chronology

Date	Event	EB Page Number
12/04/2012	The Appellant applies to the Minister for Land and Department of Lands and Surveys to lease 17 acres of Crown Land at Paradise Island for development for the restoration and up-keep of the Lighthouse.	119, §6
2012-2018	The Appellant evidenced that he had been dealing with various government departments, corresponding, attending meetings etc.	102 §9
23/05/2018	Bahamas Investment Authority writes to the Appellant stating that proposed development is approved for 5 acres in the vicinity of the Lighthouse.	120 §8
04/06/2018	The Appellant causes Paradise Island Lighthouse and Beach Club Company Limited to be incorporated to be the vehicle to receive the lease if granted. The Appellant is Director and President of the Company.	120 §7
02/10/2018	Memorandum of Understanding signed by the Appellant and the National Museum of the Bahamas / Antiquities, Monuments and Museum Corporation of the Bahamas (for the development, management, and operation of the Paradise Island Lighthouse).	121 §9
07/01/2020	The Appellant received a letter from the Acting Director of Lands & Surveys captioned “APPROVAL FOR CROWN LEASE FIVE (2+3) ACRES AT THE WEST END OF PARADISE ISLAND.” Attached was a Crown Lease Agreement (“the Lease”) The letter also stated “Enclosed are the Lease and Counterpart for Lessee signing, dating, sealing, witnessing and notarizing. The date at the top of the page 1 should be left blank and it will be inserted at the time of the Lessor signature”. “After the above, please return both documents to this Department. Following execution, one document will be sent to you for safekeeping”.	121 §10, 399
09/01/2020	The Appellant signs and seals the Lease and returns it to the Department of Lands & Surveys as requested.	124 §15 400
12/01/2020	The Appellant sent a letter to the Minister requesting a ‘Comfort Letter’ due to delay in receiving the fully executed Lease.	121 §11, 405
27/02/2020	The Appellant meets with AG and other Senior Officers of the Government. Mr Smith is told that “there was no agreement...”	124 §16
19/03/2020	The Appellant sends rent in the sum stated in the Lease	132 §59,
18/05/2020	Writ of Summons	9
30/12/2020	Statement of Claim	33
10/02/2021	Defence	39
30/03/2022	Trial commenced before Hon. Chief Justice, Sir Ian R Winder. 3 days, with Judgment on 16 February 2023.	465

16/02/2023	Judgment by Chief Justice Sir Ian Winder. Plaintiff's claim dismissed with costs.	14
30/03/2023	Notice of Appeal Motion filed.	161
16/11/2023	Hearing of Appeal, adjourned part heard to 13 December 2023 and 14 March 2024	526
14/03/2024	Court of Appeal Judgment	115
03/04/2024	Notice of Motion, Leave to appeal to the Privy Council	149
11/07/2024	Leave to Appeal granted by Bahamas Court of Appeal on condition of security	156
08/04/2025	Final leave to appeal to the Privy Council granted by Bahamas Court of Appeal	160
03/06/2025	Notice of Appeal filed with the Privy Council	260
07/07/2025	Notice of Acknowledgement filed by the Respondent	283