



Michaelmas Term
[2025] UKPC 49
Privy Council Appeal No 0014 of 2024

JUDGMENT

**Lincoln Bain and another (Appellants) v Zinnia
Rolle (Respondent) (The Bahamas)**

**From the Court of Appeal of the Commonwealth of
the Bahamas**

before

**Lord Briggs
Lord Leggatt
Lord Richards**

**JUDGMENT GIVEN ON
24 July 2025**

Heard on 24 July 2025

Appellants

Tanya N Wright

(Instructed by World Legal Services (Bahamas))

Respondent

Travette L Pyfrom

(Instructed by Pyfrom Farrington Chambers (Bahamas))

LORD LEGGATT:

1. This case management hearing has been held to decide whether the Board should entertain this appeal or whether to do so would be contrary to settled practice of the Board. The underlying decision is a judgment for \$64,000 on a contractual claim by the respondent for repayment of money paid under two written agreements.

2. The defence was that the agreements sued upon were never in fact made and that the signature of the first defendant on the agreements had been forged. That raised a straightforward factual dispute on which the judge heard oral evidence. She found the evidence of the first defendant and the witness called by the defendants to be incredible and rejected the forgery allegation.

3. There was no argument at the trial specifically directed to the amount claimed by the plaintiff. Judgment was given for the sum of \$64,000 that I have mentioned, which was said to constitute the principal sum of \$40,000, with interest calculated at 10% up to 23 April 2010.

4. It appears to the Board that the words “up to” must be a typographical error because 23 April 2010 was the date of the second agreement and must have been intended to refer to the date from which interest ran. The writ was issued in April 2015, some five years later. The sum of \$24,000 awarded as interest must be understood to relate to the period between the date of the second agreement, 23 April 2010, and the date of issue of the writ.

5. It is apparent that no interest was awarded for the period from the date of the writ to the date when judgment was given. That date was 6 December 2021 and on the defendant's appeal to the Court of Appeal the main ground of appeal relied on was a complaint that there had been inordinate delay between the hearing at which evidence had been taken, in August 2017, and the eventual handing down of judgment in December 2021. That was a period of over four years, extraordinary by any judicial standard.

6. The Court of Appeal considered the argument that the delay made the judgment unreliable and unsafe. They, however, rejected it. They did so on the basis that, however egregious and culpable the delay was, it did not prevent the judge from properly evaluating the evidence and making the finding that was determinative of the case.

7. The result is that on the issue of whether the agreements sued upon were genuine or forged, there are concurrent findings of fact by the two courts below.

8. It is the settled practice of the Board not to depart from such concurrent findings of fact, save in exceptional circumstances. That practice was authoritatively stated in the case of *Devi v Roy* [1946] AC 508 and has been consistently applied by the Board ever since.

9. There are two grounds of appeal against the decision of the Court of Appeal, which the defendants now seek to advance before the Board. It is convenient to take first ground two of the proposed appeal. That is an argument that the issue of delay arose for the first time in the Court of Appeal so that the challenge to the judge's finding on the basis of that delay cannot be regarded as involving concurrent findings of fact because, necessarily, the judge made no finding about the effect of delay on her own judgment.

10. The Board regards that argument as misconceived. The contention that the judge's findings of fact were unsafe and unreliable because of the egregious delay which occurred is no different in principle from any other argument seeking to challenge, for one reason or another, the reliability or accuracy of the judge's findings of fact. That argument having been rejected by the Court of Appeal and the judge's findings upheld by the Court of Appeal, there are concurrent findings of fact on the essential question of whether the agreement was genuine or forged. No exceptional circumstance has been shown which would justify the Board in departing from its settled practice not to disturb such findings. Ground two of the proposed appeal is, therefore, directly contrary to the practice recognised in *Devi v Roy* and cannot properly be entertained.

11. The other ground of appeal, which Ms Wright has put at the forefront of her able submissions this afternoon, seeks to raise an issue about the quantification of the claim and, in particular, about the amount of interest included in the judgment sum. It is common ground that that point is not the subject of concurrent findings of fact. Indeed, there are no findings of fact on the point in the courts below. The reason for that, says the respondent, is that this argument violates another settled practice of the Board, which is not to allow new points to be advanced which have not been argued or ruled upon in the courts below. As was stated in *Ryan Cox v Cox* [2019] UKPC 32, at para 11:

“it is not the practice of the Board, save in very exceptional circumstances, to allow a new point of law to be argued without the benefit of judgments upon it in the courts below, even where all the facts relevant to the new point have been established in evidence or are undisputed.”

12. Ms Wright sought to persuade us, first, that the point which she seeks to argue is not a pure point of law, but involves a question of fact, which is not the subject of concurrent findings. The Board cannot accept that. There was no relevant dispute of fact at the trial that affects this point. There was no dispute, so far as the Board can discern,

about the payment of the sum of \$40,000. The dispute concerned whether it was paid under a genuine or a forged agreement.

13. The point raised is about how interest should be calculated. In particular, at the trial the defendants could have raised issues about whether and for what period interest should be awarded at the contract rate of 10% in circumstances where, as Ms Wright points out, the contract provided for 10% per annum interest to be awarded for the contractual period of three years but said nothing about the award of interest after that.

14. The Board considers, however, that the time to raise any such argument, if it was to be raised, was at the trial or, failing that, before the Court of Appeal. Ms Wright says that the point was raised before the Court of Appeal. But the Board is not satisfied that it was raised properly or sufficiently for that submission to be borne out. We were taken to the grounds of appeal to the Court of Appeal where Ms Wright sought, in particular, to rely on grounds five and six. Ground five states:

“The learned judge in the court below erred in law and/or in fact when she ordered that the appellant pay the value of the respondent's filed claim in the amounts of \$64,000 on the recovery of \$40,000 with interest calculated at 10% up to 23 April 2010 in the absence of any credible receipt, voucher or proof that the sum of \$36,000 odd was paid to the first respondent.”

Ground six then asserts that the learned judge erred in law and in fact when she without any evidence and without giving a reason awarded the sum of \$3,143 to the respondent.

15. Neither of those grounds, however, directly takes issue with the calculation of interest. The first raises a question about the absence of a credible receipt, voucher or proof; and the second is simply a denial that there was evidence to support the award of the sum of \$3,000 odd.

16. It is right to say that in the skeleton argument of the appellants before the Court of Appeal, at para 54, there is an assertion that there was a failure to prove the amount of \$64,000 and that the judge had entered judgment without there being proof that there was an entitlement to interest. But the Board does not consider that that bare reference to interest was sufficient to engage argument on the point in the Court of Appeal and Ms Wright has not taken the Board to any passage in the transcript of the oral hearing before the Court of Appeal which indicates that the point was ever raised in the course of oral argument.

17. The first time that it was properly raised in the Court of Appeal, so far as the Board can discern, was after the Court of Appeal had given its decision dismissing the appeal, when permission was sought to appeal to the Privy Council. It was at that hearing that Ms Wright sought to introduce the argument disputing the calculation of interest.

18. In those circumstances, the Board considers that it would not be right to allow the appellants, on this second appeal, to introduce argument about interest raising questions on which neither court below has been asked to pronounce or has pronounced.

19. In the circumstances, the Board has not found it necessary to call upon counsel for the respondent. The Board is satisfied that the grounds of appeal are not ones which the Board should properly entertain and the appeal should therefore be struck out at this stage without proceeding to a full hearing.