



[2026] UKPC 30
Privy Council Appeal No 0047 of 2025

JUDGMENT

**Paradise Island Lighthouse and Beach Club
Company Limited (Appellant) v The Attorney
General of the Commonwealth of The Bahamas
(Respondent) (Bahamas)**

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

before

**Lord Reed
Lord Sales
Lord Hamblen
Lord Burrows
Lord Doherty**

**JUDGMENT GIVEN ON
20 August 2026**

Heard on 20 July 2026

Appellant

Damian Gomez KC

Sidney Cambridge

Damian Falkowski

(Instructed by Simons Muirhead Burton LLP)

Respondent

Rowan Pennington-Benton

Kirkland Mackay

(Instructed by Charles Russell Speechlys LLP)

LORD HAMBLÉN:

1. Introduction

1. The issue on this appeal is whether there was a binding agreement between the parties for the grant of a lease.

2. The alleged agreement concerns the grant of a 21-year lease of five acres of Crown land on Paradise Island in The Bahamas. The land was immediately adjacent to the oldest lighthouse in The Bahamas. It was proposed that the appellant would restore and maintain the lighthouse and that it would use the land to construct and operate recreational and entertainment facilities, including a beach club.

3. The appellant contends that a letter of 7 January 2020 sent on behalf of the Minister Responsible for Lands and Surveys (“the Minister”), which enclosed a lease for execution by the appellant, evidenced a binding agreement between the appellant and the Minister for the grant of the lease. It is submitted that the judge at first instance and the majority of the Court of Appeal were wrong to conclude otherwise.

2. Factual and procedural background

4. In April 2012, Mr Toby Smith, a Bahamian citizen, applied to the Minister to lease 17 acres of Crown land at Paradise Island for development and for the restoration and up-keep of the lighthouse.

5. 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. This letter agreed to recommend to the Minister that he approve the grant of a 21-year Crown lease of five acres of land adjacent to the lighthouse.

6. On 4 June 2018, Mr Smith caused the appellant company to be incorporated to be the vehicle to receive the lease, if granted.

7. On 2 October 2018, a Memorandum of Understanding was signed between the appellant and the Antiquities, Monuments and Museum Corporation (“AMMC”) with respect to the proposed development.

8. On 7 January 2020, the Acting Director of The Department of Lands and Surveys wrote to the appellant, enclosing a lease (“the Lease”) for execution. The letter stated:

“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.”

9. The appellant executed the Lease and returned it to the Department of Lands and Surveys on 9 January 2020.

10. On 12 February 2020, the appellant wrote to the Prime Minister, who was the Minister responsible for Crown Lands, asking for a “Comfort Letter”. The material terms of the letter are cited below.

11. On 27 February 2020, the appellant met with the Attorney General and others, at which time Mr Smith was told that there was no agreement between the appellant and the Minister.

12. On 19 March 2020, the appellant tendered to the Minister a cheque for \$29,254.40 which was the rent stated under the Lease.

13. The appellant commenced the claim on 18 May 2020 seeking a declaration that there was a “concluded agreement for a lease” between the parties or damages.

14. Following a trial in the Supreme Court of The Bahamas, the Honourable Chief Justice Sir Ian R Winder dismissed the claim by a judgment dated 16 February 2023 (2020/CLE/gen/00463). He held that there was no agreement for a lease as it was subject to execution by the Minister.

15. By a majority, the Court of Appeal dismissed the appellant's appeal by a judgment dated 14 March 2024 (SCCivApp No 68 of 2023). Smith JA found no fault with the Chief Justice's assessment of the evidence and agreed with his reasons for dismissing the claim. Turner JA agreed that the appeal should be dismissed. Sir Michael Barnett P dissented.

16. On 11 July 2025, the Court of Appeal granted leave to appeal to the Judicial Committee of the Privy Council.

3. The judgments below

The Supreme Court

17. At the trial the Chief Justice heard evidence on behalf of the respondent from Mrs Candia Ferguson, the Director of Investments at the BIA. Mr Smith gave evidence on behalf of the appellant.

18. The Chief Justice identified the central issue as being “whether there was an agreement for a lease between Paradise and the Minister responsible for Crown Lands and therefore an enforceable lease”.

19. In determining that issue, the Chief Justice directed himself in accordance with the guidance provided by the UK Supreme Court in *RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG (UK Production)* [2010] UKSC 14; [2010] 1 WLR 753 (“*RTS*”). In giving the judgment of the court, Lord Clarke of Stone-cum-Ebony JSC stated as follows (at para 45):

“Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations.”

20. The Chief Justice stated that “having considered the evidence as a whole” he was not satisfied that a binding agreement had been made as it was “subject to execution” (para 30).

21. His essential reasons for so concluding are set out in para 33 as follows:

“Whilst the letter dated 7 January 2020 is capable of being an offer to Smith it was conditional upon it being executed by the Minister. This is so because:

(a) The document contemplated that it would be returned, if accepted, and forwarded to the Minister for execution to complete the process, as:

(i) Paradise was told not to date document as that would be done at the time of the Lessee’s inserting his signature. — ‘The date at the top of page 1 should be left blank and it will be inserted at the time of Lessor signature.’

(ii) All of the documents were to be returned to the Minister for him to execute and a signed document would be sent to him. — ‘After the above, please return both documents to the Department. Following Lessor execution, one document will be sent to you for safekeeping.’

(iii) Had Paradise’s execution been expected to complete the transaction, as Paradise asserts, the documents would have been forwarded as signed.

(iv) Had Paradise’s execution been expected to complete the transaction, as Paradise asserts, the letter would have spoken to the payment of the leasehold payments, but it didn’t.

(v) Had Paradise’s execution been expected to complete the transaction, as Paradise asserts, one would have expected a check for the payment of the initial year's

rent, which was payable in advance, to have been furnished with the returned documents.

(b) Legal strictures existed which prohibited the disposition of the property in the manner asserted by Paradise, without a properly executed deed:

(i) The statute of frauds prohibits the enforcement of an unexecuted contract as it made all contracts creating an interest in land for more than three years from the time of execution unenforceable if the contract is not evidenced in writing. The Common Law does not countenance a claim based on such oral contracts to transfer interests in land as enjoined by the statute. (See Owusu: *Commonwealth Caribbean Land Law* p 167).

(ii) The effect of Section 54(1) of the Conveyancing and Law of Property Act, as extracted above, would suggest the requirement that the seal of the Minister be placed to effect any transfer of Crown lands.

(c) Paradise's own letter of 12 February 2020, discussing the arrangement, notwithstanding it had already been executed by it, betrays its own view that the document was subject to execution by the Minister. Just days after signing and returning the document he wrote to the Minister in these words:

‘As you are aware, I have been requesting a meeting with you for the past, more than, two years. Unfortunately, I have been reduced only being able to chat with you briefly on your way to the House of Assembly and Cabinet. I would appreciate to have a formal meeting with you as is afforded to others.

In such a chats (sic), in the past and today, you advised me that the land that I am asking for in the Crown Land Lease would not be compromised with “Carnival. Royal Caribbean Cruise Lines or any other cruise company”. You have also referred me to Mr Joshua Sears on several occasions and in speaking with him to enquire if you have signed the Crown Land Lease, there is no update other than it awaits your signature.

I am writing to you today to request a Comfort Letter. You mentioned today that my “land matter will be dealt with at the same time that you deal with Royal Caribbean Cruise Line’s land matter on 2 March 2020”.

As you are aware, my application is almost eight years in the making. I have patiently waited for a favorable outcome so I am rather surprised that my lease is now somehow commingled with a foreign party’s expression of interest that is only recent. Further, I understand directly from Royal Caribbean Cruise Line’s legal counsel that they have applied for the whole area of Crown Land situated on the Western portion of Paradise Island, which wishes to encompass the land that I have applied for and contained within the Crown Land Lease Agreement. This has me deeply concerned.’

[Emphasis added]

I did not accept Smith’s explanation to the contrary.”

22. Section 54(1) of the Conveyancing and Law of Property Act (“the Act”) provides:

“DISPOSITION OF CROWN LANDS

54. (1) Any power that immediately before the 10th day of July, 1973, was under section 24 of the Bahama Islands Constitution Order, 1969, vested in the Governor of the Bahama Islands —

(a) to make grants and dispositions of any lands or other immovable property in the said Islands or any interests in such property that were vested in Her Majesty or the Governor on behalf of Her Majesty as the property of the Crown for the beneficial interest of the said Islands, or

(b) to exercise in relation to such property or interests any other powers lawfully exercisable by Her Majesty, shall be vested in the Minister, so however, that, wherever the employment of the Public Seal would have been required under that section, the official seal of the Minister shall be employed instead.

(2) In this section ‘Minister’ means the Minister responsible for Crown Lands.”

The Court of Appeal

23. Smith JA stated that the Chief Justice had correctly identified the central issue and had properly directed himself by reference to *RTS*. In accordance with that guidance, he observed that the Chief Justice had “examined both the words used in the relevant documents and the conduct of the parties” (para 22).

24. In relation to the words used in the documents, he stated that he could find no fault with the Chief Justice’s “objective analysis” of the letter of 7 January 2020, as set out in para 33(a) of his judgment (para 25), and the letter of 12 February 2020, as set out in para 33(c) (para 27).

25. In relation to the parties’ conduct, he observed (at para 28):

“the learned CJ set out the evidence and cases of the respective parties. The CJ observed that the Minister’s case had always been that there was no agreement until a formal lease was signed (see paras 24–30 of the judgment). As for the case of Paradise, the CJ examined the testimony and case presented by Mr Smith. With respect to his expectation expressed in the letter of 7 February 2020 that Paradise had ‘a Binding Agreement’ for a lease pending the receipt of a ‘Comfort Letter’ from the Minister, the trial judge stated succinctly at para 33 ‘I did not accept Smith’s explanation to the contrary’ (i.e. his expectations about ‘a Binding Agreement’).”

26. He stated that “the words used and the conduct of the parties showed that both the Minister and Mr Smith (on behalf of Paradise) knew and expected that the Minister had to formally sign the contract before any agreement could be reached” (para 35). He then set out section 54(1) of the Act and stated:

“37. Mr Smith and Paradise must be deemed to know the law. In any event, on the facts as found by the trial judge, Mr Smith had no expectation that there was a binding agreement until the Minister signed the documents (or at the very least gave him a ‘Comfort Letter’ as he requested).

38. It would, in my view, be untenable for the contrary to be true, especially in The Bahamas. Namely, that the Crown could divest itself of limited Crown Lands other than by the deliberate and formal granting of a lease.

39. From a government perspective, it could hardly be argued that a present or prior government should be bound by the acts of its alleged ‘agents’ when they may not have any knowledge of or control over the acts of such agents. The requirement of direct ministerial control over the disposition of scarce Crown Lands seems imperative in the context of The Bahamas.”

27. He also rejected the appellant’s argument that the absence of the words “subject to contract” meant that “the draft lease was never subject to the execution of a formal lease as provided for in statute” (para 31). He observed that (at para 32):

“Ever since the case of *Winn v Bull* (1877) 7 Ch D 29, 32, it has been stated that the absence of the words like ‘subject to contract’ does not mean that there is no need for a formal contract. It is still a question of interpretation and construction in the circumstances of any specific case.”

He accordingly concluded that the appeal should be dismissed.

28. Sir Michael Barnett P dissented. He concluded that the letter of 7 January 2020 did evidence a binding agreement between the appellant and the Minister for a lease. His essential reasons for so concluding were as follows:

“86. In the present case, there is no suggestion that there were any terms not yet agreed or which required further discussions. The negotiations were complete and the terms of the agreement were incorporated in the lease prepared by the Respondent and sent by the Respondent to the Appellant for execution. If the lease did not represent the terms of the agreement, the Respondent would not have sent it to the Appellant for execution by it and state that upon its return it would be executed by the Minister and a counterpart sent by the Minister to the Appellant for safekeeping. That is completely inconsistent with a continuing or ongoing negotiation as pleaded in paragraph 12 of the Defence.

87. The fact that the Minister did not sign the lease did not prevent the lease, and all of the terms which had been agreed upon, being enforceable ...”

4. The parties’ cases

29. The appellant contends that the letter of 7 January 2020 evidenced a binding agreement between the appellant and the Minister for the grant of a lease—ie there was a binding legal obligation to grant a lease to the appellant in the terms of the Lease sent under cover of that letter. It was not the appellant’s case that this was an “offer”, which was the possibility that the Chief Justice had considered but rejected at para 33 (see para 21 above); rather, for the reasons articulated in the dissenting decision of the President in the Court of Appeal, by 7 January 2020 there was already a concluded agreement for a lease. If there was an agreement for a lease, then it was irrelevant that the Minister had not signed it.

30. The appellant criticised the reliance the courts below placed on section 54 of the Act. As the President stated, this section vests a power in the Minister which had previously vested in the Governor but has no further relevance (para 90).

31. The appellant also criticised the reliance placed on Mr Smith’s letter of 12 February 2020 and his subjective understanding. The relevant inquiry is an objective one.

32. The respondent supports the decisions of the courts below. He submits that whether negotiated terms are intended by the parties to be final and binding at that stage, or are advanced “subject to contract”, depends on the context and the particular facts and circumstances of the case. In the context of the facts and circumstances of this case the Chief Justice was entitled to hold that there was no final and binding agreement and that the potential demise was “subject to execution”. This view is supported by the fact that the formalities required to demise Crown lands had not been complied with. The Chief Justice made no error of law and the majority of the Court of Appeal was entitled and correct to uphold his decision.

5. The issue on the appeal

33. The agreed issue on the appeal is:

Whether the courts below were correct or entitled to hold that there was no agreement for a lease between the Appellant and the Minister.

34. This is a second appeal. As such, the issue is correctly characterised as being whether the courts below were entitled to hold that there was no agreement for a lease. Since the Court of Appeal upheld the Chief Justice’s decision, it is his decision that is of central importance in determining that issue.

35. The Chief Justice correctly identified the issue as being whether there was an agreement for the lease of the land.

36. He directed himself correctly in law. The passage cited from Lord Clarke’s judgment in *RTS* provides appropriate guidance to determine whether or not a valid and binding agreement for a lease was made. As there explained, the test is objective; it involves consideration of the communications between the parties by words or conduct, and it requires an objective conclusion as to when the parties intended that their legal relations should become binding. That may be at a stage before all the terms are agreed, provided all essential terms have been agreed. Conversely, it may be at a time after all terms have been agreed, as, for example, in a “subject to contract” case.

37. The appellant’s essential case is that all terms were agreed prior to 7 January 2020 and that the letter of that date merely evidenced and confirmed that agreement. The terms of the Lease attached to that letter were extremely detailed. It is apparent that there had been a long period of prior negotiations between the parties, but there is no evidence or finding that all these detailed terms were already agreed by 7 January 2020. If that were so, there would surely be detailed documentary exchanges between the parties evidencing this, but no such evidence was before the court. The Board accordingly does not consider that the 7 January 2020 letter can in itself constitute a binding agreement for the lease.

38. A possible alternative analysis is that the letter of 7 January 2020 was an offer to contract on the terms of the Lease which was accepted by the appellant’s return of the executed documents on 9 January 2020. This was not, however, the way that the case was advanced before the Court of Appeal or the Board. Nor is it the approach of Sir Michael Barnett P, which the appellant endorses. In those circumstances, the Board does not consider it appropriate to focus on this possible analysis.

39. In any event, the conclusion of the Chief Justice, which the majority of the Court of Appeal upheld, was that even if all the terms had been agreed on or shortly after 7 January 2020, this was a “subject to contract” case and, viewed objectively, there was no intention to create binding legal relations until the lease had been executed by the Minister. The Board notes that if this is correct then the 7 January 2020 letter cannot have been an offer.

40. The Board considers that the reasons set out in para 33(a) of the Chief Justice’s judgment are cogent grounds to support that conclusion.

41. The Chief Justice focuses first on the language of the letter. He highlights the requirement that the dating of the agreement be held over until the time of signature by the lessor, and the statement that the documents were to be returned and then sent back to the appellant following execution by the Minister. If the agreement was already made then there was no need to delay the dating of the lease, nor would the documents need to be sent back to the appellant.

42. The Chief Justice then identifies various relevant contextual matters, namely that, had the appellant's execution been expected to complete the transaction, then (i) the documents would have been forwarded as signed; (ii) the letter would have spoken to the payment of the rent due and (iii) the appellant would have furnished payment of the rent. As the Court of Appeal observed, there is no fault to be found with this "objective analysis".

43. In para 33(b) of his judgment the Chief Justice refers to the Statute of Frauds and section 54 of the Act. The appellant criticised the Chief Justice's apparent reliance on these matters as they do not apply to an agreement for a lease. They nevertheless provide relevant context. They illustrate that grants and dispositions of land are an area of law in which formality is commonly required. As such, there is nothing unusual about the parties intending that their legal relations should not become binding until formal execution of a lease, rather than by an exchange of correspondence and provision of an unsigned lease. Further, in this case it was apparent that both parties contemplated and indeed agreed there would be a formally executed lease. In such circumstances, it is unsurprising for the parties to intend that that should be the time at which they would become bound to its terms and not before.

44. It is also relevant that this case concerned Crown land. As section 54 makes clear, any grant or disposition of Crown land must be done under Public Seal of the Minister, a further layer of formality. This was an aspect of the case on which the majority of the Court of Appeal placed reliance, having the advantage of familiarity with local practices and expectations. They clearly considered that it would be unusual in The Bahamas for the Crown "to divest itself of limited Crown Lands other than by the deliberate and formal granting of a lease" (para 38).

45. In para 33(c) of his judgment the Chief Justice refers to the appellant's letter of 12 February 2020. The appellant criticised any reliance on this letter and in particular on the subjective understanding of Mr Smith. It is correct that the test is objective and that the subjective views of the parties are irrelevant. It is, however, well established that in determining whether and when a contract is made it is necessary to consider the whole of the communications between the parties. One does not draw a line at the point where one party alleges that the contract was made and ignore what happened thereafter. As stated by Earl Cairns LC in *Hussey v Horne-Payne* (1879) 4 App Cas 311, at p 316:

“you must take into consideration the whole of the correspondence which has passed. You must not at one particular time draw a line and say, ‘We will look at the letters up to this point and find in them a contract or not, but we will look at nothing beyond.’ In order fairly to estimate what was arranged and agreed, if anything was agreed between the parties, you must look at the whole of that which took place and passed between them.”

46. There are objective indicators in the 12 February 2020 letter that no binding agreement had yet been made. For example: (i) reference is made to the appellant’s “application for Crown Land”, not to an existing agreement in relation to the land; (ii) the appellant states that he has “been approved for the lease” of the land, not that he has an agreement for a lease of that land; (iii) the appellant was seeking a “Comfort Letter” in circumstances where, on the appellant’s case, it was a matter of obligation, not comfort. This was accordingly a letter upon which the Chief Justice was entitled to place reliance.

47. In summary, the Chief Justice identified the correct issue. He directed himself correctly in law. He provided cogent reasons in para 33(a) to support his view that any agreement of terms remained “subject to contract”, which, in the present context, meant subject to execution by the Minister. The further matters referred to in para 33(b) and 33(c) were relevant and supportive. In those circumstances, no error of law was made by the Chief Justice and the majority of the Court of Appeal was correct to hold that he was entitled to come to the conclusion which he did and to uphold his decision.

6. Conclusion

48. For all these reasons, the Board concludes that the courts below were entitled to hold that there was no agreement for a lease between the appellant and the Minister and the Board will humbly advise His Majesty that the appeal should be dismissed.