Hilary Term
[2025] UKPC 13
Privy Council Appeal No 0031 of 2024

JUDGMENT

Rubis Bahamas Ltd (Appellant) *v* Lillian Antionette Russell (Respondent) (The Bahamas)

From the Court of Appeal of the Commonwealth of The Bahamas

before

Lord Lloyd-Jones
Lord Briggs
Lord Hamblen
Lord Stephens
Lady Rose
Lord Richards
Lady Simler

JUDGMENT GIVEN ON
18 March 2025

Heard on 27 January 2025

Appellant
Aidan Casey KC
Oscar Johnson, Jr. KC
Peter Burgess
Keith Major, Jr.
Dennise Newton
(Instructed by Sinclair Gibson LLP)

Respondent
Krystal D Rolle KC
Darron B Cash
(Instructed by Rolle and Rolle)

LORD HAMBLEN:

Introduction

1. On 25 July 2024 the Board ordered that there should be the hearing of a preliminary issue in relation to the application for permission to appeal in this case. That issue is whether there is an appeal as of right. This depends on the proper interpretation of section 23(1) of The Bahamas Court of Appeal Act ("the CA Act") which provides that there is an appeal as of right "in a civil action in which the amount sought to be recovered by any party … is of the amount of four thousand dollars or upwards" (the "value threshold").

2. The factual context in which the issue arises is a claim in tort brought by the respondent ("Ms Russell") against the applicant ("Rubis") for damage to her property allegedly caused by fuel leaks from tanks at an adjacent petrol service station owned by Rubis. At first instance the claim succeeded in relation to leaks occurring in 1994 and 2012/13 and damages of $692,825.14 were awarded. On appeal it was held that Rubis was only liable for the 2012/13 leak and the damages were reduced to $159,450. Rubis seeks to appeal on liability, causation and quantum.

3. Rubis contends that the correct approach to determining whether an appeal surmounts the value threshold for an appeal as of right is to look at the value of the appeal to the appellant, and where the appellant is the defendant, that is the amount for which the plaintiff has obtained judgment in the action, against which judgment the defendant seeks to appeal. In this case that value is $159,450, the amount of damages awarded by the Court of Appeal, the entirety of which is being challenged on appeal.

4. This approach was rejected by the Court of Appeal. It held that there is only an appeal as of right where the claim made is one for liquidated damages. This was a claim for unliquidated damages. The Court of Appeal reached this decision in reliance on a passage in the judgment of the Board given by Lord Nolan in *Zuliani v Veira (Saint Christopher and Nevis)* [1994] 1 WLR 1149 ("*Zuliani*"), as interpreted in prior Court of Appeal decisions in The Bahamas, beginning with its decision in August 2022 in the case of *Paul F Major v First Caribbean International Bank (Bahamas) Ltd* SC Civ App. No. 77 of 2021 ("*Major*").

5. Rubis contends that this approach is contrary to the plain meaning of section 23(1), is wrong in principle, is inconsistent with a long line of authorities and rests on a misinterpretation of *Zuliani.*

The factual and procedural background

6. Ms Russell owns one property in a housing subdivision in Nassau, which is situated across from a petrol service station owned by Rubis since 2012, separated by a roadway. Rubis purchased the service station from Texaco Bahamas Ltd ("Texaco") and then leased it to Fiorente Management and Investment Ltd.

7. Ms Russell commenced these proceedings in March 2015. In her Statement of Claim she alleged that leaked petrochemical products had migrated from the service station to her property and had contaminated the soil and water table there.

8. In relation to the 1994 leak, the claim was brought against Rubis for negligence on the basis that Texaco had failed to remediate her property, and that Rubis assumed Texaco's liabilities when it acquired Texaco's assets. Claims were also made for trespass and nuisance.

9. In relation to the 2012/2013 leak, a claim in negligence was made on the basis that Rubis had failed adequately to inspect, maintain and repair the fuel equipment at the service station. Claims were also made for trespass, nuisance, and liability under *Rylands v Fletcher* (1868) LR 3 HL 330.

10. The damages claimed included cost of remediation ($782,905), diminution in value ($131,000), cost of testing and sampling ($3,000), cost of appraisal ($450) and cost of damaged trees (to be assessed).

11. By a judgment dated 14 April 2022 Thompson J found that both leaks occurred, they both caused damage to and reduced the value of Ms Russell's property, and Rubis was liable for the damage caused by both leaks. He awarded $692,825.14 to Ms Russell, consisting of $250,000 in damages for loss of amenity value, $439,375.14 for the cost of remedial work, and $3,450 for the cost of testing and appraisal.

12. Rubis appealed. By its judgment dated 19 October 2023 (the "substantive judgment"), the Court of Appeal (Barnett P, Crane-Scott and Evans JJA) allowed the appeal in relation to the 1994 leak but upheld the claim in relation to the 2012/13 leak on the basis of liability under *Rylands v Fletcher*. It set aside the judgment of $692,825.14 and substituted for it an award of $159,450, consisting of $25,000 for loss of amenity value, $131,000 for diminution in value and special damages of $3,450.

13. Rubis applied for permission to appeal but its application was dismissed by the Court of Appeal in its judgment of 27 February 2024 (the "PTA judgment").

14. On 22 April 2024, Rubis applied for special leave to appeal the substantive judgment and, in the alternative, special leave to appeal the PTA judgment.

15. By its order of 25 July 2024, the Board (Lord Briggs, Lord Sales and Lord Burrows) ordered that there should be an oral hearing of the preliminary issue of whether there is an appeal as of right against the substantive judgment; if there is, the full appeal will follow on a date to be fixed; if there is not, special leave to appeal was refused, there being no arguable point of law of general public importance.

The legislative framework

16. Article 105 of the Constitution of the Commonwealth of The Bahamas provides as follows:

> "105. (1) Parliament may provide for an appeal to lie from decisions of the Court of Appeal established by Part II of this Chapter to the Judicial Committee of Her Majesty's Privy Council or to such other court as may be prescribed by Parliament under this Article, either as of right or with the leave of the said Court of Appeal, in such cases other than those referred to in Article 104(2) of this Constitution as may be prescribed by Parliament.
>
> (2) Nothing in this Constitution shall affect any right of Her Majesty to grant special leave to appeal from decisions such as are referred to in paragraph (1) of this Article."

17. Parliament has prescribed for an appeal to lie from the decisions of the Court of Appeal as of right by section 23 of the CA Act, which provides:

> "Appeals to the Privy Council.
>
> 23. (1) An appeal shall lie to Her Majesty in Council from any judgment or order of the court upon appeal from the Supreme Court in a civil action in which the amount sought to be recovered by any party or the value of the property in dispute is of the amount of four thousand dollars or upwards, and with the leave of the court but subject nevertheless to such restrictions, limitations and conditions as may be prescribed in relation thereto by Her Majesty in Council, in any other

> proceedings on the Common Law, Equity, Admiralty or Divorce and Matrimonial sides of the jurisdiction of the Supreme Court.
>
> (2) Save as is provided in this section the decision of the court in any civil proceedings brought before it on appeal shall be final.
>
> (3) Nothing in this section contained shall be deemed to restrict or derogate from the right of Her Majesty in Council in any case to grant special leave to appeal from the decision of the court in any cause or matter."

18. The precise formulation used in section 23 of the CA Act, and specifically the wording "in which the amount sought to be recovered by any party", appears to be unique to The Bahamas. In most other jurisdictions with appeals as of right to the Judicial Committee of the Privy Council (the "JCPC") by reference to a value threshold, both current and historic, the phrasing is "where the matter in dispute on [or in] the appeal" amounts to or is of the value of or exceeds [x] (the "model formulation").

19. Save in relation to the monetary threshold, the criterion for an appeal as of right to the JCPC has been in materially the same terms in The Bahamas since the Supreme Court Act 1896. At that time appeals were from the Supreme Court.

Zuliani **and** ***Major***

20. *Zuliani* concerned an appeal to the JCPC against two judgments of the Eastern Caribbean Court of Appeal in Saint Christopher and Nevis (the "ECCA"). In the proceedings the plaintiff, who was a barrister and solicitor, claimed from the defendants US$286,411.99 for legal work as set out in a bill of costs. The bill was found to be defective on various grounds, but rather than dismissing the claim the first instance judge ordered that the defendants should pay the amounts found to be due from them upon taxation of individual bills of costs to be filed by the plaintiff. That decision was upheld by the ECCA.

21. The defendants sought to appeal the judgment of the ECCA and contended that they were entitled to do so as of right under the Constitution of Saint Christopher and Nevis, which provided that an appeal would lie as of right "where the matter in dispute on the appeal to Her Majesty in Council is of the prescribed value or upwards".

22. The ECCA decided that the defendants did not have an appeal as of right (Civ App. No. 5 of 1991). Having considered the JCPC's decisions in *Allan v Pratt* (1888) 13 App Cas 780 and *Lakhamshi & Brothers v Furniture Workshop* [1954] AC 80, the ECCA concluded:

> "In the present case, the amount of the judgment or the liability thereunder has not yet been determined. It therefore cannot be asserted with certitude that the value of the matter in dispute on appeal – 'looked at from the point of view of the appellants' – is of the prescribed value to render the appellate judgment appealable by the appellants under section 19(1) of the Constitution of Saint Christopher and Nevis."

23. The defendants were granted special leave to appeal against both decisions of the ECCA. The JCPC initially dealt with the substantive appeal and dismissed it on its merits. In a single paragraph at the end of the judgment Lord Nolan dealt with the appeal against the decision regarding the as of right provision as follows:

> "In the circumstances, the appeal against the second decision of the Court of Appeal is of no practical significance, but it raises a question of general importance. Again, in agreement with the Court of Appeal, their Lordships would answer the question in favour of the plaintiff. In providing that the automatic right of appeal should arise only where the matter in dispute was of the value of (or in excess of) a precise figure the legislature has chosen not to include an award of unliquidated damages. In the view of their Lordships this provision should be strictly construed. No doubt there will be many cases, of which the present is one, where it can be said as a matter of the utmost probability, or even of virtual certainty, that the damages ultimately awarded will be in excess of E.C.$5,000, and in such cases the Court of Appeal may very well think it right, as a general rule, to grant leave in the exercise of its discretion. Equally, however, there may be cases—and again the present case may serve as an example—where the likely amount of damages is at or above the statutory threshold, but which are so lacking in merit that the Court of Appeal in its discretion would refuse leave."

24. *Major* concerned a claim for unfair dismissal, wrongful dismissal, breach of contract and defamation for which damages were claimed "in the minimum amount" of $208,572. The plaintiff's claims were dismissed at first instance and again on appeal. The plaintiff made an application for leave to appeal to the JCPC on the basis that his appeal

was as of right. The Court of Appeal (Isaacs, Crane-Scott and Evans JJA) held, in reliance on *Zuliani*, that there was no appeal as of right as section 23 of the CA Act is to be construed as referring to claims for liquidated damages only. It held (the judgment of the Court being given by Evans JA):

> "25. …A close reading of **Zuliani** is in my view instructive. Lord Nolan speaks of three (3) separate situations. Firstly, the automatic right of appeal should arise only where the matter in dispute is of the value of (or in excess of) the statutory threshold and is a **precise figure**. In that situation Lord Nolan says the Legislature has chosen not to include an award of unliquidated damages and this provision he says should be strictly construed. Secondly, Lord Nolan refers to a situation where it can be said as a matter of the **utmost probability**, or even of **virtual certainty**, that the damages ultimately awarded will be in excess of $EC 5,000.00 (the statutory threshold). In such a case, Lord Nolan said, the Court of Appeal may very well think it right, as [a] general rule, to grant leave in **the exercise of its discretion**. The third and final situation is where the **likely amount** of damages is at or above the statutory threshold, but the cases are so **lacking in merit** that the Court of Appeal in its **discretion** would refuse leave.
>
> 26. It is clear that the claim put forward by the Applicant herein is not one of which it can be said that the value of his claim relates to a **precise figure**. It requires an assessment by the court as to the proper sum to be awarded. It follows that he has no **automatic right of appeal** in the sense envisaged by Lord Nolan. It can be said however, that his claim even at its lowest likely amount meets or exceeds the statutory threshold of Four Thousand Dollars ($4,000.00). It follows that he has a right which is subject to the exercise of the discretion of this Court. It is the ambit of that discretion which will govern the review of the remaining issues." (Emphasis in the original.)

25. It was recognised that this decision represented "a marked change from the way that such applications have been dealt with in the past" and that it would "follow that the category of cases which do pass that test would be much smaller than originally thought" (para 24).

26. *Major* was followed and applied by the Court of Appeal (Barnett P, Crane-Scott and Evans JJA) in *Deyvon Jones v FML Group of Companies Ltd* SC Civ App. No. 69 of 2021. That case concerned a claim for damages for breach of contract, alternatively for

constructive dismissal. Damages of over $1 million were claimed. The trial judge dismissed the claim. The appeal was allowed. The majority awarded the plaintiff $120,000 as damages; Barnett J dissented on the basis that he would only have awarded $30,000. FML sought to appeal on the ground that the damages should be limited to $30,000. The judgment of the court dated 1 September 2022 was given by Barnett P. It was held that as the claim brought was for unliquidated damages there was no appeal as of right. Barnett P stated:

> "15. In my judgment, as the claim brought in this case was for unliquidated damages and even though the statement of claim particularized the loss and damage in excess of $1 million and this court held that the damages [were] in excess of the $4000 threshold, the actual claim in the Supreme Court was not a claim [in] 'a civil action in which the amount sought to be recovered by any party or the value of the property in dispute is of the amount of four thousand dollars or upwards'. It is therefore not an appeal as of right."

27. The same approach was followed by the Court of Appeal (Isaacs, Crane-Scott and Evans JJA) in *Lucretia Rolle v Airport Authority* SC Civ App. No. 119 of 2021 ("*Rolle*") in which the judgment dated 8 March 2023 was given by Crane-Scott JA. That case concerned a claim for damages for personal injuries following a slip and fall at work. The claim was dismissed as being statute-barred, a decision upheld on appeal. It was held that there was no appeal as of right as the claim was an "unspecified claim for 'damages for personal injuries'". Crane-Scott J stated:

> "32. Is this an appeal 'as of right'? We have considered the respective submissions and based on the authorities of *Zuliani* and *Major* we are satisfied that the appeal is not an 'as of right' appeal within section 23 of the Act since the amount sought to be recovered or the value of the Intended Appellant's claim was an unspecified claim for 'damages for personal injuries.' In short, the proposed appeal from the judgment of this Court is an appeal from the Supreme Court in a civil action in which the Intended Appellant made a claim for unliquidated damages yet to be assessed.
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> 33. In *Zuliani*, the Privy Council suggests that the provision should be strictly construed. Writing the Board's decision, Lord Nolan explained:

> ‘In providing that the automatic right of appeal should arise only where the matter in dispute was of the value of (or in excess of) a precise figure the legislature has chosen not to include an award of unliquidated damages. In the view of their Lordships this provision should be strictly construed.’ [Emphasis added.]
>
> 34. We are satisfied that the Intended Appellant has failed to meet the statutory threshold for leave to appeal to the Privy Council ‘as of right’. That said, we are satisfied that the value of her claim, even at its lowest, will in all likelihood meet or exceed the statutory threshold of Four Thousand Dollars ($4,000.00). Based on the Board’s guidance in *Zuliani*, this means that she has an appeal which though not ‘as of right’, is *subject to* the exercise of the Court’s discretion.” (Emphasis in the original.)

28. The Court of Appeal in the PTA judgment followed these earlier decisions and specifically cited paras 32−34 of *Rolle.* The judgment was given by Barnett P who stated:

> “11. In this case, the action in the Supreme Court sought damages in tort. Although it particularized special damages in excess of $4,000.00 it was still a claim for unliquidated damages as any claim in tort must be. It was not a claim in contract seeking a specified sum under some contractual right. …
>
> 12. We are satisfied that this is a claim for unliquidated damages in tort and it is not an appeal ‘as of right’”.

29. In another decision of the Court of Appeal (Isaacs, Crane-Scott, Jones JJA) in *Strachan v Albany Resort Operator Ltd* SC Civ App. No. 67 of 2021 it was held that a claim for specified sums by way of special damages in excess of the value threshold did give rise to a right of appeal. That case concerned a claim in negligence in which both general and special damages were claimed. Judgment was given by Isaacs JA on 8 February 2023.

The parties’ cases

30. Mr Aidan Casey KC for Rubis contends that the correct approach to the value threshold in section 23 is not to look at the claim originally made, but rather to consider

the value of the appeal to the appellant. In the present case the value of the appeal to Rubis is $159,450, being the damages awarded by the Court of Appeal. That far exceeds the value threshold of $4,000.

31. He submits that this is supported by the language of section 23, by a long line of JCPC authority stemming from its 1862 decision in *Macfarlane v Leclaire* (1862) 15 Moo PCC 181 and by considerations of principle, logic and fairness.

32. Ms Krystal Rolle KC for Ms Russell did not seek to defend the Court of Appeal's decision. She said that there was no justification for reading words such as "liquidated claims only" into section 23 and that the decision in *Major* was based on a misreading of Lord Nolan's judgment in *Zuliani*.

33. The opposition to the appeal therefore rests on the Court of Appeal's judgments in *Major* and subsequent cases rather than the submissions of counsel. The reasoning in those judgments has been set out above.

The interpretation of section 23

34. Statutory interpretation requires the court to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision.

35. The value threshold in section 23 is expressed in terms of "the amount sought to be recovered by any party". As a matter of language this naturally refers to the amount being claimed by a claimant in an action. This is initially as set out in a claimant's pleading. However, actions do not stand still. They develop during the course of proceedings and the amounts claimed frequently change. Claims may be dropped, claims may be added and claims may be dismissed and not appealed.

36. The context in which these words fall to be interpreted is a proposed appeal and that is the relevant stage of the action. At this stage the amount being claimed depends upon what is at stake on the appeal, not what may have been claimed at some earlier stage of the action. If, for example, an initial claim is made for $1 million, judgment is given for $500,000, an appeal is made against that judgment but there is no cross-appeal against the amount awarded then the amount at stake on the appeal is clearly $500,000. The fact that the amount initially claimed was $1 million is nothing to the point. For the purpose of the appeal the only amount in issue is the $500,000 for which judgment was given. That is now the "amount sought to be recovered" by the claimant.

37. If, for example, a plaintiff originally claimed $10,000, judgment was given for $3,000, and the defendant sought to appeal, it would make no sense to say that the value threshold of $4,000 had been met because the "amount sought to be recovered" had originally been $10,000, even though only $3,000 was now in issue. Conversely, it would equally make no sense to say that the value threshold had not been met if the original claim had been for $3,000 but $5,000 had been awarded and that award was now being appealed.

38. The self-evident purpose of a value threshold for a right to appeal is to ensure that leave to appeal is required for appeals concerning small or minor claims but not otherwise. Although that purpose may have been undermined by inflation since the monetary thresholds were set, it remains the purpose which needs to be taken into account when interpreting section 23. For that purpose, what matters is the amount at stake on the appeal, not what may have been at stake at some earlier stage of the proceedings.

39. When one considers the meaning of the words "the amount sought to be recovered by any party" in the light of their context and the purpose of having a value threshold for a right of appeal, that amount naturally refers to the amount which is sought to be recovered at the time of and for the purpose of the appeal.

40. As a matter of statutory language the Board therefore considers that the Court of Appeal was wrong to consider that the "amount sought to be recovered" is to be determined by reference to the claim as originally pleaded. It should be interpreted as referring to the "amount sought to be recovered" at the time and for the purpose of the appeal.

41. Nor does the Board consider that *Zuliani* suggests otherwise. The critical passage relied upon by the Court of Appeal is Lord Nolan's statement:

> "In providing that the automatic right of appeal should arise only where the matter in dispute was of the value of (or in excess of) a precise figure the legislature has chosen not to include an award of unliquidated damages." [Emphasis added.]

42. Lord Nolan was not there focusing on what had originally been claimed but rather on what had or had not been awarded by way of the judgment. It is considering the value of the claim by reference to the judgment being appealed, not the pleadings. What is meant by his reference to "unliquidated damages" will be considered further below.

The authorities

43. There is a long line of authority which supports the approach that the determination of whether the value threshold is met depends on what is at stake on the appeal for the party who is appealing. Many of these cases involve the model formulation which refers to the value of "the matter in dispute" on or in "the appeal". Such a formulation expressly links the valuation to "the appeal", but, for the reasons given above, the same applies to the different wording used in section 23.

44. The first case is *Macfarlane v Leclaire.* It concerned an appeal from the Canadian Court of Appeal. The relevant statutory provision stated that judgments of the Court of Appeal were to be final "in all cases where the matter in dispute shall not exceed the sum, or value, of £500" but that there was a right to appeal "in cases exceeding that sum or value". The respondent claimed £417 on certain promissory notes against the defendant, for which they obtained judgment in default. It also sought to attach goods in the possession of the appellant which they alleged were the property of the defendant and for which the appellant had paid £1,642. The first instance court dismissed the claim, but that decision was reversed on appeal and the effect of the Court of Appeal's judgment was to make the goods subject to the attachment liable not only to the respondent's claim for £417 but to the claims of all the creditors of the original defendant. The Board held that the value of the subject-matter in dispute therefore exceeded the value threshold and so there was an appeal as of right. Lord Chelmsford stated that in determining that value it was necessary to look at how the judgment affects the interests of the party appealing against it. He stated (at p 187):

> "In determining the question of the value of the matter in dispute upon which the right to appeal depends, their Lordships consider the correct course to adopt is to look at the judgment as it affects the interests of the parties who are prejudiced by it, and who seek to relieve themselves from it by an appeal. If their liability upon the judgment is of an amount sufficient to entitle them to appeal, they cannot be deprived of their right because the matter in dispute happens not to be of equal value to both parties; and, therefore, if the judgment had been in their favour, their adversary might possibly have had no power to question it by an appeal. In this case, the effect of the judgment was to place in jeopardy the whole of the goods contained in the assignment from Prevost, for which a sum of £1642, currency had been paid."

45. In *Allan v Pratt* the Board followed "the rule laid down" in *Macfarlane v Leclaire*. This was another Canadian case. The plaintiff sued for damages for personal injury arising out of an accident at work. He claimed $5,000 (which was above the value threshold) but was awarded only $1,100 (which was below the value threshold). That judgment was affirmed on appeal and the defendant sought to appeal to the JCPC contending that he had a right of appeal because the amount originally claimed was above the threshold. The

Board held that the relevant value was the amount recovered by the judgment rather than the amount claimed. The Earl of Selborne stated (at p 781):

> "The proper measure of value for determining the question of the right of appeal is, in their judgment, the amount which has been recovered by the plaintiff in the action and against which the appeal could be brought. Their Lordships, even if they were not bound by it, would agree in principle with the rule laid down in the judgment of this tribunal delivered by Lord Chelmsford in the case of *Macfarlane v Leclaire*, that is, that the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal. If there is to be a limit of value at all, that seems evidently the right principle on which to measure it. The person against whom the judgment is passed has either lost what he demanded as plaintiff or has been adjudged to pay something or to do something as defendant. It may be that the value to the defendant of an adverse judgment is greater than the value laid by the plaintiff in his claim. If so, which was the case in *Macfarlane v Leclaire*, it would be very unjust that he should be bound, not by the value to himself but by the value originally assigned to the subject-matter of the action by his opponent. The present is the converse case. A man makes a claim for much larger damages than he is likely to recover. The injury to the defendant, if he is wrongly adjudged to pay damages, is measured by the amount of damages which he is adjudged to pay. That is not in the least enhanced to him by the fact that some greater sum had been claimed on the other side."

46. Both *Macfarlane v Leclaire* and *Allan v Pratt* concerned appeals against claims which succeeded. *Mohideen Hadjiar v Pitchey* [1893] AC 193 ("*Mohideen Hadjiar*") involved a claim which had been dismissed but a similar approach of looking at what was at stake for the appellant on the appeal was adopted. This was an appeal from the Supreme Court of Ceylon. The plaintiff made a claim for possession of property valued at Rs 4,050 and for mesne profits until possession was recovered which meant a total claim of Rs 5,850 as at the time of the Supreme Court judgment. The claim was dismissed and the value threshold for the right of appeal was Rs 5,000. It was held that the appealable amount was the amount in respect of which the suit had been dismissed which was the full claim, including mesne profits. There was therefore a right of appeal.

47. *Lovibond v Grand Trunk Railway Company of Canada* [1936] UKPC 35, [1936] 3 DLR 449 ("*Lovibond"*) also concerned an appeal involving a claim which had been dismissed, in that case on procedural grounds. The plaintiff was a stockholder in railway companies whose name had been removed from the stock register and their stock

transferred to the Minister of Finance in trust for the Crown. It was claimed that the removal of the plaintiff's name as shareholder was unlawful and claims were made for his restoration to the register, alternatively damages in certain specified amounts. There was a right of appeal "where the matter in controversy … exceeds the sum or value of 4,000 dollars". The damages claimed far exceeded this sum. The Board held that there was a right of appeal. Lord Russell of Killowen stated:

> "On the one hand it is said that the question for consideration on the appeal is a question of procedure or jurisdiction, and that there is no controversy of a pecuniary nature. On the other hand the contention is that the true test is what is at stake on the appeal, that what is at stake is the plaintiff's right to continue proceedings in which he is claiming damages far in excess of $4,000, and that accordingly that this is a case (whether that word means 'cause' or 'instance') in which the matter in controversy exceeds the sum or value of $4,000. The question is now of interest in this litigation only as regards costs, owing to the fact that special leave to appeal was granted. Their Lordships however are of the opinion that the contention of the appellants is correct, and that the plaintiff was entitled as of right to appeal to His Majesty in Council. The order of the Court of Appeal dismissed his action and as a result his claim to damages was just as effectively put to an end to as if his action had been dismissed after a full trial on merits. In either case it appears to their Lordships that for the purposes of an appeal there is matter in controversy which exceeds the sum or value of $4,000."

48. The approach to be adopted was regarded as being sufficiently clearly established as to be described in the following terms in *Bentwich, The Practice of the Privy Council in Judicial Matters,* 3rd ed (1937), p 107:

> "The proper measure of value for determining the question is, in the case of a plaintiff appellant, the amount for which the defendant has successfully resisted a decree in the lower Courts: *Mohideen Hadijar v Pitchley* [1893] AC 193. And where the defendant is an appellant, the amount which has been recovered by the plaintiff in the action and against which the appeal would be bought: *Allan v Pratt* 13 App Cas 780. The rule is that the judgment is to be looked at as it affects the interest of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal: see *Lovibond v Grand Trunk Ry Co of Canada* (1936), *The Times, ubi supra,* p 32. Where an action for possession and mesne profits was dismissed, the

> appealable amount was the value of the property and the mesne profits: *Mohideen Hadijar, etc (supra)*. In some cases the value to the defendant of an adverse judgment is greater than the value laid by the plaintiff to his claim. If so, it would be unjust that he should be bound not by the value to himself, but by the value originally assigned to the subject-matter of the action by his opponent: *Allan v Pratt (supra).*"

49. The approach set out in *Macfarlane v Leclaire* has been endorsed and followed in more recent JCPC cases. In the 1954 case of *Lakhamshi & Brothers v Furniture Workshop* Lord Tucker stated (at p 87):

> "It was laid down by this Board in *Macfarlane v Leclaire* that 'the value of the subject-matter in dispute,' under corresponding legislation relating to Canadian appeals, must be determined by looking at the judgment as it affects the interests of the party who is prejudiced by it and who seeks to appeal. The same test was applied in *Allan* v *Pratt* to a case of an appeal from a judgment awarding damages for personal injuries, it being held that the value was the sum awarded and not the sum claimed."

50. In *Walter Fletcher v Income Tax Comr* [1972] AC 414 ("*Walter Fletcher"*) Lord Wilberforce stated (at p 419G-H):

> "Whether an appeal is competent under a provision such as this (which has existed and exists in the same form in many other jurisdictions) must be decided upon the basis of the judgment against which it is sought to appeal, and depends upon whether that judgment affected the interest of the party prejudiced by it to an extent not less than the specified amount. This was clearly laid down by this Board in *Macfarlane v Leclaire* (1862) 15 Moo PCC 181, which has repeatedly been followed and applied."

51. Most recently, in *Sian Participation Corpn (in liquidation) v Halimeda International Ltd (Virgin Islands)* [2024] UKPC 16, [2024] 3 WLR 937 Lord Briggs and Lord Hamblen at paras 111-112 cited the above passage from Lord Wilberforce's judgment in *Walter Fletcher*, described it as providing "[a]uthoritative guidance as to how the value threshold falls to be applied" and stated that it is "well established that the value threshold must be approached from the perspective of the appellant".

52. In summary, the authorities establish that whether the value threshold in provisions such as section 23 has been met is to be decided upon the basis of the judgment against which it is sought to appeal and depends upon whether that judgment affects the interest of the party prejudiced by it to an extent not less than the specified amount (*Walter Fletcher*). In the case of an appellant defendant that will depend on the amount which has been awarded by the judgment which is being appealed (see, for example, *Macfarlane v Leclaire* and *Allan v Pratt*). In the case of an appellant plaintiff that will depend upon the value of the claim which has been dismissed and is being appealed (see, for example, *Mohideen Hadjiar v Pitchey* and *Lovibond*).

53. This is entirely consistent with what the Board considers to be the meaning of the relevant wording in section 23 in the light of its context and the purpose of a value threshold for a right of appeal, as set out above.

The PTA judgment

54. Applying the approach laid down by the authorities to the facts of the present case, the judgment against which Rubis seeks to appeal awarded Ms Russell damages of $159,450. Rubis appeals against the entirety of the judgment. That judgment affects the interest of Rubis to an extent that is in excess of the value threshold of $4,000. There is therefore a right to appeal under section 23.

55. The Court of Appeal was wrong to focus on the claim originally made rather than the judgment being appealed. That judgment is for a precise, quantified sum. The fact that the claim originally made was for unliquidated damages is irrelevant. That claim is now merged in a judgment for a liquidated amount. There is no difficulty in identifying or valuing the amount at stake for Rubis on the appeal. It is the judgment sum of $159,450.

56. That is sufficient to dispose of the preliminary issue. The appeal does, however, raise the wider question of whether *Major* was correctly decided and how the value threshold is to be applied in a case, such as *Major*, where the claim has been dismissed. The authorities show that the same approach is to be followed, and the question is whether the judgment being appealed affects the interest of the appellant to an extent not less than the specified monetary threshold. The authorities also show that that depends on the value of the claims which have been dismissed and are being appealed.

57. In principle that must be correct. If it were otherwise, then the unsuccessful defendant would be in a more advantageous position than the unsuccessful plaintiff. The unsuccessful defendant would be able to establish value by reference to the specified judgment amount. Unless, however, reliance can be placed on the claims made, even if unliquidated, the unsuccessful plaintiff would be unable to do likewise. Both plaintiff and

defendant should be equally entitled to show how their interests are affected by the appeal and what is at stake for them.

58. Leaving aside *Zuliani*, there is no suggestion in any of the JCPC cases on the value threshold that the valuation of the dismissed claim being appealed depends upon whether it is a claim for liquidated or unliquidated damages, or whether it is a claim for general or special damages, or whether the general damages are claimed for a specified sum or are at large. *Mohideen Hadjiar* took into account a claim for mesne profits, which is a claim for general damages. The damages claims in *Lovibond* were not claims for liquidated damages.

59. Nor is there any support for the drawing of such distinctions in the language of section 23. It does not refer to "liquidated" or "unliquidated" damages or to "liquidated" or "unliquidated" claims, nor is there any reference to special or general damages. It refers in general and unqualified terms to the "amount sought to be recovered", without distinguishing between the legal basis upon which such recovery is sought or the nature of any damages claimed.

60. In principle, what matters is the valuation of the claim, not its label. Every money claim has a value and a claim for unliquidated damages is a claim for a monetary amount, namely the true value of the claim properly assessed.

61. The exclusion of unliquidated claims from the scope of section 23 would have arbitrary and unjust consequences. If, for example, a plaintiff claims general damages for catastrophic personal injuries where it is obvious that, if liability were established, damages of at least $1,000,000 would be awarded, but only makes a claim for special damages of $3,900, it would be perverse to say that the value threshold had not been met. It would be equally perverse for there to be a right of appeal simply because the relatively minor claim for special damages was for $4,001 rather than $3,900. Equally there is no reason in logic or justice for allowing an appeal as of right for a claim for a contractual debt of $4,001 but not for a $1,000,000 general damages claim.

62. Nor would the exclusion of unliquidated claims serve or meet the purpose of a value threshold. A general damages claim for $1,000,000 is not a small or minor claim. It is a substantial claim which affects the interests of the plaintiff to a very significant extent.

63. The Board considers that this approach to appeals by a plaintiff is correct both as a matter of authority and as a matter of principle. If so, that calls into question what Lord Nolan said in *Zuliani*. The Board considers that where Lord Nolan referred to "an award of unliquidated damages" he meant a judgment which does not award any amount by way of damages, as was the case in *Zuliani*. The effect of the order made in that case was akin

to a judgment for damages to be assessed. That does not, however, mean that no valuation of the claim can be made. Indeed, Lord Nolan acknowledged the possibility of it being shown that the value threshold would be exceeded as a matter of "utmost probability" or "virtual certainty". In such a case, the judgment surely affects the interest of the appellant to an extent in excess of the value threshold.

64. If a plaintiff can establish value by reference to claims which have been dismissed, the same must surely apply to a claim which has succeeded but for which damages remain to be assessed. Any other conclusion would be unprincipled and unjust. An appellant plaintiff who had failed to establish liability would be in a more advantageous position than an appellant plaintiff who had succeeded on liability.

65. The fact that the value threshold is expressed as a precise figure does not mean that value can only be established by reference to claims for a specified or liquidated amount or that certainty rather than probability is required. It identifies what has to be established but does not specify or restrict how that is to be done. So, for example, in relation to the value threshold for property related claims there will often be no specified value and evidence of value will be required (see further below). Evidence of value should equally be permissible in relation to the amount sought to be recovered.

66. It is striking that Lord Nolan does not refer to any of the line of cases following *Macfarlane v Leclaire* or the rule which it "clearly laid down", a rule which has "repeatedly been followed and applied" (per Lord Wilberforce in *Walter Fletcher*). Had he considered those cases it is inconceivable that he would have expressed himself in the terms which he did. To the extent that what Lord Nolan stated in *Zuliani* differs from the approach set out in the *Macfarlane v Leclaire* line of cases, that established line of authority rather than *Zuliani* should be followed and applied. The proper approach is as set out in para 52 above.

67. Following the proper approach means that *Major* was wrongly decided. The plaintiff in that case should have been allowed to seek to establish that his claim for unliquidated damages satisfied the value threshold.

68. The burden of showing that the value threshold has been met lies on the applicant. In cases involving claims for unliquidated damages which have been dismissed, or not addressed or assessed, that requisite value needs to be established to the satisfaction of the court. Given the low monetary threshold, in many cases that may be easy to establish or not in dispute – see, for example, the comments of Lord Hope in *Li Chen Ling Kaw v Societe Piang Sang Pere et Fils* [2012] UKPC 19, para 15. But in borderline or disputed cases evidence is likely to be required.

69. It is well established that evidence may be adduced for this purpose. In *Bentwich* under the heading "Evidence of value" it is stated as follows (at pp 110-111):

> "The Judicial Committee has recommended the grant of leave to appeal, on being satisfied as to the real value, even where it is greater than the stamp duty would have indicated. In one case in which leave was granted, the true value was stated in the judgment of the Court below. In another case the order admitting the appeal directed that the registrar of the Court below 'should transmit, together with the record, satisfactory evidence, to be supplied by the appellants, that the real or market value of the land in dispute exceeded the sum of Rs.10,000'. The Court which is asked to grant leave to appeal should ascertain the value of the suit. Where a report with reference to the value has been made, full information with reference to the proceedings should be included in the record on the appeal to the Privy Council: *Anup Mahto v Mita Dusadh* (1933) 60 I A 366. Where there was a right of appeal to the Supreme Court in the colony in certain cases where the amount involved was over £500, the Judicial Committee held that the Supreme Court was wrong in refusing to hear an appeal on the ground that the value should be found and stated by the Court appealed from, and could not be ascertained by themselves on affidavit: *Falkners' Gold Mining Co Ltd v M'Kinnery* [1901] AC 581."

70. Finally, for completeness the Board should address Ms Rolle's submission that the decision in *Zuliani* is properly to be explained on the basis that it concerned an interlocutory rather than a final decision. Whilst the Board agrees with Ms Rolle that there is no right of appeal in respect of interlocutory decisions, it cannot accept that *Zuliani* was such a decision or that it was purportedly decided on that basis. There is no reference to this issue in the judgment. The decision being appealed was in effect one where the claim had succeeded but damages remained to be assessed. Such a decision is final as to liability.

Conclusion

71. This is an appeal against a judgment for $159,450. For the purpose of the appeal that is "the amount sought to be recovered". The value threshold under section 23 of the CA Act of $4,000 is therefore satisfied. The applicant has an appeal as of right and the full appeal will follow on a date to be fixed.