Easter Term
[2025] UKPC 24
Privy Council Appeal No 0115 of 2023

JUDGMENT

Garet O Finlayson and another (Appellants) *v* Caterpillar Financial Services Corporation (Respondent) (The Bahamas)

From the Court of Appeal of the Commonwealth of The Bahamas

before

Lord Briggs
Lord Sales
Lord Stephens

JUDGMENT GIVEN ON
29 May 2025

Heard on 6 May 2025

Appellant
Kahlil D Parker KC
Roberta W Quant
(Instructed by Cedric L Parker & Co (Nassau, Bahamas))

Respondent
Aidan Casey KC
Faisal Osman
Karen S Brown
Keith O Major, Jr.
(Instructed by Sheridans Solicitors LLP (London))

LORD STEPHENS:

Introduction

1. Garet O Finlayson and Mark G Finlayson ("the appellants") guaranteed a loan from Caterpillar Financial Services Corporation ("the respondent") to Kurc Limited. The loan agreement between the respondent and Kurc Limited is dated 21 December 2001 and subsequently it has been amended on three occasions. The loan was granted to facilitate the construction of a 147-foot mega yacht hull number SY26 ("the Maratani X") which vessel was constructed between 2002 and 2006 in New Zealand. The Maratani X was security for repayment of the loan and for the other contractual obligations of Kurc Limited under the loan agreement as amended. In December 2015 Kurc Limited defaulted on the loan and thereafter the respondent wished to sell its security, the Maratani X. On 29 March 2016 by a document entitled "Consent to surrender of vessel" ("the surrender agreement") Kurc Limited consented to surrender and give up possession of the Maratani X to the respondent. The appellants were also parties to the surrender agreement and in that agreement, they acknowledged that Kurc Limited had defaulted under the loan agreement and they had defaulted under the guarantees. They also acknowledged that the respondent was entitled to immediately proceed to foreclose upon the Maratani X. The respondent took possession of the Maratani X and on 29 December 2016 sold it for $2,700,000 on an "as is, where is," basis. After deduction of the expenses of sale the amount realised was $2,430,000. At the time of the sale the amount owing by Kurc Limited to the respondent under the loan agreement as amended was $4,208,602.41. After applying the net proceeds of sale to the debt, the balance still due from Kurc Limited to the respondent was $2,763,474.78. The amount of $2,763,474.78 included the principal sum of $1,980,741.10 outstanding on the loan, $18,076.79 unpaid interest, and $764,656.89 "collection realization effort fees" incurred by the respondent which fees included costs incurred by the respondent in carrying out repairs to the Maratani X prior to the sale of the vessel.

2. The respondent sued the appellants in The Bahamas on foot of their guarantees for the balance owed by Kurc Limited of $2,763,474.78 and also claimed interest on the principal sum of $1,980,741.10 together with costs.

3. At trial before Hanna-Adderley J ("the judge") the loan agreement and the guarantees were admitted by the appellants, and there was no dispute that Kurc Limited was in breach of the loan agreement. What was disputed was whether the respondent "acting as mortgagee failed to sell the [Maratani X] for the best price reasonably obtainable." Essentially, the appellants asserted: (a) the respondent had failed to comply with its duty as mortgagee to take reasonable precautions to obtain the best price reasonably obtainable at the time of the sale of the Maratani X; (b) the Maratani X had been sold at an undervalue; (c) if the respondent had complied with its duty and had obtained the best price reasonably obtainable then all the monies owed by Kurc Limited

to the respondent on foot of the loan agreement would have been recovered on the sale of the Maratani X; and (d) therefore, the appellants were not liable on foot of their guarantees.

4. The trial before the judge commenced on 28 February 2020 and continued on 25 September 2020, 10 December 2020 and 23 March 2021. Robert Hughes, special accounts underwriter, gave evidence on behalf of the respondent in a witness statement filed on 2 January 2020 and orally on 28 February 2020 and 25 September 2020. Mark Finlayson, one of the appellants, was the only witness who gave evidence on behalf of the appellants. His witness statements were filed on 23 October 2018 and 21 November 2019, and he gave oral evidence on 10 December 2020 and 23 March 2021. Neither Robert Hughes nor Mark Finlayson were qualified to give expert evidence as to the best price reasonably obtainable for the Maratani X at the time of its sale. Neither the respondent nor the appellants called any expert evidence at trial as to the best price reasonably obtainable for the Maratani X at the time of its sale. Rather, both the respondent and the appellants relied on a large volume of documents as to the history and the condition of the Maratani X and as to its value as at the date of sale. These documents were admitted in evidence by agreement. The judge recorded, at para 56 of her judgment, that the respondent relied on the documents "which were not disputed by the [appellants]." In resolving the issues in the action the judge, in the main, preferred to rely on the documents which had been admitted in evidence by agreement rather than on the oral evidence of either of the witnesses. The judge explained her reasoning for doing so in her judgment as follows:

> "17. The parties called one witness in support of its case. These witnesses spoke to the facts of the case and in some instances gave more opinion than fact as to what they considered to be relevant to the issues of this action.
>
> 18. Considering their evidence and the Volume of documents before me, this action I find will be determined largely on the documents hereinbefore mentioned and secondly on the conduct of the Plaintiff in respect of the sale of the vessel."

5. The judge in a detailed and lengthy judgment made factual findings at paras 56-70. Based on those findings she concluded, at para 77, that she was satisfied that the respondent "took reasonable care to obtain the best price reasonably obtainable at the time [of the sale of the Maratani X]." She also concluded, again at para 77, that the respondent "acted reasonably in the exercise of its power of sale in securing a proper price for the [Maratani X] especially in the condition it was in." The judge found in favour of the respondent granting it liberty to enter judgment against the appellants for:

(a) the sum of $2,763,474.78 comprising the outstanding principal sum under the loan agreement together with accrued interest and collection and realisation effort fees;

(b) interest on the outstanding principal sum of $1,980,741.10 at the contractual rate of 14.12% per annum from 28 February 2017 to the date of payment; and

(c) costs to be taxed if not agreed.

6. In her judgment dated 10 June 2022, at para 95, the judge apologised profusely for the 14-month delay in delivering her judgment stating that the disruption caused by the COVID-19 pandemic greatly interfered with the court's writing schedule.

7. The appellants' appeal was heard by the Court of Appeal (Barnett P, Evans and Moree JJA) in November 2022. There were several grounds of appeal but for present purposes it is sufficient to identify three.

(a) *Ground One*. The appellants asserted that "relevant substantive evidence before the [judge] demonstrated that the respondent's sale of the [Maratani X] for $2,430,000 was unreasonable, reckless, negligent, and prejudicial to the appellants' interests in all the circumstances." In short, the appellants challenged the judge's factual findings which led her to conclude that the respondent had complied with its duty to take reasonable precautions to obtain the best price reasonably obtainable at the time of the sale of the Maratani X.

(b) *Ground Two*. Under this ground the appellants raised a point under section 18 of the Stamp Act 1925 which had not been pleaded in their defence and which they had not relied on at trial so that the judge had made no findings in relation to it. Section 18 of the Stamp Act 1925 provides:

> "No instrument which is required by any act to be stamped shall be pleaded or given in evidence in any court unless the said instrument shall be duly stamped and the stamps thereon cancelled, except as hereinafter provided."

The appellants asserted that the loan agreement and the guarantees had not been stamped so that they were neither properly pleaded nor admissible before the judge.

(c) *Ground Three*. Under this ground the appellants asserted that the judge's excessive delay in delivering her judgment caused prejudice to the appellants and that there were errors in the judgment which were probably or possibly attributable to the delay.

8. The Court of Appeal in a comprehensive and careful judgment delivered by Sir Michael Barnett, President, with which the other members of the court agreed, dismissed the appellants' appeal.

9. In relation to ground one the Court of Appeal, at paras 17-19, citing *Tse Kwong Lam v Wong Chit Sen* [1983] 1 WLR 1349 at 1355, *Aodhcon LLP v Bridgeco Ltd* [2014] EWHC 535 (Ch) at para 151 and *Close Brothers Ltd v AIS (Marine) 2 Ltd* [2018] EWHC 4061 (Admlty), at para 14, set out the duty of a mortgagee when exercising a power of sale to take reasonable precautions to obtain the best price reasonably obtainable at the time of the sale. The Court of Appeal stated that in this case the burden of proving a breach of this duty by the mortgagee rests on the mortgagor. Therefore, the Court of Appeal held that at trial, for the appellants to have succeeded in their defence, they had to satisfy the court that the respondent, acting by itself and its agents, did not take reasonable care to perform the duty of taking reasonable precautions to obtain the best price reasonably obtainable at the time of the sale. The Court of Appeal, at para 14, set out the facts as found by the judge and at paras 29, 32 and 41 set out documentary evidence which had been admitted at trial by agreement which evidence supported the judge's factual findings. In the section of this judgment entitled "Factual background" the Board will summarise the judge's factual findings and the documentary evidence relied on by the Court of Appeal to support those findings including, for instance, a letter from Landon Gracey, Customer Service Manager of the respondent to Rob Coon, the Managing Director of the respondent, written just prior to the sale of the Maratani X in December 2016. The Court of Appeal noted, at para 42, that at trial this letter was in evidence by agreement without any objection being made as to its admissibility. At this stage it is sufficient to state that the Court of Appeal noted that the appellants had not called any expert witness to establish any breach of duty by the respondent and that in the absence of any expert evidence the judge was entitled to make the factual findings contained in her judgment. Based on those findings the appellants had not discharged the burden resting on them to establish that the respondent was in breach of its duty to obtain the best price reasonably obtainable at the time of the sale. The Court of Appeal, at para 44, dismissed this ground of appeal.

10. The Court of Appeal dismissed ground two stating, at para 51, that "this ground has no merit." The Court of Appeal explained its reasoning for that conclusion as follows:

> "45. … Neither the Loan Agreements, [nor] the Guarantees, … were made in The Bahamas, nor are any of them governed by Bahamian law.

> 46. The Loan Agreements and Guarantees were admitted by the appellants in their Defence.
>
> 47. The debt was created by the Loan Agreements and the Guarantees; the fact of the default and the amounts owed were acknowledged by the appellants on the Consent to Surrender the Vessel signed on 29 April 2016.
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> 48. The documents, including the Loan Agreements and Guarantees, were all admitted into evidence by agreement.
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> 49. No objection was taken by the appellants to the admissibility of the documents for want of stamping.
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> 50. No opportunity was given to the trial Judge to adjudicate on the question of whether any of the documents were required to be stamped and, if so, the amount of the duty eligible on any challenged document."

The Court of Appeal added that:

> "52. The appellants have studiously failed to identify which provision of the Stamp Act or any other Act in The Bahamas which requires stamp duty to be paid on a loan agreement, … or guarantee made outside The Bahamas, and governed by a foreign law, and the amount of such duty, if any. Revenue statutes do not have extra-territorial affect."

11. The Court of Appeal dismissed ground three, explaining its reasoning for doing so in the following terms:

> "57. Notwithstanding the l4 month delay between the completion of the evidence and the delivery of the judgment, the judgment of the trial Judge was clear, and carefully considered the issues and the evidence. In this case, there were only two witnesses. Their evidence in chief was contained in their Witness Statements. Their evidence on cross examination and re-examination was contained in transcripts duly recorded by a court stenographer. The evidence in the admitted written documentation showed clearly what transpired.

> 58. In my judgment, the delay, though inexcusable, did not affect the quality and reliability of the judgment and the judge's clear reasons…."

12. The appellants now appeal as of right to the Judicial Committee of His Majesty's Privy Council: see article 105 of the Constitution of the Commonwealth of The Bahamas and section 23 of the Court of Appeal Act 1964.

Factual background

13. In this section of the judgment the Board summarises the factual background which summary is taken from the judgments below and the documentary evidence relied on by the judge and by the Court of Appeal.

14. Garet Finlayson is the President and director of Kurc Limited which company is beneficially owned by the appellants.

15. Under the loan agreement between the respondent and Kurc Limited dated 21 December 2001 the respondent agreed to lend Kurc Limited $9,680,000 for the construction of the Maratani X. The loan agreement was not entered into in The Bahamas and was not governed by Bahamian law.

16. Under agreements dated respectively 21 December 2001 and 1 June 2011 Garet Finlayson and then Mark Finlayson guaranteed the indebtedness of Kurc Limited. The guarantees were not entered into in The Bahamas and were not governed by Bahamian law.

17. In 2002 construction of the Maratani X commenced in New Zealand. There were several delays in relation to the vessel's construction and at one point construction ceased for approximately 12-18 months due to litigation between the shipyard and the owner over the draft of the Maratani X. The specification was for a draft of six and half feet but it was constructed with a draft of seven and a half feet. This caused the transom to sink and the vessel to plough through the water, as well as causing a risk of flooding the lazarette.

18. The Maratani X underwent a sea trial in New Zealand in 2006 after which it was cargoed to The Bahamas and delivered to Kurc Limited, roughly two years late. When it was delivered Kurc Limited discovered that the Maratani X still had draft issues and Garet Finlayson was unable to use it at his home in The Bahamas. At some point in 2007 he took it to Fort Lauderdale/Miami.

19. The judge held, at para 57, that between 2006 and 2012 the Maratani X was used extensively including for commercial charters. However, the extensive use of the vessel included the appellants using it as a floating condo.

20. There was evidence, which was accepted by the judge, that Kurc Limited spent $1,000,000 on repairs to and the maintenance of the Maratani X. However, it is unclear as to when this money was spent and what it was spent on.

21. In 2012 the Maratani X sailed to Fort Lauderdale for maintenance and was not used commercially or extensively or at all after that. Kurc Limited continued to pay the respondent promptly on the loan agreement.

22. In 2013 Kurc Limited listed the Maratani X for sale with a broker named Luke Brown, at the price of $19,000,000.

23. In October 2014 Kurc Limited entered into a brokerage agreement with Bradford Marine Yacht sales ("Bradford") and granted Bradford the exclusive right and authority to manage the sale of the Maratani X. The sales executive in Bradford acting on behalf of Kurc Limited was Tucker Fallon. The gross asking price was initially $14,000,000.00, though in June 2015 the price dropped to $13,000,000, in September 2015 it dropped to $8,999,000, in January 2016 it dropped to $7,500,000 and in April 2016 it dropped to $6,500,000 being promoted by Tucker Fallon as a "distress sale." In response to this promotion Tucker Fallon received numerous inquiries at this price and had three written offers, one at $3,500,000, one at $4,200,000 and one at $4,250,000. However, all the offers were subject to survey and sea trial.

24. In the autumn of 2015 Kurc Limited began having serious payment problems and defaulted on the payments under the loan agreement.

25. Williamson Marine Surveyors LLC prepared a survey report dated 25 November 2015 in relation to the Maratani X. In their report they assumed that the vessel would pass a sea trial with minimal repairs. On that basis they valued the vessel on a forced sale at $4,500,000.00.

26. The difficulties in selling the Maratani X and its condition in 2016 were further highlighted in an email dated 3 March 2016 from Tucker Fallon, the broker retained by Kurc Limited and by the appellants and who had been trying to sell the Maratani X since October 2014. The email was sent to Mark Finlayson, one of the appellants. In the email Tucker Fallon informed Mark Finlayson that:

> "Activity for clients to look at [the Maratani X] is very slow. Much of the reason for that is that all of the major brokers in South Florida know that the boat has not run in years. One broker asked me how I was going to sell a boat that could not go for a sea trial. All the Fort Lauderdale brokers know about the boat and are afraid to bring a client to see the boat. The brokers do not want a buyer to find out that so many systems do not work, that the boat has not run. The brokers will be reluctant to even show the boat because they would be concerned that they could lose the client."

Tucker Fallon also stated:

> "Buyers and brokers can deal with the facts that the [Maratani X] needs paint, new headliners, the teak needs work, the hydraulics do not work, the elevator does not work and more, but They need to know that the engines and generators are operating correctly."

27. On 28 April 2016, Tucker Fallon wrote to the respondent. The letter highlighted the difficulties in selling and valuing the Maratani X and its condition in 2016. He informed the respondent that the Maratani X had problems from when it was launched. He stated that he had heard that when the vessel was first launched the swim platform was under water, and that flotation was increased at the stern. He considered that the platform was still low to the water. He understood that the draft of the Maratani X when constructed was much deeper than anticipated and needed to be reduced for use in The Bahamas. To achieve this the hull was reworked at the propellers to create propeller pockets and part of the keel was cut off. He also said that he had heard that the exhaust system was too hot requiring additional raw water to be pumped into the exhaust to cool it. He understood that on one occasion this pump system was left on after the engines were shut off and salt water was able to get back into an engine requiring a rebuild. He stated that other brokers had asked him about stability issues and about how the boat would plane or not plane when underway. He informed the respondent that the design goal was to have a speed of around 20 knots but that he had been told that it never went over 15 knots. He also stated that the Maratani X was not operational. The starting controls did not have power; the captain would start the engines by jumping the starters. The hydraulic systems might or might not work properly. He stated that the Maratani X had not been used for years and that there had been no budget to maintain the systems or keep up the exterior or interior maintenance. He advised that an investment had to be made to get the boat in running condition so that a survey and sea trial could take place. He stated that the current market value could be only estimated, and he placed a value on a forced Liquidation sale of $3,000,000 with the boat in running condition.

28. On 16 May 2016 the respondent obtained an order of a court in the United States authorising it to make, or cause to make, necessary inspection and/or repairs to the Maratani X including to the air conditioning system, compressors, engines and related equipment.

29. On 23 May 2016 a survey was carried out by Davis & Company even though the engines would not start. Davis & Company valued the Maratani X on the assumption that it would pass a sea trial. On that basis they valued the vessel on a forced sale at $4,600,000.00.

30. Upon the respondent taking physical control of the Maratani X, and to determine the full extent of the disrepair of the Maratani X, it began to take apart sections normally covered by floor panels, ceiling tiles, false walls, etc. It also undertook a full computer system check along with a test of the generators, main engines, fire control systems, and all other vital components of the vessel. These checks revealed that a lot more work was required in order to get the vessel ready for sea trial. Moreover, as the contractors continued to trouble-shoot, the depth of the repair issues worsened. A few examples were:

(a) Wires were Jerry-rigged to circumvent alarm systems;

(b) Hydraulic systems were disconnected or reconnected against normal practice;

(c) Fuel tanks had water leaking into them;

(d) The main ship power control system was dangerously rewired.

31. The respondent spent some $700,000 on repairs to the Maratani X between taking possession at the end of April 2016 and October 2016. These repairs, mostly safety related, were completed in late October 2016 days before the Fort Lauderdale Show.

32. The respondent appointed its own broker, Whit Kirtland of Bradford, to affect a sale and the Maratani X was listed for sale by Bradford on 1 November 2016. The respondent received four offers in total, although only one in writing, ranging from $1m to $2m. The respondent now had to decide what to do. For instance, the valuation of $4,600,000 was based on the Maratani X passing a sea trial. The offers of $1m to $2m were on an “as is, where is” basis. The evidence as to what the respondent decided is contained in the letter from Landon Gracey, Customer Service Manager of the respondent to Rob Coon, the Managing Director of the respondent, written just prior to the sale of the Maratani X in December 2016. The letter was written after the respondent had already

expended $700,000 on repairs to the Maratani X. Landon Gracey stated that the respondent's initial plan was to sell the vessel after a sea trial. However, to bring it to that condition would cost approximately $500,000 in further repairs taking roughly four to five months and incurring monthly holding costs of $25,000. He stated that the respondent's broker, Whit Kirtland, of Bradford, had advised that the value of the Maratani X on an "as is, where is" basis was approximately $3m and after a sea trial would be $3.5m or more. Landon Gracey continued by stating:

> "A major consideration is if it doesn't pass sea trial, it might entail costly repairs. There may be design flaws based upon the input we've heard from Kirtland's research and other brokers that we have spoken to, that could render the vessel unsellable if it becomes known. Hence, our new approach is to sell it as is where is. … versus the additional Investment and risk of repairs for an orderly liquidation."

33. Thereafter the respondent decided to accept an offer of $2,700,000 on an "as is, where is" basis. They arrived at that decision on a commercial basis but in any event the Board notes that the mortgagee was not under a duty to improve the property for sale by expending a further $500,000 on further repairs to the Maratani X: see *Aodhcon LLP v Bridgeco Ltd* at para 151(v).

Grounds of appeal to the Board

34. Before the Board the appellants relied on the three grounds of appeal advanced before the Court of Appeal and in addition, in relation to ground one, submitted that the Court of Appeal erred in holding that the burden of proof rested on the appellants to establish that the respondent had failed to comply with its duty to take reasonable precautions to obtain the best price reasonably obtainable at the time of the sale of the Maratani X. Rather, the appellants suggested that it was for the respondent to establish that it had complied with that duty and that the respondent had failed to do so.

Ground one

35. In support of its submission that the burden rests on the mortgagee to prove compliance with its duty to take reasonable precautions to obtain the best price reasonably obtainable at the time of the sale of the Maratani X, the appellants relied on *Tse Kwong Lam v Wong Chit Sen* in which the Board said at page 1355:

> "In the view of this Board on authority and on principle there is no hard and fast rule that a mortgagee may not sell to a

> company in which he is interested. The mortgagee and the company seeking to uphold the transaction must show that the sale was in good faith and that the mortgagee took reasonable precautions to obtain the best price reasonably obtainable at the time. The mortgagee is not however bound to postpone the sale in the hope of obtaining a better price or to adopt a piecemeal method of sale which could only be carried out over a substantial period or at some risk of loss."

The appellants seized on the words that "the mortgagee … seeking to uphold the transaction must show … that the mortgagee took reasonable precautions to obtain the best price reasonably obtainable at the time." However, the burden of proof in *Tse Kwong Lam v Wong Chit Sen* rested on the mortgagee because the sale by the mortgagee was to a company in which it had an interest. The close relationship between the mortgagee and the purchasing company meant that the mortgagee was subject to such a conflict of duty and interest as to make it necessary for the mortgagee to show that he had complied with the duty. Absent such circumstances the burden of proving a breach of the mortgagee's duty rests on the mortgagor. As the sale of the Maratani X was not to a party with such a close relationship to the respondent, the Board dismisses the appellants' ground of appeal that the Court of Appeal incorrectly placed the burden of proving a breach of the mortgagee's duty on the appellants.

36. In relation to ground one, Mr Parker KC vigorously advanced the proposition that the evidence before the judge demonstrated that the Maratani X had been sold at an undervalue so that the respondent had failed to comply with its duty to take reasonable precautions to obtain the best price reasonably obtainable at the time of sale. The immediate difficulty he faced is that there were concurrent findings of fact made by the lower courts which lead to the conclusion that no breach of duty had been established by the appellants. It is the Board's settled practice not to entertain second appeals challenging concurrent findings of fact by two lower courts save in exceptional circumstances. That practice applies to all appeals to the Judicial Committee including appeals as of right: see *Devi v Roy* [1946] AC 508, *Sancus Financial Holdings Ltd v Holm* [2022] UKPC 41; [2022] 1 WLR 5181. The extent of the exceptionality contemplated is that (leaving aside errors of law) there has been such a departure from the rules which permeate judicial procedure as to make what happened not fairly described as judicial procedure at all. Lord Thankerton was careful not to close the doors on categories of exceptionality. However, exceptionality ought to be capable of being demonstrated relatively summarily. At the commencement of the hearing before the Board the appellants were required to demonstrate, as a preliminary condition, that there exist exceptional circumstances which justify a departure from the practice, before the Board proceeded further with the appeal in relation to ground one (except in so far as it related to the burden of proof). Despite valiant efforts by Mr Parker, he was wholly unable to demonstrate any exceptional circumstances. Rather, as the Court of Appeal stated, the documents which were admitted in evidence by agreement, were clear. Those documents, which include documents from the appellants' own broker, Tucker Fallon, record the condition of the Maratani X in 2016,

the failure over years to sell the vessel, the advice obtained from brokers as to the value of the vessel, the expenditure involved in carrying out further repairs and the dangers involved if the vessel failed a sea trial.

37. The Board declines to entertain that part of ground one which involves a challenge to concurrent findings of fact made by the lower courts.

Ground two

38. The Board dismisses this ground of appeal. It is sufficient to state, in agreement with the Court of Appeal at para 52, that the Stamp Act 1925 is a revenue statute and as such it does not have extra-territorial effect. Accordingly, there was no requirement under section 18 of the Stamp Act 1925 for the loan agreement or the guarantees to be stamped before they could be pleaded or given in evidence.

Ground three

39. Mr Parker, on behalf of the appellants, was unable to identify any errors in the first instance judgment that were probably or even possibly attributable to the delay. As the judge held at trial, this case primarily turned on the documents so that the factual findings were not based to any significant extent on recollection of oral evidence or the demeanour of the two witnesses. As the Court of Appeal noted, the documents are clear and the judge carefully considered the issues and the evidence. The Board agrees with the Court of Appeal's assessment at para 58 that "the delay, though inexcusable, did not affect the quality and reliability of the judgment and the judge's clear reasons."

40. The Board dismisses this ground of appeal.

Conclusion

41. The Board will humbly advise His Majesty that this appeal should be dismissed.