

Unravelling the threads – When can judgments be set aside for fraud?

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In *Finzi v Jamaican Redevelopment Foundation Inc* (Jamaica) [2023] UKPC 29, the Judicial Committee of the Privy Council recently reviewed the principles of English law that govern when a party can set aside a judgment (or arbitral award) as having been obtained by fraud, and to what extent ‘fresh evidence’ of fraud is required. In so doing, their Lordships took a different approach than the English Court of Appeal had advocated in another recent decision (*Park v CNH Industrial Capital Europe Ltd (t/a CNH Capital)* [2021] EWCA Civ 1766). The Privy Council concluded that the Court of Appeal had read too much into statements made *obiter* by Lord Sumption in a Supreme Court decision on the same issue (*Takhar v Gracefield Developments Ltd* [2019] UKSC 13), and imposed a more stringent test to determine whether a claimant could still challenge a judgment as procured through fraud when the relevant evidence was already available at the time of the original trial.

In addition to providing a full and thoughtful review of the authorities, *Finzi* also offers a good reminder of the function that the Privy Council plays. Decisions by the Privy Council are binding on all Commonwealth states which continue to allow an appeal to this English judicial body from their own, national, tribunal of final instance. Privy Council rulings are not, however, binding on the English Courts themselves, being only of ‘persuasive authority’. The importance of that ‘persuasive authority’ is not, however, to be underestimated. The members of the Privy Council’s Judicial Committee tend to be the Justices of the Supreme Court, and they will not shy away from commenting frankly on decisions made by all levels of the English Courts – including the Supreme Court.

[Read the full article here.](#)