OUTER HOUSE, COURT OF SESSION

[2024] CSOH 25

CA64/23

OPINION OF LORD SANDISON

In the cause

(FIRST) KEITH LOGIE INCH; (SECOND) RODERICK ANGUS ERSKINE STUART

Pursuers

against

MARGARET MARY TOTTEN

Defender

Pursuers: Brown; DAC Beachcroft Scotland LLP (for Levy & McRae, Glasgow)
Defender: Party

6 March 2024

Introduction

[1] In this action the pursuers each seek payment of £125,000 plus interest from the defender, claiming to be owed those amounts in terms of a loan agreement executed by the parties. The matter came before the court for a proof of two days' duration, in which the defender was, by consent, ordained to lead. Although she had previously had the benefit of legal representation, by the time of the proof she was unrepresented.

Background

[2] The pursuers rely on a loan agreement executed by the parties on 9 May 2018 setting out the terms on which the pursuers agreed to lend and the defender agreed to borrow the sum of £250,000. Those terms included a stipulation that repayment could be demanded after one year by the giving of seven days' written notice. The pursuers demanded repayment of the loan in writing by letter from their solicitors to the defender dated 19 April 2023. The defender maintains that she understood that the £250,000 had been gifted to her as a result of an unexpected reduction in the price obtained for shares in a company in which she and the pursuers were shareholders and which was sold, that she was not specifically aware of having signed a loan agreement, and that subsequently the pursuers told her not to worry about the matter, which would be sorted out. The defender maintains that, on the faith of an understanding generated by what had been said to her that there was no need for the sum in question to be repaid, she agreed to the sale of another company of which she was a member and transferred shares in a further company to the pursuers, all to her detriment, and that they are now personally barred from demanding repayment of the loan.

The Evidence

Defender's Case

[3] **Margaret Mary Totten** (46) adopted a witness statement in which she stated that she and the pursuers had been business partners in IA3 (pronounced IA Cubed) Limited ("IA3"), with the pursuers holding the majority stake. In 2018, negotiations were entered into to sell all the shares in that company. As the negotiations continued, it had become apparent that she was in line to receive £250,000 less than originally expected from the sale.

She was not happy about that, and did not want to proceed with it. The pursuers did want the sale to proceed, and told her that they would make up the £250,000 which she considered was value that she was going to lose. On that basis she agreed to proceed with the sale. All of the minority shareholders had received less than they expected and the pursuers made pay-outs to them too. None of them had been asked to repay that money. She was asked to sign documentation, and believed that that was all in relation to the sale of the company, although she had no specific recollection of what documents she had signed, or when.

[4] She had no need of the money at the time to purchase a new house. She and her husband had been looking at purchasing a new house, but had not committed to purchasing one at the point of the sale of the company. Her husband had purchased a new house for £500,000 some months later, and that would not have happened had she not received the £250,000 pay-out from the pursuers. That sum, along with other monies, was used in connection with that purchase.

[5] Following the sale of IA3, she continued to have a business relationship with the pursuers, and together they started another company, Akari Solutions Limited, at the end of 2018. All of the shares in Akari Solutions Limited were held by Akari Solutions Group Limited ("Akari Group"). The parties worked together to build the company. In early 2020, the second pursuer approached her and asked when she was going to start repaying the money she had been lent. She had said that she did not realise that the money had to be paid back. He had suggested that she take out a mortgage to pay it back. The subject was then dropped.

[6] The pursuers had then acquired other businesses, namely CXP Limited and VKY Intelligent Automation Limited ("VKY"). She was made a director of VKY, and was given a

10% shareholding in the company. The pursuers concentrated on their other businesses and left her to do most of the work at Akari Solutions Limited. The first pursuer became seriously unwell, as did another Akari Group shareholder, Lesley Clarkson. The pursuers and Ms Clarkson made it known that they wanted to exit Akari Group as shareholders and needed to sell the business. Sale negotiations and conversations started to take place with a Stuart Fenton, managing director of Woolf Partners Limited, in 2022. She knew Mr Fenton and was asked to assist with those negotiations. During the negotiations, the pursuers each mentioned the money that she was supposed to owe them, but she had replied that she did not know what they meant, in order to avoid confrontation, which she disliked. She mentioned her concerns to Mr Fenton about the supposed loan, in the context of informing him that it would not be financially viable for her to sell her shares in Akari Group for a low value. Mr Fenton had suggested that he might pay the outstanding loan sum as part of the acquisition of the company, and provision to that effect was made in the first letter of intent issued by Woolf Partners in relation to the proposed acquisition. She did not accept that she owed any money to the pursuers, but wanted the matter sorted out. The negotiations for the sale of the company faltered and the pursuers asked her to bring Mr Fenton back to the table. He had come back to negotiate further, but after further financial analysis dropped the original price being discussed and decided in November 2022 that he would not include payment of the loan amount in the deal. During the due diligence process, a spreadsheet showing the interest due on the supposed loan had been in circulation and was drawn to her attention by Mike Lazenby, a director of Woolf Partners.

[7] She approached the second pursuer and said that she was worried about the loan that was supposedly due by her to the pursuers. He said to her "Don't worry Mags, we can sort that". She said that she did not want to agree to the terms being proposed for the sale of

Akari Group, as she would be making a loss. The second pursuer re-iterated that she did not need to worry. He told her "Let's focus on the deal". She was still worried about the matter and met again with the second pursuer to discuss it. He told her "It's sorted, Mags, don't worry". She understood that to mean that the pursuers were no longer going to ask her to repay any money. When she separately met the first pursuer, he said that if she had spoken to the second pursuer about it, "then it'll be okay, and we'll work it out". These conversations took place days before the deal for the sale of Akari Group was due to close.

[8] The second pursuer then approached her and said that as part of that deal, she would have to resign as a director of VKY and hand back her 10% shareholding in the company for nothing. She was unsure about this, but trusted the second pursuer when he said he was helping her. She mentioned to her colleagues Kimberley Totten and Lindsay Climson that she would be making a loss of around £200,000 if she went ahead with the sale on those terms. It would have made no sense to transfer all her shares in VKY for nothing, get less than she wanted for the sale of her shares in Akari Group, and still be due £250,000 plus interest to the pursuers. She would never have signed over her shares in VKY to the pursuers had she known that she would still supposedly owe them that sum. The disposal of her shares in VKY was a "redline" in the contract, and the sale of Akari Group would not proceed if she did not agree to do that. The second pursuer again told her that she should not worry about the loan money, it would be sorted, and she should focus on the deal. She was fairly sure that Lindsay Climson and Kimberley Totten were present during that discussion.

[9] Her shares in VKY were not valued. The second pursuer did not want the shares valued, as he did not want to incur an unnecessary cost, only to be told what he already believed, which was that they had no value. He had emailed her on 21 January 2023 to say

that the company was loss-making, would continue to be so, and had substantial debt. He had said that they could have a valuation done if she wanted, but he did not think the cost was worthwhile. She had asked to see the company accounts, but was never provided with a copy of them. She had never seen any financial information in respect of the company. She did not believe that her shares in VKY were worth nothing. However, when the second pursuer asked her to confirm to the first that she was ready to proceed with signing over her shares, she agreed and did so.

[10] After the sale of Akari Group, the money due to her from the sale had not appeared in her bank account and she sent an enquiry to the second pursuer about that. He said that the parties' solicitor in the sale had suggested that that the money due to her should be divided into thirds, with one third going to the defender and one third each to the pursuers, to account of the sums due by her to them. She was taken aback and said that she thought that the matter had been sorted out. The second pursuer started hounding her about the loan. She did not like confrontation and got upset, telling him that she could not believe he was doing this to her. The first pursuer denied that any arrangement to write off the supposed loan had been made. She explained that she could not pay back such a sum, but both pursuers told her that she needed to come up with a repayment plan. A few days later, perhaps in March 2023, the first pursuer told her "This needs dealt with" and both pursuers mentioned her home and property owned by her husband. She repeatedly said "you told me it was sorted", stated her position that she had always believed that the money was a gift, and again got upset.

[11] She then received a solicitors' letter in April 2023 demanding repayment of the £250,000 plus interest. She did not recall previously having received any interest schedules.

[12] In cross-examination, the defender accepted that the written loan agreement she had signed in 2018 was not difficult to understand, that she had been advised by the solicitors acting for the shareholders of IA3 (who drew it up) that she might wish to take independent legal advice about it, and that she understood that it was a document which she had to sign in order to receive the £250,000 that she had discussed with the pursuers. Nonetheless, she had understood that the money was a gift to her by the pursuers and that the loan agreement was just one element of a whole suite of documentation that she had had to sign in connection with the sale of IA3. She had not understood that the solicitors for the shareholders were not acting for her in relation to this aspect of things, and tended to sign documents that she was asked to sign without reading them. She could not remember whether she had read the loan agreement or not. She did not believe that the £250,000 was a loan, but could not remember exactly what had been discussed with the pursuers in 2018. She did not remember reading email correspondence from the solicitors dealing with the loan paperwork; she had received 60 to 70 emails in total from them concerning the sale of IA3. She must simply have had someone scan the draft document sent to her, signed it and sent it back to the solicitors. She had no particular recollection about it. When she was told that money had been transferred to her bank account, she thought it was something to do with the proceeds of the IA3 share sale. The second pursuer had started speaking to her about repaying the £250,000 at some point after Akari Group had been set up in December 2018. That was when she first found out that the pursuers regarded the arrangement as one of loan, rather than as a gift associated with the sale of IA3. There had been multiple conversations about it once she realised that the pursuers wanted to be repaid. She was not good in confrontational situations and did not remember what she had said when asked to repay. The second pursuer had said he needed the money repaid as he

wanted to lend it to another mutual friend. The matter was not pressed further. She had not received any interest statements, and IT staff could find no emails relating to that matter in her email account.

[13] She had received a letter from the pursuers' solicitors dated 19 April 2023 demanding repayment. She had contacted her own solicitors and, in two Teams calls, had told them all about what had happened. They had replied to the pursuers' solicitors, saying that the money had been a gift, but she accepted now that she had been wrong about that. The reply had also said that she had not signed the loan agreement, but that was wrong. She had been asked whether the signature on it was her usual signature, and had said – correctly – that it was not, but did not deny having signed it. After she saw the letter written by her solicitors, she had told them that it was wrong to say that her position was that she had never signed it, but that was after the letter had been sent.

[14] In relation to the sale of Akari Group, she was a major shareholder and the only person with significant influence or control. She had a team working with her, but she was the primary contact with Microsoft and thus the source of many client leads. Akari Group would not have been sold without her in place. Stuart Fenton wanted her to stay with Akari Solutions Limited, and she wanted to do so, but the sale would involve her losing any equity stake and accepting a lower salary with no bonus entitlement. The pursuers planned to exit the business altogether. She had explained the situation about the loan to Mr Fenton and explained that she would still be in debt if she had to repay it. She had asked him to have Woolf Partners repay it as part of the purchase of Akari Group. He had put repayment of the loan in the first letter of intent issued by Woolf Partners, and had been sent (without asking for it) a statement of the interest due on the loan by the pursuers or someone associated with them. By about November 2022, however, the relationship between the first

pursuer and Mr Fenton had become strained and the negotiations stalled. When they eventually restarted, repayment of the loan was not part of the offer, leaving it as her responsibility.

[15] She owned 10% of VKY and Woolf Partners had insisted that she give up that holding as a perceived source of a conflict of interest with her work for Akari Solutions Limited. There were no external buyers for that shareholding and she was unaware of what the company's Articles said about its transfer. She had no idea what she was doing and had trusted the people with whom she was working. She had asked the second pursuer to show her VKY's bank statements, but none had been provided. She had asked to see its accounts, but was told that she was slowing things down. The second pursuer had told her that her VKY shares had no value, because the company had a negative value. She had had no time to consult a lawyer, and did not in any event know what she would have asked one. She wanted a valuation of VKY, but was told there was no time for that, and that it would be too expensive. The company's accountants were unwilling to provide an informal valuation and she was told that a formal one would cost £6,500, which the shareholders in Akari Group would be unwilling to pay. She did not know what had been said by the pursuers to the other shareholders in Akari Group, and she did not herself approach those shareholders. She felt that she had to dispose of her shares in VKY in order to get the Akari Group deal over the line; she had no choice but to transfer them to the pursuers for no consideration, despite not wanting to do so. Woolf Partners did not care to whom she might sell the shares. After she raised her concerns about being left out of pocket if the Akari Group deal proceeded without the loan being repaid with the second pursuer, he had told her that the loan would be "sorted" after the deal had been completed. He had said "Don't worry, we'll sort it, just focus on the deal". She accepted that that could mean a variety of things; he had

not said in so many words that the loan would be written off. She had got nothing in writing; that was not how things were done between her and the pursuers. However, she would not have agreed to the Akari Group deal had she not believed that the loan would be written off, because in that situation she would be losing money. The majority of the purchase price would go to paying off debt owed by Akari Group to the pursuers, who would also receive a sum to cover arrears of salary with interest. It would have been better for her in such circumstances just to continue with the existing situation at Akari, rather than agreeing to sell it. The first pursuer had said that carrying on for the long run as matters stood was a live option, and the staff generally had agreed to take salary cuts and carry on if necessary. She had worked hard to get the deal done and would not have done so had she thought that she was going to be worse off in consequence. The transaction for the sale of Akari Group had completed on 10 February 2023. A few days afterwards, and while the purchase price was still in the hands of the sellers' solicitors, the second pursuer had approached her and had asked her to split her share of the proceeds three ways, one third to each of the pursuers towards repayment of the loan, and one third to herself. There had been a few conversations about that, in the office and elsewhere. The first pursuer had suggested that she could start repaying the loan once her son left school and she was no longer paying fees in that connection. Again, being bad at confrontation, she had deflected the requests to repay, and had received all of the money due to her from the Akari share sale.

[16] Matters had escalated after the pursuers' solicitors had demanded repayment in April 2023. Someone at her own firm of solicitors had suggested that the facts she had told them might amount to a defence of personal bar. She had left them to correspond with the pursuers' solicitors and state her defence as they saw fit. She had not been asked by them to

choose between denying that what had happened amounted to a loan at all, or else stating a personal bar defence. She honestly believed that there had been an agreement to write the loan off.

[17] **Kimberley Ann Devlin Totten** (28) gave a witness statement in which she noted that until August 2023, she was the director of services for Akari Solutions Limited, having previously been its director of operations and before that having worked for IA3. At that company, she had reported directly to the defender but also worked alongside the pursuers, Lindsay Climson and Thomas Hind. At Akari Solutions Limited, her role was to oversee the day-to-day running of the business and the structuring of departments, all with the aim of delivering service to clients. During her time at Akari Solutions Limited, she worked alongside the same people, as well as with Lesley Clarkson and Natalie Bell. She remained with the company after the pursuers had ceased to be involved with it.

[18] Akari Solutions Limited was incorporated at the end of 2018. She was involved with the start-up of the business and was a shareholder in Akari Group. That company was acquired by Woolf Partners Limited at the beginning of 2023. There were many meetings amongst the shareholders in the lead up to the sale of the company. She could not be specific about dates, or who was at each individual meeting. The pursuers were driving the sale forward. The rest of the shareholders, especially the defender, were on the fence about the sale. They were not sure that it was the right thing to do. She was concerned that the investors were perhaps not right for the business, the deal was changing daily, and the value being offered for the business was decreasing. However, the pursuers had decided that the sale was going ahead, so the rest just had to go along with that. There was a lot of pressure on her from the pursuers during the sale to get it pushed through; they were making a lot of

effort to convince the other shareholders that the deal on offer was the best they were going to get.

[19] She was aware that the defender had previously been gifted a sum of money by the pursuers, but not how much. She was not aware of any of the detail about that matter. She was also gifted a sum of money by the pursuers, to cover the capital gains tax due to be paid on the funds she had received from the sale of IA3. She did not know who else might have received such money, preferring not to get involved in other people's business. She was aware that IA3 was undersold, but was not party to the conversations taking place regarding that sale. Overall, in terms of the money given to the defender, she did not know the details.

[20] In further examination-in-chief, Ms Totten stated that she had been given a monetary gift by the second pursuer upon the sale of IA3. Every minority shareholder in the company had received a gift.

[21] During the period leading up to the sale of the shares in Akari Group, the first pursuer had been unwell and the second pursuer very stressed. They both wanted out of the business altogether. There had been some discussion about getting more clients if the proposed sale did not go through, but she personally did not believe that the business could continue if it was not sold. She remembered a conversation with the second pursuer in which he had said that the sale was best for everyone. The due diligence process which formed part of the sale had been very time-consuming and stressful. She had been concerned about restrictive covenants which she was being asked to accept.

[22] In cross-examination, Ms Totten stated that she had received about £20,000 as the sale price of her shares in IA3, and the monetary gift she had received was in an amount calculated to pay off the capital gains tax due on that sum. The proposed share sale price

had gone down during the negotiations for the sale of IA3, and there had been open conversations amongst those concerned about the situation, although she could not recall who had said what to whom. She did not conceive that the gift she received had anything to do with the fall in the proposed sale price. She understood that the defender had received a gift too, but could not recall who had told her that – it might have been the defender herself. She had asked no questions and was given no detail. The defender had not mentioned anything about having signed a loan agreement.

[23] **Lindsay Mair Climson** (32) gave a witness statement in which she indicated that until June 2023, she was director of operations for Akari Solutions Limited, had previously been commercial director there, and before that was a client services manager at IA3. During her time at those companies, she had reported to the defender and worked with the pursuers.

[24] The pursuers provided the funds needed for Akari Solutions Limited, but did not participate in its day-to-day management. Akari Group was acquired by Woolf Partners Limited at the beginning of 2023. The sale of the company so soon had not been planned, but the first pursuer and Ms Clarkson had health troubles and wanted to leave. Some of the other shareholders wanted to continue to be involved in the business. Negotiations for the sale began in August 2022.

[25] She was aware that the defender had been given money from the pursuers in 2018, but was not aware of the specific sum. She was also given a sum of money from the pursuers when IA3 was sold, as she understood was the case in respect of all the other minority shareholders. The money she was given was to cover the tax on the sum she was to receive from the sale of the company. She believed that this money was given because the

price paid for the company was less than anticipated and was to soften that blow. She was aware that the defender had received more than her.

[26] During the sale of Akari Group, the defender told her that the pursuers had asked for the money they had given her back. The defender was in shock. Ms Climson came to understand that the repayment of the money was an issue in the sale of Akari Group. She recalled the second pursuer saying to the defender in the run-up to the sale something along the lines of "just push it through, and we'll figure it out". The defender kept her up to date on her discussions with the pursuers. There were also discussions surrounding the defender giving up her 10% shareholding in VKY. The pursuers would often say one thing to the staff of Akari Solutions Limited, and then the defender would say that they had taken her aside and said something else. Decisions would be collectively made, and then the pursuers would change their mind. They would often blame the defender for problems with the company. They were generally out for themselves, and had deliberately held up the division of the sale proceeds from the sale of Akari Group until the solicitors for all the shareholders had had to step in.

[27] In further examination-in-chief, Ms Climson stated that she had remained with Akari Solutions Limited after the sale of Akari Group. The defender, with whom she shared an open-plan office, had told her that she had received a gift from the pursuers upon the sale of IA3, and was aghast about being asked to pay it back. She had said that she would have to be “nuts” to go ahead with the sale of Akari Group without the loan being dealt with. The second pursuer had said something along the lines of “Let’s get it [the deal to sell Akari Group] done, we’ll figure it [the loan] out.” The due diligence process had been draining and ultimately exhausting. The pursuers and Lesley Clarkson had wanted to exit quickly. The various shareholders all had different rights, and the Articles had been changed at the

last minute for some reason. She had just gone along with that and done what was expected of her.

[28] In cross-examination, Ms Climson stated that the gift she had received on the sale of IA3 was to pay tax due on the share sale price. It was general knowledge that all the minority shareholders were gifted money – she had assumed that everyone was getting the same sort of gift as she was getting. She did not know the amount that anyone else was getting. The defender had spoken to her about being expected to repay a gift from the pursuers, perhaps shortly before Christmas 2022. The firm impression which she had been left with was that the defender had not expected to be asked to repay it. She never mentioned any loan agreement.

[29] In re-examination, Ms Climson agreed that she had first been told by the defender about being asked to repay a gift around the start of 2020. Something about a loan had also been mentioned by her during the run-up to the sale of Akari Group.

Pursuers' case

[30] **Katherine Lesley Ann Clarkson** (56) gave a witness statement in which she said that she had worked for the pursuers in various companies they owned for about 20 years, and knew them well. She had been financial director of Akari Solutions Limited for about five years until 2021, and after that had been the finance director of VKY.

[31] The pursuers had told her that the defender had put money down on a new house and that they had given her a loan to finance the new house until her existing house had been sold. No more detail than that had been provided. In 2019 they had shown her a copy of the loan agreement and asked her to prepare and send to them a statement of interest, which she did. She was then asked to send such statements to the pursuers and the

defender by email periodically, around every quarter. She did so. She never received any response from the defender. She had had no discussion with the defender about the loan at all.

[32] In further examination-in-chief, Ms Clarkson confirmed her written evidence about the sending of interest statements to the defender. There was no cross-examination.

[33] **Roderick Angus Erskine Stuart** (60), the second pursuer, provided a witness statement in which he noted that his background was in management consultancy and that he had started an outsourced contact centre business, in the course of which he met Mr Inch, with whom he founded a similar business. After selling that business, in 2016 the pursuers acquired other companies together, one of which was IA3, in which the defender was the sales director. She was offered shares in the company and acquired 17% of the shares in issue, the pursuers holding 67%.

[34] In 2018 IA3 was sold to GCI Limited, which was consolidating smaller businesses in similar fields and was itself in the process of being sold. GCI eventually offered £2.8 million for IA3 on a "take it or leave it" basis. That was less than the shareholders in IA3 had hoped for, but the market consolidation that was taking place did not leave them much choice but to accept.

[35] In the last few days before the IA3 deal completed in late April or early May 2018, the defender came into the pursuers' office in tears. She said she had put a substantial deposit down on a new house in Newton Mearns. She said that she wanted to buy this house for cash because her husband did not believe in having a mortgage, and that because she was going to get less from the sale of IA3 than had been hoped for, she was not going to be able to buy the house and would also lose the deposit. She said that she did not want to

sell her existing house in Cambuslang immediately because she did not think the market was advantageous at that point.

[36] The pursuers discussed the situation and agreed that they would lend the defender the sum of £250,000 to enable her to buy the new house in Newton Mearns. They expected to be repaid within a year by means of the sale of the property in Cambuslang. They wanted the loan formally documented and the second pursuer approached Craig McKerracher of Harper MacLeod, Solicitors, on 8 May 2018 by email to ask if he would do that. Mr McKerracher agreed, and emailed the loan agreement to the parties, making it clear that the defender should take independent legal advice if she wished. She chose not to do so and the loan agreement was signed at the pursuers' offices on 9 May 2018 before a witness, Jason Haggarty, who also worked there. The loan was to be interest-free for the first year given that it was anticipated it would be repaid during that period from the sale of the Cambuslang property. After that it was to accrue interest at the rate of five per cent over Bank of Scotland base rate and was to be repayable on demand subject to seven days' notice.

[37] The defender emailed the signed loan agreement to Craig McKerracher on 10 May 2018 and the pursuers gave their consent for the loan monies to be paid over to the defender, out of the sums being held by Harper MacLeod from the consideration due to the pursuers from the sale of the shares in IA3. The transfer took place the same day, and was acknowledged by the defender by way of email to Mr McKerracher.

[38] The subject of repayment of the loan had been raised by the pursuers with the defender regularly, in the context of asking her how she was getting on with selling her house in Cambuslang and requesting that she produce a repayment plan. The pursuers' finance director, Lesley Clarkson, had at their request sent the defender statements three or four times a year showing the interest and total balance due periodically after the end of the

first year. The defender had never commented on the statements. No repayments had been made. The matter was regarded by the pursuers as a private one between them and the defender and had not been raised in discussions when other people were present.

[39] The pursuers had become involved in Akari Solutions Limited at the end of 2018. It was an IT business which provided technical support to other businesses using Microsoft software. Akari Group held 100% of Akari Solutions Limited, which was the trading company. The defender was also involved and made a significant contribution to the success of the business. Woolf Partners had made an offer to purchase Akari Group in late 2022. In the early course of negotiations, there had been some suggestion that Woolf Partners or its owner, Stuart Fenton, might take over the creditor's interest in the loan to the defender. Neither of the pursuers had brought up the subject of the loan with him, so that must have been done by the defender. Mr Fenton told the second pursuer that he had had one of his team, Mike Lazenby, check the interest calculations which had been issued. However, as negotiations continued, the matter was not further raised. The pursuers came to consider that the deal was unlikely to proceed and did not take an active part in the negotiations. The defender, however, was keen for the deal to take place and continued to drive the negotiations forward. As they appeared to be coming to fruition, in February 2023 Mr Stuart asked the defender to divert some of the proceeds which would be coming in for the sale of her shares in the company to repaying the loan. She was not willing to do that. She said that she had discussed the matter with her husband and that she would start making repayments in June 2023 as her free income would increase when her son left school. He may have said to her that they should focus on the sale of Akari Group first and then deal with the loan. There was never any discussion about the pursuers waiving the loan in exchange for the defender consenting to that sale proceeding.

[40] The parties also had an interest in VKY, which delivered AI and automation services for contact centres. As the defender was to remain as a key employee of Akari Solutions Limited after the sale of Akari Group, the purchasers insisted that she give up her shareholding and directorship in VKY because they considered that to be a competing interest and that there was a potential for conflict of interest. The pursuers discussed the value of the defender's 10% shareholding in VKY with her and the consensus was that the shares were not worth anything because of the level of debt in that company. The defender was asked if she wanted to have her shares independently valued and estimates of the cost of that exercise which had been obtained were provided to her. She declined to have the valuation carried out and did not ask to see the company accounts. She determined simply to give up her shares in VKY, as did Lesley Clarkson, who wanted to sever her association with VKY for health-related reasons. Both knew that those shares were worth nothing.

[41] During the discussions about the sale of Akari Group there was no suggestion that the loan was to be waived. There was no question of the pursuers giving up £125k each, plus interest, in return for the VKY shares that were worthless.

[42] After the sale of Akari Group the pursuers tried to speak to the defender about repayment of the loan but she never committed to anything. The pursuers came to the conclusion that they were being strung along, particularly given that there had been no apparent attempt to sell the house in Cambuslang, a relative of her husband was apparently staying there and the house had been put into the name of a company of which the husband was the director, and charged to a mortgage provider. The house in Newton Mearns was in her husband's name only and was also mortgaged. None of that tallied with what the pursuers had been told at the time of making the loan. The pursuers had instructed solicitors to issue a formal demand for repayment of the loan, which they did on 19 April

2023. The defender's response had been that she had never seen the loan agreement before and that no monies were due to be paid by her.

[43] In further examination-in-chief, Mr Stuart stated that no assurances had ever been given to the defender that the loan would not be repayable. No impression to that effect had ever been given to her by him. He had no recollection of ever saying, in connection with the loan, that it would be "sorted". He might well have said that he wanted the deal to sell Akari Group done, but nothing to give the impression that the loan would not have to be repaid. As far as he was concerned, the sale of Akari Group and the loan were two different things. Either shortly before or shortly after settlement of the share sale, he had suggested to the defender that she might like to use some of the proceeds due to her towards repayment of the loan. She had replied that she did not want to do that, as she wanted her husband to see that she was getting money out of her work for Akari. She said that she had discussed the loan repayment with her husband, and that when their son finished school, as he was due to do shortly, she would have more income available to repay it.

[44] As to the gifts made on the occasion of the sale of IA3, Ms Climson, Ms Totten and another person had each held 1% of the shares in that company, and as a gesture of goodwill he and Mr Inch had decided to pay the tax which those individuals would have to pay on the sale price they would be receiving. That price was around £20,000, meaning that the gifts amounted to about £2,000 each. There was no connection between those gifts and the loan to the defender, who had held 17% of IA3.

[45] In cross-examination, Mr Stuart stated that he had no recollection of saying to the defender "Don't worry Mags, we'll sort it out" or words to that effect. He had been in constant conversation with the defender during the period leading up to the sale of Akari Group, and would have been trying to focus her on getting the deal done. Stuart Fenton had

stopped talking to him in November 2022, and he had been convinced from that point that there would be no deal. However, Mr Fenton had subsequently started to communicate with the defender alone, through whom all information had then flowed. He denied having been himself in contact with Mr Fenton after November 2022. He and the first pursuer had been amazed by how hard the defender had worked to get the deal done. His own view was that the defender saw a better future under Mr Fenton's leadership than under that of the pursuers. The sale of Akari Group would not have been done had the defender not agreed to it.

[46] After the sale of Akari Group had concluded, he had started to research the properties held by the defender and her husband, and was shocked to discover that the husband had a company which owned the house in Cambuslang, with a mortgage. He considered that the money lent to the defender had been used to assist her husband to buy property. That is what had led to the present litigation. He denied having previously been aware of the company in question, stating that he had assumed that the Cambuslang property had been held in common between the defender and her husband.

[47] He had brought up the loan in conversation with the defender fairly regularly from about 12 to 18 months after it had been made. He had not anticipated the problems which had been encountered. He had thought that partial repayment would be made out of the defender's proceeds from the sale of Akari Group, and that a payment plan would then be set up. He had never thought that the defender would be unwilling to repay the loan.

[48] **Keith Inch** (69), the first pursuer, gave a witness statement in which he noted that he had a professional background in telecoms and IT, and had been involved in businesses with the second pursuer for around 15 years. One such business was IA3, which provided bespoke IT services to Microsoft customers. The defender was a key employee of that

company, with particular expertise in sales and customer relations. The pursuers acquired 34% and 33% respectively of the shares in the company in 2016. The defender had 17%, and there were other minor shareholders. The company had a longstanding business relationship with another business called GCI, which in 2018 was buying up smaller businesses in the same or related sectors, and was itself for sale. Negotiations were entered into for the sale of IA3 to GCI, with the price payable dependent on the price which was in turn to be paid for GCI. When a firm offer was eventually put forward for the purchase of IA3, it was less than had been hoped for, but all of the shareholders felt that in a consolidating market it was one that should be accepted. The purchaser considered that the defender should stay with the company after the transaction, and so one of the conditions of the sale was that £500,000 of the purchase price would be retained and released in two equal tranches, after three and six months, so long as the defender remained with the company.

[49] As the sale and purchase deal was nearing completion, about the beginning of May 2018, the defender had come to see the pursuers in their office in Glasgow and appeared very upset. She said that she had put down a large deposit on a new home in Newton Mearns and was not going to be able to complete its purchase because she was going to be receiving less than anticipated from the sale of IA3. She did not feel able to sell her existing house in Cambuslang as the market was such that she did not think she would get back what she had paid for it. In these circumstances the pursuers agreed to lend her £250,000 to enable her to buy the house in Newton Mearns and avoid losing the deposit. The loan was to be interest-free for a year and to be repayable thereafter, to give the defender time to sell her Cambuslang house advantageously. The parties decided to have their agreement set out in writing before the loan was advanced.

[50] On 8 May 2018 the pursuers instructed Craig McKerracher of Harper MacLeod to act on their behalf to draw up a formal loan agreement. Mr McKerracher was also then acting for the shareholders of IA3 in its sale. The instructions to Mr McKerracher were that the pursuers were each lending the defender £125,000, and that the loan was to be repayable on demand after the passage of one year, subject to seven days' notice, with interest then to accrue at 5% over the Bank of Scotland base rate. Mr McKerracher drafted a loan agreement to be signed by all parties, emailed it to all of them, and made it clear that the defender could, if she wished, take independent legal advice about it. She had chosen not to do so and the agreement was signed at the pursuers' office on 9 May 2018 before a witness, who worked there and was the first available person when the agreement needed to be signed and witnessed. The defender had emailed the signed agreement to Mr McKerracher on 10 May 2018 and the loan amount was paid to her by him out of monies he held for the pursuers, receipt being acknowledged on the same day.

[51] After a year had passed, the pursuers had asked their finance director Lesley Clarkson to issue statements to the defender by email showing the interest that had become due from time to time. No comment on those statements was received from the defender. The pursuers also themselves occasionally asked the defender how she was getting on with the sale of her house in Cambuslang and asked her about making a repayment plan. She never made such a plan, nor made any repayments, but equally never suggested that the loan was not in fact repayable. Because the pursuers regarded the loan as a personal and private matter, they never discussed it in front of anyone else.

[52] The defender had left IA3 after a falling-out and £250,000 of the retention monies from its sale had been lost. Nonetheless, the pursuers joined with the defender in a new company, Akari Group, which held 100% of the shares in Akari Solutions Limited, which

traded in the provision of technical support to other businesses using Microsoft software, training and individual bespoke solutions. Again, the company was significantly dependent on the defender's ongoing relationships within Microsoft, which were the primary source of the sales leads. Akari Group had eight separate classes of shares, with preferential rights attaching to the 24 shares (out of 100 in issue) held by each of the pursuers. The defender held 25 shares.

[53] The business had been reasonably successful and in late 2022 an offer to purchase Akari Group was made by Woolf Partners. The pursuers were keen to accept the offer, as was the defender, who again was being asked to stay on after the sale. The loan had been discussed at that stage and indeed there had been brief talk as to whether the creditor's interest in it might be taken over by Woolf Partners or its owner Stuart Fenton. Mr Fenton told the first pursuer in November 2022 that he had had one of his team, Mike Lazenby, check the interest calculation which the defender had forwarded to him.

[54] However, the suggestion that the creditor's interest in the loan might be transferred came to nothing and in around February 2023 the pursuers asked the defender to agree that the loan would be repaid out of the sale proceeds due to her from the sale of the company. She was insistent that she should receive the full sale proceeds that were due to her and that she would deal with the loan monies separately. She said that she and her husband had worked out a repayment plan and that she would begin making repayments of the loan in June 2023, when her son was due to leave school and she would no longer be paying school fees. The pursuers acceded to the defender's suggestion that they should focus on getting the deal for the sale of the company done and to talk about the loan afterwards, but there was no discussion about waiving the loan.

[55] The parties each also had an interest in VKY, which traded in the automation of routine tasks such as data entry. The pursuers each held 37.5% of the shareholding in that company and the defender held 10%. The purchasers of Akari Group intended to retain the defender as an employee of Akari Solutions Limited after the purchase. They insisted as part of the deal that she should not be allowed to remain as a director of. or retain her shares in, VKY because that was considered by them to be a competing business. The pursuers did not think that the shares in VKY were worth anything because of the level of debt in that company, amounting to a net liability of more than £65,000. The company had never made a profit and was dependent on support from the pursuers. The Articles of Association of the company had provisions on the transfer of shares and also contained a relative valuation mechanism. The pursuers asked the defender if she wanted to have her shares valued, but the cost of that exercise was going to be about £4,500 plus VAT and she indicated that she did not see any point in spending that money because she was satisfied that the shares were valueless. She did not ask to see the company accounts, although they would have been made available to her had she done so. The pursuers had no particular interest in acquiring the defender's shares in VKY; they already controlled the company. The defender never suggested that she should be allowed to keep those shares or that the sale of Akari Group should not take place because of the purchaser's requirement that she should dispose of them. At no point did the pursuers link the loan to the sale of Akari Group or the disposal of the defender's shares in VKY. It remained outstanding and repayable in full. They would never have agreed to accept anything less than full repayment.

[56] After the sale of Akari Group the pursuers continued to try to get the defender to commit to a repayment plan for the loan, without success. They discovered that her house in Cambuslang was in the name of a limited company in which she had no apparent

interest, and that her new house was in the name of her husband alone. They became concerned that she had no intention of repaying the loan voluntarily, and had their solicitors issue a formal demand for repayment on 19 April 2023. The defender's solicitors maintained that she had never seen the loan agreement before, had not agreed to borrow money, and owed nothing, which was very different from the position which she had until that point adopted.

[57] Mr Inch was briefly cross-examined about the circumstances in which an element of the retention monies from the sale of IA3 had been forfeited due to the defender and others becoming involved in Akari Group, along with the pursuers, before that was permitted in terms of the sale of IA3, but he did not recall the details of that episode, which in any event seemed at best of tangential relevance to the matters in dispute in the present case.

Defender's Submissions

[58] In understandably brief submissions on her own behalf, the defender stated that it was well-known amongst those concerned that the sale price of the shares in IA3 had dropped during the course of the negotiations for the sale and purchase transaction, and that the £250,000 provided by the pursuers to her was intended to reflect that situation. She had always believed that it was a gift. She had – most unfortunately, as she now appreciated – been in the habit at the time of signing documents without reading them.

[59] She had explained to the first pursuer in November 2022 that there was no point in her going ahead with the sale of Akari Group if the loan was not going to be repaid, and he had told her that that would be "sorted". There was no ambiguity about that. It meant that things would be put in motion to resolve the outstanding loan. The matter had not then been brought up again until after the sale transaction had concluded, when the first pursuer

told her that things were not going to be sorted. She had questioned that position, but her views had been dismissed. She had been dishonestly led into agreeing to the sale of Akari and the transfer of her VKY shares to the pursuers. She had not wanted the sale of Akari Group to proceed, but had accepted that it should, and then the goalposts had been changed. That was the same pattern of behaviour as had been adopted by the pursuers in relation to the sale of IA3; letting her believe that the £250,000 was a gift, then saying afterwards that it had been a loan all along.

Pursuers' Submissions

[60] On behalf of the pursuers, counsel moved the court to grant decree for payment to each of the pursuers of a principal sum of £125,000 with the pactional interest due thereon in terms of the loan agreement. The defender admitted that on 9 May 2018 she and the pursuers had each executed a formal written loan agreement. It provided for the defender to receive a loan of £250,000 from the pursuers, interest free for a year, then carrying interest at 5% over the Bank of Scotland base rate from time to time, compounding quarterly. The defender further admitted that on 10 May 2018 she had received payment of the principal sum of £250,000, so that interest began to run on 10 May 2019. Following expiry of the one-year interest-free period the loan was to be repayable on demand subject to seven days' written notice. Repayment of the principal sum and interest was to be made equally between the two pursuers. The defender admitted that she had made no repayment of the loan or accrued interest. Repayment of the loan, with interest, was demanded by letter to the defender from the pursuer's solicitors dated 19 April 2023, as the defender further admitted. The defender therefore admitted execution and delivery of the loan agreement, receipt of the funds and receipt of the demand for repayment. She did not contend that she

had made any repayment. She did not suggest that the remedy sought was other than that for which the agreement provided. The only defence asserted was that the pursuers were personally barred from enforcing their right to insist on repayment. Personal bar was the defender's only plea-in-law. Unless that plea was made out the admissions were sufficient to entitle the pursuers to the decree they sought.

[61] The defender's claim that she understood that the £250,000 to have been a gift was incredible. There was no reason for her to be given anything by the pursuers; she had not been in a position to stop the sale of IA3. The loan agreement was not a complex document and there was no basis to think that any person of ordinary intelligence could be left in any doubt as to its import. The contemporaneous email correspondence likewise made it abundantly clear that the transaction was one of loan. In any event, it was irrelevant whether the defender was in this respect now dishonestly asserting a belief she never genuinely held, or whether she had in fact held a genuine but erroneous belief. The whole chapter of evidence was irrelevant to the resolution of the issue before the court.

[62] The requirements of the plea of personal bar were authoritatively stated by the Inner House in *Ben Cleuch Estates Ltd* v *Scottish Enterprise* [2008] CSIH 1, 2008 SC 252 at paragraphs 85 and 87:

> "[85] The circumstances in which a plea of personal bar will be sustained were formulated by Lord Birkenhead LC in *Gatty* v *Maclaine* (p7), in the following familiar terms:
>
> > 'Where A has by his words or conduct justified B in believing that a certain state of facts exists, and B has acted upon such belief to his prejudice, A is not permitted to affirm against B that a different state of facts existed at the same time.'
>
> It seems to us that the most important word in that dictum is 'justified'. There must be a representation made by A, whether by words or by conduct, as to the existence of a certain state of fact. B must believe the representation, and must act in reliance

> upon it to his prejudice. But that is not sufficient. The belief in that state of fact must be justified by the representation.
>
> …
>
> [87] … [T]o found a plea of personal bar, the representation must be such that a reasonable man would regard it as intended to be believed and relied upon. In other words, the representation must be interpreted objectively. If it conveys to the reasonable man that it was seriously intended, and that the person to whom it was made was being invited to believe it and act upon it, it matters not that the party making the representation may not in fact have intended that it be relied upon, either generally or for a particular purpose. If, judged objectively in that way, the representation is to be treated as one which its maker intended should be relied upon, the person to whom the representation was made is then, to revert to Lord Birkenhead's language, 'justified' in believing it, and if he is justified in believing it, he is entitled, in a question with the representor to rely on it. Entitlement to rely on the representation is a consequence of justified belief in the represented state of facts. As expressed in the authorities, where the representation has produced a justified belief in a state of facts, the representor is personally barred from maintaining that the facts were other than as represented. …"

[63] When those criteria were applied to the evidence, it was clear that the defender could not succeed. She gave no clear account of any relevant representation. None of what she claimed to have been said came close to an unequivocal statement that the pursuers had agreed to waive their rights to repayment of the loan. On the contrary, the asserted comments were most obviously indicative of a wish to postpone for future discussion the precise terms on which repayment was to be made, and in the meantime to proceed with the sale of Akari Group. The defender had decided to go along with that. There was no basis to think that a reasonable person in the position of the defender would regard what she maintained had been said as a representation that the debt had been waived at all, far less one that was intended to be believed and relied upon. The transaction for the sale of Akari Group had been fully and formally documented, just as the loan itself had been. The defender's reaction to the demand for payment being made had not been to assert furiously that it was improper because the pursuers had only a few months previously indicated that

it was to be written off. That is what might have been expected of her had the account she now gave been the truth. Rather, she chose through her solicitors to deny that she had ever agreed to borrow money, claimed never to have seen the loan agreement and asserted that there was something untoward about the signature. The court should conclude that these letters were the result of her having given deliberately dishonest instructions to her solicitors.

[64] In relation to the shares in VKY, the defender did not ask for those shares to be valued and did not offer to prove that they had any value at the date she divested herself of them. Again, no link was drawn between the VKY shares and the loan in the contemporaneous correspondence, as was to be expected if such a link truly existed. The court should repel the plea of personal bar and pronounce decree as concluded for.

Decision

[65] Up to three questions may require to be addressed in order to determine the proper resolution of this action. Firstly, what exactly was said to the defender by the pursuers (and in particular the second pursuer) about the loan in the run-up to the sale of Akari Group? Secondly, did what was said form a proper basis upon which a reasonable person might conclude that the pursuers were representing that they intended the loan to be forgiven? Thirdly, did the defender in fact reach that conclusion and act in reliance on it to her detriment in agreeing to the sale of Akari Group (which involved the gratuitous transfer of her shares in VKY)?

[66] In relation to the first question, the defender's position is that the second pursuer told her, in the context of conversations in which she had expressed concern about her own position should the loan remain payable after the sale of Akari Group, "Don't worry Mags,

we can sort that" or "It's sorted Mags, don't worry". After being informed by her of these conversations, the first pursuer had told her "we'll work it out". Neither pursuer had any specific recollection of any conversation along the lines claimed. The second pursuer was prepared to accept that he might well have told the defender to concentrate on getting the sale of Akari Group done and that the loan would be dealt with thereafter, but denied having ever said to her that her issue with the loan would be "sorted" or having given that impression by other words to like effect. Lindsay Climson stated that she had a recollection of a conversation in which the second pursuer had said to the defender that she should just push on with the Akari Group sale and that they would then "figure out" the issue of the loan. That is evidently much closer to the second pursuer's version of events than it is to that of the defender.

[67] The pursuers attacked the general credibility of the defender, for a variety of reasons. I did not find that all of the criticisms made of her in that regard were well-founded, but the content of some of her evidence seemed odd to say the least. Firstly, her suggestion that she had considered (albeit, she now accepted, wrongly) that the £250,000 transferred to her by the pursuers had been a gift rather than a loan depended, at least to a large extent, on the proposition that the anticipated share price in the sale of IA3 had slumped during the negotiations for its sale by an amount which resulted in her receiving a lesser sum than she had originally expected, with the diminution being, if not exactly £250,000, at least something of that order. No evidence at all was adduced in support of that proposition. The other justification advanced for the defender's original claimed belief that the £250,000 was a gift was the claim that other shareholders in IA3 had also received gifts at the time of its sale. That proposition, though specious enough in itself, fails further scrutiny. The other shareholders in IA3 who received gifts from the pursuers upon its sale received pecuniary

amounts apt to enable them to pay off the Capital Gains Tax due on the receipts of sale. Thus, Kimberley Totten and Lindsay Climson, each 1% shareholders in IA3, received around £20,000 as the sale price for their shares, and each received around £2,000 by way of gift from the pursuers. Had any gift to the defender proceeded along the same principles, she would have received around £34,000 from the pursuers in respect of the tax on the price obtained for her 17% share in IA3, not £250,000. The defender also maintained that she could not recall quite what had been said between her and the pursuers in 2018 about the reasons for the advance of the £250,000, which contrasts starkly with the pursuers' clear and comprehensible account (backed to some extent, at least, by the evidence of Lesley Clarkson about what she had been told by them about those reasons) of what she told them about her house purchase problem at the time and how that was reflected in the terms of the loan which was agreed.

[68] In short, nothing has been established about the circumstances of the sale of IA3 which would have justified the defender in thinking that the £250,000 was somehow to be regarded as a gift in that connection. Further, the documentation which she was asked to sign in order to receive that sum of money, along with contemporaneous email exchanges, made it perfectly plain that it was being advanced as a loan. The defender's position in relation to that matter was not to assert positively that she had not read the documentation, but rather to say that she could not remember anything about it. That is difficult to reconcile with the subsequent position adopted on her behalf by her solicitors in correspondence after the demand for repayment of the loan was made in April 2023, which was positively to assert that she had not signed the loan agreement and had not even seen it before that point.

[69] None of these matters supports the conclusion that, in instances where the defender's evidence on points of importance contrasts with those of others, it should be preferred. I do

not overlook the fact that the defender had various explanations for the infelicities in her evidence (for example, her suggestion that she had been in the habit of signing documents without reading them, and that her solicitors must have picked up wrongly what she said to them about the loan agreement), but the very fact that one party has to attempt to explain more than one apparent difficulty in her own evidence while those telling a different story have no discrepancies to explain away is in itself unhelpful to the suggestion that her evidence should be preferred where accounts differ.

[70] Drawing these strands together, I hold that, as set out in the evidence of Ms Climson, from which in its essentials the second pursuer did not demur, he told the defender in the run-up to the conclusion of the Akari Group sale that she should concentrate on getting that deal done and that attention would then be turned to address the issues which she was raising with the loan. I do not consider that the first pursuer said anything different to the defender.

[71] That answer to the question of what exactly was said to the defender supplies a clear answer to the second question which arises, namely whether what was said formed a proper basis upon which a reasonable person might conclude that the loan was to be forgiven. All that was said was that there would be a discussion about the loan after the Akari Group deal was done. No reasonable person in the position of the defender could have concluded that that meant that the loan was to be forgiven. All that such a person could have taken from what was said to the defender was that the pursuers intended to have a discussion about the defender's difficulties with the loan after the Akari Group deal was done. That discussion might have resulted in capital forgiveness in whole or in part, the remission of interest in whole or in part, or simply in a repayment schedule being agreed. It would not have been reasonable for a person in the position of the defender to conclude that any one of those

outcomes was more probable than any other, when all that had been said was that a discussion would be had.

[72] If I had accepted that the defender was told that her issue with the loan would be "sorted", then a degree of ambiguity would have remained, but in the context of her expressing concerns about her ability to repay the monies outstanding on the loan if the Akari Group deal settled at the price ultimately being offered, I would have held in all the circumstances that a reasonable person could have concluded that that meant that the pursuers intended to afford the defender at least some meaningful element of capital forgiveness or interest remission. The defender's claimed repayment difficulties could not sensibly be regarded as "sorted" unless something of that kind was to be put forward. That might have raised difficult questions about the extent to which the pursuers were entitled to seek, as they do, repayment of capital and payment of pactional interest in full. However, in the event those questions do not arise. Had they arisen, they would – given my answer to the third question identified above – not ultimately have resulted in a different answer to the ultimate question of the viability of the defender's plea of personal bar as a whole.

[73] That third question is not one which requires to be answered, given the way in which the first two have been resolved. However, had it been necessary to do so, I would have concluded that the defender did not in fact act on the faith of what was said to her (either on her own version of events or that which I have preferred) in agreeing to the sale of Akari Group and the concomitant divestiture of her shares in VKY. It should be borne in mind that by the time that potential sale was bruited, the first pursuer and Ms Clarkson had both suffered serious illness and, like many in that position, had re-evaluated their life choices and very clearly wished to exit the Akari business. The second pursuer, who had had in the circumstances to take on a far greater operational role in the business of Akari than he had

anticipated or wished for, was almost, if not equally, keen to sell up and depart. Both pursuers were more than happy to take the deal ultimately put forward by Woolf Partners, even if it was not as generous as might have been anticipated, because it provided a reasonable route to the exit which both wished for, and was indeed the only such route which was then available. In these circumstances, the defender (along with the other more minor shareholders in Akari Group) came under considerable pressure to agree to the sale. Kimberley Totten spoke to having felt compelled to proceed with the deal, despite entertaining serious misgivings, and did not believe that Akari's business could continue if it was not sold. Although there had been some talk of continuing the business during the period when it appeared that Woolf Partners were not going to proceed with their offer, once it became apparent that a deal was again on the table, it was practically inevitable in the circumstances that that deal was going to be done, come what may. Although the defender may have had her qualms, she was going to receive a reasonable sum for her shareholding and was seen by Woolf Partners as a key employee of the business going forward, with all of the future opportunities that that might bring. Although the matter was never tested by valuation, there was no evidence before the court that the defender's shares in VKY were worth anything and I do not consider that she thought otherwise. She had previously been able effectively to shrug off the pursuers' enquiries as to when she was going to repay the loan and there was nothing at that stage to suggest that that situation could not be indefinitely continued (the litigation only having ensued once the pursuers subsequently discovered that the loan monies had not been applied for the purchase of property by the defender as they had thought). The defender had tried and failed to get Woolf Partners to pay off the loan as part of their purchase of Akari Group. In these circumstances, I conclude that she would have regarded a bird in the hand as better than

two in the bush and was prepared to agree to the sale of Akari Group on the offered terms regardless of anything having been said to her about how the loan was going to be addressed in future. It follows that her plea of personal bar would have foundered at this stage even had it surmounted the previous obstacles in its way.

Conclusion

[74] I shall sustain the pursuers' second plea-in-law, repel the defender's plea, and grant decree as first and second concluded for.