SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

[2026] SC EDIN 9

EDI-CA11/25

JUDGMENT OF SHERIFF K J CAMPBELL KC

in the cause

BIBBY FACTORS LIMITED

Pursuer

against

BANK OF SCOTLAND PLC

Defender

Act: Conn (Mitchells Roberton, solicitors, Glasgow)
Alt: Smith (Pinsent Masons, solicitors, Glasgow)

Edinburgh 12 January 2026

Introductory

[1] The pursuer in this action is a commercial debt factoring company. The defender is a clearing bank. The pursuer seeks payment from the defender of sums paid through an account with the defender in the name of a mutual client of the parties, Lumos Telecom Limited ("Lumos"). It is convenient to summarise the key facts, which are either admitted or agreed. In 2022, Lumos had entered a debt factoring agreement with the pursuer (5/4 of process)., in terms of which the pursuer advanced funds to Lumos in consideration of an assignation of the right to receive payment on Lumos's invoices to its customers. Lumos was required to give notice to its customers of the assignation of the debt, and of details of a designated bank account controlled by the pursuer through which payment was to be made

by Lumos's customers. The defender provided banking services to Lumos. On 31 October 2024, the pursuer became aware that a customer of Lumos, Morrison, might have made payments on invoices issued by Lumos not to the pursuer but to an account in name of Lumos held with the defender. Early in the afternoon of 31 October 2024, the pursuer wrote to the defender calling attention to the existence of the factoring agreement, setting out the terms of a trust provision in the agreement, and its concerns about payment from Morrison for account of Lumos. That was delivered to the defender by hand to a principal city centre branch in Glasgow, to the branch in Edinburgh where it was understood the payment was to be received, and electronically to a named member of the defender's staff with whom the pursuer had previously had dealings.

[2] In the letter of 31 October 2024 (5/1), the pursuer asserted that allowing Lumos to withdraw or otherwise pay out funds would be a breach of trust, and sought confirmation from the defender that it would not accept instructions to pay out funds beneficially owned by the pursuer. The pursuer also invited urgent contact from the defender. The pursuer received no contact from the defender until 7 November 2024, when a member of the defender's staff contacted the writer of the letter. In the meantime, funds totalling £44,614.44 were received by the defender from Morrison to account of Lumos on 1 November 2024. A series of payments out of the account were made shortly after midnight on 1 November 2024, leaving a credit balance of £3.70. Several further payments were attempted or made between 1-4 November 2024. On 21 November 2024, Lumos entered administration.

[3] The pursuer's case in essence is that the sums paid by Morrison for account of Lumos fell within the factoring agreement, and should have been paid to its nominated account; and that as the defender had notice of the factoring agreement and the specific concern about payments to this customer, on receipt of the funds on 1 November 2024, the defender

knew or ought reasonably to have known that the funds were held by Lumos on trust for the pursuer. In consequence, the pursuer pleads, the funds ought not to have been intromitted with in any way other than payment to the pursuer. In consequence, the payments made in the early hours of 1 November 2024 were made in breach of fiduciary duties on the defender.

[4] Following several case management hearings to help focus the issues, parties entered into a Joint Minute of Agreed Facts, (No. 27 of process), which allowed the matter to proceed as a debate, which I heard on 14 October 2025. At the outset of the debate, Mr Conn for the pursuer moved the court to allow the record to be amended to show deletion of the pursuer's case relying on mandate all in terms of the marked-up version of the record, number 29 of process. The defender did not oppose that. It was agreed the expenses of the amendment should be reserved. The debate thereafter proceeded on parties' preliminary pleas.

Defender's submissions

[5] For the defender, Ms Smith adopted her Note of Argument, and invited me to sustain the defender's pleas to the relevancy and to dismiss the action. She submitted that the central questions were whether the defender acquired fiduciary duties, and in particular whether there was knowing receipt or dishonest assistance. A bank may become a fiduciary, but a bank does not as such owe fiduciary duties, and especially not to third parties. The pursuer relied on two textbook entries for a proposition that a bank should be cautious when receiving funds in a trust account. Reference was made to Grier *Banking Law in Scotland* (2001), paragraph 6-32. It was submitted that the cases relied on were about knowing receipt; however in this case, the pursuer had insufficient averments to meet the

objective test set out in the authorities. However, if the court was not with the defender, it was accepted the court might require to hear evidence. The notice relied on by the pursuer was the letter dated 31 October 2024 (5/1). This referred to the pursuer and defender's "mutual client", indicated there was an invoice finance agreement, but contained no vouching of it. There was a screenshot provided of the Morrison account. The aged debt analysis included with the email, on the face it, had no bearing on Morrison and there was no explanation of how it was relevant to that account. The letter had been received at 13.38 hours, and the sums had been received overnight. All the sums had been transferred out over a period of 38 minutes with the exception of £3.70. It was submitted that the notice was very little indeed although the pursuer said it was sufficient. The defender submitted that Grier's comments were not written in a world of electronic banking and the situation discussed there was not the situation in the present case. It was Grier that went on in the passage beginning "mere suspicion that there might be a trust… maintained such refusal". However, the principal obligation on a bank on receipt of payment instructions was to make payment as quickly as possible. A bank was under no duty to enquire about the purpose of the account or payment. Reference was made to *Philipp* v *Barclays Bank* [2023] UKSC 25, at paragraph 30.

[6] Turning to the authorities relied on by the pursuer, it was submitted these were addressing a different situation, namely tracing or knowing receipt of funds in breach of trust. *Barclays Bank* v *Quistclose* [1970] AC 567, was a knowing receipt case. The notice is set out at page 579 of the case and, it was submitted, was clearly a very explicit letter from the customer. The defender accepted that notice after receipt might be relevant, but in this case the notice had been provided before receipt and funds paid out rather than retained. This was not dishonesty, and it was submitted it was not sufficient for knowing receipt.

Reference was made to the judgment of Lord Chancellor Herschell in *Thomson* v *Clydesdale Bank* (1893) 20R (HL) 59. Likewise in *Devron Potatoes* v *Gordon & Innes* 2003 SCLR 103, a constructive trust had been pled but was not argued ultimately and the decision proceeded on unjust enrichment principles. In the present case, the defender did not hold the funds and the pursuer's plea sought reparation. The pursuer asks "must the defender benefit?" The pursuer's position was that the bank should be cautious about payment, however there was no averment on record that the customer instructed payment to an overdrawn account, so it was submitted there was no need for the bank to exercise caution in those circumstances.

[7] The defender did not take issue with the term "dishonest assistance" but submitted the pursuer's argument blurred the distinction between knowing receipt, and dishonest assistance. The defender's position was set out at length in the note of argument. It was submitted in short that the only circumstances in which the bank acquired liability was that it assisted in the breach of trust. Reference was made to *Cruikshank* v *Gordon & Innes* [2007] CSOH 113, at paragraphs 15 and 16. It was submitted paragraph 16 answered the pursuer's case directly. The bank might be liable if it received funds wrongly or if it assisted knowingly in breach of trust. There was no authority in Scots law about dishonest assistance, the cases were about dishonest receipt. Many of the English authorities relied on principles of equity, which do not apply in Scotland, although the Court of Session had indicated that it might be desirable for Scots law to achieve the same result.

[8] Reference was made to *Bank of Scotland* v *MacLeod Paxton & Woolard* 1998 SLT 258. It was submitted that the facts pled could not lead to an objective finding of dishonesty. In essence, the facts relied on are: (1) a letter was hand delivered and emailed at 13.38 to an employee of the defender; (2) funds were received at 24:00/00:00; (3) funds were paid out

over the space of 38 minutes; (4) there was a telephone conversation with Stephen Owens who said he could not recall such a letter in his banking career. It was submitted that accordingly, the pursuer's case was irrelevant. The bank had not received funds for its own benefit, and the bank was not acting or averred to be acting dishonestly. Accordingly, the action should be dismissed with expenses. The defender's fallback was that if the threshold test did require knowledge on the part of the defender, proof would be required.

Pursuer's submissions

[9] For the pursuer, Mr Conn adopted the pursuer's Note of Argument. The pursuer submitted that the case involved debt factoring, and it was routine that those arrangements involved trusts and it was also routine that funds were sometimes paid to the supplier rather than to the factor. It was relatively routine for letters such as 5/1 to be sent by factors to banks. The notice had been sent to the defender four ways, and the defender accepted that it had received notice in two of those ways, namely by hand and by email. If the defender's position was that 3 hours' notice before the close of the banking day was not enough, that was not pled in the Defences, and it should be noted that the defender did admit that the frequently received urgent requests about funds and accounts. Cases such as *Thomson* v *Clydesdale Bank* were cases about the application of funds but they were fundamentally about the bank using funds which they knew they should not. It was submitted that the bank's intention was irrelevant. Standing the notice, the defender knew it was moving money which was not the customer's to receive or deal with. It was that knowledge and intromission which the pursuer relied on.

[10] Reference was made to Grier paragraph 6.32. There was no need for the bank to be, as the author described, an amateur detective nor was there in this case a place for mere

suspicion. The fact that there was a factoring arrangement with a trust provision was clearly put forward in the letter dated 31 October 2024. The bank's duty to honour instructions was not the same as suspending payment until the morning of 1 November, and checking the position. It was submitted the banks have many powers to scrutinise transactions short of refusing to make a payment and the *Quincecare* duty showed that banks can have broader duties and will interfere with transactions.

[11] It was submitted that the cases referred to in the pursuer's Note of Argument set up fiduciary duties on part of the bank, and in this case the pursuer avers breach of a fiduciary duty. It was accepted that there was no case which was on all fours with the present, but there was no doubt that where there is the fiduciary duty and funds are paid out in breach of it the bank must have liability to the person to whom it owes the fiduciary duty.

[12] The pursuer disputed the defender's argument that knowing receipt is a requirement in Scots law but in the present case there was knowing receipt. The bank had the funds and knew to whom it was owed. The pursuer's primary position was that the doctrine of knowing receipt did not apply, and the fallback was that if it was a requirement, the bank receiving money was knowing receipt. It had received money from Morrison and was told it was not Lumos's money but was the pursuer's. Reference was made to the Joint Minute paragraphs 17b and 17n which listed payments out to Lumos on 1 November 2024. It was submitted the defender may very well have been in the situation that Grier warned about. It may well be that there was not an overdraft on the account but payment into another overdrawn account. The defender was on notice but took no steps to investigate. It was submitted the defender certainly knew that payment was not being made to the designated account.

[13] Turning to the letter of 31 October 2024 (5/1), there were a number of clear features which made its purpose unambiguous.

- It was on headed paper.
- The name and account of Lumos was specified.
- The fact that invoice finance was involved was mentioned, and there was reference to the debts being assigned to the pursuer (it was accepted the aged debt analysis added nothing to that).
- There was reference to Lumos having diverted payment.
- The trust was clearly spelled out, and the "not action" was spelled out.

The defender had called back to the pursuer but did not do anything until a week later. The defender's decision not to prioritise the matter was clear, and that had consequences. It was submitted the letter was clear and if the defender took one week to consider and action it, that was a business risk decision on their part. It was submitted banks do things urgently all the time, reference was made to condescendence 6 and answer 6. It was submitted no authority was required for that proposition. On receipt of correspondence of this kind, the third party may be in bad faith, or, on investigation, the bank may require to act. It was submitted the bank knew 3 hours before the end of the banking day, and 11 hours before the funds were received of the pursuer's interest in the funds. The defender was not entitled to proof on whether 3 hours was sufficient; in any event it was submitted 3 hours was sufficient and there was no evidence to the contrary.

[14] Turning to the defender's position about the existence of fiduciary duties, reference had been made to *Barnes* v *Addy* (1874) 9 LR Ch App 244, at pages 251-252. It was clear that an address to different circumstances: receipt of trust property, and dishonest assistance. These were very clearly separate. It was submitted there was no need to look for dishonesty

if there was trust property. Here there was notice, and the pursuer's position was primarily based on the question of notice. The pursuer submitted that the bank had knowledge, and had then paid out, giving rise to liability; even though the parties were, as the defender described it, strangers. In relation to the question of knowledge, reference was made to *Commonwealth Oil and Gas* [2009] CSIH 75, at paragraph 85, A*jou* v *Dollar Land Holdings* [1994] 2 All ER 685, at page 700 and *Bank of Scotland* v *Macleod Paxton and Woolard 1998 SLT 258*. In relation to the last named case, the point was knowledge of dishonesty not the dishonesty as such; the bank had a suspicion and carried out some investigation and then paid. In the present case the defender did do something albeit 7 days late. In relation to *Philipp* v *Barclays Bank* [2023] UKSC 25, reference was made to paragraph 30, paragraph 107 and paragraphs 97-100. It was submitted that where the bank was put on notice, trust funds were not to be paid out. The duty to the customer to make payment was not absolute. It was submitted there was no need for further evidence about banking practice. Reference was made to *Quistclose* and Lord Reid's observation that notice given after the transfer may be sufficient (at 578B). It was accepted that there was clear notice in that case but the position was not absolute. In the present case the funds had not been comingled with other funds. Grier suggested that where the bank became aware of the trust they became subject to fiduciary obligations and earlier notice was not required. Reference was made to *Devron Potatoes* at pages 122-3. In that case, the primacy was the issue of notice (page 123A-B) and that the knowledge was of the funds being trust funds was important. The defender's submission in section 6 asserted that there were insufficient averments, however the pursuer averred that the defender was a bank and deferred the circumstances of payment. The bank had received money which was accepted not to be theirs. On the authorities either dishonesty or knowledge of trust was required. The court had the agreed facts and the letter

and it was submitted that was evidence of the existence of a trust, money coming in and knowledge on the part of the defender. There was no general duty on the defender to pay the funds out at one minute past midnight. The pursuer reviewed its motion for decree.

Defender's reply

[15] In a brief reply, it was submitted that many of the cases referred to were about tracing funds which was why there was a lesser requirement of what might be described as *mens rea*. However, it was submitted that if the bank received funds and they were disbursed within 35 minutes, there was a requirement for dishonesty and there was no Scots law authority about dishonest assistance. The cases appeared to relate to circumstances where payment had been applied to a debt due to the bank. That was why many of the cases were decided on unjust enrichment principles, where the bank had been using funds for its own benefit. If it were otherwise, it was submitted, the bank would be the second defender in all debt claims.

[16] In relation to *Philipp* v *Barclays Bank*, reference was made to paragraphs 31-37. At paragraph 31, it was clear the bank could have refused to make payment only if it had knowledge there was a breach of trust. However, from paragraph 32 it was clear that the bank could not refuse to comply if it was merely concerned that there might be a breach of trust. The *Quincecare* duty was to protect the customer it did not arise when the customer was acting wrongfully. It was submitted the pursuer's averments and submission about what the defender could have done amounted to a case of negligence, however that was not sufficient to establish liability in the context. As the passage from Grier indicated, banks are not expected to be detectives, which it was submitted, would in effect what the defender would have been doing had it made enquiries about who the pursuer was. The pursuer

insisted dishonesty was not required and there was no averment of dishonesty; on the question of receipt and dishonesty the defender's position was that receipt was beneficial receipt, the funds had not been paid to an overdraft.

Analysis and decision

[17] There are two broad issues in dispute: what, if any, duties the defender owed to the pursuer, and secondly, whether the pursuer's averments are sufficient to instruct a case that the defender was on notice about the trust to which the pursuer submits the funds in the Lumos account were subject at the time they were disbursed. Before discussing those matters, it is convenient first to note that in response to the pursuer's averments in condescendence 2 about the factoring agreement, and that sums received by Lumos were held on trust for the pursuer, the defender pleads these "are believed to be true". As the defender is not a party to the factoring contract, these averments are quite properly not admitted, but the effect of their being believed to be true is the same. The defender's substantive response, in answer 6, is that the effect of its own banking contract with Lumos was that it could not accept a mandate from the pursuer without instructions from the Lumos.

[18] On the question of a bank's duties where a trust is averred, both parties took as their point of departure Grier *Banking Law in Scotland* (2001), paragraph 6-32. The relevant passage is in the following terms:

> "It is most important that the bank should know that an account is set up as a trust account. A bank is not expected to be clairvoyant and able to recognise that funds are being held for another. In the absence of notice of a trust account the bank would be entitled to assume but the funds held in account are for the benefit of the customer and not the beneficiaries of a trust. However if a bank is aware that there might be a trust involved or even if there is sufficient indication to make a bank consider that there might be a trust, the prudent banker would be well advised to clarify the

> position and to put the matter beyond doubt, although the mere fact that the customer is the sort of person, such as the solicitor or stockbroker, who might be holding funds on behalf of another, is not of itself enough to put the bank on inquiry… Once a bank is aware that there is a trust, the bank has to recognise its fiduciary duty, and simultaneously to have in mind the interests of the trust, the beneficiaries, the bank's own interests, and the trustee's interest… However, mere suspicion that there might be a trust involved would not be grounds for refusing to pay a cheque: something more definite that 'suspicion' would be required to maintain such a refusal."

[19] It will be evident that the bank having notice of the trust is a key element of the existence of duties to third parties. The principal authority cited for the importance of notice in creating any obligation on the bank to a third party is *Thomson* v *Clydesdale Bank* (18930 20R (HL) 59, to which I was referred. In that case, a stockbroker sold shares for the pursuer trustees, and paid the cheque from the buying broker into his account, which was in overdraft. He did not remit the sale proceeds to the pursuer. The broker absconded. The trustees sued the bank, and the evidence was that the bank believed the funds were deposited in the course of business and that there was no evidence the bank knew the broker had paid the money improperly. The trustees' argument was in essence that because the account was in the name of a stockbroker, it would be understood that the broker was acting for principals, and that sums paid into the account were in fact so paid. The House of Lords rejected that as a sufficient basis for placing a liability on a bank.

> "It is obvious that the case of the appellants wholly fails unless they bring home to the respondents much more than has been attempted here, namely a knowledge that in the particular case the person was not justified in paying over the particular amount. Of course, if they prove that there was such knowledge on the part of the bankers, the bankers could not retain it"
> LC Herschell at p61

[20] I am unable to accept the defender's submission that Grier's commentary (written a little over 20 years ago) is no longer apt in an era of electronic payment. In the first place, electronic payment was known in 2001, albeit much less common for non-commercial

transactions; secondly, and more pertinently, the notion of payments made fraudulently or in breach of contract are not new, rather, the means of effecting such merely change with technology. That much is evident from the decision of the Supreme Court in *Philipp* v *Barclays Bank plc* [2023] UKSC 25; [2024] AC346, which concerned authorised push payment fraud.

[21] Although *Philipp* was an English appeal, with the exception of cases concerning equitable interests and remedies, which this was not one, the law in this area in Scotland and England is broadly similar, and it is therefore helpful to consider the decision. In *Philipp*, the Supreme Court was concerned with the extent of a bank's duty to execute instructions from customers, and particularly where it was, or might be, on notice that payment could result in misappropriation of the customer's funds, rather than a breach of trust. Lord Leggat, with whom the other justices agreed, surveyed the law, particularly in light of an earlier decision, *Barclays Bank* v *Quincecare Ltd* [1992] 4 AllER 363, which was alluded to, but not elaborated on, in submissions before me. It is convenient to set out a number of elements of the Supreme Court's reasoning.

> "Unless otherwise agreed, the bank's duty to comply with its mandate is strict. Where the bank acts outside the mandate by making a payment which the customer has not authorised, it cannot debit the customer's account. Conversely, where the bank receives an instruction to make a payment given in accordance with the mandate, the ordinary duty of the bank is simply to carry out the instruction and to do so promptly."
> [para 30]

> "In summary, the duty of a bank which has come to be referred to as the 'Quincecare duty' is not, as that epithet might suggest, some special or idiosyncratic rule of law. Properly understood, it is simply an application of the general duty of care owed by a bank to interpret, ascertain and act in accordance with its customer's instructions. Where a bank is 'put on inquiry' in the sense of having reasonable grounds for believing that a payment instruction given by an agent purportedly on behalf of the customer is an attempt to defraud the customer, this duty requires the bank to refrain from executing the instruction without first making inquiries to verify that the instruction has actually been authorised by the customer. If the bank executes the

> instruction without making such inquiries and the instruction proves to have been given without the customer's authority, the bank will be in breach of duty. It will also in making the payment be acting outside the scope of its own authority from the customer and will therefore not be entitled to debit the payment to the customer's account."
> [para 97]

[22] In my view, the reasoning in *Philipp* is consistent with *Thomson* v *Clydesdale Bank*, and is supportive of the analysis offered by Grier in the passage cited. A bank's duty under its mandate from its customer is strict, and is generally to pay as instructed. However, where a bank is put on enquiry about instructions from a customer's agent which suggest the agent may be misappropriating the customer's funds, the obligation is not to pay without confirming the customer's instructions. I consider that is equally applicable by parity of reasoning where the bank is on enquiry not about fraud, but about funds in the customer's account being subject to a trust. In that event, the bank is obligated not to pay out in breach of trust. I consider that conclusion also follows from *Barclays Bank* v *Quistclose Investments Ltd* [1970] AC 567.

[23] In that case, the circumstances were somewhat more complex than in the present case, but the ultimate result is similar. R Ltd, which was a customer of Barclays, was in financial difficulty, and was overdrawn significantly in excess of its agreed limit. It obtained agreement from another company for new funding conditional on payment of a large dividend. Quistclose, which appears to have been a related company of R Ltd, provided funds to meet the dividend, and these were paid to an account with Barclays opened for the purpose, which purpose was expressly disclosed to Barclays. R Ltd went into liquidation before the dividend was paid, and Barclays thereafter applied the funds to meet outstanding liabilities of R Ltd. Quistclose sought recovery of the funds from R Ltd and Barclays. At

579G-H, Lord Wilberforce (with whose speech the rest of the committee agreed) formulated the issues in this way:

> "Two questions arise, both of which must be answered favourably to [Quistclose] if they are to recover the money from the bank. The first is whether as between [Quistclose and R Ltd] the terms upon which the loan was made were such as to impress upon the sum of £209,719 8s 6d a trust in their favour in the event of the dividend not being paid. The second is whether, in that event, the bank had such notice of the trust or of the circumstances giving rise to it as to make the trust binding upon them."

[24] In my opinion, that is broadly the set of questions with which this case is concerned. The answer to the first question is in this case much more straightforward than in *Quistclose*, because the coming into existence of a resulting trust subject to particular English rules of equity need not concern us. That is because as between the pursuer and Lumos, there was an explicit trust provision in the factoring agreement. That is not in dispute. Lord Wilberforce's second question about notice plainly does not depend on the English law of trusts. It is also pertinent to note that Lord Reid in concurring observed,

> "I would only add that I am by no means satisfied that this House would be precluded from holding, in such circumstances as exist in this case, that notice of the trust received by the bank after they received the money could be effective." (p578B)

While obiter, that suggests the focus is on notice being received by the bank. On the notice point, the court in *Quistclose* held the information provided to the bank was clear and sufficient to put it on notice of what was in substance a trust; see Lord Wilberforce at 582B-F. Having held there was such notice, his Lordship concluded

> "As was appropriately said by Russell LJ [in the Court of Appeal] it would be giving a complete windfall to the bank if they had established a right to retain the money."

I consider that applies equally in the context of the present case. The windfall here is not retaining the money, but avoiding an obligation to account and repay the money paid out on the instructions of Lumos.

[25] A significant plank of the defender's case is that the pursuer does not plead "knowing receipt", in the sense of receipt for the defender's own benefit (*El Ajou* v *Dollar Land Holdings* [1994] 2 AllER 685, at 700) or dishonest assistance, an English equitable doctrine whose application in Scots law is unclear (*Barnes* v *Addy* (1874) 9LR Ch App 244, referred to in *Commonwealth Oil & Gas Co* v *Baxter* [2009] CSIH 75, at paragraph 85). I consider the pursuer's submission well-founded that there is no requirement to establish dishonesty in a case where the existence of a trust is established, and the bank had notice of that fact. That seems to me clear from *Barclays Bank* v *Quistclose*. While the defender is correct that there is no averment that the defender benefitted from the deposits, as in the overdraft cases, in my opinion, that is nothing to the point. The pursuer's case is that the defender became subject to fiduciary obligations on notice of the trust imposed by the factoring agreement. I consider on the basis of the authorities considered above, the pursuer's submission is well-made.

[26] Accordingly, I conclude that in principle liability of the kind the pursuer contends for can arise where a bank had notice that funds in a customer's account are subject to a trust arising from a factoring agreement. I turn next to the averments on record.

[27] The pursuer pleads the terms of its factoring agreement in condescendence 2, and as noted above, these are, quite properly not admitted but believed to be true. It is plain from the clauses referred to that the intention was all sums received by Lumos were held by them on trust for the pursuer. Parties made submissions about the letter of 31 October 2024 (5/1), which is incorporated into condescendence 4. The circumstances of its preparation and delivery to the defender have been summarised above. Examination of the letter discloses that:

- It is set out on the pursuer's headed paper.

- The name and details of Lumos's account with the defender is specified.
- The fact that invoice finance was involved is mentioned, and there was reference to the debts being assigned to the pursuer (it was accepted in submissions that the aged debt analysis added nothing to that).
- Reference is made to Lumos having diverted payment of sum(s) due on invoices.
- Most pertinently, the fact that sums are to be held on trust for the pursuer was clearly spelled out.
- Thereafter, the pursuer addresses itself to the defender with three points: (a) asserting that the defender honouring the payment instruction would "be assisting the Company in a breach of trust and, in circumstances where you have full knowledge of the trust, you will be liable to us for dishonest assistance." (b) expressing the hope that Lumos will transfer payment to the account nominated for factoring; and (c) seeking confirmation from the defender that it will not "accept instructions from the Company to withdraw or pay funds that are beneficially owned by us to anyone other than us."

[28] In my view, the averments taken together with the incorporated letter (5/1) are sufficiently specific to give fair notice of what the pursuer relies on in putting the defender on enquiry about the existence of a trust in relation to the funds in the Lumos account. It is of course correct that the defender's primary obligation under its account mandate with Lumos was to make payment when instructed. However, on the basis of the authorities discussed above, that obligation is suspended where the defender had notice of the kind given by the pursuer. Accordingly, I conclude that the action as presently framed is both

relevant and sufficiently specific in its averments. The remaining question is whether proof is required, or whether the court can grant decree without proof.

[29] In answer 6, the defender avers that it was bound by obligations of confidentiality to Lumos, and that it was unable to accept a mandate from anyone else without the authority of Lumos. As a matter of contract between the defender and Lumos, for aught yet seen, that may well be correct, and may provide an answer to why the defender did not pay over £44,614.44 to the pursuer on receipt of the notice. However, it does not explain why the defender was unable to suspend payment having been given notice of the kind contained in 5/1, at least until the existence and nature of the trust had been vouched to its satisfaction. No reason has been advanced in the defender's averments beyond the obligation of confidentiality between the defender and Lumos, why that could not have been done on the afternoon of 31 October 2024, or even on the morning of 1 November. However, I consider it is at least possible there may be such reasons. I am satisfied on balance that it will be necessary to hear evidence about that.

Conclusion

[30] I will therefore repel the defender's first and second pleas in law. I will appoint the action to proof. Given the Joint Minute of Admissions, that is likely to be a proof in short compass, and it will be necessary to discuss the precise scope of proof. As indicated above, I reserved expenses in relation to an amendment procedure, and there may be further expenses issues which arise. I will therefore fix a case management hearing to deal with both further procedure and expenses.