

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT FALKIRK

[2026] SC FAL 87

FAL-A157-24

NOTE

by

SHERIFF SG COLLINS KC

in causa

NASREEN AKHTAR or ALI

Pursuer

against

IMRAN KARIM

Defender

Pursuer: Sandemans, solicitors
Defender: Adams Whyte, solicitors

FALKIRK, 8 June 2026

Introduction

[1] There was before the court a motion on behalf of the pursuer for decree in terms of a minute of tender lodged 26 March 2026 and minute of acceptance of tender lodged 31 March 2026. This motion was opposed by the defender, who instead sought decree in terms of an extra-judicial settlement, the offer and acceptance of which are said to be set out in minutes intimated by the defender on 27 May 2025 and lodged by the pursuer on 18 March 2026. The difference in parties' positions was as to the date to which interest on the settlement sum should run, and the date to which the pursuer should be found entitled to expenses. The case also called as an OCR rule 18.3 hearing in respect of a minute of

amendment for the pursuer and answers. However it was agreed that this would only be a live issue if the court was unwilling to grant decree in the terms sought by either party. In that event the action would proceed, and the rule 18.3 hearing should be continued to another date.

Background

[2] In this action the pursuer seeks damages from the defender for breach of contract relating to the lease of commercial premises in Bainsford. The record was closed on 26 February 2025. A proof was assigned for 22 April 2025 but was then discharged at the pre-proof hearing. Offers and counter offers to settle the matter extrajudicially were made and refused. On 27 May 2025 the defender's agent sent to the pursuer's agent a document bearing to be a copy of a minute of tender, in the following terms:

"Whyte for the Defender stated and hereby states to the Court that without prejudice and under reservation of his whole rights and pleas and without admission of liability the Defender tenders as follows: To pay to the pursuer the sum of FOURTEEN THOUSAND SEVEN HUNDRED AND FIFTY POUNDS (£14,750.00) STERLING together with interest at the judicial rate running from date of citation of this action until the date of this Tender together with the taxed expenses of the process to date in full satisfaction of the craves of the initial writ."

In error, however, the defender's agent failed to lodge this minute with the court, and the pursuer's agent failed to notice that he had not done so. Further offers and counter offers to settle - including a pursuer's offer lodged with the court on 5 June 2025 - were then made and refused. Meantime further procedure followed. In due course this included a minute of amendment for the pursuer and answers thereto, and a rule 18.3 hearing was assigned for 8 April 2026.

[3] On 9 March 2026 the defender's agent emailed the pursuer's agent intimating that the defender was willing to "walk away... on a drop hands basis and in that regard based

on an award of no expenses due to or by either party". The pursuer consulted with her solicitor and counsel in the light of this. It is accepted in her written submissions that at this consultation "instructions were given that the Tender... be accepted". Accordingly on 18 March 2026 the pursuer's agent lodged, and intimated to the defender's agent, a minute of acceptance of tender. It states:

"Sandeman for the pursuer states to the Court that the Pursuer hereby accepts the tender contained in the Defender's Minute of Tender number [blank] of process, in full of the craves of the Initial Writ."

At the same time the pursuer's agent lodged and intimated a motion in the following terms:

"...to grant decree in Terms of the Minute of Tender number [blank] of process and the Minute of Acceptance number [blank] of process"

The failure to include the process number of the minute of tender reflected the fact that the pursuer's agent had not checked the process before lodging his minute of acceptance and motion. Had he done so it would have been apparent to him that the defender's minute of 27 May 2025 had never been lodged. However it was this minute to which his minute of acceptance was directed.

[4] In the absence of a minute of tender in process the sheriff clerks were unable to deal with the pursuer's minute of acceptance of tender and motion, and alerted the defender's agent to this. On 26 March 2026 he emailed the sheriff clerk and lodged a copy of the minute which he had sent to the pursuer's agent on 27 May 2025. On 27 March 2026 the sheriff clerk emailed the pursuer's agent pointing out that as he had earlier failed to lodge a certificate of intimation of the initial writ, interest from the date of citation could not be specified and thus the motion for decree in terms of the defender's minute could not be processed. This email was copied to the defender's agent who replied to the sheriff clerk on 30 March 2026. He attached, in particular, notice of opposition to the pursuer's motion for decree, his

primary position being that the court should award the defender the expenses of the cause from 26 June 2025, that is, a date 1 month from the date on which the defender's minute had been intimated to the pursuer's agent.

[5] The pursuer's agent having become aware that the defender's minute had only now been lodged, and thus post-dated his minute of acceptance of 18 March 2026, lodged a further minute of acceptance of tender on 31 March 2026. This minute (apart from the date thereof) was in identical terms to the pursuer's earlier minute. The court then appointed the pursuer's now opposed motion for decree to be heard on 8 April 2026, along with the rule 18.3 hearing. Although this motion pre-dates both the minute of tender lodged on 26 March 2026 and the minute of acceptance lodged on 31 March 2026, it has nevertheless been treated by both parties as a motion by the pursuer for decree in terms of them. Written submissions and lists of authorities were then lodged by both parties in respect of this motion. On 8 April 2026 I heard oral submissions from parties' agents and reserved judgment.

Submissions

[6] The pursuer submitted that as the minute intimated to him by the defender's agent on 27 May 2025 had not been lodged with the court, it was not a tender. Therefore the pursuer's minute lodged on 18 March 2026 was not a minute of acceptance of tender, because there was at this point no tender to accept. However the defender's minute lodged on 26 March 2026 did constitute a minute of tender, and the pursuer's minute lodged on 31 March 2026 was a minute of acceptance of it. Accordingly there was a binding agreement in terms of these latter two minutes and decree should be granted in terms thereof. The defender's minute of 26 March 2026 tendered a sum in settlement together with interest and

expenses “to date”. It was submitted that this date was the date when the defender’s minute of tender was lodged with the court, that is, 26 March 2026. The minute of acceptance of 31 March 2026 had been lodged within a reasonable time thereafter. Accordingly the court should find the pursuer entitled to the whole expenses of process, up to and including the expenses of the present motion.

[7] The defender’s agent submitted that although his minute had not been lodged with the court on 27 May 2025, it had been intimated to the pursuer’s agent on that date. It therefore still constituted an offer to settle the action, by payment of a principal sum plus interest and expenses. There was no time limit for acceptance of this offer, it had not lapsed, and it had not been withdrawn. It was expressly accepted that following the defender’s email of 9 March 2026 the pursuer had given instructions to accept this offer. It made no difference to this that the minute in which it was contained, unbeknown to the pursuer and her legal representatives, had not been lodged. The pursuer’s instructions were given effect by lodging the minute of acceptance of tender on 18 March 2026. The two documents therefore expressed an agreement to settle the action which was binding and enforceable. Accordingly the court should grant decree in terms thereof.

[8] As regards expenses, the offer in the minute had been for interest and expenses “to date”, that is, the date when it was intimated on 27 May 2025. In giving instructions to accept the offer in the minute the pursuer must have known and accepted this. The defender accepted that the pursuer was entitled to a reasonable time to decide whether or not to accept the offer, and in the circumstances submitted that this would have been a period of 1 month. Accordingly the court should find the pursuer entitled to interest and expenses to 26 June 2025, but thereafter award expenses in favour of the defender. Alternatively, accepting some responsibility for the procedure arising out of the initial

failure to lodge the minute of 27 May 2025, the defender's agent recognised that the court might not grant expenses in the defender's favour as regards the procedure following the lodging of the minute of acceptance on 18 March 2026.

Analysis and decision

[9] A tender is a judicial offer to settle an action. It is an offer which is made through the court. It is usually made by lodging a minute of tender as a separate part of the court process, and then intimating a copy of this minute to the other party. Acceptance of a tender is also made through the court, usually by lodging a minute of acceptance. The reason for "speaking through the process" in this manner is to ensure a "perfect record" of the precise terms of the offer and of the times when it was made and accepted: *Ramsay's Trustees v Soutar* (1864) 2 M 891 at 892. Tenders are a product of judicial decisions, not rules of court, but the procedures are - or should be - well understood by practitioners: see Macphail, *Sheriff Court Practice* (4th Edition), paragraph 14.40 on. Adherence to these procedures should avoid the need to argue about whether settlement has been agreed, and if so when, and on what terms.

[10] Whether made by way of a tender or extra-judicially, an agreement to settle an action remains contractual in nature. If there is consensus as to settlement terms then it is the underlying agreement which is binding on parties, not the legal character of the document in which it is expressed: *Clark v Hope* 2006 SCLR 98 at paragraph 20. Accordingly when a court pronounces decree in terms of minutes of tender and acceptance it is doing no more than giving judicial effect to an agreement between the parties as to the terms on which the action is to be settled: *Anderson v Thomson* 1985 SLT (Sh Ct) 8 at page 9; *Manor Lifts Ltd v JH Gray (Builders) Ltd* 1989 SLT (Sh Ct) 63 at page 65. A tender must include an

unqualified offer to pay the pursuer's expenses to the date of it. An extrajudicial offer may also do so, but if there is no consensus as to payment of expenses then there will be no binding agreement to settle: *Anderson*, at page 9.

[11] In the present case the defender's agent intimated a document bearing to be a minute of tender on 27 May 2025. But as he had failed to lodge it with the court it did not constitute a tender. But although there was no judicial offer to settle, the purported minute of tender did amount to an extrajudicial offer. It was an offer by the defender to settle the action by payment of the sum stated, plus interest and taxed expenses "to date", that is, to 27 May 2025. This offer was not time limited, was not withdrawn, and did not lapse. And in March 2026 the pursuer gave instructions to her agent and counsel to accept it. Erroneously believing it to have been made by way of tender, the pursuer's agent lodged and intimated a minute of acceptance of tender on 18 March 2026. There was in fact no tender, but this purported minute of acceptance reflected the instructions which the pursuer had given, that is, to unconditionally accept the offer made in the minute of 27 May 2025. This included acceptance of the defender's offer to pay the pursuer interest and expenses to that date. There was therefore offer and acceptance, and accordingly a binding and enforceable agreement between the parties. That there was consensus is underlined by the fact that the pursuer lodged a motion for decree in terms of the minutes.

[12] Notwithstanding this, the defender's agent then lodged a copy of the minute of tender with the court on 26 March 2026. His having done so, the pursuer's agent has, in effect, sought to take advantage of the situation by treating this minute as an offer to pay interest and expenses to this date, rather than to 27 May 2025, and by lodging a further minute seeking to accept this supposed offer. I am not willing to accede to this. It is admitted that the pursuer, on advice of her agent and counsel, agreed to accept the offer

contained in the minute intimated on 27 May 2025. By so doing, she agreed to accept awards of interest and expenses to this date, and that the defender would be entitled to expenses from a reasonable time thereafter. When the defender's agent lodged a copy of the minute with the court on 26 March 2026 he did so to provide the court with the terms of the offer on which the pursuer's motion for decree was founded, and to enable the clerks to process the pursuer's motion. What he lodged was a copy of the same document as had been intimated on 27 May 2025. He did not lodge the copy minute on 26 March 2026 intending to make a new offer to settle, as settlement terms had already been agreed. And he did not do so to vary the terms of the settlement agreement which the parties had reached as regards interest and expenses.

Conclusion

[13] I will therefore refuse the pursuer's motion for decree in terms of the minutes of 26 and 30 March 2026. I will grant the defender's motion and give effect to the agreement to settle this action reflected in the minutes of 27 May 2025 and 18 March 2026. In terms thereof I will grant decree against the defender for payment to the pursuer of the sum of £14,750 in satisfaction of the craves of the initial writ. That being so, I will refuse as unnecessary the pursuer's motion under OCR rule 18.3 to open up and amend the record in terms of the minute of amendment and answers.

[14] As regards interest and expenses, the defender conceded that the pursuer was entitled to a reasonable time from 27 May 2025 to accept the offer in the minute, and I agree that 1 month would have been reasonable. Interest will therefore run on the principal sum at the judicial rate from the date of citation, 21 August 2024, until 26 June 2025. The pursuer will be entitled to the expenses of process, as agreed or taxed, until this same date.

Thereafter the defender will be entitled to the expenses of process until 18 March 2026, when the pursuer lodged her minute of acceptance of tender.

[15] The defender's agent accepted some responsibility for the dispute which has arisen since then, caused as they were by his failure to lodge the minute of 27 May 2025 with the court. On the other hand the pursuer's agent failed to notice that this minute had not been lodged before lodging the minute of acceptance and motion on 18 March 2026. As I have said, he has sought on behalf of his client to take advantage of the situation since then, but I have found for the defender on the substance of the opposed motion on 8 April 2026. In these circumstances I will find no expenses due to or by either party from 19 March 2026 until the conclusion of the action.