SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2025] SC GLA 36

GLW-A983-23

JUDGMENT OF SHERIFF D N TAYLOR

in the cause

BRIAN MCCARDLE

Pursuer

against

GERALD GEORGE GRADY

Defender

GLASGOW, 1 April 2025

The sheriff, having resumed consideration of the cause, finds the following facts admitted or proved:

(1) The pursuer is a qualified electrician and an approved contractor with Sovereign Chemicals Limited who specialise in rot work. He has considerable experience of renovating and developing properties.

(2) The defender is the pursuer's second cousin.

(3) The defender is the former owner of 48 Dowanside Road, Glasgow comprising the first and second floors of the tenement block at 48/48A Dowanside Road. James Renwick is the owner of 48A Dowanside Road which comprises the ground floor of the tenement block. In or about 2017 the parties had discussions about communal work which was required to the tenement block at 48/48A Dowanside Road, Glasgow.

(4) No 5/36 of process is a copy of a report on the property at 48/48A Dowanside Road, Glasgow dated 20 October 2017 prepared by Allied Surveyors which was requested by the

pursuer on the instructions of the defender. The report identified a significant outbreak of dry rot within the property and recommended that a detailed disruptive timber specialist report be obtained.

(5) The pursuer discussed the Allied Surveyors report with the defender and on his instructions asked Ross-Toration Surveys Limited to survey the property. No 5/11 of process is a copy of the report prepared by Ross-Toration Limited dated 17 April 2018. Ross-Toration Limited recommended that specialist damp proofing works be carried out at the property including the removal of fungal growth, the application of a fungicidal/insecticidal spray, the removal and replacement of certain parts of the property such as window frames, cornicing, plasterwork and shower cubicles, and the treatment of areas of dry and wet rot.

(6) The parties agreed that the pursuer instruct and supervise the work recommended by Ross-Toration Limited. The rot work was communal to the properties owned by the defender and Mr Renwick.

(7) The pursuer gave a verbal estimate to the defender that the communal work would cost approximately £15,000 to £20,000.

(8) Between about April 2018 and sometime after 17 January 2019 the communal work recommended by Ross-Toration Limited was carried out at the property. Nos 5/22 to 5/31 of process are photographs of the work carried out at the property between 11 April 2018 and 17 January 2019. This work was instructed and paid for by the pursuer on the instructions of the defender. The communal work carried out is more particularly described in items one to eight of the pursuer's breakdown of costs No 5/33 of process.

(9) The communal work was supervised by Sovereign Chemicals Limited who inspected the property on five occasions and who issued a guarantee for the concluded work.

(10) Nos 5/9 and 5/10 of process are copies of a statement of account and invoice issued by Sovereign Chemicals Limited to B C M Developments a company of which the pursuer is or was a director. The statement of account and invoice relate to the supply of materials used in the course of the communal work.

(11) No 5/12 of process is a copy of an application made by the pursuer to Sovereign Chemicals Limited for a guarantee in respect of the communal work carried out at the property.

(12) At some point after 17 January 2019 the pursuer agreed a total price of £18,000 for the communal work with the defender. Of that sum the pursuer was liable to pay £12,000; James Renwick was liable to pay the balance of £6,000.

(13) The agreed price for the communal work was due to be paid by the defender and Mr Renwick to the pursuer on completion of the work.

(14) The defender advised James Renwick that the communal work had been completed at the property. He asked Mr Renwick to pay him the sum of £6,000 in respect of his share of the work.

(15) Mr Renwick was not prepared to pay the sum of £6,000 to the defender without carrying out further investigations. He had not been advised by either the pursuer or the defender that the work was going to be carried out.

(16) Mr Renwick asked a friend of his who was a quantity surveyor to inspect paperwork relating to the work. He also received a copy of the guarantee for the work from the pursuer.

(17) Following inspection of the paperwork Mr Renwick's friend advised him that £6,000 was a fair price for his share of the communal work which had been done at the property.

(18) On 23 August 2019 Mr Renwick paid the sum of £6,000 to the defender. No 5/1 of process is a copy of Mr Renwick's Nationwide Building Society statement vouching for payment of the sum of £6,000. Of the sum of £6,000 the defender paid the pursuer the sum of £3,000. He retained and continues to retain the balance of the payment due to the pursuer of £3,000.

(19) The defender has not paid the sum of £12,000, being his share of the communal work, to the pursuer.

(20) On the instructions of the defender the pursuer carried out the electrical and plumbing work referred to in item 10 of the pursuer's breakdown of costs No 5/33 of process. No price was agreed in respect of this work. The rates charged by the pursuer for this work and the time spent by him carrying out the work are all reasonably stated in the breakdown of costs No 5/33 of process. The total amount payable by the defender to the pursuer in respect of this work is £1,580. The defender has not paid this sum to the pursuer.

(21) The pursuer has failed to prove the nature and extent of any additional plasterwork and cornicing work carried out on his instructions at the defender's property, the reasonable rates payable in respect of any such work and any sums which he paid to tradesmen or contractors for any additional plasterwork and cornicing work.

(22) The pursuer was a trader for the purposes of section 2 of the Consumer Rights Act 2015 in respect of the communal work carried out at the defender's property and the additional electrical and plumbing work which he carried out at the property.

(23) No date was agreed for the completion of either the communal work or the additional electrical and plumbing work. Accordingly it was an implied term of the contracts for the communal work and the additional electrical and plumbing work that this work would be completed within a reasonable time.

(24) The defender has failed to establish any entitlement to a price reduction in terms of section 54 of the Consumer Rights Act 2015 in respect of either the communal work or the additional electrical and plumbing work.

(25) None of the contracts entered into between the parties were illegal contracts or *pacta illicita.*

(26) In or about March 2022 the defender's brother John Grady asked the pursuer to assist in relation to the marketing of the defender's property for sale. The defender was in a difficult financial position at this time and was unable to attend properly to his affairs.

(27) With the authority of the defender and the defender's brother the pursuer instructed DM Hall to prepare a home report on the property. MQ Estate Agents paid the sum of £995 to DM Hall Surveyors in respect of the cost of the home report. The pursuer paid the sum of £1,000 to MQ Estate Agents for the home report.

(28) No 5/34 of process is a copy of the invoice rendered by DM Hall to MQ Estate Agents dated 31 March 2022. No 5/35 of process is a copy of an email sent by MQ Estate Agents to the pursuer dated 24 January 2024 acknowledging receipt of his payment of £1,000 in respect of the cost of the home report.

(29) MQ Estate Agents marketed the property for sale in or about April 2022. The property was sold for a price of £1,100,045. In the course of the marketing of the property the pursuer attended approximately 64 viewings of the property. He also assisted in the clearing of the property for sale.

(30) There was no agreement between the pursuer and the defender, nor between the pursuer and John Grady, that the pursuer would be entitled to any payment in respect of the time he spent attending viewings, assisting in the clearing of the property for sale, organising the estate agent or organising and attending at the home report survey.

Finds in fact and in law:

(31) The defender is contractually bound to pay the pursuer the sum of £12,000 in respect of the defender's share of the agreed cost of the communal work.

(32) The defender having been unjustifiably enriched by his retention of the sum of £3,000 paid to him by Mr Renwick he is bound to make payment of that sum to the pursuer.

(33) The pursuer having carried out additional electrical and plumbing work on the defender's instructions and the sum of £1,580 being a reasonable cost for the work carried out the defender is contractually bound to make payment of that sum to the pursuer.

(34) The pursuer is entitled to payment from the defender of the sum of £995 in respect of the cost of the home report prepared for the property by DM Hall in or about April 2022.

THEREFORE repels the second, third, fifth and sixth pleas in law for the defender; sustains the defender's fourth plea-in-law in part; sustains the pursuer's first, third, fourth and fifth pleas-in-law; sustains the pursuer's sixth plea-in-law in part and grants decree for payment by the defender to the pursuer of the sum of £17,575 with interest thereon at the rate of 8% per annum from 10 October 2023 until payment; Assigns a hearing on all questions of expenses to take place on 14 April 2025 at 2 pm within Glasgow Sheriff Court, 1 Carlton Place, G5 9DA to take place by telephone conference call.

NOTE

Background

[1] I heard proof in this action on 1 and 2 October 2024 in which the pursuer seeks payment of the sum of £21,000 plus interest from the defender.

[2] The defender is the pursuer's second cousin.

[3] The action concerns work which was carried out at the defender's former home at 48 Dowanside road, Glasgow and at the tenement block of which 48 Dowanside Road forms part.

[4] In the course of the pursuer's proof evidence was led from the pursuer, Barry Chuwen, James Renwick and John Grady. The only witness for the defender was the defender himself.

[5] The proof proceeded on a record dated 22 February 2024.

[6] Prior to the proof the parties lodged their own affidavits and the pursuer lodged affidavits for all of his witnesses. Those affidavits were treated as the evidence in chief of the witnesses subject to such further questioning as the court allowed at proof.

[7] The pursuer lodged six inventories of productions prior to the proof; no productions were lodged for the defender. On the second day of the proof, during the cross-examination of the defender, the pursuer lodged a further inventory containing a search summary from the Register of Inhibitions. I allowed this inventory to be received although late.

[8] At the conclusion of the evidence I fixed a hearing on submissions to take place on 18 November 2024. Prior to that hearing parties lodged written submissions and lists of authorities. That hearing required to be discharged due to the non-availability of the pursuer's agent.

[9] A fresh hearing was assigned for 6 January 2025. At the conclusion of the hearing I made avizandum. I now issue my judgment.

Summary of the evidence

The pursuer's proof

The pursuer

[10] The pursuer adopted his affidavit No 5/39 of process as his evidence in chief.

[11] The defender's brother John Grady approached the pursuer in 2017. John Grady and his sister had concerns about the defender. The defender was in poor health and his house at 48 Dowanside Road, Glasgow was in a terrible condition.

[12] The pursuer met the defender and inspected his house. It was agreed that the pursuer would instruct a home report for the property with a view to putting it on the market.

[13] The pursuer obtained a home report which indicated that there was an outbreak of rot within the property.

[14] The pursuer instructed Ross-Toration Surveys Limited to inspect the property and report on the extent of any rot works required. Ross-Toration inspected the property and recommended that work be carried out to address the problem with rot.

[15] The pursuer instructed, project managed and paid for the rot work under the supervision of Sovereign Chemicals Limited. The work carried out was communal work to the defender's house at 48 Dowanside Road and his neighbour's house at 48A Dowanside Road. The defender was given a guarantee for the work carried out which was issued by Sovereign Chemicals Limited.

[16] The pursuer could not give the defender an exact price for the communal work because it was not clear, until an invasive survey was carried out and the work was progressed, how much work would be required. Before the work commenced the pursuer told the defender that he estimated that the communal work would cost £15,000 to £20,000.

[17] The communal work commenced on or about 11 April 2018. In summary the ceilings in the master bedroom, the upstairs hall, upstairs bathroom and the second and third bedrooms had to be removed. Rotten timbers had to be removed and the affected areas treated before replacement joists and wall plates were fitted.

[18] The pursuer took photographs of the communal work as it progressed, Nos 5/22 to 5/31 of process.

[19] The communal work was finished sometime after 17 January 2019.

[20] After the communal work was finished the parties verbally agreed a price for the work of £18,000. The defender agreed to ask his neighbour Mr Renwick for his one third share of the agreed sum of £18,000.

[21] Mr Renwick paid the sum of £6,000 to the defender. Of the £6,000 paid by Mr Renwick the defender paid £3,000 to the pursuer. The defender did not pay the sum of £12,000 (ie his two thirds share of the agreed sum of £18,000) to the pursuer.

[22] The pursuer spoke to additional work which he stated he either instructed and paid for or carried out at the defender's property. Specifically he instructed and paid for the plastering and cornicing work described in items 8 and 9 of his breakdown of costs No 5/33 of process. He carried out the electrical work described in item 10 of the breakdown. No prices were agreed in respect of these additional works. The pursuer had not been paid for any of this work by the defender.

[23] In 2022 the defender was approached by the defender's brother John Grady who asked him to help with the marketing and sale of the defender's home. The defender was in a dire financial position and was not in good health.

[24] The pursuer met the defender on a number of occasions at or about this time. He agreed to assist the defender with the marketing and sale of the defender's property on the basis that he was paid the outstanding sum payable in respect of the communal work.

[25] The pursuer instructed an up to date home report for the defender's property. He paid the sum of £995 for the home report to MQ Estate Agents who in turn paid DM Hall surveyors.

[26] The pursuer also attended approximately 64 viewings of the defender's property when the property was put on the market by MQ Estate Agents. During viewings the pursuer advised viewers of the nature and extent of the communal works which had been carried out in 2018/19.

[27] The pursuer also assisted John Grady and other members of the defender's family in clearing the defender's home of items in preparation for the property being put on the market. The defender's property was subsequently sold for £1,145,000.

[28] Following the sale of the defender's property the defender messaged the pursuer (No 5/7 of process) asking for details of what the pursuer was owed and saying that he would get him squared up.

[29] In cross-examination it was put to the pursuer that the defender did not want him to do any rot work at his property given his previous involvement with him. The pursuer vehemently denied that suggestion. It was also put to the pursuer that the defender had concerns about the pursuer's financial situation and specifically whether the pursuer was claiming benefits unlawfully (page 118 of day one of the shorthand notes). In response the pursuer testified that any benefits that he was receiving were received legitimately. The pursuer was also cross-examined about his failure to produce any documentation in respect of the work carried out at the defender's property. In response he stated that he gave the

defender documents relating to the plasterwork carried at the property at a cost of £1,690. The pursuer was asked about Mr Renwick's knowledge of the communal work which was carried out at the property. He stated that "he (Mr Renwick) seen the works progressing" (page 134 of day one of the shorthand notes).

Barry Chuwen

[30] Mr Chuwen adopted his affidavit No 5/42 of process.

[31] He is the owner of MQ Estate Agents, 148/150 West Regent Street, Glasgow.

[32] In or about December 2021 MQ Estate Agents was instructed by the pursuer to market the defender's property. Mr Chuwen attended the property which was in a terrible condition. He recommended that the property be cleared before being put on the market.

[33] Mr Chuwen was made aware that the defender had granted a power of attorney in favour of his brother John Grady. Mr Chuwen was advised by the pursuer that the only reason the pursuer was prepared to assist the defender was because a power of attorney was in place.

[34] The marketing of the property commenced on 13 April 2022. There were 64 viewings all of which were attended by the pursuer who advised viewers of the extent of the work which had been carried out to the property in or about 2018/2019. The defender did not attend any of the viewings.

[35] A guarantee in respect of the rot works carried out at the property in or about 2018/2019 was placed in the lounge for viewers to inspect.

[36] MQ Estate Agents instructed and paid for a home report on the property which was obtained from DM Hall Surveyors. The pursuer paid MQ Estate Agents for the cost of the home report.

[37] The property was sold for a price of £1,100,045 in or about April 2022.

[38] There was no cross-examination of Mr Chuwen.

James Renwick

[39] Mr Renwick adopted his affidavit No 5/40 of process.

[40] He lives at 48A Dowanside Road, Glasgow. The defender formerly lived at 48 Dowanside Road.

[41] The defender approached Mr Renwick with regards to communal work which was required to the roof at 48/48A Dowanside Road. Mr Renwick asked the defender to obtain quotes for the work which was required. Mr Renwick was liable to pay one third of the cost of any communal work; the defender the remaining two thirds.

[42] Some months later the defender advised Mr Renwick that the communal work had been completed by the pursuer without any reference to Mr Renwick. The defender asked Mr Renwick to pay him the sum of £6,000 in respect of his one third share of the total cost of the work.

[43] Mr Renwick was unhappy that the work had been done without his approval and was not prepared to pay the sum of £6,000 to the defender without making further investigations. He spoke to the pursuer who showed him paperwork relating to the work which had been carried out including a guarantee. He arranged for a quantity surveyor friend of his to inspect the paperwork. Mr Renwick's friend advised him that £6,000 was a fair price for his share of the work which had been carried out.

[44] Having made the foregoing enquiries Mr Renwick paid the defender the sum of £6,000 on 23 August 2019. He assumed that the defender would pay the sum of £6,000 to the pursuer.

[45] Mr Renwick received a letter from the defender's agents dated 1 July 2024 No 5/37 of process advising him that £3,000 of the sum of £6,000 paid by him had not been paid to the pursuer. The letter indicated that the defender wished to return the sum of £3,000 to Mr Renwick and asked for his bank details. The defender's agents sent a follow up letter to Mr Renwick on 23 July 2024 No 5/38 of process. Mr Renwick did not respond to either of these letters. His position is that the full amount of the sum of £6,000 he paid to the defender should be paid to the pursuer.

[46] Cross-examination focused on why Mr Renwick did not reply to either of the two letters sent by the defender's agents.

John Grady

[47] John Grady is the defender's brother. He adopted his affidavit No 5/41 of process.

[48] At or about the beginning of 2022 Mr Grady discussed the defender's situation with his sister and brother-in-law. The defender was in a substantial amount of debt. He needed assistance to manage his financial affairs. It was decided with the defender's agreement that he should sell the property and use any free proceeds to clear his debts.

[49] Mr Grady agreed with the defender that the defender would grant a power of attorney in his favour. A power of attorney was prepared for the defender to sign but was never actually signed. Mr Grady proceeded on the basis that he was acting under a power of attorney granted by the defender in his favour. He first became aware that no power of attorney had been signed when he spoke to the defender's solicitor after the property had been sold.

[50] Because of the pursuer's experience in property development and building/repair works Mr Grady asked the pursuer to assist in relation to the marketing and sale of the

property. He did so on the basis that the pursuer would be paid what he was owed for the work carried out to the property in 2018/2019 once the property was sold.

[51] The pursuer assisted other family members in relation to the clearing of the property in or about April/May 2022. The pursuer also attended all of the viewings of the property.

[52] In cross-examination Mr Grady described as "a fantasy" the idea that the pursuer would charge the defender for his time in attending viewings of the property. The pursuer attended viewings to help the defender as a family member and on the basis that he would be paid for the work which he had previously supervised or carried out at the property in 2018/2019. The pursuer was due to be paid £21,000 in respect of this work including the cost of the DM Hall home report.

The defender's proof

The defender

[53] The defender testified that his brother John Grady spoke to the pursuer. Following that conversation the defender spoke to the pursuer about carrying out some work at the defender's property at 48 Dowanside Road. The defender was intending to sell his house.

[54] The defender asked the pursuer to decorate three upstairs bedrooms, to fix the fan in the en suite toilet, to fix the cistern in the toilet and to do some other minor electrical work. He gave the pursuer a set of keys to enable the pursuer to access the property as and when he pleased to do the work.

[55] As part of this work the pursuer fitted a new hob in the kitchen. The wrong cable was fitted to the new hob which had to be repaired by another electrician. The decorating work was not carried out.

[56] While carrying out work at the defender's property the pursuer advised the defender that he had found dry rot between the roof and the ceiling of the top floor. He told the defender that he had a contact at Sovereign.

[57] At some point between February and April 2018 the pursuer verbally quoted a price of £9,000 for the rot work which required to be carried out. The rot work was communal work. The defender was liable for two thirds of the cost of the work. His downstairs neighbour Mr Renwick was liable for the remaining third of the cost. Shortly after quoting a price of £9,000 the pursuer verbally quoted an increased price of £18,000 for the communal work.

[58] The pursuer advised the defender that the communal work would take about 4 days to complete. The work was completed by some point between May and July 2018 and was carried out by the pursuer "off his own back" without any instruction from the defender (page 28 of day two of the shorthand notes).

[59] In or about 2019 Mr Renwick paid the defender the sum of £6,000. That payment was made by Mr Renwick because the pursuer told Mr Renwick that the final bill for the communal work was £18,000 and that therefore his share was £6,000.

[60] Of the £6,000 received from Mr Renwick the defender paid the pursuer the sum of £3,000. The defender did not pay the pursuer the remaining £3,000 paid by Mr Renwick because he was concerned that the pursuer was working at his property and claiming benefits at the same time. He did not wish to become embroiled in being a witness in a prosecution brought against the pursuer.

[61] The pursuer was to be paid for the communal work once the work was finished. In fact the defender has not paid the pursuer anything in respect of his share of the communal work. The reason why no further payment has been made to the pursuer is because the

pursuer has not provided the defender with any invoices, receipts or documentation to vouch for the communal work.

[62] The defender's property was not put on the market in 2018/19. It was marketed for sale in 2022. The property was decluttered or removed of rubbish and unwanted possessions prior to being put on the market. The defender's family, including the pursuer, assisted in decluttering the property.

[63] The pursuer also attended viewings of the defender's property albeit not with the defender's consent. The defender assumed that the pursuer attended viewings to promote his own business interests by being in contact with persons viewing the property.

[64] The defender understood that the pursuer had paid the sum of £995 in respect of a further, updated, home report which was required for the property.

[65] A substantial part of the cross-examination of the defender was taken up in exploring the financial circumstances of the defender and the circumstances surrounding the marketing of the property in 2022. I will not summarise the evidence given by the defender on these matters as I considered this evidence to be of little relevance to the issues in dispute.

[66] In the course of cross-examination the defender testified that his brother thought that he had held a power of attorney granted by the defender in his favour. The defender's position was that he never signed any power of attorney and that his brother had no authority to act on his behalf in managing his affairs.

[67] In relation to the pursuer's attendance at viewings of his property the defender's position was that the pursuer had no business contract or terms of engagement entitling him to remuneration for attending viewings.

[68] The defender stated in cross-examination that the pursuer walked off the job in April/May 2018 at which point the work was not complete. No further work was carried out after the pursuer walked off the job (see pages 106 and 120 of day two of the shorthand notes).

[69] The defender was cross-examined on the differences between his position in his original pleadings and his position in evidence.

[70] Towards the end of cross-examination the defender testified that he had bumped into his neighbour Mr Renwick in St Enoch Square after the discharge of the proof earlier in the year. He spoke to Mr Renwick about the transfer of the sum of £3,000 to Mr Renwick who told him that there was no need to transfer the funds.

[71] The defender was referred to No 5/7 of process being a text message sent by him to the pursuer on 4 July 2022. The message asks for a breakdown of what the defender owes and refers to the defender getting the pursuer squared up. This message relates to sums due to the pursuer for payments made by the pursuer to the cleansing department when the defender's property was being decluttered.

The pursuer's submissions

[72] The pursuer adopted his written submissions No 11 of process. He submitted that the case could be analysed in terms of three separate contracts.

[73] The first contract was for work which the pursuer organised to the defender's home in 2017 to 2019 to prepare the property for sale. This work consisted primarily of the communal rot work.

[74] The pursuer's averments about this work were supported by his affidavit and parole evidence. His evidence should be regarded as credible and reliable. His evidence was

supported by the affidavits and oral testimony of the other witnesses who gave evidence in the course of the pursuer's proof.

[75] It was far more likely that the scope of this work was as described by the pursuer rather than by the defender. The defender's evidence was inconsistent and incredible in a number of respects. For example the defender was unable to explain why he asked for £6,000 from Mr Renwick in circumstances where, on his evidence, the scope of the works he instructed was limited to the decoration of a few rooms and other minor works. It was implausible that the defender would not have stopped the pursuer from carrying out the work which he did if the scope of the pursuer's instruction was as limited as the defender claimed. That was particularly so given that the defender continued to live in the property while the work was being carried out.

[76] The circumstances surrounding the defender's retention of the sum of £3,000 paid by Mr Renwick, his attempts to repay this sum to Mr Renwick and the basic discrepancies in his original pleadings regarding these matters were also demonstrative of a lack of candour on the defender's part.

[77] The defender's evidence that he did not pay the sum of £3,000 to the pursuer because he was waiting for documentation to vouch the works did not ring true. There was evidence from the pursuer, Mr Chuwen and Mr Renwick that Sovereign Chemicals Limited had issued a guarantee for the communal works. The text message No 5/7 of process should be regarded as an admission by the defender of money owed to the pursuer.

[78] On the prescription issue the pursuer's evidence should be preferred. He testified that the price payable for the communal work was not due to be paid until the defender's property was sold. In any event esto that was not the position the work was not completed until sometime after January 2019. The photos spoken to by the pursuer Nos 5/22 - 5/31 of

process evidenced the dates when work was being carried out at the property. No written demand for payment was made to the defender until 2 December 2022. Mr Renwick did not pay his share of the communal work to the defender until August 2019. These dates were consistent with the pursuer's position on when payment was due. The pursuer's position was clear and straightforward.

[79] In contrast the defender gave differing dates in his pleadings and in evidence of when the communal work was completed. He referred to payment being made by staged payments which did not make any sense given the limited extent of the work which he said he instructed. The onus of establishing that the obligation to make payment had prescribed rested on the defender (*Dunlop* v *McGowans* 1979 SC 22 at page 27). The defender had failed to discharge that onus. Accordingly the pursuer's claim in respect of the first contract had not prescribed. The defender was due to pay the pursuer £12,000. He was also due to pay the sum of £3,000 to the pursuer in respect of the balance of the amount owed and paid by Mr Renwick.

[80] The second contract referred to by the pursuer was for additional work carried out to the defender's property.

[81] The pursuer submitted that I should accept his evidence that he either carried out or arranged the work described in items 8, 9 and 10 of the pursuer's breakdown of costs No 5/33 of process. He had explained the work which had been carried out in respect of these items and had provided a breakdown of costs. The defender had not paid for any of the additional work instructed.

[82] In contrast the defender's position was implausible. If all that was involved was some painting and decorating the defender would have obtained estimates himself and not involved the pursuer. It was also improbable that the pursuer fitted the wrong cable to the

kitchen hob and that the defender paid another tradesman to fix this error. There was no evidence of the defender having complained to the pursuer about this matter prior to the action being raised. In general it was more likely that the scope of the works instructed was far greater than the defender was prepared to admit.

[83] Both parties accepted that no price was agreed for the additional work. In the circumstances the pursuer was entitled to remuneration on a *quantum meruit* basis. Reference was made to *Gloag and Henderson: The Law of Scotland* 13th edition paragraph 10.14, *Avintair Ltd* v *Ryder Airline Services Ltd* 1994 SC 270 per Lord Sutherland at page 276 and McBryde: *The Law of Contract* 3rd edition at paragraph 9.45.

[84] The pursuer submitted that the amount charged for the additional work of £4,000 was reasonable. That sum was based on rates of £40 per hour for the electrical work and £60 per hour for the specialist work. The pursuer's experience as an electrician and in property development was sufficient to entitle him to give evidence on the reasonable rate payable for these works.

[85] With reference to the defender's argument for a price reduction in terms of section 52 of the Consumer Rights Act 2015 the pursuer was not a trader for the purposes of the work carried out at the defender's property. Reference was made to the definition of a trader in section 2(2) of the 2015 Act as a person "acting for purposes relating to their trade, business, craft or profession". In any event there was no evidence that the work had not been carried out within a reasonable time. The defender had made no complaint that the work had not been carried out within a reasonable time before the action was raised.

[86] The third contract between the parties was for services rendered by the pursuer in connection with the marketing of the defender's property in 2022. Specifically the pursuer assisted in the decluttering of the defender's property and attended approximately

64 viewings arranged by the estate agents. He was entitled to remuneration on a *quantum meruit* basis for this work no price having been agreed. There was ample evidence that the defender had held his brother and sister out as having his authority to act on his behalf. Reference was made to section 1 of the Requirements of Writing (Scotland) Act 1995, *Ben Cleuch Estates Ltd* v *Scottish Enterprise* [2006] CSOH 35 per Lord Reed at paragraph 143, *Gloag and Henderson, supra*, at chapter 18.23, *Dornier GmbH* v *Cannon* 1991 SC 310 and *John Davidson (Pipes) Ltd* v *First Engineering Ltd* 2001 SCLR 73. In any event the parties had met on several occasions and agreed that the pursuer would assist the defender with the decluttering of his property and attend viewings.

[87] The defender's argument that the contract between the parties was a *pactum illicitum* was misconceived. The basis for this submission seemed to be that the pursuer was in receipt of benefits while working. However in the absence of payment from the defender the pursuer had no earnings to declare to the Department for Work and Pensions. In short there was no evidence that the pursuer was receiving benefits illegally. Neither was there any evidence that the defender reported his concerns to the relevant authorities.

[88] Finally the pursuer submitted that there was ample evidence of the pursuer paying for the second home report on the defender's behalf. The pursuer was entitled to be reimbursed by the defender for the amount paid for the home report.

The defender's submissions

[89] The defender adopted his written submissions, No 12 of process.

[90] In general the defender submitted that the onus of proof rested upon the pursuer. The pursuer's case was fatally flawed by an insufficiency of evidence.

[91] With reference to John Grady's affidavit and the evidence led at proof it was clear that John Grady had no authority to act on the defender's behalf. Any decluttering assistance provided by the pursuer was provided on a casual basis and not in implementation of a contractual relationship between the parties. The pursuer's claim for remuneration for attending viewings could not be a *quantum lucratus* claim as there was no averment nor evidence that the defender was enriched by the pursuer's actings. There was insufficient evidence to prove this element of the claim on a *quantum meruit* basis. In particular no evidence was elicited from Mr Chuwen or from anyone else as to what a reasonable estate agency rate would be for attending viewings.

[92] It was accepted that the defender had an obligation to reimburse the pursuer in respect of the sum of £1,000 paid to DM Hall for the home report.

[93] No written contract was entered into in relation to the contract for the communal work at the defender and Mr Renwick's properties. The pursuer had failed to produce any written evidence to identify the specialist contractors and tradesmen who did the work. No estimates, invoices, timesheets or other documentation was produced from the specialist contractors apart from a report prepared by Ross-Toration and some invoices and order notes purporting to vouch for the purchase of a small amount of materials.

[94] In the circumstances there was no evidence of who did the communal work, when they did it and what they were paid. Objection was taken to certain passages of the pursuer's evidence at the proof on the basis that the individuals who did the work were not giving evidence. That evidence was allowed under reservation of its relevancy and competency. It was suggested that in the course of discussing the objection to the evidence the pursuer's agent had conceded that the claims for the communal work and the additional work were *quantum meruit* claims (see paragraph C of the defender's written submissions

and page 72 of day one of the shorthand notes). No evidence was led to prove the claim for the communal work on a *quantum meruit* basis.

[95] Furthermore the pursuer's evidence about who actually undertook the communal work and about the extent of his role was inconsistent.

[96] No expert evidence was led from any skilled person about precisely what communal work was done. Mr Renwick testified that a surveyor friend of his looked at paperwork and advised him that the price charged by the pursuer was fair. That evidence was hearsay and opinion evidence. It did not meet the test for the admissibility of expert evidence set out in *Kennedy* v *Cordia (Services) LLP* 2006 UKSC 6.

[97] The pursuer's claim for reimbursement of the sum of £3,000 paid to him by Mr Renwick was misconceived. This claim was a claim for unjust enrichment. With reference to *Gloag and Henderson, supra*, at paragraph 10.14 any retention of funds by the defender had to be at the defender's choice. The court would have to be satisfied that the defender was voluntarily retaining Mr Renwick's money. That was evidently not the position as the defender's agents had offered to return the funds to Mr Renwick twice. In that respect the defender was not retaining the sum of £3,000 voluntarily. The only person with a legal obligation to pay the sum of £3,000 to the pursuer was Mr Renwick. The pursuer should be suing Mr Renwick.

[98] The claim for additional work was bedevilled by the same problems as the claim for the communal work. There was a lack of independent evidence and documentation to vouch the claim for additional work. The defender was a consumer in terms of the Consumer Rights Act 2015. The pursuer was in material breach of contract and was not entitled to any payment for the additional work. Esto the pursuer was entitled to any payment the defender was entitled to a reduction in price.

[99] Irrespective of the position on the merits the pursuer's claim for payment (of the sums of £12,000, £3,000 and £4,000) had prescribed in terms of section 6 of the Prescription and Limitation (Scotland) Act 1973. The action was raised on 10 October 2023. Any claim for work completed prior to 10 October 2018 had prescribed.

[100] The photographs relied upon by the pursuer did not actually show anyone doing any work and were of no assistance to him. The defender's evidence that the work was completed by April/May 2018 and certainly before the Glasgow Fair should be preferred. It was inherently unlikely that the pursuer would have agreed that payment for the work be delayed until the defender's property was sold.

[101] The final submission made by the defender was that the contract (it was not entirely clear which contract was being referred to) was a *pactum illicitum* and unenforceable as a result. The basis of this submission was that the pursuer was claiming benefits while being paid for work carried out at the defender's property.

[102] The pursuer accepted in cross-examination that the contractors he instructed to do the work were paid in cash. No documentation had been produced to vouch for the work carried out or for any sums paid to the contractors. The only reasonable inference was that there was a desire on the part of the contractors, and perhaps also on the part of the pursuer, to evade paying tax.

[103] The defender referred to the statement made in *Gloag on Contract*, 2nd edition at page 567 that "Contracts to evade the revenue laws are illegal".

Decision

[104] The pursuer presented his case on the basis that the sum sued for comprised of five elements and I shall consider each of these elements in turn. I shall also consider four

discrete issues raised by the defender: the position with a concession said to have been made by the pursuer's agent, prescription, the Consumer Rights Act 2015 and *pactum illicitum*.

[105] Before I address the specific areas of contention I make some general comments about the credibility and reliability of the evidence which I heard.

[106] I did not find either of the parties to be entirely credible or reliable. On a number of the key issues I considered the pursuer's evidence to be more credible and reliable than that of the defender. The pursuer's evidence was more consistent with the documentary productions and with the evidence of the other witnesses who testified in the course of the pursuer's proof ie Mr Chuwen, Mr Renwick and Mr John Grady. I found the evidence of Mr Chuwen, Mr Renwick and Mr Grady to be wholly credible and reliable.

Cost of the defender's share of communal work: £12,000

[107] The pursuer testified that he estimated the cost of the communal work in the sum of £15,000 to £20,000. That evidence made sense on the basis that he was unable to say how much work was required at the start. It also fitted with the terms of the report prepared by Ross-Toration Limited.

[108] The final agreed price of £18,000 was within the original estimate of £15,000 to £20,000. The pursuer spoke to the breakdown of work contained within items 1 to 8 of No 5/33 of process. He also spoke to photographs of the work Nos 5/22 – 5/31 of process. He explained that he took these photographs so that he could show the work that had been done on the property (page 45 of day one of the shorthand notes). He was not seriously challenged on the terms of the photographs in cross-examination.

[109] There was one particular aspect of the pursuer's evidence which I did not accept. In examination in chief he stated that Mr Renwick saw the communal work progressing. That was at odds with Mr Renwick's evidence on this matter. Mr Renwick was clear that he had not been kept advised of the progress of the communal work by either of the parties.

[110] Notwithstanding my reservations about the discrepancy between the pursuer's evidence and the evidence of Mr Renwick, overall I consider that the pursuer gave a consistent account of the scope of the communal work and of the agreement which he reached with the defender to carry out the work.

[111] In contrast to the pursuer's evidence on the communal work issue there were a number of inconsistencies in the defender's evidence about this matter.

[112] The most significant of these concerned Mr Renwick's payment of £6,000 to the defender. The defender was unable to give a coherent explanation of why he asked Mr Renwick for £6,000 if, as he claimed, there was never any agreement on a price of £18,000. £6,000 was precisely the sum which Mr Renwick would be liable to pay if the communal work was agreed in the sum of £18,000.

[113] The defender's evidence that the pursuer quoted an initial price for the communal work of £9,000 and then an increased price of £18,000 a week later did not ring true. Initially he testified that the pursuer asked Mr Renwick to pay him £6,000. That was untrue. He was at times prone to go off on a tangent in his answers to questions. For example early in his examination in chief (pages 29-31 of day two of the shorthand notes) the defender spoke at length about an embezzlement case which he claimed the pursuer was involved in. There was no reference to any embezzlement case in the defender's pleadings.

[114] His evidence that the text message No 5/7 of process related to payments due to the pursuer for cleansing charges was improbable. The timing of the text message and its terms

made it much more likely that the message referred to sums due by him to the pursuer in a more general sense. As such I regard the text message as an admission by the defender that a sum of money was owed to the pursuer.

[115] There was an important discrepancy in the defender's written pleadings in relation to the payment by Mr Renwick. In brief defences which were lodged on 10 November 2023 the defender averred in answer 8:

> "Admitted that the pursuer met the adjoining proprietor; in respect that the work was not undertaken, the sum of £3,000 contributed by the said proprietor was returned to him."

That averment was wrong on two counts viz Mr Renwick paid the defender £6,000 and the defender did not return the sum of £3,000 to Mr Renwick. I allowed the record to be amended to state the true position on the first day of the proof. No or at least no credible explanation was provided as to why such basic discrepancies found their way into the defender's pleadings.

[116] The defender submitted that I should disregard Mr Renwick's evidence that a quantity surveyor friend of his reviewed paperwork and advised him that the price charged for the communal work was fair. He submitted that this evidence was hearsay evidence and also that it did not meet the criteria specified in *Kennedy* v *Cordia (Services) LLP* 2006 UKSC 6 for the admissibility of expert evidence.

[117] I make three observations in relation to this submission. First of all no objection was taken was taken when Mr Renwick was giving evidence on this matter. Secondly hearsay evidence is admissible in terms of section 2 of the Civil Evidence (Scotland) Act 1988 albeit there may be an issue as to how much weight I should attach to the evidence in the absence of evidence having been led from the quantity surveyor friend. Thirdly and in any event the

evidence is of little relevance in so far as the critical issue is not whether £18,000 was a fair price for the communal work but rather whether the price was agreed in the sum of £18,000.

[118] At one point in his cross-examination the defender testified that he bumped into Mr Renwick in St Enoch Square after the discharge of an earlier diet of proof in the case. The defender stated that he told Mr Renwick that his solicitor would be contacting him to arrange for the transfer of money to him and that Mr Renwick said that there was no need to do that. Mr Renwick did not refer to this meeting in his affidavit or in his oral evidence and I do not accept that any such meeting took place.

[119] For all of the foregoing reasons I accept the evidence of the pursuer and his witnesses on the key issues relating to the communal work. In particular I accept the pursuer's evidence about the nature and extent of the communal work and the price which the defender agreed to pay for the work. I have made findings in fact on that basis.

The position with the concession said to have been made by the pursuer's agent

[120] In the course of the pursuer's examination in chief an objection was taken to questions which the pursuer was asked about additional work carried out at the property. The basis of the objection was that the pursuer's evidence about work carried out by other contractors was inadmissible. In the event, as I will comment on later in this judgment, the pursuer said very little about the additional work carried out by other contractors and tradesmen. His position on record was that he instructed and paid for this work and accordingly I am not prepared to sustain the objection. As will become apparent however there is a very real issue about the weight to be attached to the pursuer's evidence about these matters in the absence of evidence from the contractors themselves.

[121] In the course of the parties' submissions about the objection, and in response to a question from the court, the pursuer's agent indicated that part of the pursuer's claim was a *quantum meruit* claim. In his written submissions the defender founded upon this comment submitting that it was intended to apply to the claim for the communal work.

[122] Prior to the hearing on submissions I asked parties to address me on the significance, if any, of the comment made by the pursuer's agent. I wished to establish whether the comment should properly be treated as a concession by the pursuer that the claim for payment of the communal work was a *quantum meruit* claim. I drew the attention of parties to two recent Sheriff Appeal Court cases in which the issue of concessions had been discussed: *Promontoria (Henrico) Limited* v *Wilson* 2018 SAC (CIV) 21 and *A* v *B* 2020 SAC (CIV) 9.

[123] At the hearing arranged to deal with this matter the defender's agent indicated that he regarded the comment made by the pursuer's agent as a concession that the claim for payment of the communal work was a *quantum meruit* claim.

[124] In response the pursuer's agent submitted that the comment in question did not apply to the claim for payment of the communal work. The comment referred only to the pursuer's claim for additional work.

[125] In considering this matter I noted that the comment made by the pursuer's agent was made at a point in the pursuer's evidence where he was being asked questions about the additional work. The pursuer had already testified that a price of £18,000 had been agreed for the communal work. That was his position on record. In the circumstances I concluded that the comment made at the proof referred only to the claim for additional work and was not a concession that the claim for payment of the communal work was a *quantum meruit* claim.

Prescription

[126] The defender's third plea-in-law seeks dismissal on the basis that the action is time-barred in terms of section 6 of the Prescription and Limitation (Scotland) Act 1973.

[127] In oral submissions the defender confirmed that the prescription plea applies to the claims for: the defender's £12,000 share of the communal work, reimbursement of the sum of £3,000 paid by Mr Renwick to the defender and the additional work in the sum of £4,000.

[128] The basis of the prescription plea is that all of the work giving rise to the foregoing claims was completed more than 5 years before the action was raised.

[129] The pursuer's response was twofold. His primary position was that he agreed with the defender that he would not receive payment until the defender's property was sold. Esto there was no agreement on deferral of payment until the sale of the property the work was not completed until sometime after January 2019 and the quinquennium should not start to run until then.

[130] In examination in chief the pursuer stated that he was prepared to agree to delay payment until the sale of the property because the defender was a family member and also because he had no money. I did not accept the pursuer's evidence on this matter.

[131] The background was that the parties had fallen out over work which the pursuer had carried out at the defender's property in or about 1997. The defender had instructed Richardson and Starling to do some rot work at his property instead of instructing the pursuer. In the circumstances it seemed unlikely to me that the pursuer would defer payment for any work until the sale of the property. He had no control of when the property would be sold. Presumably he would either have to agree with the contractors

who actually did the work that they would likewise refrain from seeking payment until the sale of the property or alternatively pay the contractors and be out of pocket until sale.

[132] It is much more likely that the parties agreed that the pursuer would be paid for the communal work and for the additional work once that work was completed. That was the defender's position on record - see answer two.

[133] The question then becomes when the communal work and additional work was completed.

[134] The defender's evidence about this matter was inconsistent and difficult to follow. In evidence he said that the pursuer and the tradesmen instructed by the pursuer were last at his property in April/May 2018. In cross-examination he stated that the pursuer walked off the job in April/May 2018 without completing the work (page 106 of day two of the shorthand notes). However on record he averred in answer 2 that the services rendered by the pursuer were provided by July 2018.

[135] The pursuer's position was that the communal work was not completed until sometime after January 2019. I have already referred to the photographs No 5/22 - 31 of process. The pursuer was asked about three of these photographs in particular. He testified that No 5/24/1 of process was a photograph taken on 10 December 2018. The photograph showed the removal of plaster from the brick dividing wall prior to the brushing down and spraying of the wall with fungicidal spray. Similarly the pursuer explained that No 5/30/2 of process showed work being carried out in the upper hall of the defender's property just outside the bathroom. The last photograph No 5/31 of process was taken on 17 January 2019.

[136] I found the pursuer's testimony about the photographs to be detailed and credible. I do not attach any significance to the fact that no other tradesmen or contractors appear in the photographs.

[137] The defender inferred that the dates on the photographs had been altered. That allegation was not put to the pursuer in cross-examination. No other evidence was presented to support the defender's claim that the dates on the photographs had been altered and I reject any such suggestion. I accept that the photographs show the communal work being carried out between 11 April 2018 and 17 January 2019.

[138] The proposition that the communal work was not finished until sometime after 17 January 2019 fits with the date of the documents relating to the supply of materials used for the communal work Nos 5/9, 5/10 and 5/13-21. It is also consistent with the date of the application for the Sovereign guarantee, 17 December 2018. Finally and most importantly it is notable that Mr Renwick did not make payment of the sum of £6,000 to the defender until 23 August 2019.

[139] Overall then I consider that the weight of evidence supports the proposition that the communal work was not finished until sometime after 17 January 2019. On that basis I reject the defender's contention that the claim for the communal work has prescribed. It follows that the claim for payment of the sum of £3,000 has not prescribed either.

[140] In relation to the additional work my impression from the pursuer's evidence was that this work was instructed and completed after the communal work had been completed. That would make sense as it would be disingenuous to carry out plastering, cornicing and electrical work in the property while rot work had still to be completed. Also there was no evidence that any demand for payment of the additional work had been made prior to completion of the communal work. In any event I accept the submission made to me by the

pursuer that the onus rests upon the defender to establish that an obligation to make payment has prescribed - see *Dunlop* v *McGowans* 1979 SC 22 at p 27. The defender led no credible or reliable evidence to discharge that onus. On that basis I reject the defender's submission that the claim for payment for the additional work has prescribed.

The Consumer Rights Act 2015

[141] The defender submitted that the pursuer was in breach of section 54 of the Consumer Rights Act 2015 and that he was entitled to a discount on the price as a result. It appears from the defender's written submissions and from his averments in answer 11 that his argument for a price reduction was made solely in relation to the claim for the cost of the additional work. However the defender's fifth plea-in-law is couched in general terms and is not restricted to the claim for the cost of the additional work. Given that the scope of the defender's Consumer Rights Act argument is unclear I shall consider the argument in relation to both the claim for the communal work and the claim for the additional work.

[142] Sections 52, 54 and 56 appear in part 1 of the 2015 Act. They state as follows:

> **"52. Service to be performed within a reasonable time**
> (1) This section applies to a contract to supply a service, if—
> (a) the contract does not expressly fix the time for the service to be performed, and does not say how it is to be fixed, and
> (b) information that is to be treated under section 50 as included in the contract does not fix the time either.
> (2) In that case the contract is to be treated as including a term that the trader must perform the service within a reasonable time.
> (3) What is a reasonable time is a question of fact.
> (4) See section 54 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.
>
> …

54 Consumer's rights to enforce terms about services

(1) The consumer's rights under this section and sections 55 and 56 do not affect any rights that the contract provides for, if those are not inconsistent.

(2) In this section and section 55 a reference to a service conforming to a contract is a reference to—

(a) the service being performed in accordance with section 49, or

(b) the service conforming to a term that section 50 requires to be treated as included in the contract and that relates to the performance of the service.

(3) If the service does not conform to the contract, the consumer's rights (and the provisions about them and when they are available) are—

(a) the right to require repeat performance (see section 55);

(b) the right to a price reduction (see section 56).

(4) If the trader is in breach of a term that section 50 requires to be treated as included in the contract but that does not relate to the service, the consumer has the right to a price reduction (see section 56 for provisions about that right and when it is available).

…

56. Right to price reduction

(1) The right to a price reduction is the right to require the trader to reduce the price to the consumer by an appropriate amount (including the right to receive a refund for anything already paid above the reduced amount).

(2) The amount of the reduction may, where appropriate, be the full amount of the price.

(3) A consumer who has that right and the right to require repeat performance is only entitled to a price reduction in one of these situations—

(a) because of section 55(3) the consumer cannot require repeat performance; or

(b) the consumer has required repeat performance, but the trader is in breach of the requirement of section 55(2)(a) to do it within a reasonable time and without significant inconvenience to the consumer.

(4) A refund under this section must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund.

(5) The trader must give the refund using the same means of payment as the consumer used to pay for the service, unless the consumer expressly agrees otherwise.

(6) The trader must not impose any fee on the consumer in respect of the refund."

[143] Part 1 of the 2015 Act applies where there is an agreement between a trader and a consumer for the trader to supply goods, digital content or services, if the agreement is a contract. A trader is defined in section 2(2) of the 2015 Act as:

> "a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf."

[144] The pursuer submitted that he ought not to be regarded as a trader for the purposes of the 2015 Act. His trade, business or profession was that of a property developer.

[145] The difficulty with this submission, at least as far as the communal work is concerned, is that in cross-examination it was put to the pursuer that rot eradication was not his field. In response he stated "it's one of the things that I do. Why would I be an accredited Sovereign rot specialist?" (page 109 of day one of the shorthand notes).

[146] In considering whether the pursuer falls within the statutory definition of a trader it is legitimate to consider the legislative intention of parliament when enacting the 2015 Act (see eg *R (Quintavalle)* v *Secretary of State for Health* [2003] 2 AC 687). The primary purpose of the 2015 Act was to enact a series of legislative provisions for the protection of consumers. Against that background I consider that the definition of trader in the 2015 Act should be interpreted widely. Given that the pursuer described himself as having experience in rot eradication work in his own evidence and that he charged the defender and Mr Renwick for his services I consider that he falls within the definition of a trader for the purposes of the communal work.

[147] As far as the additional work is concerned the pursuer is a qualified electrician. Therefore I would regard him as acting as a trader when he was carrying out the additional electrical work at the defender's property. The position with the plasterwork and cornicing work is academic given the findings that I have made about that work elsewhere in this

judgment - see paragraph 178 infra. Although the pursuer did not do the plastering and cornicing work his position was that he instructed others to do it. He charged for the work he claimed had been done by others. As such, if the matter had been material, I would have regarded the pursuer as a trader in terms of the 2015 Act for the purposes of this work as well.

[148] The defender bears the burden of proving an entitlement to a reduction in price in terms of the Consumer Rights Act 2015 as he will fail if no evidence is led on the matter (see *Walker and Walker, The Law of Evidence in Scotland* 3rd edition at page 15 paragraph 2.2.3).

[149] In the event no credible or reliable evidence was led which would enable the court to find that either the communal work or the additional electrical work was not completed within a reasonable time. All that the defender said about the timescale for completion of either the communal work or the additional electrical work was that he was told by the defender that the work would take 4 days to complete. The defender's evidence on the estimate of 4 days was at odds with the pursuer's evidence on the nature and extent of the work which was carried out. I have already said that I preferred the pursuer's evidence on these matters. It follows that the defender has failed to establish that he is entitled to a price reduction under the 2015 Act in respect of either the claim for the communal work or the claim for the additional electrical work.

Pactum illicitum

[150] The basis of the defender's *pactum illicitum* plea is that the pursuer was claiming benefits while seeking payment from the defender.

[151] The plea proceeds on a flawed premise.

[152] The chapter on *pacta illicita* in *Gloag on Contract*, 2nd edition begins:

> "It is proposed to consider, in this chapter, those agreements which the law declines to enforce on the ground either that they are directly forbidden by law; that they are designed to further some illegal purpose; or that they result from some illegal act"

[153] The sentence from *Gloag* founded upon by the defender that "Contracts to evade the revenue laws are illegal" does not assist his *pactum illicitum* argument. The sentence appears in a passage with the heading "Smuggling". The discussion in the passage is about contracts entered into for the purposes of smuggling or evading the revenue laws.

[154] In the present case the contracts entered into between the parties were not entered into for the purpose of evading the revenue laws. The purpose of the contracts was to carry out or arrange work at the defender's property, or to perform services for the pursuer. None of these contracts had an illegal purpose.

[155] The error in the defender's analysis is demonstrated by his averments in answer 14:

> "Esto the pursuer's right to payment has not been extinguished by prescription (which is denied) the pursuer has a reasonable concern that performance of that obligation would facilitate benefit fraud and make him an accessory thereto. Any such obligation ought not to be enforced unless and until the pursuer produces evidence that the Department of Work and pensions is satisfied that payment could legitimately be made."

[156] No authority was cited for the proposition advanced in these averments. In short the defender's concern that the pursuer was claiming benefits illegally is not a sufficient basis for treating one or more of the contracts entered into as a *pactum illicitum*.

[157] There are further difficulties for the defender in stating an argument that any of the contracts entered into was a *pactum illicitum*.

[158] It is not in dispute that the defender paid the pursuer the sum of £3,000 in part payment of Mr Renwick's share of the communal work. His payment of £3,000 to the

pursuer is not consistent with his claim that he withheld payment of sums sought by the pursuer because of suspected benefit fraud.

[159] Furthermore no evidence was led of the amounts of any benefits payments received by the pursuer, the dates when any such payments were made nor of how any benefits received relate to money paid by the defender.

[160] For all of the foregoing reasons I shall repel the defender's sixth plea-in-law being the *pactum illicitum* plea.

The amount paid by James Renwick to the defender: £3,000

[161] The pursuer claims that the defender has been unjustly enriched by his retention of the sum of £3,000 which Mr Renwick paid to him. The defender maintains that he is under no obligation to pay this sum to the pursuer. He is not retaining the sum of £3,000 by choice. He has tried to repay that sum to Mr Renwick.

[162] There is no dispute that (i) Mr Renwick paid £6,000 to the defender for his share of the communal work (ii) the defender only paid £3,000 of that sum to the pursuer (iii) the defender has retained the balance of £3,000.

[163] The law on unjust enrichment was restated recently by Lord Tyre in delivering the opinion of the court in *Dmwshnz Limited (in liquidation)* and *Mark Wilson and James Ashley Dowers, the liquidators thereof* v *Bank of Scotland Plc* [2024] CSIH 18. At paragraph 38 Lord Tyre stated:

> "In order to succeed in a claim for redress of unjustified enrichment, a pursuer must show that the defender has been enriched at his expense, that there is no legal justification for the enrichment, and that it would be equitable to compel the defender to redress the enrichment: *Dollar Land (Cumbernauld) Limited v CIN Properties Limited* (above); Lord Hope at page 99."

[164] Here the defender has been enriched at the pursuer's expense. He has retained a sum of money, £3,000, which Mr Renwick paid to him. Mr Renwick's intention was that the defender would pay the pursuer the full amount which he had paid to the defender.

[165] The sum was paid by Mr Renwick in respect of part of his share of the communal work arranged by and paid for by the pursuer. There is no legal justification for the defender retaining that sum.

[166] The defender has retained money which should have been paid to the pursuer for several years. It is equitable that he should be compelled to redress the enrichment by paying the sum of £3,000 to the pursuer. Accordingly I shall sustain the pursuer's fifth plea-in-law and grant decree for payment by the defender to the pursuer of the sum of £3,000.

Cost and supply and fit of additional works: £4,000

[167] In article 11 of condescendence the pursuer avers that he carried out additional works at the defender's property on his instructions. The additional work is detailed in items 8, 9 and 10 of the pursuer's breakdown of costs No 5/33 of process. Parties were agreed that no price was agreed for any additional work carried out. Therefore the pursuer claimed entitlement to remuneration for this work on a *quantum meruit* basis.

[168] The additional work consists of three elements: plastering work (item 8), cornicing work (item 9) and electrical/plumbing work (item 10). The pursuer carried out the electrical work himself but did not do the plastering or cornicing work. His position was that this work was done by other specialist contractors who he instructed and paid.

[169] I consider the claim in respect of the plasterwork, item 8 of the breakdown, first of all. The evidence led by the pursuer to support this head of loss was sparse to say the least.

[170] The pursuer was referred to the general description of this work given in item 8 of the breakdown. In evidence he stated that two plasterers carried out the work over 2 days at a rate of approximately £300 per day (page 75 of day one of the shorthand notes). No breakdown of what the plastering work entailed was provided beyond the general description given in item 8 of the breakdown. The pursuer's evidence that the work was carried out over 2 days at a cost of £300 per day does not square with the breakdown which simply gives a total figure of £1,680 for the plastering work. No evidence was led from the contractors who did the work, nor of how many hours it took to do the work. Critically no evidence was led as to why the rate referred to by the pursuer should be regarded as a reasonable rate. No documentation such as timesheets, invoices or receipts were produced to vouch for what was done.

[171] The defender referred to the productions lodged by the pursuer Nos 5/13 to 5/21 of process. He submitted that the lodging of these documents would appear to demonstrate that the pursuer was aware of the need to keep records of the work being carried out, at least in a general sense. In the circumstances it was far from clear why the pursuer had not sought to lead evidence from the individuals who did the work nor lodge productions to vouch for the work being carried out. There is considerable force in that submission.

[172] Even less detail was provided to vouch for the cornicing work, item 9 of the breakdown. All that the pursuer said in evidence was that this work was carried out by a specialist who required to take down and replace the cornicing.

[173] The pursuer submitted that his evidence that the amounts charged for the plastering and cornicing work were reasonable was based on his experience as an electrician and as a property developer. I accept that the pursuer is a qualified electrician and that he has experience in developing houses. However I do not accept that the pursuer's experience in

these areas means that he can speak to the reasonable rates for plastering, scaffolding and cornicing work. The onus of proof rests upon the pursuer to prove that he is entitled to the amounts charged for items 8 and 9 in his breakdown No 5/33 of process.

[174] The pursuer cited a number of authorities in support of his submission that he was entitled to remuneration on a *quantum meruit* basis for the additional work. In particular he referred to *Avintair Ltd* v *Ryder Airline Services Ltd supra*.

[175] In *Avintair* the pursuer reclaimed against the dismissal of the action at a procedure roll hearing. The pursuer had acted as aviation consultant for the defender in relation to the obtaining of contracts for engine overhaul and similar work from Pakistan Airlines. It sought remuneration from the defender on a *quantum meruit* basis given that no price had been agreed for the services provided by the pursuer. At first instance the Lord Ordinary did not consider that a contract had been entered into between the parties as they were in dispute about the rate of remuneration from the start.

[176] In granting the reclaiming motion the Inner House observed that:

> "The reason why the contract made no express provision for payment is not important. What matters is that goods or services were provided which ought to be paid for. In such circumstances a claim may be based either on recompense or implied contract, and where the work was done under a contract as is averred in this case, the appropriate claim is on implied contract on the principle of *quantum meruit*."

It is important to appreciate that these comments were made on the basis that the pursuer's averments were read *pro veritate*. No evidence had been led. In the present case, having heard evidence, I am not satisfied that the pursuer has proved the nature and extent of any plastering and cornicing work which was carried out at the property. That is an important distinction between *Avintair* and the present case.

[177] The pursuer also referred to a further passage from *Avintair*:

> "A claim for payment *quantum meruit* may be measured by the ordinary or market rate of payment for the goods or services, but the circumstances may be such that there is no ordinary or market rate. In that case the best one can do is to seek to show by other evidence what is reasonable."

In *Avintair*, understandably, there was no market rate for the services provided by the pursuer as an aviation consultant. The circumstances of the present case are quite different. There is an ordinary or market rate for plastering and cornicing work. The pursuer has not led any evidence of what those rates are.

[178] In the absence of the appropriate evidence I do not consider that the pursuer has proved that the work referred to in items 8 and 9 was carried out. Nor do I consider that he has proved that he is entitled, on a *quantum meruit* basis, to seek the amounts claimed in items 8 and 9 nor that these sums have actually been paid to the tradesmen or contractors concerned.

[179] Thus far I have focused on the pursuer's claim for the plastering and cornicing work. The electrical work – item 10 of the pursuer's breakdown - is in a different position to the plastering and cornicing work. The pursuer carried out this work himself. He is a qualified electrician. He gave a clear and concise account of the work which he carried out.

[180] The work is described in a reasonable amount of detail in item 10 of his breakdown. A rate is quoted for labour, the total number of hours is provided and details are given of the materials used.

[181] The defender's position was that the hob did not work. He claimed that he arranged for an electrician to carry out a repair to the hob. No evidence was led from the unnamed electrician in question and no documentation was produced to vouch for the repair. In the

absence of such evidence I accept the pursuer's evidence that he did the work described in item 10.

[182] I also accept the pursuer's evidence that the rate charged for this work of £40 per hour is a reasonable rate. Unlike the position with the plastering and cornicing work the pursuer was in a position to speak to what was a reasonable rate for this work given that he is a qualified electrician.

[183] I had some concerns about the very last piece of work in item 10 which is a charge for the supply and fit of a new WC and cistern in so far as this is obviously not electrical work. However the defender accepted in evidence that the cistern was fitted and that it worked (page 103 of day two of the shorthand notes). Also there was documentary vouching for at least some of the materials used to carry out this work - see No 5/21 of process. Unlike the plastering and cornicing work the pursuer spoke to carrying out this work himself. The rate charged was a reasonable rate - £40 per hour and it was not suggested in cross-examination that the pursuer was not entitled to charge for the work. In the circumstances I shall grant decree for payment by the defender to the pursuer of the sum of £1,580 which is the full amount charged by the pursuer in item 10 of his breakdown.

Cost of marketing and sale services: £1,000

[184] In article 13 of condescendence the pursuer avers that he was instructed to carry out work in connection with the re marketing and sale of the defender's property. He avers that this work was instructed by John Grady and his sister Pauline Hughes in terms of a power of attorney granted by the defender, and also by the defender directly.

[185] In evidence the pursuer testified that this work consisted primarily of the pursuer attending 64 viewings of the property and assisting in what was referred to as the

decluttering of the property. He sought payment for 25 hours of work at a rate £40 per hour resulting in a claim for £1,000 in total.

[186] I accept the pursuer's evidence that he attended viewings and assisted in clearing the defender's property of rubbish and unwanted items. His evidence that he attended viewings was corroborated by Mr Chuwen and his assistance in clearing the house was corroborated by John Grady.

[187] It was clear from the evidence of John Grady and the defender that a power of attorney was never signed by the defender. However I accepted the evidence of the pursuer and John Grady that the pursuer carried out these tasks with the full knowledge and authority of the defender and also on the basis that John Grady and his sister had the defender's ostensible authority to instruct the pursuer to assist.

[188] The pursuer cited a number of authorities on the issue of the ostensible authority of an agent. I need not refer to these authorities in any detail given my decision on this aspect of the case. Suffice it to say that I accept the proposition that a principal can incur liability under a contract if the agent's act in entering the contract was within his ostensible authority.

[189] The real issue with this element of the claim is whether the pursuer is entitled to any payment for this work and if so what that payment should be.

[190] John Grady described as fanciful the notion that the pursuer would charge anything for attending viewings (see page 174 of day one of the shorthand notes). The defender disavowed any suggestion that the pursuer was entitled to be paid anything for attending viewings. I accept the evidence of the defender and more importantly of John Grady on this matter. No agreement was reached between the parties that the pursuer would be entitled to be paid for attending viewings.

[191] John Grady did not refer to the pursuer being entitled to charge for helping in clearing the defender's property. The impression given was of family members (including the pursuer) assisting the defender in his hour of need not of an agreement being reached that the pursuer would be paid anything for helping out.

[192] It is true that John Grady testified that the pursuer agreed to help out by attending viewings and clearing the property in return for an assurance that he would be paid the sum that he was owed for the work carried out at the property in 2018/2019. He referred to a sum of £21,000 as being payable to the pursuer for the work carried out in 2018/2019. Having regard to John Grady's evidence as a whole I consider that he did not believe that any element of the sum of £21,000 included payment to the pursuer for attending viewings or for helping declutter the property. Accordingly there is no basis on the evidence for the pursuer's claim for payment for attending viewings or decluttering the property.

[193] Lest I be wrong in the foregoing analysis I do not in any event consider that the pursuer has proved that he is entitled to any remuneration for the work carried out. No price was agree for the pursuer's attendance at viewings or for his assistance in decluttering the defender's property. Therefore the pursuer sought payment for this work on a *quantum meruit* basis.

[194] The onus is on the pursuer to prove his entitlement to remuneration on a quantum meruit basis. No evidence was led of either the appropriate rate for attending viewings or assisting in decluttering the property. The obvious person to ask about rates chargeable for attending the viewing of a property was Mr Chuwen yet no questions were asked of him in that respect. No other evidence was led which would entitle the court to find that the rate charged for attending viewings of £40 per hour was a reasonable rate. Similarly no evidence was led in respect of the reasonable rate to be charged for assisting in decluttering a house.

[195] The pursuer submitted that I should accept his evidence that £40 per hour was a reasonable rate for this work on the basis of his experience as a property developer and qualified electrician. I do not accept this submission. There was no evidence to indicate that the pursuer had knowledge of the rates to be charged for attending viewings or assisting in decluttering a house by virtue of his experience as a property developer or electrician and I am not prepared to draw such an inference from the fact that the pursuer has experience in these areas. It should have been a simple matter for the pursuer to lead evidence from Mr Chuwen and/or other witnesses on the appropriate rates. In the absence of such evidence I would not have been prepared to find this element of the claim established even if I had found that, in principle, the pursuer was entitled to seek some form of remuneration for the work carried out.

[196] In addition to claiming payment for attending viewings and decluttering the defender's house of rubbish the pursuer also sought payment for services rendered in "(a) organising the estate agent" and "(b) organising and attending at the home report survey" - see the averments in article 13 of condescendence. No evidence was led of any agreement that the pursuer was entitled to be paid for organising the estate agent (whatever that entailed) nor for organising and attending at the home report survey. Neither was there any evidence of any reasonable rate that the pursuer would be entitled to charge for doing these things. Accordingly I reject the pursuer's claim for these items as well.

Cost of home report (DM Hall): £1,000

[197] There was evidence from the pursuer and from Mr Chuwen that the pursuer paid the sum of £1,000 to MQ Estate Agents in respect of the cost of the home report provided by

DM Hall. That evidence is corroborated by the terms of the documentary productions Nos 5/34 and 5/35 of process.

[198] In the event I did not understand the defender to dispute the fact that the pursuer paid for the DM Hall report.

[199] For some reason the pursuer paid MQ Estate Agents £1,000 when in fact the home report only cost £995. In the circumstances I have found that the pursuer is entitled to payment from the defender of the sum of £995 by way of reimbursement of the sum which he paid for the home report.

Summary

[200] I have preferred the evidence of the pursuer and his witnesses on most of the key elements of his various claims. I have rejected the defender's arguments on prescription, price reduction in terms of the 2015 Act and *pactum illicitum*. I have therefore found that the pursuer is entitled to payment of the sums of (i) £12,000 in respect of the defender's share of the communal work (ii) £3,000 in respect of the balance of the sum paid for the communal work by Mr Renwick (iii) £1,580 for the additional electrical and plumbing work and (iv) £995 for the home report prepared by DM Hall Surveyors. The total of the foregoing sums is £17,575. Interest was craved by the pursuer on the sum sued for from the date of citation. Accordingly I have awarded interest on the total sum of £17,575 at 8% per annum from the date of citation until payment.

[201] To give effect to my decision I shall repel the first, second, third, fifth and sixth pleas-in-law for the defender; sustain the defender's fourth plea-in-law in part; sustain the pursuer's first, third, fourth and fifth pleas-in-law; sustain the pursuer's sixth plea-in-law in

part and grant decree for payment by the defender to the pursuer of the sum of £17,575 with interest thereon at the rate of 8% per annum from 10 October 2023 until payment.

[202] The parties did not make any submissions in relation to the issue of expenses. In the circumstances I have fixed a hearing on expenses to take place on 14 April 2025 at 2 pm to call by telephone conference call. If parties are able to reach agreement on the issue of expenses they can contact my clerk to seek to have the hearing discharged and an appropriate interlocutor pronounced.