OUTER HOUSE, COURT OF SESSION

[2026] CSOH 64

CA96/23

OPINION OF LORD LAKE

In the cause

FERIT SAMURAY

Pursuer

against

MAXIM ASANOV

Defender

Pursuer: Frain-Bell KC, K Young; MBM Commercial LLP
Defender: Jones KC (sol-adv); Brodies LLP

7 July 2026

Introduction and background

[1] In this action the pursuer seeks payment of two sums; $350,000 and €350,000. They are sought on the basis that they represent repayment of a loan or, alternatively, that they represent the extent to which the defender has been unjustly enriched at the pursuer's expense.

[2] The background as averred is that in February 2021 the defender was the sole shareholder of Monitox Limited, a company registered in Scotland, and wished to sell his shares to the pursuer. Monitox was licenced by the Financial Conduct Authority as an electronic money institution and, as such, the sale of shares was a change in control

requiring prior approval of the FCA. The threshold for a change of control is transfer of 10% of the shares. Possibly as a means to address the requirement for approval, it is averred that that the parties entered into three agreements. The first was dated 22 February 2021 and stated that the pursuer would purchase 9% of the defender's shares in Monitox for €76,500. The second agreement was a share purchase agreement ("SPA") dated 21 July 2022 in terms of which the pursuer agreed to purchase 91% of the defender's shareholding in Monitox for €750,000. The third agreement was a share pledge and loan agreement ("SPLA") also dated 21 July 2022. In terms of this, the pursuer was to lend the defender the sum of €700,000 and, as security for the loan, the defender would pledge the 91% of shares in Monitox which he owned to the pursuer. The SPLA states that a payment of $350,000 was to be paid to the defender and that €350,000 had already been paid on 12 August 2022. Although there was some question regarding whether the signatures were properly witnessed, it was ultimately accepted by both parties that they had entered into these agreements. This action is brought under the SPLA.

[3] The agreements are riddled with inconsistencies concerning the sums advanced, the dates of advance, the currencies in which the advances were made and the shareholdings concerned. There are striking inconsistencies even within the SPLA taken in isolation. In their evidence, both parties said the agreement was prepared by a legal adviser but, if this is so, it is remarkable that is it so shambolic. The problems with the agreements do not, however, affect the determination of the issues before me.

[4] It is apparent that the agreements were not implemented in the manner they describe. Despite the first two agreements proceeding on the basis of a sale of 9% of shares followed by a sale of the remaining 91%, in places the SPLA appeared to indicate that there had been no transfer of shares prior to it and that the first tranche of shares to be transferred

would be 33% of the total shareholding with the remainder to follow in the second tranche. This was implicitly recognised in the statement provided by the defender. However, the pursuer avers that no shares were ever transferred to him and his evidence was that none were pledged to him. This was confirmed by the defender in his evidence when he said that he had since sold all the shares in Monitox to a third party. It is agreed, however, that the pursuer transferred sums to the defender by way of loan under the SPLA. The parties agreed by joint minute that the pursuer made loan payments to the defender of $412,572.88 on 21 August 2021 and $356,504.31 on 22 July 2022. Both payments were vouched. It was agreed that, expressed in Euros, the total amount received by the defender from the pursuer was €701,525.41. No point was taken that these dates do not match those stated in the SPLA.

The parties' contentions

[5] The pursuer advanced a number of bases on which it was claimed that the defender was due to repay the loan. The first was that he claimed the defender had breached the SPA by demanding additional payment and that this amounted to an Event of Default as defined in the SPLA with the result that repayment was due. The pursuer relied on the clause in the SPLA regulating default, the relevant parts of which are as follows:

> "9.1 On the occurrence of an Event of Default the security hereby constituted shall become immediately enforceable and all powers conferred by this Agreement or any applicable law shall be immediately exercisable upon such occurrence and at any time thereafter and without prejudice to the generality of the foregoing the Lender (and without any obligation to give any notice to the Borrower) may:- …
>
> b) receive, collect, recover, sue for and if necessary use the name of the Borrower for the recovery of and retain all the Loan amount and further any dividends, interest or other moneys, distributions of profits, bonus shares or assets, due or receivable or payable on or accruing on or in respect of the Company;"

[6] In definitions section of the SPLA, Event of Default is stated to mean,

> "any Event of Default including but not limited to any situation whereby the Company is deemed insolvent, liquidated or the license revoked by the Financial Conduct Authority, or it cannot be utilized for any reason and/or any breach by the Borrower of any one or more the provisions of this Agreement".

The pursuer referred to Clause 3.2 of the SPLA which included the following:

> "The Borrower shall grant the security to the Lender in accordance with Clause 3 pending the approval of the Lender as a shareholder of the Company by the Financial Conduct Authority and in accordance with the Share Purchase Agreement, attached hereto as Appendix A and which forms an integral part of this Agreement."

It was submitted that this reference to the SPA being an integral part of the SPLA meant that a breach of the SPA counted as a breach of the SPLA. It was also claimed that the SPA provided the commercial background to the agreement recorded in the SPLA and could be considered part of it on that basis.

[7] The second basis on which the pursuer claimed there was an obligation on the defender to repay the loan was a claim that the defender was in "wholesale breach" of both the SPA and SPLA. It was averred that he is in breach of Clause 3.1 of the SPLA which is in the following terms:

> "The Borrower is a legal and/or ultimate beneficial owner of 318.500 (three hundred eighteen thousand five hundred) ordinary shares in the Company, which the Lender intents [*sic*] to acquire in the following manner: (a) the 91% (forty one percent) [*sic*] will be by way of pledge through this Agreement and simoltanosly [*sic*] with the Share Purcahse [*sic*] Agreement."

It was claimed that this was breached in that no shares had been transferred. The third alleged breach said to give rise to a requirement to repay was that the defender has failed to comply with the obligation in Clause 3.3 of the SPLA to

> "complete and submit all relevant forms and applications to the Financial Conduct Authority, in order to appoint the Lender as a 33% (thirty-three percent) [*sic*] shareholder to the Company, on or before the 01st of August 2022".

Finally, he avers that the defender was in breach of obligations to deliver various documents as at the date of execution of the SPLA as required by Clause 7.1.

[8] The defender pleads that he was not in breach of the obligation in Clause 3.3 to obtain regulatory approval for the transfer of shares to the pursuer. He says that the difficulty with getting approval lay in the fact that the pursuer withdrew the application to the FCA and that this made it impossible to make any progress with the transaction. It was agreed in the joint minute that the application was withdrawn.

[9] As an alternative to this basis for recovery, the pursuer pleads that if there was not an Event of Default under the SPLA entitling him to recover the loan amount, it was an implied term of the SPLA that he would be entitled to repayment if the longstop date specified in the SPA passed without transfer of the shares being completed, or the defender breached the SPA by demanding an increase in the purchase price for the shares. As a further alternative, the pursuer pleads that there has been a "total failure of consideration as a result of the defender's failure to transfer the … shares" and that he is entitled to repayment on that basis. Finally, he pleads that if there was no breach of contract, the defender has been unjustly enriched as a result of the payments made to him by the pursuer and he is entitled to recompense.

The evidence

[10] The evidence in the proof came from just two witnesses; the pursuer and the defender. Neither was a satisfactory witness.

[11] The pursuer did not explain the discrepancy as to how many shares were to be transferred in each tranche and when. His explanation as to why he had paid the second instalment when he had not received any of the material that was to be provided to him on

execution of the agreement was hard to follow. He was unable to explain why the allegation that he had not been provided with that material was not included in the pleadings until April 2025. He acknowledged that it was not agreed that that he had withdrawn the application to the FCA but had denied this in his pleadings. He had claimed that the payments to the defender were made from the proceeds of sale of a yacht which he owned but was unable to account for the statement in the application to the FCA for permission for change of control of Monitox that the vessel was owned by Roxanne Financial Standing Luxury Yachts Limited. He was also unable to explain the apparent discrepancies between the date of sale of the vessel and the date on which he made payments to the defender. In relation to the allegation that the defender had demanded additional money and thereby breached the SPA and/or the SPLA, he said he had not seen any documentation from the defender demanding additional payment but was relying on what he had been told by his lawyer.

[12] The defender prevaricated in relation to many questions put to him in cross-examination. As is customary, at the outset of his examination in chief he adopted his witness statement. In relation to the obligation on him to seek approval for the change of control of Monitox, his statement includes the following:

> "27 I have reviewed the correspondence at Productions 7/13 to 7/17 to refresh my memory. As I have said, Ms Louka was the one liaising with the FCA on my behalf (and I provided my consent by email to the FCA case handler for Ms Louka to liaise with the regulator on my behalf).
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> 28 I remember that the FCA raised some queries in relation to the application, which Ms Louka dealt with, including that there had been a misspelling of Mr Samuray's surname on the s178 Notice.
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> 29 Ms Louka then had to respond to the list of questions and make the appropriate changes to the notice. She liaised with the case handler by email regarding the notice, and she sent a letter to the FCA responding to their comments on the original s178 Notice. The application was then amended (Production 7 /16).
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> 30 The FCA came back with a final list of questions. I understand that the case handler at the FCA phoned Ms Louka to explain that the FCA were prepared

> to approve Mr Samuray, but they needed evidence on source of funds. They were requesting a bank statement proving that Mr Samuray had the funds to purchase the shares.
>
> 31 I have produced the correspondence between Monitox and the FCA at 7/17, which shows the diligent approach taken by me and Helena on my behalf to ensure that all of the FCA's queries were properly addressed."

I have removed references to footnotes which referred to production 7/17 of process and four other productions which were before the court. It was agreed that their contents should be admitted in evidence without being spoken to by a witness. Several of these documents are dated in late 2022. The reference in the statement to "Helena" is to Helena Louka who he described as an employee of Monitox in paragraph 25. In the productions referred to, she is designated as the chief operating officer of the company. In his statement the defender states that she helped collect information and complete forms on his behalf. Despite the terms of his statement and the terms of the productions, when he was asked about these matters in cross-examination he claimed that he had not spoken to Ms Louka prior to summer 2023.

[13] The defender was very evasive when asked questions about the documents he referred to in his statement and ultimately denied any prior knowledge of them. Although emails to and from Ms Louka were copied to an address given as m.asanov@monitox.com, he said that this was not his email address and he had not received the emails. He did not suggest why the chief operating officer of the company he owned and who was corresponding with the FCA purportedly on his behalf would be corresponding with a person other than him using an address which had his name in conjunction with the company name. He did not offer any explanation as to why he had referred to these documents in his statement and then adopted it without any explanation that he has not received the emails. He prevaricated when he was asked whether a possible business

relationship with Mastercard would increase the value of Monitox. He denied having asked for additional payment from the pursuer as consideration for the shares but did say that he sought money to cover expenses he claimed he had incurred in the period following signature of the agreements.

[14] As a generality, I found the pursuer was not reliable and the defender was neither credible nor reliable. I am not willing to accept their evidence other than when there is a concurrence between them or it is supported by credible and reliable evidence from other sources.

Decision

[15] Starting with the various bases advanced by the pursuer as to why repayment was due, it has not been proved that there was an Event of Default in terms of the SPLA. I do not accept the submission for the pursuer that the expression "this agreement" in the definition is capable of including the SPA. The agreements were completed at the same time and it is reasonable to assume that had it been intended to include breach of the SPA as an Event of Default, that would have been expressed directly.

[16] I do not accept that it has been proved that there was a breach of Clause 3.1. Read fairly, this is an expression of intent and does not impose any obligation on the defender. As I have concluded that there is no evidence that I can accept as being credible and reliable, I am not in a position to make findings about what efforts were made by the defender to seek approval for the change in control, what forms or applications were submitted by him or what documentation was provided by him to the pursuer when the agreements were executed. In that position, the pursuer has not proved his case that there was a breach in these respects. Even if I had been of the view that the SPA fell within the term "this

agreement" used in the definitions of the SPLA, for the same reason I would not have been willing to conclude that the pursuer had proved that an additional demand for payment was made.

[17] As none of the alleged breaches of the agreement have been proved, the claim that the defender is bound to make repayment as a result of a breach of the agreement by him fails. However, in the submissions for the pursuer as to the basis on which repayment might be made, there is reference to *Nielsen* v *Stewart* 1991 SC (HL) 22. In both the Inner House and the House of Lords the conclusion was expressed there that where the contract of loan does not contain provisions for repayment there is an obligation on the debtor to repay on demand. The defender submitted that the decision makes it clear that this rule applies only "in the absence of agreement to the contrary". That is correct but I was not referred to anything in the agreement as demonstrating agreement to the contrary. Although, it is not expressed in clear terms, Clause 9.1 quoted above addresses circumstances in which the security in the form of the pledge might be called upon and what steps might be taken in order to realise its value. There is no provision stating a date of a situation in which the loan will be repayable other than when there is a default.

[18] As noted above, it is agreed in the joint minute that sums were advanced by way of loan. There is no agreement as to when these sums are to be repaid in the ordinary course. The implied term therefore applies and they are repayable on demand. The case for the pursuer is therefore simply that he has demanded payment of the sums, there is therefore an obligation to make payment and that payment has not been made. There is no need for consideration of breach of either agreement.

[19] Although the pursuer advanced a claim for recompense based on unjust enrichment, in that there is an obligation on the defender to repay, there is no enrichment and no such claim arises.

[20] For completeness I would note that there was an argument advanced by the defender as to the formalities that had to be complied with in order for there to be a valid pledge of shares. The defender pleads that the Clause 5.1(d) meant that the SPLA was subject to provisions of Cypriot law which regulate the required formalities for execution of a pledge of shares. However, Clause 16 of the SPLA says that it is to be governed by the laws of the "United Kingdom". Clause 5.1(d) relied on by the defender is a warranty that steps are not required in terms of the Cypriot law for the legality, validity, enforceability or admissibility in evidence of the agreement. No such issue has arisen before me. An opinion dated 5 May 2025 obtained by the defender from Nicos Avraamides of L Papaphilippou & Co LLC, advocates and legal consultants in Cyprus, and agreed in the joint minute relates to the requirements for a valid pledge of shares but, in the circumstances, I am not required to consider this.

Disposal

[21] I am satisfied that the pursuer is entitled to repayments of the sums he advanced to the defender. There is a difficulty, however, in that the conclusions refer to one sum of $350,000 and one of €350,000 whereas the joint minute in terms of which the payments are admitted refer to a payment of $412,572.88 and a payment of $356,504.31. These sums cannot be reconciled with the conclusions. Although there is agreement that the total amount received by the defender expressed in Euros is €701,535.41 and the motion for the pursuer was that I should grant decree in that sum, that too cannot be reconciled with the

conclusions. I could not competently grant decree in that sum. In this situation, there is no alternative but to put the case out by order for me to be addressed on what orders I should make.

Expenses

[22] In relation to expenses, the pursuer relied on Clause 13 of the SPLA which is in the following terms:

> "All reasonable legal and other costs and expenses, taxes and duties incurred by the Lender in connection with the negotiation, preparation, completion and any registration of this Agreement and with exercising any of its powers and protecting and enforcing its interests and rights hereunder in any court of law or otherwise shall, on a full indemnity basis, be for the account of the Borrower."

On the basis of this and in reliance on the customary conclusion seeking "the expenses of the action" the pursuer argued that he should not be awarded expenses on a party-party basis and instead sought expenses on an "indemnity basis".

[23] Unlike in England, "indemnity basis" is not a term of art in Scotland and I took it to mean that expenses were sought on an "agent/client - client paying" basis. However, I do not consider that in the circumstances of this action, Clause 13 calls for an award of expenses on that basis. It refers to "*reasonable* legal and other costs and expenses". This qualification is not consistent with a blanket indemnity being given and it will be apparent from the discussion above that much of what has been set out in the pursuer's pleadings and in evidence was not relevant to the ultimate disposal. It would not be appropriate - or reasonable - for the defender to be found liable to pay those sums. When granting decree I intend to find the pursuer entitled to expenses against the defender on a party-party basis.