



SHERIFF APPEAL COURT

**[2025] SAC (Civ) 22
DUN-A335-24**

Sheriff Principal Gillian A Wade KC

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL GILLIAN A WADE KC

in the appeal in the cause

TOGETHER COMMERCIAL FINANCE LIMITED

Pursuer and Respondent

against

JOHN SMITH

Defender and Appellant

8 July 2025

[1] This is an appeal against the decision of the sheriff at Dundee dated 3 April 2025 in terms of which he (a) held that the defender and appellant (“the appellant”) had no material defence to the action, and (b) granted summary decree in favour of the pursuer and respondent (“the respondent”) together with expenses as taxed.

[2] The grounds of appeal and the written submissions lodged by the appellant in terms of Rule 8.2(1)(b) of the SACRs 2021 purport (i) to challenge the jurisdiction of the court, (ii) make various assertions about the concurrent role of the Lord Advocate as a government minister and head of the prosecution and the implications which that has for the separation of powers, (iii) challenges the refusal to deal with these issues by way of a preliminary hearing, (iv) asserts various contraventions of the European Convention on Human Rights,

the Human Rights Act 1998 and the Modern Slavery Act 2015, (v) asserts that there was no valid contract between the parties to the dispute, (vi) argues that the court failed to take account of what are described as “Common Law Court Orders”, which parties have allegedly ignored, and (vii) fails to take account of the issue of a counter claim and set off.

[3] The appellant’s principal complaint is that because the Scottish Ministers have failed to ensure the separation of powers, largely by virtue of the Lord Advocate’s dual role, the legal system is fundamentally flawed and therefore the appellant’s human rights have been violated. Accordingly he submits that he is not subject to the jurisdiction of Dundee Sheriff Court nor indeed the statutory scheme governing judicial proceedings in Scotland. He expressly states that this objection applies equally to this appeal. However in lodging his Note of Appeal and, in fairness, complying with the procedural requirements incumbent upon him, he has submitted to the jurisdiction of the court and asked that it determine the issue. It therefore falls upon this court to do so in accordance with the existing substantive and procedural rules.

Factual background

[4] This is a straight forward ordinary action for repossession and recovery of arrears in which the respondent is seeking orders for entry into possession of and ejection of the appellant and any occupiers from, premises at McLaggan House, 1 Wurzburg Court, Dundee, DD2 1FB (“the secured subjects”) on the basis that the appellant had failed to comply with a Calling Up Notice and was in default of a standard security granted over the secured subjects under the Conveyancing and Feudal Reform (Scotland) Act 1970. The action was warranted on 8 November 2024 and service was effected on 19 November 2024 by sheriff officer. The appellant lodged a Notice of Intention to Defend and then a letter

dated 22 December 2024 and a further letter dated 5 February 2025, in which he set out his proposed defences to the action. However the purported defences did not comply with the requirements of OCR 9.6.2. Furthermore, taking their content at its highest, they did not set out a stateable defence to the action. In addition there were implied admissions that (a) there was a standard security in favour of the respondent over the secured subjects to which the Standard Conditions applied, (b) the appellant entered into the loan secured by the standard security, (c) the appellant had failed to make payments in terms of the loan and was in default of the standard security, (d) a Calling Up Notice had been served on the appellant, and (e) the appellant had failed to comply with the terms of the Calling Up Notice.

[5] The defence which the appellant sought to advance amounted to a number of “pseudolegal assertions” which have been made before the Scottish courts without success on a number of occasions and to which I shall return. However the points made do not address the merits of the respondents’ claim and are instead constitutional and jurisdictional challenges of the nature referred to at para [3].

[6] Procedurally the case followed the ordinary court rules (“OCR”s) and on 11 February 2025 the respondent lodged a motion for summary decree in terms of OCR 17.2 on the basis that (a) the appellant’s case had no real prospect of success, and (b) there existed no other compelling reason why summary decree should not be granted at that stage. A hearing on that motion was assigned to call on 20 March 2025. The appellant was unrepresented and the sheriff continued the matter until 3 April 2025 to allow him to instruct a solicitor. However on 2 April 2025 the appellant emailed the sheriff clerk at Dundee Sheriff Court to inform the court that he would not be attending the hearing the following day.

[7] On 3 April 2025 the case called before the sheriff by Webex. In the absence of the appellant the respondent's agent renewed the motion for summary decree. The sheriff, having taken account of the fact that the appellant had chosen not to attend the hearing granted summary decree on the basis that the appellant had no material defence to the action and made an award of expenses in favour of the respondent as taxed. It is against this decision which the appellant now appeals.

Submissions

[8] The appellant and the respondent both lodged written submission in terms of Rule 8.2(1)(b). In short the submissions upon which the appellant seeks to rely mirror the arguments which he advanced in his emails to the sheriff clerk which purported to constitute his defence to the ordinary action. They do not address the merits of the case and focus instead on criticisms of the judicial system and on grounds of institutional bias. The appellant complains that as he was deprived of the opportunity to be heard on these preliminary issues, his fundamental human rights have been violated. He makes reference to what are described as "Common Law Court Orders" which he maintains were not complied with by those upon whom they were served. None of those named individuals are parties to the instant proceedings. For these reasons the appellant invites the court to "strike out" the action and declare all prior decrees and decisions in relation to this dispute void. He also asks the court to recognise his status as a "living man" and to confirm that no further process be allowed to proceed unless jurisdiction is established by consent. The respondents submit that the sheriff did not err in law and applied the correct legal test in granting summary decree. In addition he took into account the fact that the appellant, having been aware of the hearing, failed to appear.

Decision

[9] Having had regard to the pleadings which were before the sheriff, the non-appearance of the appellant, the fact that the appellant has not yet stated a relevant defence to the action and the test which the sheriff applied I am satisfied that the sheriff did not err in his decision to grant summary decree in favour of the respondents.

[10] The appropriate pre action protocols were observed and the Calling Up Notice upon which the action proceeds was duly served. The appellant does not state any defence which directly addresses the merits of the case. On that basis there is no doubt that the appellant has no real prospect of success in the action. Turning then to whether there exists any other compelling reason why summary decree should not have been granted I have had regard to the content of the two letters which were lodged with the sheriff clerk and upon which the appellant sought to rely.

[11] I agree with the submission of the respondents that they did not conform to the form and substance of defences required by Ordinary Cause Rule 9.6(2). However I have taken account of the fact that the appellant is representing himself and should be afforded some degree of latitude at least in relation to form. If it were the case that those letters disclosed a discernible substantive defence to the action I may have been minded to overlook any deficiencies as to form. Regrettably that is not the case.

[12] The purported defences are in the following terms:

- "1. No valid contract exists – I challenge the existence of any lawful contract that binds me to the alleged obligations in this matter.
2. The parties to the dispute require clarification – The proper legal standing of all parties involved must be established before any proceedings can continue.
3. The Defender is not the correct party in this dispute – There is a fundamental misidentification of the correct legal entity.

4. The court lacks authority and jurisdiction over a living man – The principles of common law and natural justice must be observed.
5. Unlawful use of slavery – Any attempt to impose obligations without lawful consent violates fundamental human rights protections.
6. Unlawful human trafficking – The matter must be scrutinised in accordance with relevant laws prohibiting coercion and exploitation.
7. Fraud – Any potential fraudulent misrepresentation or procedural misconduct must be fully examined.
8. Criminal coercion – Any lawful attempts to compel compliance through improper means must be challenged.
9. Conflict of laws – any inconsistencies between applicable legal frameworks must be resolved before the case proceeds further.”

[13] Taking these purported defences at their highest it is clear that they fall far short of the test for relevancy and specification articulated in the various authorities not least of which is *Ellon Castle Estates Co Ltd v MacDonald*, 1975 SLT (notes) 66 *per* Lord Stewart:

“Our whole system of pleading and of disposal of cases upon preliminary pleas must depend upon each party stating with candour what are the material facts upon which he relies and admitting the facts stated by his opponent which he knows to be true.”

[14] The defences contain no denial, even in general terms, that the appellant entered into the loan or granted the security which forms the basis of the action for recovery and repossession. Instead he attempts, as others have done in the past, to deny that the laws of Scotland apply to him.

[15] Apart from the fact that proof of the loan agreement, or indeed the terms of the standard security which the appellant granted, do not require proof the sheriff had before him a copy of the Commercial Bridging Loan Agreement between the respondent and the appellant dated 5 April 2023. This was incorporated into the pleadings *brevitatis causa* along with a copy of the Standard Security of even date. He was also able to consider the Land Register Title Sheet with registration number ANG82690 and a copy of the Calling Up Notice with proof of service. The appellant did not and to date has not advanced any compelling argument to challenge these documents or the calling up process. He does not

address the averment that he had failed to maintain the repayment instalments due in terms of said Standard Security or that he had failed to comply with the Calling Up Notice. There was no defence, express or implied, to the averment that the appellant is in default in terms of Standard Condition 9(1)(a) and 9(1)(c) of Schedule 3 of the 1970 Act and the said Standard Security and, at the date of this action, the arrears on his account were £262,074.60 with an outstanding balance of £10,141.92. The appellant did not deny that he remained in possession of the property. The issues of slavery, human trafficking and breach of human rights to which the appellant refers without any specification as to their application simply do not arise in the context of this action. The reference to these matter is so spurious and non-specific as to render it impossible for the respondents to respond to any such averment. The remaining allegations of fraud and criminality are wholly misplaced and irrelevant if not indeed amounting to what can be termed “scandalous”. No factual basis is provided for such an assertion. That being so the sheriff was quite correct to determine that, even allowing some latitude as to form, there was no other compelling reason why summary decree should not be granted.

[16] Matters are compounded by the appellant’s deliberate non-appearance at the hearing on 3 April 2025. He was fully aware that the motion for summary decree would be renewed and had failed to take account of the sheriff’s generous continuation to enable him to secure legal representation. Further indulgence would have served no useful purpose and would run contrary to the sheriff’s duty to expedite proceedings in furtherance of the interests of justice.

[17] Finally the Note of Appeal reiterates certain pseudolegal arguments very similar to those articulated in the letters to the clerk of court. Put shortly they assert (a) that the Scottish courts and the statutory laws of Scotland have no jurisdiction over a “living man”,

(b) that the dual role of the Lord Advocate as both a member of the government and head of the prosecution offends against the separation of powers and vitiates all civil proceedings and deprives the appellant of a fair hearing, (c) that any civil proceedings against the appellant are in breach of the Modern Slavery Act 2015, the Human Rights Act 1998, and the European Convention of Human Rights, and (d) that the 'Common Law Court Orders' issued by a so called court set up by the appellant himself, have relevance to proceedings in the courts of Scotland. These arguments amongst others are often advanced by individuals identifying as either a "freeman of the land" or "sovereign citizen" arguments.

[18] Similar arguments have been considered in England. In *Lewis v West Bromwich Building Society* [2023] EWHC 1361 (KB) the court considered a number of cases in which "freeman of the land" arguments were invoked in an attempt to undermine County Court possession proceedings. Master Thornett, at paragraph 19 of his judgement, made the following observations:

"Some counsel addressed me as to the commonality and similarity of the claims to those adopted by certain interest groups; one of which as is self-entitled the 'Freemen on the Land'. As I commented at the conclusion of the hearing, the court in these cases has not directly been concerned with any ideals or philosophy underlying the claims. Very much to the contrary, its concern has been to stem what seems to have been a concerted plan to subvert - without realistic or rational conviction - collateral proceedings and decisions in possession proceedings in the County Court, all which constitutes an abuse of process. As I made plain in open court, the consequences of such intention, if proven, could be extremely serious for all those involved and go well beyond the waste of time, money and resources that has occurred."

[19] The vexatious nature of such arguments was discussed in *Watson v Lord Advocate* 2013 GWD 19-378. At paras [68] Sheriff Cubie (as he then was) addressed similar arguments, albeit in a different factual context. Under reference to the Canadian case of *Meads v Meads* 2012 ABQB 571 he stated:

“The pursuer's approach in this case contains all of these elements, and more. For example during his submissions he made reference to ‘enticement to slavery,’ a purported crime to which reference is made in Meads; ... ; he refers to the Magna Carta. These references can hardly be coincidental. He has no doubt been influenced, or informed, or even inspired by similar declarations or approaches; he has certainly been exposed to them. It is unfortunate that he had not become aware of the hopelessness of such an approach. The action is manifestly ill conceived on a number of levels and is bound to fail.”

[20] The suggestion that by styling oneself as “a living man” rather than a legal person one can in some way avoid the jurisdiction of the court and the obligation to make loan repayments under a properly constituted agreement with a *bona fide* lender is not only without foundation but is a futile attempt to deprive the respondents of the legal remedy to which they are entitled. Such arguments have no place in Scots law and those who seek to advance them can expect their overt attempts to abuse the court process to sound in expenses.

[21] For these reasons the appeal is refused and the decision of the sheriff affirmed.

[22] In ordinary course expenses should follow success. However the appellant has not made submissions in this regard. I shall afford him 7 days from today’s date within which to lodge further written submissions on the question of expenses only, failing which I shall grant decree with expenses in favour of the respondents as taxed.