SHERIFF APPEAL COURT

[2026] SAC (Civ) 58
GLW-L63-22

Sheriff Principal A Y Anwar

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL A Y ANWAR

in the appeal in the cause

OLIVER COLLINGE & STRATFORD HAMILTON as joint liquidators of AYMA IOT LIMITED (IN LIQUIDATION)

Noters/Respondents (in appeal)

against

JOHN MACMILLAN

First Respondent

and

TANVIR AHMAD

Second Respondent/Appellant

and

GRACE ANNE MACMILLAN

Third Respondent

Noters/Respondents: Vaughan (sol adv); Morton Fraser MacRoberts LLP
Second Respondent/Appellant: Self-represented

15 July 2026

Introduction

[1] The respondents are the joint liquidators of AyMa IOT Ltd ("the Company"). The appellant, John MacMillan, and Grace MacMillan were the directors of the Company.

[2] The background to this matter is set out in an earlier opinion of this court (*Collinge* v *MacMillan* [2024] SAC (Civ) 31; 2025 SLT (SAC) 81). Put shortly, the respondents allege that, prior to liquidation, the directors received significant sums of money from the Company without justification. The respondents lodged a Note in the liquidation process in July 2023 seeking payment of various sums from the directors alleging a breach of directors' duties, wrongful trading and seeking repayment of alleged gratuitous alienations.

[3] They sought (a) £824,114.75 from John MacMillan as second craved; (b) £359,984.51 from the appellant as third craved; (c) £50,321.19 from Grace MacMillan as fourth craved; (d) £612,413.86 from the appellant and his co-directors jointly and severally as fifth craved; and (e) £187,709.16 from the appellant and his co-directors jointly and severally as sixth craved. The sums second, third, fourth and fifth craved were sought in terms of section 212 of the Insolvency Act 1986 ("the 1986 Act") or alternatively in terms of section 242 of the 1986 Act. The sums sixth craved were sought in terms of section 214 of the 1986 Act.

[4] John and Grace MacMillan did not enter process and decree in absence was granted against them in terms of the second and fourth craves.

[5] Following a diet of debate, the sheriff excluded many of the appellant's averments as irrelevant *et separatim* lacking in specification. By interlocutor dated 2 March 2026, he granted decree in favour of the respondents as third craved. He allowed a proof before answer on the remaining craves (five and six). The appellant appeals against the

interlocutor of 2 March. His appeal is restricted to the sheriff's decision to grant decree as third craved.

The pleadings

[6] It is a matter of admission that the appellant was a director of the Company between 13 September 2019 and 28 March 2022; that the Company was incorporated for the purposes of telecommunications activities, information technology consultancy activities and data processing, hosting and related activated; that Logistics Plus Inc ("LP"), a company incorporated in the United States of America supplied the Company with a significant volume of personal protective equipment ("PPE") during 2020; that the Company failed to make payment to LP; that LP obtained judgement against the Company in the High Court in England and Wales in 2022; that LP presented a petition to wind up the Company; and that a winding up order was granted on 19 August 2022.

[7] The respondents aver that the Company's financial statements for the period ending 31 March 2020 disclose net liabilities of £92,740 and that the Company was at that date, balance sheet insolvent (Article 3.3). They aver that notwithstanding the Company's insolvency, an intense period of trading took place after 31 March 2020. The Company accepted orders from Deliver Net Ltd for the supply of large quantities of PPE. To fulfil those orders, the Company placed orders with LP for the purchase of PPE. The respondents aver that as a result of trading activity which took place after 31 March 2020, by 21 April 2020, the Company suffered a deficit of £153,631 from which it did not recover. By 29 January 2021, the deficit position had increased to around £3,560,000. As at the date of liquidation on 19 August 2022, that deficit was at least £4,150,000 (Articles 3.4 and 3.5).

[8] In response, the appellant avers that in or around summer of 2021, the Company fell into dispute with Deliver Net in relation to the PPE supplied by LP. Deliver Net refused to make payment in relation to what it maintained was defective PPE. The appellant avers that the Company had a substantial defence to the actions raised by LP for payment. That defence relied upon John MacMillan providing information to the Company's solicitors. He indicated that he was unable to do so as a result of ill health, leading to LP securing judgment against the Company (answers 3.1 and 3.4).

[9] In Article 5.2, the respondents aver that during the period from 8 April 2020 to 24 March 2022, the Company made payments totalling £359,984.51 to the appellant. That is the sum third craved. The respondents aver that the appellant is liable to repay, restore or account for the sums misapplied or misappropriated by him in terms of section 212 of the 1986 Act or alternatively, that the sums amount to a gratuitous alienation in terms of section 242 of the 1986 Act.

[10] In response the appellant avers that these payments were payments of salary and bonus due to him (answers 5.2). These are described as "agreed salary and agreed bonus" (answers 3.2) and further that "in respect of said payments, appropriate Tax and National Insurance were deducted". The appellant avers that at the time of the payments, he understood the Company to be trading profitably, that "a number of organisations contracted with the Company for the use of software" and that "a number of prospective organisations were in discussions with the Company in relation to the use of software."

[11] The appellant also avers that in the early months of the Company's trading, the Company was involved in the development of cloud-based software which the Company was to develop and sell to customers; that the Company had developed a copyright in respect of that software; that owing to the pandemic, the Company was unable to progress

the marketing of the software; that during lockdown, the Company availed itself of opportunities to sell PPE; and that until the dispute with LP arose, the Company, to the knowledge of the appellant, traded successfully. He avers that the Company invested money in research and development and received appropriate rebates from HMRC (answers 5.7).

The sheriff's decision

[12] The sheriff considered the extent of any obligation incumbent upon the appellant to provide notice of his defence to the claims made in the Note. He concluded that the comments made by this court in the earlier appeal on the need for the appellant to provide fair notice of his position were consistent with the Inner House's observations in *The Liquidators of Glasgow City Bank* v *Mackinnon* (1882) 9R 535, notwithstanding that the normal rules of pleading do not apply in cases of this nature. In terms of the degree of specification required, he considered the guidance provided in MacPhail, *Sheriff Court Practice* (4th ed.), paragraph 9.30 to be helpful.

[13] He noted that the appellant admitted having received the sum of £359,984.51. He noted that the appellant did not provide any detail of the salary or bonuses he was entitled to or of how any such salary or bonus payments were approved by the Company. He noted the lack of any explanation of why these payments were reasonable in the context of the Company's financial position. He considered that the appellant could be presumed to be aware of the salary and bonuses received by him and the basis upon which these were calculated. The averments about other organisations contacting the Company and having discussions with it lacked essential detail; the names and addresses of the organisations concerned had not been provided nor had the appellant attempted to explain why the

position with the Company's dealings with any organisation had any bearing on the salary and bonus payments made to him. No explanation had been provided as to why the averments relating to the defence the Company may have had to the original action raised against it by LP were relevant to the payments of salary and bonus. There was no explanation as to why the averments in answers 5.7 relating to the Company's activities was relevant to the payments made to the appellant. The sheriff concluded that the appellant's averments did not amount to a relevant or specific defence and granted the respondents' third crave.

[14] The respondents also challenged the relevancy and lack of specification of the appellant's averments relating to the claim for the sums fifth craved. The sheriff noted that the essence of the respondents' averments in relation these sums was that the Company received a payment from Deliver Net of £675,941.10 on 29 January 2021. When payment was made, the Company's cash at bank figure became £761,460, however its deficit of assets over liabilities was £3,560,000. On that basis, the respondents averred that the appellant and his co-directors ought to have taken all reasonable steps to protect the interests of the Company's creditors. Instead, they continued to trade when they knew the Company was insolvent and in doing so breached their fiduciary duties. The sheriff noted that looking in isolation at the appellant's averments in answer, there was no substantive defence to the respondents' claim. However, he concluded that the appellant's averments required to be considered as a whole. Read as a whole, the appellant was offering to prove that the Company had a substantive defence to the action raised by LP and the deficit between the Company's assets and liabilities arose because of the disputes with Deliver Net and LP. While the respondents' averments could be more specific and detailed, the sheriff formed the view that evidence about the disputes might have a bearing upon the extent to which, if

at all, the appellant was guilty of misfeasance. Evidence would also have a bearing upon the extent to which the appellant should be compelled to contribute to the Company's assets by way of compensation. In relation to the sums sixth craved, the sheriff noted that in terms of section 214(2)(b) of the 1986 Act knowledge is a pre-requisite to a declaration of wrongful trading. He noted that the disputes with Deliver Net and LP could have a bearing upon the appellant's knowledge of the Company's financial position. For those reasons, he allowed a proof before answer in relation to the sums fifth and sixth craved.

Grounds of Appeal

[15] The appellant advanced the following grounds of appeal:

(i) The sheriff erred in law in holding that the appellant's defence to the sums third craved was irrelevant or lacking in specification;

(ii) The sheriff failed to apply the test in *Jamieson* v *Jamieson* 1952 AC 525;

(iii) The sheriff failed to recognise that the appellant had a legally stateable defence;

(iv) The sheriff erred in treating any alleged lack of specification as rendering the defence irrelevant rather than recognising that any further specification was capable of being cured by amendment;

(v) The sheriff failed to give proper effect to the principle of fair notice which requires identification of the material basis of the defence but does not require evidential detail;

(vi) The sheriff erred in granting decree where the appellant's defence was legally capable of success if proved.

Submissions

Submission for the appellant

[16] In brief, the appellant submitted that in its earlier opinion granting recall of decree by default, this court had noted that the appellant had a "prima facie" defence. The present appeal concerns the same substantive defence. A defence should not be dismissed at debate unless it must necessarily fail even if the relevant averments are proved (*Jamieson* v *Jamieson*). The appellant referred to *Henderson* v *3052775 Nova Scotia Ltd* [2006] UKHL 21, *Sarwar* v *Phlo Technologies Ltd* [2026] CSIH 20; and *Frank A Smart & Son Ltd* v *Aberdeenshire Council* [2022] SAC (Civ) 5 as supporting the proposition that where material facts are disputed and fact-sensitive issues arise, a proof before answer is ordinarily required. He relied upon *Parks of Hamilton (Townhead Garage) Ltd* v *Deas* 2022 SCLR 292 as supporting the proposition that what constitutes fair notice must be considered in context. The sheriff did not identify any legal principle by reference to which the defence must fail. He did not hold that the defence was incapable of success; that payment of salary or PAYE deducted from remuneration could not constitute a defence nor that the services as a director could never constitute adequate consideration under section 242 of the 1986 Act. The defence was not bound to fail. It required evidence of the role performed, the work done, the payroll treatment, the salary structure, the bonus arrangements, the Company's circumstances and only then could the court decide whether the payments were reasonable.

[17] The sheriff's approach to the fifth and sixth craves in respect of which he allowed proof, was inconsistent with his approach to the third crave. Whether the payments were legitimate remuneration could not be divorced from the Company's trading position, the appellant's understanding that the Company was trading profitably, the Deliver Net and LP disputes and the appellant's knowledge of the Company's financial position.

[18] The respondents bore the burden of establishing that the payments were recoverable. Mere payment of the sums to the appellant did not establish liability under sections 212 or 242 of the 1986 Act.

[19] Even if the sheriff had been correct that further specification was required, immediate decree was not the appropriate disposal. The information the appellant relied upon was all contained in the productions lodged by him. The sheriff ought to have allowed amendment for further specification or a proof before answer.

[20] The appellant invited the court to allow the appeal, recall the interlocutor of 2 March 2026 insofar as it granted decree as third craved and thereafter remit the cause to the sheriff for a proof before answer.

Submissions for respondent

[21] The respondents relied upon paragraphs 9.28 and 9.30 of MacPhail, *Sheriff Court Practice.* It was submitted that the degree of specification required was dependent upon the nature of the case. The sheriff recognised that abbreviated pleadings are sufficient for claims brought under section 212 of the 1986 Act, as long at the pleadings provide fair notice (*Liquidator of Beath Retail Ltd for an order in terms of s212 of the Insolvency Act 1986* [2024] SC KDY 52; *Liquidators of Glasgow City Bank* v *MacKinnock*; *Gray* v *Davidson* 1991 SLT (Sh Ct) 61). The test of relevancy of pleadings is well known (*JD* v *Lothian Health Board* [2017] CSIH 28; 2018 SCLR 1). The sheriff had been correct to conclude that the limited detail provided by the appellant would cause the respondents material prejudice if the case were to proceed to proof. He had been correct to conclude that the averments were so lacking in specification as to be irrelevant. The sheriff made no finding in relation to whether the defence was statable. The debate did not concern that issue. The debate focussed upon

whether the appellant had pled a sufficiently specific and relevant defence. What was missing from the appellant's averments was any explanation as to why very significant payments were paid to him and why it was reasonable for the Company to do so.

[22] The appellant had been aware since 3 October 2024 that the respondent sought to attack his pleadings on the grounds of specification and relevancy. The debate was discharged on two occasions on 3 March and 4 July 2025. The appellant had had more than sufficient opportunity to seek to amend his pleadings and had not done so.

Decision

[23] There was a considerable degree of overlap in the six grounds of appeal advanced and thus, I do not deal with them separately.

[24] There was no dispute between the parties as to the applicable law. The appellant did not dispute that while the strict rules of pleadings do not apply to applications made in terms of section 212, just as the respondents required to provide fair notice of their claims, so too he required to provide fair notice of his defence (*Liquidators of Glasgow City Bank; Blin* v *Johnstone* 1988 SC 63; *Liquidator of Beath Retail Ltd*).

[25] The principal function of pleadings, as explained by Lord Brodie in *JD* v *Lothian Health Board*, is to explain what a party's case is about. That explanation is provided to the court and to the party's opponent. That is because the opponent requires to know what case he has to answer and the court requires to know what case it has to adjudicate. The degree of specification required in pleadings which will be deemed sufficient for fair notice depends upon the particular circumstances and the nature of the case.

[26] In the present case, the respondents invite the court to make an order in terms of section 212(3)(a) of the 1986 Act requiring the appellant to repay sums of money the

Company has paid to him. They aver that these sums were obtained by the appellant in breach of his duties to the Company, or by misfeasance. Alternatively, they invite the court to find that the sums paid constitute a gratuitous alienation in terms of section 242 of the 1986 Act.

[27] The respondents aver that the appellant was a director of the Company between 13 September 2019 and 28 March 2022. During the period 8 April 2020 to 24 March 2022, the Company paid the appellant £359,984.51. The appellant accepts these sums were paid to him. The respondents aver that by 31 March 2020, the Company was balance sheet insolvent. As a result of trading activity which took place after 31 March 2020, by 21 April 2020, the Company suffered a deficit of £153,631 from which it did not recover. By 29 January 2021, that deficit increased to around £3,500,000. By the date of liquidation, in August 2022 it was £4,150,000. Thus, the respondents offer to prove that for the duration of the period in which sums were paid to the appellant, the Company was balance sheet insolvent or in deficit.

[28] The respondents aver that these sums were received by the appellant in breach of his fiduciary duty. More particularly, they aver that by 31 March 2020, it was, or ought to have been clear to the directors of the Company that the Company was in financial difficulties. It ought to have been clear to the directors that the Company was experiencing difficulty in obtaining the correct category of PPE, with appropriate certification and in delivering the PPE timeously. The effect of the payments to the respondent was to significantly worsen the Company's financial position and to benefit the appellant personally. The respondents aver that no reasonable director could have taken the view that it was proper to make payments in this quantum to themselves in circumstances where the Company was balance sheet

insolvent and experiencing severe difficulties in its delivery commitments to customers and its financial obligations to its suppliers.

[29] The appellant's averments in response are, in the main, simply bold statements or bare denials. He states that the sums he received were agreed salary and bonus. He fails however to specify when or how these sums were agreed by the Company, what the nature of any bonus scheme was, how he qualified for bonuses and why these payments were reasonable having regard to the Company's financial circumstances. He provides no details of the work he carried out for or on behalf of the Company during the period 8 April 2020 to 24 March 2022, when he received £359,984.51. He avers that appropriate tax and national insurance was deducted from the payments made to him. During submissions, he emphasised the tax treatment of the payments. However, the appellant has, in my judgment, misunderstood the claim made against him. The claim against him is not concerned with whether the payments to him received appropriate tax treatment; the claim against him is that the payments ought not to have been made at all. The payment of tax or national insurance or the existence of payslips does not answer the respondents' claim that the sums were obtained by the appellant in breach of his duties to the Company, or by misfeasance or constitute a gratuitous alienation.

[30] The appellant avers that he understood the Company was trading profitably. He does not aver the period in which he believes the Company was trading profitably nor the basis for his understanding. He does not deny the respondents' averments regarding the Company's financial statements, that it had suffered a deficit and was balance sheet insolvent. He avers that a number of organisations contracted with the Company for the use of software without providing details of the organisations, the value of the contracts nor why the said contacts would give rise to an understanding on his part, that the Company

was trading profitably. He avers that a number of prospective organisations were in discussions with the Company in relation to the use of software. Again, he does not provide details of the organisations nor why these discussions would give rise to his understanding that the Company was trading profitably.

[31] Finally, the appellant avers that the Company had a substantial defence to the action raised by LP but that his co-director failed to provide information to the Company's solicitors to assert that defence and thereafter failed to lodge an appeal. The appellant does not explain what the nature of the defence was, what its prospects of success were, why the existence of a line of defence led him to understand that the Company was trading profitably at the time payments were made to him or why this had any bearing on the payments made to him.

[32] The appellant relied upon the oft quoted observations of Lord Normand in *Jamieson* v *Jamieson* 1952 AC 525 that "an action will not be dismissed as irrelevant unless it must necessarily fail even if all the pursuer's averments are proved.". He conflated the requirements of specification and relevancy. A director who is able to aver that sums claimed under section 212 or 242 of the 1986 Act were legitimately paid as remuneration for services provided by that director, as approved by the Company, and that the sums paid were reasonable notwithstanding the financial position of the Company, is likely to have averred a relevant defence. Such a defence may nevertheless be found lacking in specification if it does not give fair notice of the facts upon which it is based. As explained in *MacPhail* at paragraph 9.30, (comments which apply equally to averments made in defence):

> "It is possible for a condescendence to be relevant, in respect that it states facts sufficient to render the action relevant in law, but to be lacking in specification in

> respect that it does not give fair notice of all the facts which the pursuer intends to establish."

[33] The appellant correctly recognised that he would require to lead evidence of the role he performed, the work he carried out, the agreed salary structure, the agreed bonus arrangements, and the company's circumstances and only then could the court decide whether the payments were reasonable. The difficulty for the appellant is that he has failed to make averments in relation to any of these matters, notwithstanding clear calls in the respondents' pleadings for him to do so (Article 3.2). These are all matters which might reasonably be expected to be within his knowledge. Contrary to the appellant's submissions, to make averments setting out these matters is not to plead evidence; it is to plead the facts which the appellant offers to prove.

[34] The appellant submitted that this court had accepted that he had a *prima facie* defence in its earlier opinion; that being the case, it could not now be said that his defence lacked specification and was irrelevant. It is important to bear in mind that the earlier decision of this court was concerned with whether the sheriff ought to have granted decree by default, the appellant having failed to lodge defences in proper form. The court was not concerned with the relevancy or the specification of the appellant's answers but rather with whether it was in the interests of justice to allow the appellant the opportunity to defend the action. In that context, the court had noted that, the general nature of the appellant's defence was tolerably clear, namely that the sums third craved were paid as salary and bonus. This court's comments in its earlier opinion are not relevant to the matters raised at debate.

[35] Insofar as the appellant suggested that the sheriff had erred by failing to recognise that further specification of his averments could have been provided by amendment, I note that the appellant made no motion to be allowed to amend his pleadings prior to or during

the debate, nor prior to or during the appeal. The appellant has been aware since October 2024 upon the lodging of a note of basis of preliminary pleas, that the respondents sought to have the appellant's averments excluded from probation as being irrelevant *et separatim* lacking in specification. Two diets of debate had been discharged previously (3 March and 4 July 2025). Had the appellant wished to amend his pleadings, he had ample time and opportunity to do so. It is not for the sheriff to take a partisan approach by advising or directing a party to address the deficiencies in their pleadings by way of amendment. As explained by this court in *McAteer* v *Chyla* [2026] SAC (Civ) 12 at para [28], it is not open to the sheriff to assist the losing party by providing him with a way out.

[36] Accordingly, I am satisfied that the sheriff correctly concluded that the appellant's averments did not give fair notice of the facts upon which they were based and that the respondents would be materially prejudiced at proof.

[37] For completeness, I should note that I am not without sympathy for the position the appellant finds himself in. He is not represented, albeit his answers were drafted by a solicitor. I accept that the court should be slow to find his pleadings lacked specification if there was other information before the court which might provide the respondents and the court with notice of the particulars of his defence. However, the appellant did not refer the court to any such information. He simply stated repeatedly that he had lodged payslips. The solicitor advocate for the respondent explained that he had not been able to find information among the documents lodged by the appellant which might explain the particulars of the appellant's defence. I regret that I too have been unable to do so.

[38] Finally, the appellant submitted that the sheriff's decision to allow a proof before answer in relation to the remaining craves was inconsistent with his decision to grant decree

as third craved. The appellant's submission was superficially attractive. On closer examination however, it does not bear scrutiny.

[39] In relation to the fifth crave, the sheriff explained why he took a different approach and appointed a proof before answer. As the sheriff explained, the "nub of the misfeasance" of which the respondents complain is that the appellant and his co-directors breached their fiduciary duties by continuing to trade after January 2021. He correctly pointed out that the third crave was directed to an order under section 212(3)(a) and sought repayment of sums. In contrast, the fifth crave was directed to an order under section 212(3)(b) in terms of which a court can compel a party to contribute such sum to the company's assets by way of compensation as the court thinks fit. While the appellant's averments could be more specific, the sheriff formed the view that read as a whole, the appellant was offering to prove that the Company's financial difficulties arose as a result of the disputes with Deliver Net and LP and that it was reasonable for the directors to continue to trade when they believed that they had a substantive defence to the action raised by LP. The sheriff correctly recognised that evidence about these matters might have a bearing upon the extent to which, if at all, the appellant was guilty of misfeasance by allowing the Company to continue to trade and the extent to which, if at all, he should be compelled to contribute to the company's assets.

[40] The question of whether it was reasonable for the Company to continue to trade is separate and distinct from the question of whether payments ought to have been made by the Company to the appellant. There is no inconsistency in the sheriff's approach to the pleadings relating to the third and fifth craves.

[41] For completeness, I have considered the cases referred to by the appellant in his submissions. The discussion of relevancy of pleadings in *Nova Scotia* took place in the

context of a motion for summary decree. *Sarwar* considered the need for proof in cases where a party asserted an implied waiver. *Smart* was concerned with whether an abatement notice was valid and whether it had set out with sufficient clarity, the nature of the abatement required. *Parks of Hamilton* was concerned with whether fair notice had been provided in a consumer claim relating to the rejection of a motor vehicle. While each of these cases considered issues of relevancy and specification, each involved an analysis of the particular pleadings before the court. I am unable to find any support for the general proposition advanced by the appellant, namely that an enquiry should be permitted in all cases where there is a factual dispute.

[42] For these reasons, I shall refuse the appeal. Parties were agreed that expenses should follow success. I shall grant the expenses of the appeal in favour of the respondents.