SHERIFFDOM OF NORTH STRATHCLYDE AT PAISLEY

[2025] SC PAI 94

PAI-B700-23

JUDGMENT OF SHERIFF G L CRAIG

in the cause

WINIFRED DEARMAN HUDSON or ALI
(with the concurrence of the Procurator Fiscal)

Pursuer

against

SHOUKAT ALI

Defender

Pursuer: Bryce, Counsel
Defender: Whyte, Counsel

PAISLEY, 10 June 2025

The sheriff, having resumed consideration of the cause:

Finds the following facts to be proven or agreed:

1. The parties are as designed in the instance in terms of which the defender resides at the Service Address.

2. This court has jurisdiction.

3. The parties were formerly married.

4. In 2015, the pursuer raised an action in Paisley Sheriff Court craving *inter alia* divorce from the defender, court reference number PAI-F2-15 ("the divorce action"), which action was defended the pursuer was represented by Matthew Lynch, solicitor, and the defender was represented by *inter alia* Tom Williamson, solicitor.

5. As of 15 March 2016, the defender was the heritable proprietor of a number of properties including the parties' former matrimonial home, hereinafter referred to as "the Subjects".

6. By written motion in the divorce action dated 14 March 2016, the pursuer moved the court to allow the Record to be opened up and amended in term of the pursuer's minute of amendment. The minute of amendment sought *inter alia* to amend the craves by inserting a third crave as follows:

> "To interdict the Defender from effecting any transfer of or transaction involving [the Subjects]: -
> (a) and to grant interdict *ad interim*"

In addition to moving said amendment, the motion also moved the court to grant interdict *ad interim* in terms of the third crave and warrant to inhibit in terms of the fourth crave.

7. The pursuer's motion was lodged with the court on 14 March 2016 and intimated by Mr Lynch upon Mr Williamson on the same date. A hearing was assigned for 14 March 2016. Mr Williamson had knowledge of the motion and the hearing.

8. Prior to the motion hearing on 14 March 2016, Mr Williamson telephoned Mr Lynch. Mr Williamson advised Mr Lynch that, having taken the defender's instructions thereon, he was not instructed to oppose the pursuer's motion.

9. As at 14 March 2016, the defender had personal knowledge of both the motion and the hearing.

10. Mr Lynch appeared on the pursuer's behalf at the motion hearing on 14 March 2016 to move that the Record be opened, amended and closed in terms of the minute of amendment and to seek interdict *ad interim* in terms of the third crave, preventing the defender from *inter alia* transferring the Subjects. In accordance with what

Mr Williamson had advised Mr Lynch, the defender was not present or represented at the said hearing. The sheriff continued consideration of the pursuer's motion overnight.

11. The matter called again on 15 March 2016, at which hearing Mr Lynch appeared on behalf of the pursuer. The defender was again not present or represented. There being no opposition thereto, the sheriff allowed the Record to be opened up and amended in terms of the pursuer's minute of amendment and granted *inter alia* interdict *ad interim* against the defender in terms of crave 3(a) prohibiting the defender from effecting any transfer of, or transaction involving, the Subjects ("the Interim Interdict"). The sheriff continued consideration of the pursuer's motion for warrant to inhibit on the dependence to 21 March 2016;

12. On 16 March 2016 at 4.54pm Stuart Sinclair, Sheriff Officer, served a copy of the certified copy interlocutor pronounced at Paisley Sheriff Court on 15 March 2016 referred to finding in fact [11] upon the defender, albeit personal service could not be effected. Sheriff Officers, having been unable to effect personal service and having made enquiries and being satisfied that the defender continued to reside there, effected service by depositing, after several audible knocks, a copy of the certified copy interlocutor through the letterbox of the Service Address and by sending a further copy by ordinary post to the Service Address.

13. Upon the defender's instruction, works were carried out at the Service Address in or around early 2016 to repair damage caused by water ingress. The works included removing and reinstating damaged ceilings in two rooms. The works cost £3850 and were not substantial.

14. On or around 1 January 2016, the defender entered into a lease of No 8 Dixon Avenue for a period of 6 months. The defender occupied No 8 Dixon Avenue in early 2016 albeit the period of the defender's occupation, and dates thereof, are unknown to the court. The defender retained control of, and had access to, the Service Address whilst the said works were executed thereto.

15. The defender did not advise his solicitor, Mr Lynch, the court, the council or any other agency that he no longer resided at the Service Address. He failed to do so as he had not ceased to reside there. Nor did he advise such individuals or agencies of an alternative address for *inter alia* correspondence purposes, as he maintained the Service Address for the purposes of correspondence. Whilst the said works were ongoing, he would regularly access the Service Address in order to collect mail which he continued to receive at the Service Address, including a letter from the Department for Work and Pensions dated 20 April 2016. Such mail included both service copies of the Interim Interdict.

16. As at the date of service, namely 16 March 2016, the defender remained resident at the Service Address for the purposes of service, notwithstanding any works being carried out thereto and notwithstanding any temporary accommodation elsewhere in early 2016.

17. As at 15 March 2016, or shortly thereafter, the defender was personally aware of the interlocutor pronounced at Paisley Sheriff Court on 15 March 2016, of service thereof upon him, and that in terms thereof he was prohibited from effecting any transfer of, or transaction involving, the Subjects. He was personally aware of the continued calling of the divorce action on 21 March 2016.

18. The defender was not present or represented when the divorce action called again at the hearing in 21 March 2016 at which hearing, on the pursuer's unopposed motion, the Interim Interdict was continued and warrant to inhibit on the dependence was granted.

19. On 5 July 2017, the defender conveyed 90% of the heritable title of the Subjects to Mrs Rafit Bashir. The consideration thereof was stated to be "love, favour and affection". Mrs Bashir is the wife of Mr Mohammed Bashir, Mr Bashir being a professional associate of the defender.

20. As at 5 July 2017 the defender was personally aware of the Interim Interdict, of service thereof upon him, and that in terms thereof he was prohibited from effecting any transfer of, or transaction involving, the Subjects.

21. The defender continued to be represented by Mr Williamson in the divorce action after the Interim Interdict was granted.

22. The defender was represented by Mr Williamson in the divorce action when he disponed 90% of the Subjects to Mrs Bashir.

23. Mr Williamson withdrew from acting on behalf of the defender in the divorce action on or around 30 October 2018. The divorce action thereafter proceeded as undefended.

24. The parties were divorced at Paisley Sheriff Court by decree dated 30 March 2022. The Interim Interdict remained in force during the dependency of the divorce action.

FINDS IN FACT AND LAW

1. The defender, having entered appearance in the divorce action, is presumed to be personally cognisant of all orders of the court in relation thereto. The defender has failed to rebut that presumption.
2. The defender, being represented by a solicitor in the divorce action, is particularly presumed to be personally cognisant of all orders of the court in relation thereto. The defender has failed to rebut that presumption.
3. Service having been effected at the Service Address on 15 March 2016, the defender was personally aware of the Interim Interdict and of service thereof upon him on 15 March 2016.
4. The defender was aware that in terms thereof he was prohibited from effecting any transfer of, or transaction involving, the Subjects;
5. Notwithstanding such knowledge, the defender transferred 90% of the title to the Subjects on 5 July 2017 and he did so in wilful defiance of the court's order of 15 March 2016.
6. The defender is accordingly in contempt of the order pronounced at Paisley Sheriff Court on 15 March 2016.

THEREFORE, Sustains the pursuer's second, third and fourth pleas-in-law and *quoad ultra* Repels the pursuer's remaining pleas-in-law; Repels the defender's pleas-in-law; Thereafter, Finds the breach of interdict to be proved and Grants crave three of the Initial Writ, Refuses craves One and Two as no longer necessary; Continues consideration of the defender's contempt to a procedural hearing and Reserves the question of expenses, and

Assigns a hearing on further orders and on expenses on 24 June 2025 at 10.00am as an in-person hearing.

Note:

Introduction

[1] In this summary application the pursuer craves an order ordaining the defender to appear to answer for breach of an interdict *ad interim* granted in Paisley Sheriff Court on 15 March 2016 ("the Interim Interdict") whereby the defender was interdicted from effecting any transfer of, or transaction involving, the Subjects, the defender having disponed 90% of the heritable title to the Subjects to a third party on or around 5 July 2017, and having retained the remaining 10% thereof himself.

[2] In the event that breach of interdict is established, the pursuer seeks the grant of a warrant for the defender's imprisonment or a fine not exceeding £2500.

Procedural background

[3] The action was raised on 13 December 2023 and called for a hearing on 9 January 2024. The defender was allowed until 21 February 2024 to lodge answers and an evidential hearing allowed, which hearing was thereafter assigned for 2 April 2024. By unopposed motion dated 29 February 2024, the defender moved that his answers be allowed, although late. When the case called on 2 April 2024, the pursuer moved for summary decree, which motion was refused and the action continued to a further evidential hearing on 16 May 2024, reserving the pursuer's preliminary pleas meantime. The diet of 16 May 2024 was discharged on the pursuer's unopposed motion, due to the non-availability of an essential

witness, and a fresh diet assigned for 10 July 2024. The diet of 10 July 2024 was discharged on the unopposed motion of the pursuer due to the non-availability of a shorthand writer and 18 July 2024 assigned *in lieu* thereof. When the action called on 18 July 2024, the pursuer moved to amend the application by inserting a new preliminary plea numbered one anent relevancy and specification, whereupon evidence was led but not concluded. I refused the defender's motion to hear evidence out of sequence. Further diets were assigned for 13 August 2024, on which date evidence was concluded, and 27 November 2024 for submissions. The diet of 27 November 2024 was converted to a peremptory diet, the defender's agent having indicated his withdrawal from acting, which diet was continued on the defender's unopposed motion to allow him to instruct new solicitors. When the matter called as regards a continued peremptory diet on 6 January 2025, I refused the defender's motion to assign a procedural hearing and on the pursuer's motion assigned a fresh hearing on submissions for 29 January 2025. When the matter called on the 29 January 2025, the defender's original agent appeared on the defender's behalf, having been re-instructed. On the defender's unopposed motion, the defender not having lodged written submissions, I discharged the hearing and ordained the defender to lodge written submissions by 24 February 2025, allowing the pursuer to respond thereto by 3 March 2025 if so advised. The action was continued *sine die* to allow written submissions to be lodged, with a hearing on the parties' respective submissions to be assigned *ex proprio motu* if deemed necessary. The defender lodged written submissions on 24 February 2025 and further thereto, on 6 March 2025, the pursuer's solicitor indicated that he did not intend to lodge further submissions in response thereto. In this regard I wished to be addressed on various aspects of the respective parties' respective submissions and, in particular, whether the pursuer was insisting upon her position that service at the Service Address was, of itself, sufficient to

impute knowledge of the interim order to the defender and assigned a hearing on submissions which hearing took place on 15 April 2025 on which date I made *avizandum*.

Evidential matrix

[4] The pursuer led evidence from Matthew Lynch, the pursuer's' solicitor in the divorce action, and Stuart Sinclair, Sheriff Officer. In addition the pursuer lodged two inventories of productions including *inter alia* the relevant motion, minute of amendment and corresponding interlocutors in the divorce action, Land Register Extracts and adminicles of evidence relating to the defender's residence at the Service Address, and works thereto.

[5] The defender gave evidence on his own behalf, in addition to leading evidence from Mr Mohammed Bashir, Mr Azam Ahmed and Mr Mohammed Khan. In addition, the defender lodged productions including a copy lease of No.8 Dixon Avenue, Glasgow and various utilities bills addressed to the pursuer and defender at the Subjects.

Pursuer's case

Matthew Lynch, Solicitor.

[6] Mr Lynch spoke to acting on behalf of the pursuer in the divorce action. In the context of that, he had received correspondence from Mr Williamson dated 17 February 2016 detailing the defender's income and outgoings. Pertinently, as regards the latter, the defender's outgoings had been listed as mortgage payments anent the Subjects, his "home" which was narrated in the letter as the Service Address and another property, namely 47 Dixon Avenue, which property the defender derived a rental income from of £765 pcm. The letter made no reference of the payment of rent as regards No 8 Dixon Avenue, Glasgow as an outgoing, notwithstanding the lease purportedly entered into on 1 January 2016.

[7] Mr Lynch spoke to his conversations with Mr Williamson on the morning of 14 March 2016 and his appearance at the motion hearing of even date. Mr Williamson had advised that he had received the pursuer's motion, had taken the defender's instructions thereon and confirmed that the pursuer's motion would not be opposed. The sheriff had continued consideration of the motion overnight, before granting interdict *ad interim* on 15 March 2016 whereupon Mr Lynch had instructed sheriff officers to serve the interlocutor upon the defender. Mr Lynch could not recall whether he had spoken to Mr Williamson to advise the outcome of the hearing. In cross-examination he conceded that there was no file note recording any subsequent conversation between him and Mr Williamson anent the interdict.

[8] The divorce action called again on 21 March 2016. Mr Lynch had instructed a local agent, Ms Thomson, to appear on behalf of the pursuer at the said hearing. Ms Thomson had advised Mr Lynch that she had in fact been instructed to appear for both parties at the said hearing. Contrary to Ms Thomson's assertion to Mr Lynch, I note the terms of the copy interlocutor of 21 March 2016, which notes that "Stevens" had appeared for the pursuer, and no appearance had been made on behalf of the defender.

[9] Against that background, the pursuer had lodged a copy letter addressed from the Department of Work and Pensions to the defender at the Service Address. The letter was dated 20 April 2016. Mr Lynch spoke to said letter as having been lodged as a production on behalf of the defender in the context of the divorce action.

[10] Thereafter the divorce action had progressed as defended until Mr Williamson withdrew from acting on 30 October 2018, following which the divorce action proceeded as undefended. It had settled in or around March 2022.

[11] Mr Lynch had been unaware prior to the raising of contempt proceedings of the defender's assertion that he had removed from the Service Address in 2016 pending construction works thereto. Upon being advised of the defender's position Mr Lynch had determined to make his own investigations. In particular, he had made enquiries as regards the builder purportedly engaged to carry out the said works, namely "RAF Builders". Upon investigating the invoice from RAF Builders produced by the defender, Mr Lynch had noted a number of anomalies, namely that RAF Builders' purported address did not exist, nor did the invoice contain any other contact details, payment details or indeed a VAT registration number.

[12] I found Mr Lynch's evidence to be both credible and reliable.

Stuart Sinclair, Sheriff Officer

[13] Notwithstanding the passage of time, Mr Sinclair could recall effecting service of the Interim Interdict upon the defender. The matter had stuck in his mind due to difficulties he could recall having encountered in attempting to effect service upon the defender on previous occasions. In his view, the defender was apt to try to evade service.

[14] He could recall that on 16 March 2016 there had been no indicators that the Service Address was unoccupied. He had knocked on the door of the Service Address, which was a main door flat, which knocks had gone unanswered. Accordingly, he had served the interlocutor of 15 March 2016 by placing it through the letterbox of the Service Address; the mode of service effected thereby accordingly was not personal service. Before doing so his habit would have been to speak to neighbours, and whilst he could not specifically recall who he spoke to on this occasion, he would not have left the service papers if he had not been satisfied that the defender could be served at the Service Address.

[15] Mr Sinclair could not recollect any evidence of building works being carried out at the Service Address on the date of service; in any event, he only observed the Service Address from the outside, whilst the alleged building works were internal only. In cross-examination he accepted that he may not have had sight of the works but, in his view, the purported works would not necessarily render a property uninhabitable. I took little from Mr Sinclair's evidence in this regard, as he is not a builder and, in any event, had not seen the works.

[16] Thereafter, he had been asked to make further investigations by Mr Lynch as regards the defender's assertions that, as of 16 March 2016, he had not resided at the Service Address, but at No 8 Dixon Avenue. He had made enquiries with the occupiers of properties neighbouring No 8 Dixon Avenue. Whilst neighbours spoke to a high turnover of tenants at the property, none could recall the defender. He had also spoken to the occupier of the flat immediately above the Service Address, being the property from which water ingress had damaged the Service Address thereby necessitating the purported works. The occupier could recall building works being carried out to the Service Address by virtue of water ingress but could not recall the dates thereof. Mr Sinclair had also investigated RAF builders on the instruction of Mr Lynch. Upon searching the internet, he could not find any business using that name in the Glasgow area; as with Mr Lynch, he had discovered that the business address given on the invoice did not exist.

[17] I found Mr Sinclair's evidence to be both credible and reliable.

Defender's case

The defender

[18] The defender had moved from the Subjects to the Service Address in 2013 as he could no longer afford the mortgage payments and council tax relative to the Subjects. He had left the Subjects in poor condition. Accordingly, the divorce action had been served upon him at the Service Address.

[19] The defender could not recall the name of the solicitor whom he had instructed in the divorce action. All he could recall was that he would speak to his solicitor two or three times per year, when his solicitor would call him and advise him that he need not attend various court dates or to request funds. Mr Williamson had not mentioned the Interim Interdict to him and accordingly the defender denied having given him instructions relative to the pursuer's motion of 14 March 2016.

[20] The defender denied all knowledge of the Interim Interdict having been served on him. He had not therefore known of the Interim Interdict, or service thereof, when he had transferred 90% of the title to the Subjects in 2017. Had he known of the order, he would not have breached it.

[21] In January 2016 the defender had moved to No 8 Dixon Avenue as the Service Address had suffered damage due to water ingress from an upper flat. The defender had had to remove from the Service Address due to the condition of the property. He advised that half of the ceiling had collapsed, and mice were entering the property. He had hired Mr Rafiq to carry out repair works. Mr Bashir had recommended Mr Rafiq to him. The works had taken 2 to 3 months to complete, from January to April 2016 or thereabouts. He had paid Mr Rafiq in cash.

[22] No 8 Dixon Avenue was owned by Arshad Khan. In January 2016 the defender had entered into a lease thereof for a 6-month period, expiring on 30 June 2016, with rent of £400 pcm, which rent he had also paid in cash. When cross-examined as regards why said rent was not listed as an outgoing in Mr Williamson's letter of 17 February 2016, and indeed whether he had advised Mr Williamson of his liability in that regard, the defender questioned why he would give such information to his solicitor.

[23] He had not paid council tax at No 8 Dixon Avenue. Indeed, he had not informed any agencies of his relocation to No 8 Dixon Avenue, be it the council or otherwise as he only intended to live there for a short period of time. He had attended the Service Address weekly or thereabouts in order to meet with the builders. He had received the letter of 20 April 2016 from the Department of Work and Pensions addressed to the Service Address although, when questioned as to how a copy of that letter had been in the possession of Mr Williamson, he again queried why he would give such correspondence to his solicitor.

[24] He had moved out of No 8 Dixon Avenue in order around the end of April 2016.

[25] The defender's financial circumstances had led to him disposing of the Subjects. He had suffered a heart attack and stroke. As such, whilst he had a rental portfolio and income, his tenants had stopped paying him and his rental income had diminished. He referred to a number of debt collection letters he had received in 2013 and 2014 as regards *inter alia* council tax, HMRC and utilities arrears. To this end he had initially leased the Subjects to Mr Bashir, who had paid the monthly mortgage payments of £1100 pcm. or thereby. The defender had thereby assuaged the heritable creditor. Upon Mr Bashir applying pressure to the defender to carry out repairs to the Subjects, the defender had simply suggested that Mr Bashir purchase the Subjects instead and thereafter carry out the repairs himself.

[26] The defender had therefore transferred title to the Subjects to Mr Bashir's wife. His evidence was that he did so to avoid the Subjects being repossessed by the heritable creditor. Insofar as the defender was concerned, no money was paid to him by Mrs Bashir and accordingly there was no consideration paid. Mrs Bashir had, however, paid the arrears on the defender's mortgage.

[27] I found the defender to be an evasive witness, whose position was wholly lacking in credibility. His testimony suggested that he had existed, either due to the incompetence of others or his own volition, within an information vacuum during the dependence of the divorce action. I was not satisfied that he only spoke to Mr Williamson two or three times *per annum* when monies required to be paid, I was not satisfied that Mr Williamson had not advised him of the pursuer's motion, I was not satisfied that the service copies of the Interim Interdict had not come to his attention either on 15 March 2016 or shortly thereafter.

Azam Ahmed

[28] Mr Ahmed was a friend of the defender having known him for 30 years or thereabouts. He could recall the defender staying at a property in Dixon Avenue in 2016 and could recall the defender residing at a neighbouring flat whilst work was being carried out to repair damage caused by water ingress. Such works had been ongoing for four or five months. On one occasion he had visited the defender in Dixon Avenue and could recall the defender meeting him at his car outside No 8 Dixon Avenue.

[29] I considered Mr Ahmed's evidence to be of little assistance to the court.

Mohammed Kahn

[30] Mr Khan was a friend of the defender having known him for 30 years or thereabouts. He saw the defender once or twice a month, depending on his other commitments. He saw the defender at some point during the winter at the beginning of 2016. He recalled the defender staying at No 8 Dixon Avenue, whilst works were undertaken at the Service Address, but could not recall which month. Whilst he could not recall how long the works at the Service Address lasted, he had visited the defender only once whilst at No 8 Dixon Avenue.

[31] I considered Mr Khan's evidence to be of little assistance to the court.

Mohammed Bashir

[32] Mr Bashir is an estate agent. He resides at the Subjects with his wife, who is the proprietor of 90% thereof, with the defender having retained 10%. Mr Bashir knew the defender by virtue of the defender's property portfolio. He was aware that the Subjects were the parties' former matrimonial home and that the defender had removed to the Service Address in or around 2014. He could recall the defender moving temporarily to No 8 Dixon Avenue whilst repair works were undertaken to the Service Address following water ingress causing the ceiling to collapse. Whilst he could not recall the exact dates, he considered January or February 2016 to be likely.

[33] Mr Bashir had introduced the defender to Mohamed Rafique trading as RAF Builders. Mr Rafiq was often contracted to undertake works by Mr Bashir, having undertaken works to "a couple of hundred" properties on his behalf. In cross-examination, Mr Bashir conceded that he did not know Mr Rafiq's trading address.

[34] Mr Bashir had also introduced the defender to Arshad Khan, the owner of No 8 Dixon Avenue. At the relevant time, Mr Khan had been Mr Bashir's accountant. Further to said introduction, Mr Khan had leased No 8 Dixon Avenue to the defender for a period of 6 months under a short assured tenancy agreement. Mr Bashir had not charged a fee or commission for the introduction.

[35] Mr Bashir was aware that the defender had had a number of creditors in 2016. At some point in 2015, Mr Bashir and his wife have moved into the Subjects. The Subjects were at that time secured by a standard security and, in terms of the home report obtained, there was no equity remaining in the value thereof. Mr and Mrs Bashir had transferred funds to the defender to service his secured loan repayments at the rate of £1200 pcm. In addition, Mr Bashir had paid the arrears of the defender's secured loan. Consequently, on 5 July 2017 the defender transferred 90% of the title to the Subjects to Mr Bashir's wife, Rifat Bashir, whereupon Mr and Mrs Bashir assumed responsibility for the defender's outstanding borrowing secured over the Subjects. The secured lender had not been informed of this arrangement, nor had solicitors been involved in the transfer. Title had been transferred to Mrs Bashir, rather than Mr Bashir, as she was younger than he with greater prospects of securing a mortgage.

[36] I had little difficulty in accepting the evidence of Mr Bashir, albeit his evidence caused some concern as regards the transfer of title from the defender to Rifat Bashir, in terms of the failure to take legal advice, the failure to inform the secured lender and in terms of the consideration paid.

Mohammed Rafiq

[37] Mr Rafiq is a self-employed builder, having worked in the construction industry for 15 years or thereabouts. He traded under a number of different names. He employed others on an *ad hoc* basis. He could recall doing some work for the defender, further to a ceiling having collapsed in a bedroom of the Service Address. The property had been covered in black dust as a result.

[38] He spoke to the quote and invoice lodged by the pursuer, albeit could not recall the exact details of the job due to the volume of work undertaken by him, the number of people employed by him and the passage of time. In cross-examination as to the various lacunas in the quote and invoice, he conceded that the address was incorrect, there being no such address as "11 Hutchison Drive". Mr Rafiq stated that such documents had not been prepared by him but by an employee, which employee had "probably made a mistake". Mr Rafiq offered that he was not "very good" at reading or writing and as such his colleagues would deal with paperwork. No bank details were provided as his preferred method of payment was cash. No VAT number was provided as he was not VAT registered, his income falling below the VAT threshold.

[39] He could recall that the works to the Service Address; the ceiling was removed and new plasterboard erected and skimmed with plaster. He could not recall when the works were commenced but could recall that the works persisted over "a couple of months" as, as the property was unoccupied, time pressures were lessened. The defender had moved "down the road".

[40] He could not recall if any mail had been delivered at the Service Address however, in clearing the site would have placed any mail to one side. He could not recall whether or not the Service Address was visited by the defender, sheriff officers or anyone else.

[41] The defender had settled Mr Rafiq's invoice in the sum of £3850 cash. Notwithstanding the substantial amount of cash paid, he could not recall when or where it was paid over, and no record could be produced of payment having been made.

[42] Again, whilst concerned as regards a number of Mr Rafiq's business practices, I had no reason to believe that his evidence was anything other than credible, albeit I had reservations as regards its reliability.

Submissions

Pursuer

[43] Mr Bryce for the pursuer referred to the decision of the Inner House in *Henderson* v *MacLellan* (1874) 1R 920 wherein the court referred to the well-settled presumption that, after a party had entered appearance in court, and particularly when he is represented by a solicitor, he is personally cognisant of all orders of the court in the case. Personal ignorance would not be a sufficient defence unless the defender showed that his ignorance was excusable. The current case fell squarely within the scenario set out in *Henderson*. If Mr Williamson had failed to take the defender's instructions anent the interim order sought and thereafter failed to advise the defender of the orders made, that would be an egregious breach of the Law Society of Scotland Practice Rules 2011. No evidence was produced by the defender of any complaint having been made against Mr Williamson in this regard. In all the circumstances, the defender had failed to rebut the presumption set out on *Henderson.*

[44] *Esto* the presumption was rebutted; the pursuer founds upon the inadequacies of the vouching produced by the defender as failing to demonstrate his removal from the Service Address to No 8 Dixon Avenue. He had failed to produce vouching supporting payment of either rent at No 8 Dixon Avenue, or of the invoice or RAF builders. He had not led any

evidence from his solicitor or the purported landlord, Mr Khan. Nor had he registered for council tax at No 8 Dixon Avenue or told his solicitor about the lease as an outgoing. No evidence was led of mail having gone missing at the Service Address apart from, perhaps somewhat conveniently, both service copies of the interlocutor of 15 March 2016. In any event it mattered not whether the court concluded that the defender really did occupy No 8 Dixon Avenue due to the presumption referred to.

[45] I pressed Mr Bryce as regards submissions made by him in the context of his motion for summary decree, the upshot of the authorities lodged by him being that service at the Service Address was sufficient, and it mattered not that the defender may have removed temporarily therefrom. Mr Bryce indicated that the pursuer no longer insisted upon such a line of argument and conceded that the pursuer required to prove knowledge on the part of the defender.

Defender

[46] On behalf of the defender Mr Whyte submitted that evidence of a breach of a court order is not enough; what must also be proved, beyond reasonable doubt, is a wilful or deliberate disobedience or disregard of the court's orders. A contempt cannot be committed through inadvertent or accidental breaches of an order (*Sapphire 16 SARL* v *Marks and Spencer plc* [2021] CSOH 103). To establish wilful defiance, there must have been knowledge of the part of the defender as to the existence of the Interim Interdict, be it personal or constructive knowledge.

[47] The defender did not dispute that *Henderson* is authority for the presumption that a party is aware of all orders made in a court action to which he is a party however, properly understood (*Anderson* v *Moncrieff* 1966 SLT (Sh Ct) 28) the pursuer must aver sufficient

knowledge on the part of the defender in order to plead a relevant case whereupon a defence of excusable ignorance may be a defence open to the defender. As such if the court is satisfied that the defender possibly did not have personal knowledge of the interdict or that there is a plausible account amounting to an excuse which eliminates any constructive knowledge he may have had, then the court cannot be satisfied beyond reasonable doubt as regards *mens rea.*

[48] It was in this regard that there was a gap in the pursuer's case; Mr Lynch could not speak to having written to or spoken to Mr Williamson about the grant of the Interim Interdict - accordingly there is an evidential gap as to whether the defender's agents, and the defender, knew of the Interim Interdict having been granted. Mr Sinclair's evidence could not be relied upon as it was unreliable and demonstrated antipathy towards the defender.

[49] To that end, the defender denied knowledge of the Interim Interdict. Separately, the defender had disposed of the Subjects to relieve himself of an unserviceable mortgage at no financial gain to himself.

[50] I queried whether the court was to distinguish between the orders contained within the interlocutor of 15 March 2016 and the continuance thereof by interlocutor dated 21 March 2016. Mr Whyte confirmed that the defender did not make out a case as regards there being any difference between the orders in the two interlocutors which therefore fell to be regarded as one and the same. I have proceeded on that basis, which is, in any event in accordance with the approach of the Lord President in *Henderson*.

Decision

[51] The starting point in considering the requisite *mens rea* for breach of interdict is as set out by the Lord President in *Henderson,* which case, as in the present, considered contempt for breach of interdict*:*

> "Now, after a party has entered appearance in Court, and particularly when he is represented in subsequent stages of the case by his procurator, there is a well settled presumption that he is personally cognisant of all order of Court made in the case; and I see no reason why that presumption should not hold in a proceeding of this kind, as well as in any other.
>
> It is true that the party himself may not be personally aware of the orders of Court, through his procurator not having communicated his knowledge to his client, but I do not think that personal ignorance is a sufficient defence in a case of this sort. The respondent must shew that his ignorance was excusable if he is to succeed in this line of defence. But that is a question on the merits."

[52] *Henderson* was an appeal to the Inner House against a decision by the sheriff-substitute to dismiss the petition following a debate, the sheriff-substitute being satisfied that the petition was irrelevant is it did not contain averments that the respondents had received intimation of a continued order. The Lord President disagreed, holding that the petition was relevant finding at p923-24:

> "To say that the complainer must aver that the respondent had personal knowledge is a thing I never heard of before. The plain course for the Judge to take here is to assume that the respondent did know, though it is open to him to instruct a defence that he was excusably ignorant".

[53] Accordingly, it was in the context of an appeal prior to the merits of the case being decided that Lord Deas offered at p924:

> "I agree with your Lordship that the presumption is that a party to a case knows all that takes place in it, and it is for him to state in defence how far he was ignorant, and excusably ignorant, of any particular order or step of process. I do not, however, wish, at this stage of the case, to go into the question how far personal knowledge is necessary, or what circumstances may be sufficient to infer personal knowledge, because to do so might be anticipating the merits."

[54] In the case at hand, the defender not having attacked the relevancy of the pursuer's case for want of averments as regards personal knowledge, which argument would not be well-founded following the ratio of *Henderson,* I am bound by the dicta of the Lord President which, to my mind, falls into four parts:

(a) There is a rebuttable presumption that after a party has entered appearance, he is personally cognisant of all orders of the court made in the case;

(b) Such a presumption is not dependent upon his solicitor's knowledge; the *dicta* of the Lord President provides that the knowledge of the litigant, who has entered appearance, can be inferred independently of the knowledge of his agent;

(c) The presumption simply arises "particularly", that is, it is reinforced, where an agent represents him in subsequent stages of the case; and

(d) It is for the defender to show that he was "excusably ignorant" of the order.

[55] Applying the foregoing in the case at hand there is a rebuttable presumption that the defender was personally cognisant of all orders of the court, including the Interim Interdict, and it mattered not whether Mr Williamson knew, or not, of the Interim Interdict having been granted, whether he communicated that to the defender and indeed it mattered not whether the Interim Interdict was served upon him.

[56] Being satisfied of the said presumption, it was for the defender to establish that he was excusably ignorant of the Interim Interdict. The defender has failed to do so. If I were to accept that the defender was ignorant of the Interim Interdict, which for reasons which I shall come onto I do not accept, such ignorance would be by virtue of the defender's own failure to update his lawyer, the court or indeed any other authorities such as the council or the Department of Work and Pensions of a new address, albeit temporary and be it for

postal purposes of otherwise. Indeed, given the defender's own evidence that he only spoke to his solicitor very occasionally, such failure is typical of what I considered to be his cavalier attitude towards instructing or otherwise communicating with his solicitor, and indeed towards the divorce action itself. Indeed, in evidence, it became apparent that he was substantially disinterested in, and disdainful of, the same. He is, to that extent, the author of his own misfortune and the court cannot indulge such failures by enabling a party to plead ignorance of court orders properly served at the address in the instance unless that party has indicated that that address is no longer suitable. Certainly, such ignorance would not be excusable.

[57] Furthermore, I am satisfied that Mr Williamson obtained the defender's instructions as regards the pursuer's motion, including the Interim Interdict, prior to the hearing on 15 March 2016. I have no reason to doubt Mr Lynch's evidence in that regard which evidence is, to my mind, supported by the fact that Mr Williamson did not appear, or instruct appearance, at the hearing to oppose the pursuer's motion or otherwise continue it to obtain the defender's instructions. For an agent to do so without client instructions would constitute a remarkable state of affairs and yet no such issue was taken by the defender. Nor did the defender lead Mr Williamson in evidence.

[58] The defender therefore being aware of the pursuer's motion, and being aware that it was not to be opposed, was at least put on notice of the possibility of interdict *ad interim* being granted and the order being served and cannot thereafter benefit from either wilful or reckless ignorance of what followed thereon.

[59] If I am not correct in that, I am satisfied beyond reasonable doubt that the defender was personally aware of the grant of the Interim Interdict. More pertinently, given the nature of the order, I am satisfied beyond reasonable doubt that the defender was personally

aware of service thereof. That is so because I am satisfied that the defender was resident, albeit perhaps not on a full-time basis, at the Service Address on the date of service.

[60] The defender gave evidence that he had moved from the Subjects to the Service Address in or around 2013, and there is no dispute that he continued to reside there as at the date of the proof. For the reasons I am about to come onto, I am not persuaded that he wholly gave up occupancy thereof for the purposes of building works, if at all, on 15 March 2016.

[61] I have reached such a conclusion on firstly the basis that there was no evidence before me that he had removed from the Service Address on the date of service, other than the evidence of the defender, who I found to be largely lacking in credibility and his witnesses, who were not particularly reliable as regards dates.

[62] As such whilst I accept that works were carried out to the Service Address in 2016, I was not satisfied as regards the extent of those works, that they required the defender to remove from the Service Address or that such works were ongoing as at 15 March 2016.

[63] Even if I were to accept that the defender may have occupied a nearby property on the 15 March 2016 whilst works were being undertaken to the Service Address, there was no evidence before me that he had given up occupancy of the Service Address. Such works were carried out on the defender's instructions and the defender himself conceded that he regularly accessed the Service Address to inspect the same. I am satisfied that he also collected mail which continued to be sent there, the defender not having advised of an alternative address as he had not intended to remove for long. To that extent he continued to reside in the Service Address, even whilst occupying No 8 Dixon Avenue whilst works were carried out and, more pertinently, he continued to use the Service Address, and not No 8 Dixon Avenue, as a postal address.

[64] I am therefore satisfied that he resided at the Service Address at the date of service. Against that, I would require to be satisfied that both service copies of the Interim Interdict, namely that personally delivered by sheriff officers and that subsequently posted to the Service Address, went missing or otherwise failed to come to the defender's attention, whereas other items of mail were delivered without issue. I find such a position to be wholly untenable.

[65] Being satisfied that the defender was resident at the Service Address as at 15 March 2016, I am satisfied that sheriff officers effected service of the interlocutor of 15 March 2016, and therefore the Interim Interdict, on the defender on 15 March 2016 and, even if it did not come to his attention on that date, I am satisfied beyond reasonable doubt that he had sight of it shortly thereafter.

[66] Mr Whyte submitted that the defender's denials of knowledge could be tested against questions of motive, in which regard he had achieved no financial gain as regards the disposal of the Subjects. This was not, he submitted, some deliberate and calculated evasion of the Interim Interdict to benefit himself, or some performative incident of spite. He simply wished to relieve himself of a mortgage liability which he could no longer afford. I disagree. The relief from such liability was, of itself, the financial gain which the defender achieved. Whether that was an act of necessity, or an act of spite matters not; such an act was in breach of the court's order.

[67] Separately, and perhaps more troubling, I find it again indicative of the defender's nonchalant attitude towards such matters that he did not instruct solicitors or, seemingly, otherwise take legal advice as regards the disposal. This court cannot overlook the fact that the defender disponed 90% of the heritable title to the Subjects purportedly for "love, favour and affection" to the wife of a work associate, no evidence having been led of any particular

relationship between them which one would usually expect to see in such transactions, albeit I accept that such a relationship is not necessary. The transaction was therefore purportedly for no consideration on the premise that it was a gift to Rifat Bashir, and I therefore presume that no Land and Buildings Transaction Tax was paid thereon. The value obtained also ran the possibility of negatively impacting the value of the matrimonial estate, albeit I was not addressed on that.

[68] In any event, I do not consider that the transaction was indeed a gift when the consideration was clearly the assumption of the defender's liability to the secured lender, the extent of which liability was, according to the defender's evidence, greater than or equal to the value of the Subjects. For the court to overlook this anomaly would be to acquiesce in it and accordingly I wish to be addressed on the matter by the defender or his agent when the action next calls.

[69] Furthermore, the defender's failures in instructing Mr Williamson, or indeed any lawyer, in the transaction are suggestive of covert behaviour, particularly when one considers that the defender owned a portfolio of properties. It is therefore reasonable to infer that he was not naïve as regards standard conveyancing practices. Separately, I find it surprising that the defender failed to market the Subjects on the open market, which course one would normally follow if the best price were to be achieved. However marketing of the Subjects ran the risk that the proposed transaction would come to the pursuer's attention. One is therefore left questioning why the defender elected to proceed as he did, whilst mindful that such an approach on his part avoided the scrutiny of the court, of the pursuer, of lawyers and of the market.

[70] Thereafter there was no dispute that the terms of the interdict *ad interim* granted were sufficiently clear such that the defender could not plead ignorance of their import. The

order clearly and unambiguously prohibited the defender from effecting any transfer or transaction involving the Subjects; yet notwithstanding its terms, that is what the defender did when he disponed 90% of the heritable title to the Subjects to Rifat Bashir.

[71] Accordingly, as set out in *Sapphire SARL* at [46]:

> "[46] As already observed, not every breach of a court order will amount to contempt. … In brief, what must be proved, beyond reasonable doubt, is conduct which is wilful and which shows a disregard for the court. 'Wilful' in this context means deliberate: Aldridge, Eady & Smith on Contempt, paragraph 16-227. The fact that a person does something which they have been interdicted from doing, or undertaken not to do, may imply a lack of respect for the court's order, or the undertaking: Beggs v Scottish Ministers 2005 1 SC 342 at [30]. The same reasoning can equally be applied to a person who does not do something they have been ordered to do."

[72] Being satisfied that the defender was aware of the terms of the Interim Interdict when he did so, I have no hesitation in concluding, beyond reasonable doubt, that the defender, in disponing title to 90% of the Subjects, did so in wilful disobedience of the court's order. It cannot reasonably be inferred that the defender's conduct was "accidental or unintentional" (*Transocean Drilling UK Ltd* v *Greenpeace* [2020] CSOH 66). Such actions on his part at the very least readily imply a lack of respect for the court's order (*Beggs* v *Scottish Ministers* 2005 1 SC 342 at [30]), and in my view the circumstances surrounding the transaction, as I have narrated at [], only serve to bolster such an implication.

[73] There was no dispute that if the breach was established, it was sufficiently serious to amount to a contempt of court (*Sapphire 16 SARL* at [38]) and accordingly I find that the breach amounted to a contempt of court.

[74] I therefore repel the pursuer's first plea-in-law and sustain the pursuer's second, third and fourth pleas-in-law and find the breach of interdict to be proved; I repel the defender's pleas-in-law *in toto* and thereafter continue consideration of the defender's contempt to a procedural hearing to determine the appropriate disposal, at which hearing I

require to be addressed as regards paragraph [] *supra*. Parties not having addressed me as regards expenses, I assign a hearing on expenses to call alongside said procedural hearing.

Authorities Referred to

1. *Henderson* v *MacLellan* (1874) 1 R 920
2. *Anderson* v *Moncrieff* 1966 SLT (Sh Ct) 28
3. *Beggs* v *Scottish Ministers* [2005] CSIH 25
4. *Transocean* v *Greenpeace* [2020] CSOH 66
5. *Saphhire 16 SARL* (formerly known as *Orion IV European 16 SARL*) [2021] CSOH 103
6. *Easdale, Petitioner* [2024] CSOH 7