



SHERIFF APPEAL COURT

**[2026] SAC (Civ) 24
EDI-A449-24**

Sheriff Principal N A Ross
Appeal Sheriff D O'Carroll
Appeal Sheriff G Murray

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL N A ROSS

in the appeal in the cause

CLUB LOS CLAVELES; ALBERT FLETCHER; CAROL ANN PARKINSON;
NORMA ANN BURSTON; TERRENCE WILLIAM SMITH and
WALTER MCKINNON FARQUHAR

Pursuers and Appellants

against

HUTCHINSON TRUSTEES LIMITED

Defender and Respondent

**Pursuers and Appellants: Motion, (solicitor advocate); BTO Solicitors LLP
Defender and Respondent: Whyte, advocate; Blackadders LLP**

17 April 2026

[1] The first appellant (the "Club") is an unincorporated association, and the remaining appellants are officers of the Club. It operates a timeshare development in Tenerife. The respondent is the trustee for the Club which, amongst other functions, holds on its behalf shares in five limited companies which in turn own heritable property within the development. The relationship between the appellants and respondent is governed by a

Deed of Trust. The Deed of Trust provides, at Clause 15.1, that either party may terminate the arrangement by giving not less than 6 months' notice in writing.

[2] The appellants raised the action seeking specific implement of an alleged agreement reached during a video conference call on 11 October 2023 amongst the parties' respective representatives: Mr Fletcher and Mr Farquhar on behalf of the Club, and Ms Wilkinson and Mr Allan on behalf of the respondent. They averred that parties had reached a binding agreement during that meeting that the respondent would resign as trustee. The respondent did not dispute that a conversation took place during that meeting which related to the possibility of resignation by the respondent as trustee. The respondent's position was, however, that parties reached an agreement only in principle, which was not intended to be legally binding. The respondent averred that it regarded itself as bound to act in the best interests of all beneficiaries; that there was a background of internal disputes involving the Club constitution; that it was amenable to resigning; but would not enter a binding agreement to resign until a suitable replacement trustee could be identified. The appellants raised the present action seeking specific implement of the alleged oral agreement by the trustee to resign. The respondent's defence was that no enforceable agreement had been reached.

[3] The action went to proof on the question of what had occurred during the meeting of 11 October 2023. The sheriff heard evidence from all those present in the meeting and considered contemporary documentary evidence. He produced a closely-reasoned judgment which engaged with all of the evidence which he heard. The sheriff found that no binding contract to cease the trusteeship had been entered into on 11 October 2023 between the Club and the respondent.

The appellants' submissions

[4] The appellants advanced three grounds of appeal: that the sheriff had misapplied the objective test for contract formation, that he had failed to give proper weight to certain evidence, and that he failed to take account of post-meeting conduct. A fourth ground, seeking to categorise the agreement as either an option or a waiver, was not insisted upon. The appellants submitted that oral constitution, lack of formality, gratuitous undertakings or high value were not by themselves a bar to a binding contract. While the sheriff had applied the correct legal test of objectivity, he attached undue weight to these factors, and also to consideration of the respondent's subjective motivation. Further, the contemporary written evidence demonstrated a different factual scenario and had not been given due weight. The respondent's post-meeting conduct was more consistent with a binding agreement than not. All the necessary elements of a contract had been agreed.

The respondent's submissions

[5] The respondent submitted that there was a considerable history to the running of the Club, set out in the averments and evidence, and that the meeting of 11 October 2023 must be seen in context. The sheriff had properly considered the evidence and explained his view. Parties were not in dispute about the principles to be applied, but in what they required and how they had been applied to the facts. This was a contract relating to trust, and not a purely commercial contract. The key question was intention to be bound. The sheriff had approached matters correctly and objectively. The authorities did not direct that documentary evidence displaced other evidence.

Decision

[6] The appeal was limited to challenging the weight which the sheriff placed on evidence, relating to the sources of evidence, background context, types of evidence and subsequent conduct of the parties. There was no challenge as to the legal tests applied, and no challenge that the sheriff had correctly and fully recorded the evidence led at proof. Only the respondent's counsel made reference to the powers of an appeal court in such circumstances, and so we have had regard to the general criterion that an appeal court cannot interfere with inferences drawn from findings in fact unless the sheriff has reached an unreasonable conclusion on the evidence.

[7] Parties were in agreement that whether a contract has been concluded is determined objectively by what was said and done (*Dawson International plc v Coates Paton plc* 1993 SLT 80 at p 95K; *RTS Flexible Systems Limited v Molkerei Alois Muller GbmH* [2010] UKSC 14 at paragraph 45). As the Inner House noted in *Robertson v Anderson* 2003 SLT 235:

“...the critical issue is whether what was said by each party amounted to a serious undertaking of the kind to which the law attributes binding effect, or was, for example, merely light hearted banter between friends, or a statement of future intention of a non-binding character.” (at paragraph 12, per Lord Reed)

[8] The first ground for the appellants singled out two strands of the sheriff's reasoning. The sheriff was criticised for concluding that (i) the absence of an agenda for the 11 October meeting, or of any recording of the conversation, or of post-meeting written confirmation, and (ii) the fact the respondent had nothing commercial to gain, rendered it implausible that a binding agreement had been reached. The appellants' submission rested on the propositions that oral contracts were enforceable, that high value was not a barrier to informal contract, and that contracts could be entered gratuitously without commercial gain. In our view, these points are uncontroversial, but do not reflect the exercise the sheriff was

carrying out. He was assessing, as a court must, the likely intentions of the parties as objectively viewed. The identified factors were merely two of the elements which had a bearing, in his estimation, on the parties' respective intentions. Competency or relevancy were not factors in that assessment. Other pieces of evidence which the sheriff took into account related to the subsequent conduct of the parties; the benefit to the respondent of not being locked into an acrimonious trusteeship; the appellants apparently considering they required subsequently to obtain the members' consent; the absence of an available replacement trustee and likely consequences; the likelihood of binding or non-binding intention; the subjective intentions of the parties as shown by the evidence; the significant and serious nature of the decision; the absence of prior discussions; the background of acrimony within the Club; the lack of advantage for the respondent in binding itself; and the fact that the Deed of Trust stipulated 6 months' written notice of termination. The sheriff discussed his assessment of all these factors, and fully explained his reasoning. Seen in context, we do not accept that the sheriff's conclusion on these matters is one which no sheriff acting reasonably could have reached, or that the elements singled out for criticism were wrongly considered or treated, or were given undue significance. The sheriff's decision was rational and evidence-based. There is no basis on which this court could or should interfere with his assessment.

[9] The second ground related to the weight to be given to documentary evidence. The appellants founded on the content of four emails between the parties. We do not set these out in detail. The appellants may be correct that they are consistent with the appellants' position. That is nothing to the point. The only basis on which they could start to support an appeal would be if they were incompatible with the sheriff's judgment and the sheriff had failed to give an explanation. They are not incompatible with the sheriff's judgment.

Indeed, the email of 26 October 2023 appears to bolster the proposition that no agreement had been reached, in that the membership “supported unanimously the view that the contract...should be terminated by joint agreement”, a formulation apparently incompatible with the existence of an agreement. The email of 30 October 2023 stated: “we duly note termination by mutual agreement”, but that is opaque as to whether it was a past event or a future intention. We accordingly do not accept that any error was demonstrated. An appeal court cannot substitute its own findings in the absence of error or other cause. There is no basis to consider that the sheriff’s conclusions were such that no sheriff acting reasonably could have reached them.

[10] We note the appellant’s reliance on *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) where, following an extended treatise on recollection of evidence, the court stated:

“...the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses’ recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts...”

[11] No doubt that observation has much to commend it, but it is vulnerable to fact-specific considerations and is not a proposition in law. We must look at the present appeal on the specific facts, not on any general policy ground. This ground of appeal is only weakly supported by the facts which were in any event not incompatible with the analysis of the sheriff. The second ground of appeal does not give a basis on which the sheriff’s findings could be successfully challenged.

[12] The third ground of appeal was in similar vein and founded on the sheriff’s alleged failure to take account of the respondent’s post-meeting conduct. It founded on what was said to be a correct application of *RTS Flexible Systems* (above) which required weight to be

placed on subsequent conduct as evidencing a binding agreement. The appellants placed particular reliance on the respondent subsequently invoicing the appellants for a fee for “Transfer of Trusteeship”, which it was submitted no trustee should do in advance of an event which might never occur. The appellants submitted this proved there was a pre-existing binding agreement.

[13] In our view that submission was groundless both in law and in fact. *RTS Flexible Systems* did not lay out any such rule, and indeed stated:

“We agree...that, in a case where a contract is being negotiated subject to contract and work begins before the formal contract is executed, it cannot be said that there will always or even usually be a contract on the terms that were agreed subject to contract. That would be too simplistic and dogmatic an approach. The court should not impose binding contracts on the parties which they have not reached. All will depend on the circumstances...” (per Lord Clarke at paragraph 47)

[14] As to the facts, the sheriff recognised and took into account the post-contract actings. He explained at length what inferences he drew from certain documents, why he preferred some evidence over other evidence, and in particular why the invoicing and payment of this sum was not inconsistent with his conclusions. As he stated at paragraph 36:

“I do not consider the defender’s charging of a fee for work some months later for bringing its role as trustee to an end...to be evidentially significant. That need not show anything more than that both parties anticipated that the defender’s role as trustee would be coming to an end.”

[15] We cannot say that this finding is either irrational or incompatible with the sheriff’s overall conclusion. We reject this ground also. The fourth ground of appeal was not insisted upon.

Decision

[16] We refuse the appeal. We were not addressed on expenses, so parties should attempt to agree these, failing which within 21 days the clerk will fix a hearing by written submissions.