OUTER HOUSE, COURT OF SESSION

[2025] CSOH 120

CA3/25

OPINION OF LORD LAKE

In the cause

DAC BEACHCROFT CLAIMS (SCOTLAND) LIMITED

Pursuer

against

MOHAMMED AL DAHBASHI ADVOCATES

Defender

Pursuer: Brown; DAC Beachcroft Scotland LLP
Defender: Black; Johnson Legal

19 December 2025

Introduction

[1] The pursuer seeks payment from the defender of invoices rendered for legal services provided in relation to the conduct of litigations in the Court of Session. The defender does not dispute that the services were provided but does dispute liability to meet the pursuer's fees. They contend that when entering into terms of engagement with the pursuer, they did so as agents and incurred no liability of their own.

[2] The parties agreed to a preliminary proof to determine the question of whether the terms of engagement imposed liability on the defender to make payment of the pursuer's fees and outlays, or whether those terms impose liability only on the ultimate client. Prior

to the proof diet, parties produced a joint bundle of productions and entered into a joint minute agreeing that all productions were what they bore to be and that they would be admitted in evidence without the requirement of being spoken to by a witness. They also agreed that all correspondence in the bundle was sent by and to the parties and on the date apparent from the face of the documents. This has saved a great deal of time. It meant that no oral evidence was led and the hearing proceeded straight to submissions. Before turning to the agreed documents, it is convenient first to consider the legal principles that are to be applied.

Applicable law

[3] For the pursuer it was submitted that there were presumptions that, (1) where an agent acting within the scope of his authority contracts as such on behalf of a disclosed principal, he concludes a contract between his principal and the other party, and, (2) a person who signs a written contract in his own name without qualification is presumed to have intended to be personally bound by that contract. Although these were the presumptions, it was submitted that in every case the issue of whether there was personal liability is an issue to be determined by construction of the contract.

[4] Counsel referred to *Lindsay* v *Craig* 1919 SC 139 where Lord Cullen stated the following,

> "…the defender avers that he acted in the matter, within the knowledge of the pursuer, as selling agent for a Mr Houldsworth, who was disclosed to the pursuer as his principal, and that the contract of sale of the shares was thus made between the pursuer and Houldsworth. But an agent acting for a disclosed principal may interpose his own personal credit and obligation in the transaction. The rule of law is succinctly stated in Pollock on Contracts to the effect that an agent 'is personally liable if he undertakes to be so: such an undertaking may be inferred from the general construction of a contract in writing, and is always inferred where the agent contracts in his own name without qualification.'" (p 146)

Counsel also referred to a more recent restatement of the rule by a later Lord Cullen in *Digby Brown & Co* v *Lyall* 1995 SLT 932 as follows:

> "It is well settled that if such an agent signs a contractual document without qualifying his signature there is a presumption that he is contracting personally. In order to avoid this it must be apparent from the other parts of the document that he did not intend to bind himself to perform. See *Stewart* v *Shannessy*, per Lord Kinnear at (1900) 2 F, p 1293; and *Lindsay* v *Craig*, per Lord Cullen at 1919 SC, p 146; 1918 2 SLT, p 325. English law is to the same effect. See Bowstead on Agency (15th ed), p 445; and *Cooke* v *Wilson*."

As to the approach that should be taken to the issue of construction of the documents forming the contract, the pursuer adopted the statement of the law set out by Lord Sandison in *Glenfiddich Wind Limited* v *Dorenell Windfarm Limited* [2025] CSOH 62. There was reference also to the fact that in certain situations there may be a professional obligation to settle fees, but this was not said to be an issue in this case.

[5] By way of illustration of the principles, the pursuer contrasted the position of solicitors when concluding missives for the sale or purchase of heritable property with the giving of a letter of obligation at the time the transaction was implemented. In the former situation, only the client obtained rights and duties but in the latter situation it was the firm that undertook the obligation.

[6] The defender submitted that a person who signs a document is the contracting party unless (a) the document makes clear that they signed as agent for an identified principal or (b) extrinsic evidence establishes that both parties knew the person was signing as agent. It was also submitted that where the issue in dispute is as to the identity of the parties to the contract, evidence extrinsic to the contract may be admitted to establish the position. Nonetheless, the exercise that to be undertaken remains objective. The defender relied on *Hamid* v *Bradshaw Partnership* [2013] EWCA Civ 470 at [57] and *London Executive Aviation*

Ltd v *Royal Bank of Scotland Plc* [2018] EWHC 74 (Ch) as authorities for these propositions. As to whether the document made it clear that they were signing only as agent for a disclosed principal, they contended that this was a matter of contractual interpretation and there was no material dispute as to the general principles to be applied to that exercise. The defender accorded some weight to the factor of commercial common sense which was considered in *Ashtead Plant Hire Co Ltd* v *Granton Central Developments Limited* 2020 CSIH 2.

[7] The authorities support the view that identifying the parties to a contract where it is in dispute may require consideration of the documents which are said to constitute the agreement, but it is not the same exercise as construing the agreement. In *The Starsin* [2004] 1 AC 715 (quoted in *London Executive Aviation*), Lord Millet said,

> "175. The identity of the parties to a contract is fundamental. It is not simply a term or condition of the contract. It goes to the very existence of the contract itself. If it is uncertain, there is no contract. Like the nature and amount of the consideration and the intention to create legal relations it is a question of fact and may be established by evidence. Such evidence is admissible even where the contract is in writing, at least so long as it does not contradict its express terms, and possibly even where it does: see *Young* v *Schuler* (1883) 11 QBD 651; Chitty on Contracts, 28th ed (1999), vol 1 , para 12-112, p 633..... [ ]
> 176. Where a contract is contained in a signed and written document, the process of ascertaining the identity of the parties and the capacity in which they entered into the contract must begin with the signatures and any accompanying statement which describes the capacity in which the persons who appended their signatures did so. This may require interpretation, and to this extent the process may without inaccuracy be described as a process of construction. But it is not of the same order as the process of construing the detailed terms and conditions of the contract. These describe the incidents of the contract and the nature and extent of the parties' obligations to each other. But the identity of the parties themselves is not an incident of the contract. Where a signature is accompanied by a description of the capacity in which the signatory has appended his signature the description is not a term or condition of the contract. It is part of the signature and so part of the factual evidence of the identity of the party which is undertaking contractual liabilities under the contract."

In this case, the dispute is slightly different as it concerns not so much the identity of the contracting parties but the capacity in which the defender entered into a contract with the

pursuer and whether the contract so concluded imposed liability on them or only on their clients. There is no doubt as to which parties exchanged emails to form the contract but it is necessary to look at the statements in those emails to determine the capacity in which they were sent. This remains a matter to be determined objectively using the well-known principles of commercial construction and I respectfully adopt Lord Millet's statement as being the correct approach which I should take to the task before me. Because the task is one that entails determining which entity is a party to the contract rather than determination of the obligations undertaken, extrinsic evidence may be used as argued for the defender. That is of little relevance to this case, however, as the emails that go to constitute the contract are also the ones that bear on capacity.

The emails between the parties

Summary of the emails

[8] All the communications relating to the formation of the contract to which reference has been made in the proof were by email. The ones to which parties referred me and their submissions on them are as follows:

(a) An email chain beginning on 20 December 2021. In the first email the defender inquired whether the pursuer could assist in a debt recovery matter and said that if they could, names would be provided for conflict checking. There were discussions as to what options there were for recovery of the debt and the likely charges. On 21 December, the pursuer indicated when they thought it would be possible to take action but noted this was subject to being provided with full instruction and the required anti-money laundering

documentation. There was a degree of urgency on the part of the defender that action should be commenced.

(b) On 22 December 2021, the defender replied by email in which they stated that, "The client, Leander CB Consultants Limited, is a Hong Kong company." They stated that they took instructions from an individual named Christopher Shute who held the title of Executive Chairman / Managing Partner of Leander. The email then said:

> "For KYC, I attach:
> 1. Leander's Certificate of Incorporation;
> 2. Leander's Business Registration (I have asked for a current version);
> 3. Christopher Shute's Passport and proof of address."

The term "KYC" is a reference to "Know Your Client", an obligation on Scottish solicitors as part of regulations to combat money laundering which requires solicitors to verify the identity of their client and to understand their circumstances and the purpose of the transaction they are being instructed in.

(c) Later, on 22 December 2021, the pursuer replied stating:

> "So far as engagement terms are concerned, I think it's probably simplest and quickest if we engage your firm as the client, essentially as instructing agents. Please let me know if you're happy with that".

The defender responded by saying:

> "that would certainly make things easier, if that is acceptable for you. Please let us know what docs you would need in relation to ADG for that purpose."

"ADG" is an abbreviation of the name "ADG Legal" under which the defender offers its services. In response, the pursuer said that confirmation of the defender's registration as a law firm in Dubai would suffice.

(d) On 23 December 2021, the pursuer emailed a letter of engagement and standard terms and conditions to the defender. The letter is addressed to ADG Legal and opens by saying:

> "You have instructed us in connection with the matter of Leander v McLeish and Bogside Investments Limited in which proceedings are to be raised in Scotland."

The body of the letter includes reference to "the work instructed by you" and "by your acceptance you will have entered into a contract with us". There is reference to the Anti Money Laundering Regulations and a statement that the pursuer will require "full proof of identity of you". The Standard Terms and Conditions use the term "The Client" and state that the contract is between the pursuer and the Client but do not stipulate the identity of the Client. One of the standard terms stipulates that invoices can only be issued against "the Client" and not a third party and this is the position even if there is an arrangement that the third party will make payment.

(e) Later on 23 December, the defender replied saying "This is accepted" and instructing the pursuer to proceed.

(f) An interim account of fees was emailed on 31 May 2022. The next day the defender queried the fact it was addressed to them rather than Leander and said that they were merely agents for Leander. The pursuer responded saying that it has been agreed that the defender would be the client. In turn, the defender replied agreeing that the letter of engagement had been directed to them but saying that this was on the basis that they were instructing agents and that they would not have agreed otherwise. The invoice was later re-issued so as to be payable by Leander. When agreeing to do this, the

pursuer indicated that they would provide a new letter of engagement to Leander. It is not apparent if either of these were done.

(g) A little while after, on 10 August 2022, the pursuer emailed the defender regarding an invoice. It is apparent that the defender had requested that it be addressed to Leander but the email said that the pursuer's position was that this was not possible as they had not agreed terms of engagement with them. The solution was that the person at the client from whom instructions were taken transmitted funds to the defender and payment was made that way. While the position in this exchange appeared to contradict what had happened in May, I was not provided with any further detail of this.

(h) On 24 November 2022, the pursuer sent an email to the defender with a further letter of engagement and terms and conditions. This was in respect of different proceedings. The present claim is not for work carried out under that letter of engagement and I do not consider this further.

Submissions for the parties

[9] The pursuer submits the wording used in the contract was such that it was plain that liability was imposed on "the client" and this referred to the defender. They contended that the wording did not support the view that the obligations were undertaken only on behalf of another party. It was submitted that consideration of the context leads to the same conclusion. It was said to be significant that the anti-money laundering checks were done by reference to the defender and that when there was discussion about novating the agreement, it was on the common understanding that, as matters then stood, the defender was the party obliged to pay. It was said that it was obvious why the parties might both

have preferred that the defender was the party liable to the pursuer - it left the defender in charge of managing the relationship with the end-client for whom they already carried out work. In all the circumstances, it was submitted that on the exchange of emails, it was clear that the defender intended to contract as principal.

[10] For the defender, it was submitted that it was clear from the correspondence that they were contracting on behalf of their named client as the disclosed principal who was the party to the underlying litigation. The natural inference from this is that they did not incur personal liability. The initial inquiry was from one legal firm to another to carry out work for their client. This leads to an inference that the inquiry for the defender was as agent for the named client which was reinforced by the offer to send on details of the parties for a conflict check. The defender attached weight to the email of 22 December 2021 in which they identified Leander as their client, named the individual from whom they took instructions and provided details of Leander in relation to the pursuer's "Know Your Client" obligations. In relation to the suggestion from the pursuer in their email of 22 December that it would be simplest and quickest if they were to engage the defender as client, the defender submitted that this was acknowledgement that matters were being presented that way for expediency and there was recognition that the underlying reality is that the defender was acting as instructing agent on behalf of Leander. This was done to ease formalities and did not entail an agreement to be personally liable for work carried out for Leander. The pursuer had recognised in their email of 22 December that although the defender was named as client, they were instructing agents. The defender noted that although the letter of engagement was addressed to them, it was clear that the work was to be carried out for Leander in the underlying litigation and that the choice to use the defender as client was, again, to simplify compliance with regulatory requirements.

Analysis and decision

[11] In the conveyancing situation described by the pursuer, the letters forming the missives and the letter of obligation arise within a transaction which has a form that is well understood by the parties. Each communication has a specific role to play in the transaction and that is relevant to whether the liability is that of the firm that has sent the communication or the clients on whose behalf they act. There is a large element of expectation of the parties as part of the surrounding circumstances and this can affect the question of who is bound. Nonetheless, the issue of who incurs liability turns on the terms of the communication in question. This is illustrated by *Digby Brown & Co* v *Lyall* 1995 SLT 932 in which a letter of obligation which began with the words "we hereby undertake on behalf of our above named clients" was held not to bind the firm that sent it.

[12] Turning then to the communications between the parties and looking first at the ones described in paragraph (a) above, when the initial approach was made on 20 December 2021 saying "we need some assistance", although it was apparent that the defender was a legal firm, it was not clear whether they were seeking to instruct the pursuer on their own account or on behalf of clients. They described the work to be undertaken as "debt recovery" and it could have been a situation in which the debt was owed to the firm. There was no mention of a client. Even in the second email from the defender where they identify the debtors, it is not made clear to whom the debt was owed and therefore for whom the work will be undertaken.

[13] This changed with the email referred to in paragraph (b). When it was received by the pursuer it would have become apparent that the work was to be for a client of the defender. Leander are named as that "client" and their details are provided to the pursuer

for "Know Your Client" purposes. While the beneficiary of the services is not inevitably the party that incurs liability to pay for them, it is apparent that the work is being instructed for the benefit of another party and the identify of that party is disclosed. In accordance with the general presumption referred to in submissions, subject to factors indicating the contrary, this communication negates any intention on the part of the defender to undertake personal liability. This is confirmed by the provision of information for KYC purposes.

[14] There was then the change to treating the defender as a client as described in paragraphs (c) and (d). If the email referred to in paragraph (b) was in accordance with the general principle referred to by Lord Cullen in *Lindsay*, the issue with these emails is whether they are indicative of the defender nonetheless interposing their own personal credit as he described. Did they amount to an undertaking to be personally liable? This change was made because it was seen as being "simplest and quickest" in terms of compliance with Know Your Client/anti-money laundering rules. In response to a question from me, both parties confirmed their understanding that in fact it was not possible to avoid the rules in this way. If it was possible, the rules would serve little purpose. All any malefactor would require to do to avoid scrutiny was appoint a solicitor who was willing to stand in as the nominal client. What matters for present purposes, however, is the rationale for the change that was made and what a reasonable person with the parties' knowledge of the situation would take the change to mean in relation to who had liability to pay. I consider that it is significant that there was perceived to be some urgency to get the work started. The proposal was made only as a means of expediting matters. There is nothing in the exchange of emails in paragraph (c) which indicates that there was any intention to innovate upon the position that existed following the email referred to in paragraph (b).

Nothing is apparent from either email that the intention is to alter who is to be responsible for making payment.

[15] If the letter of engagement and terms and conditions (paragraph (d)) and the response to them (paragraph (e)) were taken in isolation without the emails that precede them, the reasonable inference would be that the defender was "the client", that they had entered into the contract with the pursuer and that they would be liable for the fees. It is critical, however, that these items cannot be taken in isolation from what preceded them. Those earlier communications may be viewed as part of the factual matrix to be considered in construing what the later messages mean or as extrinsic evidence to be considered in addition to them as identified by Lord Millett. When account is taken of the communications in paragraph (c), it would be apparent that the letter of engagement was drafted as it was with a view to avoiding regulatory requirements to save time and effort and that the parties were already aware that the defender was instructing the pursuer to act for disclosed principals - parties in a litigation.

[16] I do not consider that the emails referred to in paragraphs (f) and (g) contribute to the issue of determining the capacity in which the defender had acted. They were sent after the contract was made. It might be said that the fee account was rendered to the defender and this tended to show the pursuer's understanding. That would be to approach the matter subjectively. It could carry no more weight than the defender's own statement in response to it that the letter of engagement was directed to them only as instructing agents. When the required objective view is taken, the conclusion would be that the defender did not take personal liability.

[17] The above conclusions rest on the terms of the emails considered as a whole. I do not consider that in the current circumstances consideration of "commercial common sense"

is of value to this exercise. The points identified by the parties in that regard are not generalities about the manner in which parties are likely to conduct their affairs that are so clear that I can make assumptions about them in the absence of evidence. On one view it might well be that it makes sense for the pursuer to want to be in a position to rely on the credit of the defender, as the party with the established and ongoing relationship with that client, to be responsible for fees. However, it might also be said that in a transaction where the pursuer rather than the defender were providing the service and earning a fee, there was no economic rationale for the defender assuming a risk.

Conclusion and disposal

[18] In summary it may be said that the defender instructed the pursuer on behalf of a disclosed principal, Leander. It is clear from the initial correspondence that Leander rather than the defender was the intended client. Whether this is analysed on the basis of the presumption outlined by the pursuer, the dictum of Lord Cullen in *Lindsay* or simply interpretation of the communications, the result is that the defender did not incur personal liability. The agreement thereafter that the defender should be designated as client was with a view to avoiding regulatory checks. There was nothing in the exchange of emails at this point which suggested an intention to alter the capacity in which the defender was acting in introducing Leander. To adopt the phrasing from *Lindsay*, there was nothing from which it could be concluded that from that point the defender intended to interpose its own credit. Thereafter, there was nothing to change the contract that had by then been concluded. The result of the this is that the defender does not bear liability for the pursuer's fees. I therefore sustain the defender's first plea in law and dismiss the action.