

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT DUNDEE

[2023] SC DUN 23

DUN-A22-18

JUDGMENT OF SHERIFF JILLIAN MARTIN-BROWN

in the cause

RICHARD GOURLAY

Pursuer

against

LORNA CLARK

Defender

Pursuer: Self-representative
Defender: Forsyth (Sol); MML Legal, Dundee

DUNDEE, 20 June 2023

Introduction

[1] This dispute concerned whether the pursuer provided a five figure sum of money to the defender to fund the purchase of her grandmother's house. The pursuer's position was that he funded the purchase of the property in contemplation of his marriage to the defender. The defender denied that the pursuer funded the purchase of the property and characterised the pursuer as a serial and vexatious litigant, who had a history of trying to lay claim to other people's property. The key issue was the credibility and reliability of witnesses, in particular, the pursuer.

Procedural history

[2] The dispute had been running for many years. The initial writ was served on 25 January 2018, just days in advance of the time bar of 30 January 2018. It was then sisted for almost four years from 12 March 2018 until 22 January 2022, when the pursuer's first set of solicitors withdrew from acting for him. Defences were lodged on 23 February 2022 and the pursuer's second set of solicitors withdrew from acting for him on 28 July 2022. The options hearing of 6 October 2022 was continued to 3 November 2022. At the continued options hearing, I fixed a proof, the scope of which was restricted to whether the pursuer provided a five figure sum to the defender to fund the purchase of her grandmother's house.

[3] Evidence was led from five witnesses as follows:

1. Mr Stewart Sheddon, Solicitor, by affidavit dated 2 November 2015;
2. Mrs Margaret Crawford, the defender's mother, by commission with interrogatories on 3 March 2023;
3. Mr Richard Gourlay, pursuer, in person on 6 March 2023;
4. Ms Lorna Clark, defender, by commission with interrogatories on 10 May 2023;
and
5. Bill Templeton, Consultant, by video link on 7 June 2023.

[4] Oral submissions were heard on 7 June 2023 and I made avizandum.

Findings in fact

[5] I found the following facts to be admitted or approved.

[6] The parties were in an on-off relationship from around 2003 until around 2012.

[7] The defender's grandmother Mrs Nancy Allan exercised her right to buy a property in Brechin from Angus Council on 11 February 2013. Title to the property was registered in the Land Register of Scotland.

[8] Mrs Allan granted a standard security over the property in favour of her daughter (the defender's mother), Mrs Margaret Crawford.

[9] On 15 January 2013, a sum greater than the purchase price of the property was paid into the pursuer's bank account by his pension provider.

[10] The pursuer withdrew cash from his bank account on 28 January 2013.

[11] The pursuer withdrew a large sum in cash from his bank account on 31 January 2013.

Findings in fact and in law

[12] The pursuer has failed to prove on the balance of probabilities that he funded the purchase of the property.

[13] The defender is entitled to decree of absolvitor.

[14] The pursuer is liable to the defender in the expenses of the cause as taxed.

Note

[15] Parties were agreed that if the pursuer was able to prove his version of events, he should be successful. Parties also agreed that expenses should follow success. The only issue in dispute was whether the pursuer had provided funds to the defender to enable the purchase of her grandmother's property.

[16] This case turned on the credibility and reliability of the five witnesses, in particular the pursuer and the defender, because there was no documentary evidence of the purported

transaction. Each of the witnesses gave evidence in a different format, which affected the weight to be attached to their evidence.

[17] I have set out my findings in respect of each witness separately.

Stewart Sheddon

[18] Stewart Sheddon gave evidence by way of affidavit dated 2 November 2015. He had been in private practice as a solicitor for 40 years and had sat on the Committee of the Guarantee Fund for the Law Society for seven years.

[19] He was instructed by the defender's grandmother Nancy Allan to undertake the purchase of her local authority property in Brechin. Mrs Allan was benefiting from the full discount.

[20] Mr Sheddon was familiar with the family for some time before acting in the purchase transaction. Given her old age, most of the communication throughout the transaction was with her granddaughter Lorna Clark (the defender) and her daughter Margaret Crawford.

[21] The purchase of the property was not a remarkable one. He received the funds in two cheques from Margaret Crawford drawn on her own bank account. The first cheque was for the purchase price dated 26 April 2013. The second cheque was for his fees and outlays dated 15 May 2013.

[22] The Money Laundering Regulations required that Mr Sheddon should understand where the funds were coming from and use a risk based approach. He was satisfied from: (i) what he was being told about the source of the funds; (ii) what he saw from the cheques; and (iii) what he knew of the family that the purchase price was coming from Margaret Crawford. He was more than satisfied that the monies were coming from family savings.

[23] To protect Mrs Allan's home, Mr Sheddon recommended that she grant a standard security in favour of her daughter Margaret Crawford for a sum equal to the purchase price. There was a possibility, given Mrs Allan's old age, that she might need to go into a care home in the future. If there was no security, then the whole value of the house would be included in a financial assessment. The family wanted to protect the money which had been used for the purchase.

[24] Mr Sheddon remained satisfied that the monies used for the purchase did not come with from a third party, nor was it passed between people. Rather, it came from savings within Mrs Allan's family.

[25] Having given his evidence by way of affidavit nearly eight years ago, I did not have the benefit of seeing Mr Sheddon's evidence tested in cross examination. For that reason, I did not attach the same weight to his evidence as I would otherwise have done. Nonetheless, Mr Sheddon's affidavit evidence was measured and consistent with the evidence of the defender's other witnesses. I accepted Mr Sheddon as a credible and reliable witness.

Margaret Crawford

[26] Margaret Crawford gave her evidence on commission with interrogatories at her home on 3 March 2023. Neither of the parties were present or represented at the commission.

[27] Mrs Crawford was a retired school crossing patroller. She confirmed that the pursuer and defender lived together. The relation came to an end in around November 2012. She described the relationship as toxic. She was of the opinion that the pursuer exercised coercive control over her daughter. She had no contact or relationship

with him after his relationship with the defender ended. He had continued to harass her daughter.

[28] Mrs Crawford had loaned money to the pursuer. She specifically recalled loaning the pursuer money to pay a solicitor. He paid the money back to her but then subsequently asked her to give it back to him in cash. He would pay money into her bank account and then turn up at her door when she was not expecting him and demand back the money in cash. It was bizarre and he would not leave. The pursuer would come when he knew she would be in a rush.

[29] Mrs Crawford denied receiving money from her daughter that came from the pursuer. Her mother Mrs Allan put a small amount towards the house purchase. She wanted to be involved and to contribute. The rest came from Mrs Crawford herself. Mrs Crawford would never have taken money from the pursuer because he was not family. She had enough money to make the house purchase herself. She had a widow's pension as well as a state pension.

[30] Mrs Crawford built up her savings by doing a weekly budget and keeping cash in envelopes in her cupboard. She could not say whether the pursuer had seen the cabinet where she kept the money.

[31] Mrs Crawford had bank statements showing where she had obtained the funds for the house purchase. There were four withdrawals of varying amounts.

[32] The advice from her solicitor Mr Sheddon was to arrange a standard security over the property. When her mother Mrs Allan died, Mrs Crawford inherited the property and she then passed it on to the defender, who passed it on to her own children.

[33] Although I did not have the benefit of seeing Mrs Crawford give her evidence, the commissioner provided a helpful note in relation to her credibility and demeanour. Overall

she appeared to be doing her best to be truthful and accurate. Her dislike for the pursuer was obvious, although she expressed this in a calm and measured manner. I therefore accepted Mrs Crawford as a credible and reliable witness.

Pursuer

[34] Mr Gourlay gave his evidence in person on 6 March 2023. He explained that he was in a relationship with the defender from around the end of 2002 / start of 2003 until around September 2014. During that time they discussed plans to enable the purchase of her grandmother's house in Brechin under the Right to Buy scheme. Mr Gourlay offered to draw down his pension in order to fund the purchase on the basis that the defender would eventually inherit the property, by which time it would be worth more than his pension and would provide financial security for them as a couple in their retirement.

[35] The pursuer indicated that the defender and her mother were of the opinion that the defender's grandmother would not accept money from the pursuer and therefore it was agreed that he would give money to the defender, which she would pass to her mother, who would then pass it on to the defender's grandmother for purchase of the property.

[36] On around 9 January 2013 the pursuer and defender discussed plans for the future due to the defender's grandmother's deteriorating health. There was a risk of the Right to Buy scheme being lost.

[37] On 28 January 2013 the pursuer was only able to withdraw a limited amount of cash. On 30 January 2013 he was able to withdraw the remaining sum. The bank statements showed a withdrawal on 31 January 2013, possibly because it was at the end of the day. The pursuer then travelled on a bus with a five figure sum in cash in a bag to meet with the defender and give her the money.

[38] When the pursuer met with the defender, she gave a few hundred pounds back to him to tide him over. The remainder was handed over to fund the purchase of the property.

[39] The pursuer had discussed matters with the defender in a lengthy telephone call on 14 January 2013, which he recorded. That call demonstrated that the defender had sought advice from solicitor Stewart Sheddon in relation to the purchase of her grandmother's house. The defender had provided him with reassurance that if something happened between the pursuer and the defender, the pursuer would get his money back. A separate, shorter call on 30 January 2013 demonstrated the pursuer had been counting the money.

[40] The defender asked for cash from the pursuer because she did not want to show where the money was coming from. The pursuer withdrew cash from his bank which had been drawn down from his pension. He gave the sum to the defender in order to purchase her grandmother's property. He kept no receipts and did not generate any paperwork. Nor did he take out a security. He was not in a good place at the time that he provided the funds. He trusted the defender.

[41] In cross-examination, the pursuer conceded this was the third court case in which he had been involved attempting to recover money paid to another person to fund the purchase of property. The first case had been about his matrimonial home in a divorce, in which he had been unsuccessful. The second case had been in relation to his son's student flat, in which he was again unsuccessful.

[42] The pursuer denied subjecting the defender and her mother to emotional, physical and financial abuse for years. He denied that this court action was a way to continue to exercise control over them.

[43] The pursuer denied that the shorter call he had played was made five years earlier in 2008 and related to his employment tribunal settlement, rather than in 2013. The pursuer denied that he had requested to receive his employment tribunal settlement in cash in 2008.

[44] The pursuer conceded that he had recorded telephone calls without informing the defender. He conceded that he had not paid solicitor fees in the past. He conceded that he had been sequestered. He conceded that it was ridiculous to have travelled on a bus with a five figure cash sum in a bag.

[45] The pursuer initially denied borrowing money from the defender's grandmother but later, when pressed, conceded that he had received assistance from her.

[46] When pressed as to why he did not put anything in writing, having lost two previous court cases relating to funding the purchase of properties, the pursuer indicated that he did not think that the defender would do that to him given his previous experiences. He accepted that had been stupid and that perhaps he had been gullible. He accepted there was no paper trail.

[47] The pursuer conceded that the communications with the defender he had lodged as productions, including WhatsApp messages, showed that he had asked about the return of property kept in a bag and the return of a ring after the relationship had ended. He had not asked about a standard security or about getting his money back. He denied that was because he never provided the defender with funds to purchase the property.

[48] As regards the evidence of Mr Stewart Sheddon, the pursuer thought that Mr Sheddon's evidence was based on what he was told.

[49] I did not find Mr Gourlay to be a credible or reliable witness. During examination-in-chief, he provided a lot of detail about irrelevant matters but not much detail about the facts and circumstances of him allegedly providing cash to the defender. In cross

examination, he was evasive and again talked about irrelevant matters. I required to intervene on several occasions to instruct him to simply answer the question he was asked. Some of his answers in cross examination, when pressed, were different to what he had said in examination-in-chief. I did not accept as plausible his position that he was willing, for the third time, to provide funds to another person to fund the purchase of a property without any paper trail, let alone a security, given his two previous unsuccessful court actions.

Defender

[50] The defender Lorna Clark gave her evidence by way of commission with interrogatories before me at her solicitor's office. Neither party was present or represented during the commission, although the defender's solicitor was required, on occasion, to locate productions within the binders provided.

[51] The defender was a carer for her mother. She explained that the pursuer was her ex-partner. The relationship had started well but he became abusive and was a constant liar. He had borrowed money from her and her mother Margaret Crawford. In 2006 he was bankrupt. The pursuer would pay money into the defender's account and then ask for it back in cash.

[52] She denied that whilst she was in a relationship with the defender they devised a plan for him to fund the purchase of her grandmother's council house from his pension in return for a standard security as an investment for the two of them growing old.

She accepted he had drawn down money from his pension. She denied receiving tens of thousands of pounds from the defender and giving him a few hundred pounds back.

[53] The defender had not witnessed her mother's banking system of envelopes at the time of the house purchase, though she had been made aware of it subsequently.

[54] The defender was not aware that she was being recorded on the telephone calls. One conversation was about a tribunal settlement the pursuer received and took place in January 2008, rather than January 2013. In the other conversation, the defender was using domestic abuse techniques whereby she gave the pursuer little bits of information in order to appease him while keeping him at arm's length when he became aware that her grandmother Mrs Allan had decided to use the Right to Buy scheme. She was just talking rubbish.

[55] Like the pursuer, the defender tended to provide a lot of detail about irrelevant matters and I required to intervene on several occasions to instruct her to simply answer the question she was asked. While clearly upset throughout the commission, she continued to give her evidence. She was candid that she did not witness her mother's banking system at the time of the house purchase and that she had discussed some of the details of the house purchase with the defender, albeit as a domestic abuse technique. On the whole I found her to be a credible and reliable witness.

Bill Templeton

[56] Mr Templeton was a consultant at RTL Partnership Limited, having sold the company some years ago. Mr Gourlay was a client of his when he owned the business in January 2008. He had a very limited recollection of Mr Gourlay receiving settlement funds from his employment claim in cash.

[57] Mr Templeton confirmed it was his voice on the telephone calls from January 2008 and had been unaware he had been recorded.

[58] Mr Templeton was candid about the limitations of his memory in relation to his dealings with Mr Gourlay before the employment tribunal, but was clear that the settlement

funds were paid to Mr Gourlay in cash, after deduction of his fee. I found Mr Templeton to be a credible and reliable witness.

Pursuer's Submissions

[59] The pursuer submitted that he had been in a relationship with the defender from 2003 - 2014. Although living separately at the time, the defender had asked him for money to pass to her grandmother to purchase the property in Brechin. He had handed her a bag of cash containing tens of thousands of pounds and had been given back a few hundred pounds.

[60] The relationship had lasted until 2014. He had made regular payments into the defender's bank account between 2013 and 2014.

[61] The pursuer submitted that he made an error when he said that he did not receive his employment tribunal settlement in cash from Mr Templeton in 2008. No attempt had been made to mislead the court. It was 15 years ago and he tended to compartmentalise the past and focus on the current.

[62] The pursuer maintained that the calls between him and the defender were both from 2013 and showed the parties discussing purchase of the property in Brechin and him counting the money.

[63] The pursuer denied being a con man. He took the defender as genuine and made a life changing decision based on trust by giving her the bag of cash on 31 January 2013. The defender lied and manipulated the pursuer. He had been played for a fool.

Defender's Submissions

[64] The defender submitted that only the defender and her witnesses were credible and reliable and ought to be believed. The pursuer could not be trusted in the slightest.

[65] The defender submitted that the onus was on the pursuer to prove that he had given the defender money and there was no evidence other than his own word. The bank statements showed only that he drew down his pension.

[66] The covert recordings did not get him anywhere either. On the longer call, there was no agreement reached between the parties about any kind of deal going ahead. The pursuer knew fine well how a security worked but let the defender waffle on for 70 odd minutes. She was clearly making it up as she went along to keep him at arm's length. On the shorter call, there was dispute about whether it was 2008 or 2013 but all it pointed to was money being counted.

[67] The defender submitted that the pursuer had already sued his son in relation to an apparent agreement to give him title to his student flat. He lost that case because he had nothing in writing. It was incomprehensible that the pursuer would do the same thing again after having his fingers burnt.

[68] The defender submitted that in none of the pursuer's communications with the defender after he had apparently been conned did he demand a standard security or ask for his money back. There was no explanation provided for that and the pursuer was simply not credible.

[69] The defender submitted that the pursuer could not be trusted in light of his chaotic financial history. He was an ex-bankrupt who had owed over £100,000 in unpaid legal fees. The defender and her mother helped him maintain a lifestyle he could not afford. He was a financial abuser and to put matters bluntly, this was a con. Con men lie and the pursuer had

lied about receiving his employment tribunal settlement in cash. It was not an error or mistake but a blatant lie. In Dundonian terms, he had been “caught bonnie”. If he had lied about that, he could lie about other things.

[70] By contrast, the defender and her mother had given a credible and reliable account of how the house purchase was funded. Mr Sheddon was a former solicitor and confirmed he carried out anti money laundering checks.

[71] The pursuer was aware of the plan to buy the house and drew down his pension at the same time. What he did with the money no one knew but him. There was not a shred of evidence that he gave it to the defender. Decree of absolvitor should be granted, together with expenses.

Disposal

[72] In order to succeed, the pursuer required to prove that he funded the purchase of the property as set out in the pleadings. Having found the pursuer not to be a credible or reliable witness, I was left with the evidence of the defender, Margaret Crawford, Stewart Sheddon and Bill Templeton. Though some of that evidence was of limited weight due to the manner in which it was given, none of that evidence supported the pursuer’s version of events. On the contrary, all of the evidence which I accepted as credible and reliable pointed to the pursuer having no involvement in the purchase of the property in Brechin. Consequently, I was not satisfied that the pursuer had proved on the balance of probabilities that he funded the purchase of the property.

[73] I therefore granted decree of absolvitor, together with expenses in favour of the defender.