SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2025] SC GLA 64

GLW-A318-24

JUDGMENT OF SHERIFF ANDREW McINTYRE

in the cause

ENVIRAZ (SCOTLAND) LIMITED

Pursuer

against

SIMON VASEY

Defender

Pursuer: Runciman, Solicitor; Gilson Gray Solicitors LLP
Defender: Vasey; Party Litigant

GLASGOW, 18 July 2025

The sheriff having resumed consideration of the cause: (i) Sustains the first plea-in-law for the pursuer and Grants decree for payment, as first craved, but in the restricted sum of £4,100; (ii) Repels all other pleas-in-law for the pursuer; (iii) Dismisses all remaining craves for the pursuer; (iv) Sustains the fourth plea-in-law for the defender; (v) Sustains, in part, the fifth plea-in-law for the defender to the extent consistent with the court's finding that the pursuer, not having removed all asbestos debris and not having performed a full environmental clean, having contracted so to do, the defender was entitled to a price reduction; (vi) Sustains the sixth plea-in-law for the defender; and (vii) Repels all other pleas-in-law for the defender.

FINDINGS IN FACT

1. The pursuer is a company, based in Glasgow, which operates an environmental cleaning business.

2. The defender is a private individual.

3. The defender is the owner of a former farm building in Gatehouse of Fleet ("the site").

4. The site is derelict and strewn with rubble, including asbestos material.

5. On 22 June 2023 the parties agreed that the pursuer would provide a service to remove asbestos and other debris from the site in return payment of £10,800 by the defender.

6. The parties agreed that the pursuer would:

   (a) remove all asbestos cement roof sheets remaining in place within the buildings;

   (b) remove all timbers remaining in place within the buildings;

   (c) remove and dispose of all asbestos debris from both within the buildings and externally, as far as reasonably practicable;

   (d) undertake an environmental clean both within the buildings and externally;

   (e) clean all surfaces within the buildings with an "H vacuum" and "Tack rags"; and

   (f) provided a statement of cleanliness upon completion of the works.

7. The parties agreed that the defender would:

   (a) Arrange skips for the removal of waste; and

   (b) Pay the price of £10,800.

8. Over a period of 9 days between 26 June 2023 and 6 July 2023 the pursuer's employees cleared from the site a substantial amount of debris which included asbestos material.

9. The pursuer's employees did not remove all debris from the site; debris was left within the buildings on the site and within the curtilage of the buildings.

10. The pursuer's employees did not clear all asbestos from the site that it was reasonably practicable to remove; asbestos was left within the curtilage of the buildings.

11. The pursuer's employees did not fully clear the site buildings of debris before cleaning the internal areas using an H-vacuum and Tack rags.

12. The pursuer's employees did not undertake an environmental clean of the whole interior of the buildings using an H-vacuum and Tack rags.

13. On 6 July 2023 the pursuer's employees, Mr McKeeman and Mr Shannon, undertook a site inspection by walking round the site and making observations. They visually recorded parts of the site on that date.

14. On 9 July 2023 the defender inspected the site and saw that:

(a) debris remained both within the buildings and externally, and

(b) pieces of asbestos remained within the curtilage of the buildings.

15. On 11 July 2023 the defender wrote a letter to the pursuer explaining that asbestos remained on the site and that an environmental clean of the whole area had not been undertaken but the letter did not reach those dealing with the defender's contract.

16. On 12 July 2023 the pursuer's employee rendered an invoice in the sum of £10,800.

17. On 19 July 2023 the defender returned to the site and made a visual recording of parts of the site.

18. On 25 July 2023 the defender's wife, Mrs Vasey, sent an email to the pursuer advising that there were outstanding issues to be addressed.

19. On 26 July 2023 the pursuer's employee sent an email to the defender advising that no correspondence had been received in respect of the defender's concerns, and requesting a telephone call to discuss and resolve the disputed issues in order to allow the pursuer's invoice to be paid.

20. On 31 July 2023, the defender sent to the pursuer a letter, dated 28 July 2023, which enclosed the defender's earlier letter of 11 July 2023.

21. On 31 July 2023 the defender paid £4,000 to the pursuer and withheld the remaining sum of £6,800, which sum the defender believed to be a reasonable price reduction justified by the pursuer's failure to complete the work as agreed.

22. Following the defender's letter of 28 July 2023 there was no further communication between the parties until the pursuer instructed agents to recover the sum retained by the defender.

23. On 19 August 2023 Gatehouse of Fleet was struck by a storm ("storm Betty").

24. Storm Betty caused damage to the site. Metal roof trusses were damaged and brick walls collapsed leaving a considerable volume of new debris strewn across the site.

25. As a result of the damage caused by storm Betty:

(a) there was substantially more debris on the site than was left following the works by the pursuer;

(b) it became impossible to identify which debris was left by the pursuer's employees and which was caused by the storm; and

(c) the defender instructed a local builder to undertake remedial works to render the site safe.

26. On a date after 19 August 2023 the pursuer's employees made an unannounced visit to the site. The defender was not present. During that visit the pursuer's employees:

(a) saw the damage caused by storm Betty;

(b) were unaware that the damage had been caused by a storm;

(c) saw evidence of the remedial work instructed by the defender;

(d) concluded, erroneously, that the new debris which they observed had been caused by a contractor engaged by the defender to undertake new work; and

(e) made a visual recording of parts of the site.

27. The value of the service provided by the pursuer was £8,100.

FINDINGS IN FACT AND LAW

1. The pursuer is a trader in terms of section 2(2) of the Consumer Rights Act 2015.

2. The defender is a consumer in terms of section 2(3) of the Consumer Rights Act 2015.

3. When the parties contracted the defender was not acting in the course of a business in terms of the Late Payment of Commercial Debts (Interest) Act 1998.

4. The parties' contract was a contract for a trader to supply a service to a consumer in terms of section 48 of the Consumer Rights Act 2015.

5. By failing to:

(a) remove all asbestos from the site that it was reasonably practicable to remove;

(b) remove all debris from the site;

(c) clear the site buildings of debris before undertaking an environmental clean; and

(d) clean the whole interior of the buildings on the site using an H-vacuum and Tack rags;

the pursuer failed to perform the service with reasonable care and skill.

FINDINGS IN LAW

1. The pursuer is in breach of the express terms of the contract requiring the pursuer to:

   (a) remove and dispose of all asbestos debris from both within the buildings and externally, as far as reasonably practicable;

   (b) undertake an environmental clean both within the buildings and externally; and

   (c) clean all surfaces within the buildings with an H vacuum and Tack rags.

2. By operation of section 49(1) of the Consumer Rights Act 2015 it was an implied term of the parties' contract that the pursuer would perform the service with reasonable care and skill.

3. The pursuer is in breach of the implied term of the contract requiring the pursuer to undertake the service with reasonable care and skill.

4. The pursuer having failed to undertake the service with reasonable care and skill, the defender is entitled to a price reduction by an appropriate amount, in terms of section 54(3)(b) of the Consumer Rights Act 2015.

5. The value of the service provided by the pursuer being £8,100, an appropriate price reduction is the sum of £2,700.

6. The price reduction to which the defender is entitled being less than the price, the defender is bound to pay the remainder of the price, that being the sum of £4,100.

7. The defender, not having acted in the course of a business, is not bound to pay to the pursuer either late payment interest, or late payment reasonable costs, in terms of the Late Payment of Commercial Debts (Interest) Act 1998.

NOTE:

Summary

[1] This is an action for payment in which the pursuer seeks decree in the sum of £6,800. The defender contracted the pursuer to remove asbestos and other debris from his property in return for payment of £10,800. The pursuer undertook certain works and rendered an invoice for the full price. The defender formed the view the pursuer had not cleared the site to the agreed standard. He concluded that the pursuer was entitled to payment, but not in full, and so he paid only £4,000 and retained the sum of £6,800. The pursuer claims that the work was completed to the agreed standard and now seeks payment of the remainder of the price. The defender claims that, in terms of the Consumer Rights Act 2015, he is due a price reduction in the sum of £6,800 and that, accordingly, no debt is owed. The cause proceeded to proof.

[2] I have found that the pursuer did not undertake the service in accordance with either the express terms of the parties' agreement, or an implied term requiring that the service be performed with reasonable care and skill. I have found that the pursuer is thereby in breach of contract, and that the defender is entitled to an appropriate price reduction. I have found that an appropriate price reduction is one of 25% of the price; that is £2,700. That being so, the defender is due to pay the remainder of the price, namely the sum of £4,100.

The evidence

[3] For the pursuer I heard evidence from Mr McKeeman and Mr Shannon. Mr McKeeman is the pursuer's contracts manager and Mr Shannon was the works supervisor. The defender also gave evidence. For the most part, I found the witnesses to be

credible and reliable. I found Mr McKeeman to have been a fair witness who made certain concessions even if they were against the pursuer's interests. For example, when shown certain pieces of rubble which had apparently been left on site after the pursuer's works, Mr McKeeman readily accepted that the debris in question had been overlooked. In that regard I do not accept the defender's suggestion that Mr McKeeman may have felt obliged to give evidence supportive of the pursuer out of loyalty or to maintain good relations in the workplace. I found that he sought to defend the standard of work done but was, nonetheless, honest. Likewise, I found the defender to have been a particularly careful witness. He presented as being meticulous in his preparation, fully appraised of the detail of what had happened, and entirely straight-forward. If he was uncertain of a matter, he would say so and he was willing to make concessions of fact even when they were against his interests. That was evident when he conceded, under cross-examination, that some degree of environmental clean had taken place notwithstanding his averment that none had been undertaken. I am bound to say that there were points at which I lacked confidence in the evidence of the witness Shannon. I found him to have been a little more defensive in is answers. I do not believe that he was dishonest but I did find that he may have been less candid than Mr McKeeman or the defender. For example, when shown an area of rubble in a corner of the site, Mr Shannon maintained that it contained no asbestos because his team had checked it by hand. But he had already accepted that asbestos could be present in dust or very small particles and it seemed incredible that he could be so certain that the area in question contained none.

[4] In addition to parole evidence, I was shown extensive recorded footage and many photographs of the site at various points. I found that to have been a particularly important source of independent evidence which served, at points, either to corroborate or contradict

the witnesses' evidence. I was also provided with an affidavit from the defender's wife, Mrs Vasey. I have no reason to doubt what is contained in the affidavit but neither do I have an objective reason to accept it. I did not hear from Mrs Vasey nor was her evidence subject to cross-examination. I was unable to form any impression as to her credibility or reliability on the matters on which she deponed.

The facts

[5] It is possible to summarise the circumstances as follows. The pursuer operates an environmental cleaning business based in Glasgow which, amongst other things, provides an asbestos removal service. The defender owns a derelict building in Gatehouse of Fleet which he hopes to convert into a family home. Certain of the defender's buildings are, in part, constructed with asbestos which, as is well known, can be a hazardous material. The defender instructed a company to remove the asbestos. According to the defender, things went wrong and the site was left in a terrible mess and strewn with broken asbestos and other material. The defender then sought the services of the pursuer.

[6] Mr McKeeman attended at the property and offered, amongst other things, to clear the site of debris, including asbestos, and to undertake an "environmental clean" of the area in return for payment of £10,800. I shall return to the precise terms of the agreement, certain of which are a matter of dispute.

[7] In due course, the defender instructed the pursuer to proceed and, over a number of days between 26 June 2023 and 6 July 2023, Mr Shannon and his team attended at the site and cleared a substantial amount of debris including asbestos material.

[8] On completion of the works the defender was invited to attend a joint inspection of the site on 6 July 2023 (a "walk round"). However, due to other commitments, the defender

was unable to attend and so the walk-round was undertaken in his absence and visually recorded by Mr McKeeman ("the walk-round recording").

[9] There is some dispute over the precise chronology of what happened next. According to the defender, he first visited the site 3 days later, on 9 July 2023, on which date he identified problems with the work. He concluded that there remained some debris on the site which included pieces of asbestos. The defender set out his concerns in a letter dated 11 July 2023 but the evidence raised some doubt over whether that letter was ultimately received by the pursuer. I have proceeded on the basis that it was not or that, at least, it did not reach those dealing with the defender's contract.

[10] On 12 July 2023 the pursuer's employee rendered an invoice in the sum of £10,800 but the defender was disinclined to make full payment because of the shortcomings he had identified in the work. At some point thereafter, the defender returned to the site and made his own recording of the site as he found it ("the defender's recording").

[11] On 25 July 2023, the defender's wife sent an email to the pursuer mentioning the "outstanding issues". On 26 July 2023 the pursuer responded by advising that no correspondence had been received to explain why the pursuer's invoice was in dispute. That prompted the defender to send a letter dated 28 July 2023 in which he enclosed a copy of his earlier letter of 11 July 2023. Together, those letters provided the reasons for which the defender believed the works to have been incomplete and invited the pursuer to make arrangements to resolve the issues identified. Thereafter, on 31 July 2023, the defender paid the sum of £4,000 and retained the remaining £6,800 which he considered to be justified by the problems he had found.

[12] At some point after the defender raised his concerns about the work, Mr McKeeman and Mr Shannon made an unannounced visit to the site when the defender was not present.

There is a dispute over when that visit took place. The defender says that it took place after 19 August on which date the area was struck by a storm ("storm Betty"); Mr McKeeman and Mr Shannon say that it took place in late July and before storm Betty. On arrival, Mr McKeeman and Mr Shannon found that the site was not as they had left it. Metal roof beams had been removed, some scaffolding had been erected, and areas which had been cleared by Mr Shannon's team were, once again, full of bricks. They took photographs of what they found and concluded that the new rubble had been caused by new works instructed by the defender.

[13] The defender gave a different explanation. He said that between the works completing on 6 July 2023 and McKeeman and Mr Shannon's return, the area had been struck by storm Betty. According to the defender, as a result of the storm, the site suffered further damage causing it to become strewn, once again, with rubble and debris. That, said the defender, explained the mess of the site found by Mr McKeeman and Mr Shannon on their return. The defender also said that, after the storm, he instructed a local builder to remove metal roof trusses from the buildings for reasons of safety but he maintained that he had instructed no other works.

[14] It appears that following that second visit by Mr McKeeman and Mr Shannon nothing else happened between the parties. As far as the defender was concerned, he had retained £6,800 and intimated his reasons for doing so to the pursuer. Having heard nothing further, he considered the matter closed. As far as the pursuer was concerned, the job hand been done properly and payment of the remainder of the price was due. It is against that background that the pursuer raised these proceedings on 4 March 2024.

Matters in dispute

[15] The matters in dispute include: (a) the precise terms of the parties' agreement, including whether the contract was a consumer contract or a commercial contract; (b) whether the service provided by the pursuer conformed to the contract terms; (c) whether the defender is entitled to a price reduction; and (d) in what sum any price reduction ought to be. I shall address each of these matters in turn.

What did the parties agree?

(i) The express terms

[16] The parties' agreement was formed after an initial visit to the site by Mr McKeeman in June 2023. Mr McKeeman assessed the site and discussed the proposed work with the defender. Thereafter the parties negotiated a price of £9,000 plus VAT (£10,800 in total). On agreeing the price, the pursuer issued a written quotation to the defender which described the proposed works in the following terms:

> "The removal of asbestos cement roof sheets that remain in place, removal of timbers, the bagging and removal of all asbestos debris left by others as far as reasonably practicable and environmental clean of the whole area. The provision of EM10 statement of cleanliness upon completion of supervisor walk round on completion of works. Skips for the removal of waste are to be supplied by the client.
>
> Our quotation includes for all labour, transport, consumables and waste disposal."

[17] The defender and Mr McKeeman then had a telephone conversation after which the defender sent an email to Mr McKeeman summarising their discussion as follows:

> "Hi Steven
>
> Thank you for the updated quotation.

> Also, thank you for your telephone call offering reassurance about the works. We suspected that the environmental clean included cleaning all the surfaces with a H vacuum and wet rag wipe etc but thank you for confirming this. Thank you also for confirming that all the debris inside the buildings will be removed to enable a full clean. I will order a standard skip for this stuff to be put in.
>
> My wife will arrange to make the first payment, if you could ask the relevant department to contact her on [telephone number].
>
> Thanks
>
> Simon."
>
> Mr McKeeman responded as follows:
>
> 'No problem at all. I will see you on site at 0900 Monday morning.
>
> Regards
>
> Stephen McKeeman".

[18] In evidence Mr McKeeman accepted that the defender's email reflected their discussion and so I am satisfied that the pursuer agreed to undertake the work specified in the written quotation, and in accordance with the terms specified in the defender's email.

[19] It will assist, at this point, to make two observations and findings about the interpretation of the express terms. The first relates to the constituent parts of the site. The site consists of an area of land (the external parts) on which there are a number of former agricultural buildings (the internal parts). The pursuer's quote refers to the "removal of all asbestos debris left by others as far as reasonably practicable and environmental clean of the whole area". In evidence, Mr McKeeman said that there was asbestos and non-asbestos debris present in the main building and also in the external areas at the front and back of the building. He said: "To be honest we didn't discuss one area, we discussed the site in general and I did agree to clean the site and I still believe that's what we done". From that evidence I conclude that the agreement to remove asbestos debris and undertake an

environmental clean of "the whole area" included: (i) the removal of asbestos from the whole site, including from within the buildings and externally; and (ii) an environmental clean of the whole site, including within the buildings and externally.

[20] The second issue relates to the term "environmental clean". Both in their correspondence and at proof, Mr McKeeman and the defender distinguished the removal of asbestos and the environmental clean as two distinct parts of the job. The contract terms also treat these as two separate tasks. For that reason, I have addressed these matters separately. However, it was clear from the evidence that there was considerable overlap between these two tasks. According to the evidence, the purpose of the environmental clean was to clear the site of asbestos as far as was reasonably practicable. Accordingly, when witnesses spoke about the environmental clean (for example, by using a vacuum), they were referring to the removal of debris which included, or which might have included, asbestos. And, equally, as was illustrated by the evidence of Mr Shannon, the removal of asbestos could simply be regarded as part of the environmental clean. Arguably, the two parts of the job were one and the same. In the end, however, it became clear that witnesses tended to refer to the removal of asbestos as the process of removing identifiable pieces of asbestos, and the environmental clean as the process, thereafter, of clearing the site of all debris potentially contaminated with asbestos.

[21] The third issue relates to the extent to which specialist vacuums ("H-Vacuums") and rags ("Tack rags") were to be used to remove small pieces of debris and fine particles. The parties' email exchange agrees that the cleaning of the site with a vacuum and rags was to include "all surfaces". At proof, there was no suggestion that vacuums and rags were expected to have been used externally and that is consistent with common sense. For that reason, I am satisfied that, in respect of the external areas, the environmental clean was

restricted to the removal of debris by other means. On the other hand, it is clear from the terms of the email exchange that a vacuum and rags were to be used on all of the internal surfaces and not only where thought necessary by the pursuer's employees.

[22] For the foregoing reasons, I am satisfied that, in terms of the parties' contract, the pursuer was obliged to:

(a) remove all asbestos cement roof sheets remaining in place within the buildings;

(b) remove all timbers remaining in place within the buildings;

(c) remove and dispose of all asbestos debris from both within the buildings and externally, as far as reasonably practicable;

(d) undertake an environmental clean both within the buildings and externally; and

(e) clean all surfaces within the buildings with an "H vacuum" and "Tack rags".

(ii) The implied terms

[23] In his pleadings, the defender avers that he is entitled to a price reduction "by virtue of the Consumer Rights Act 2015", but he does not mention the provision of the 2015 Act which entitles him to that remedy. The pursuer correctly points out that that is an omission. The provision in question is section 49 of the 2015 Act read together with section 54 of the Act. Those sections provide as follows:

> **"49 Service to be performed with reasonable care and skill**
> (1) Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.
> (2) See section 54 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

54 Consumer's rights to enforce terms about services

(1) The consumer's rights under this section and sections 55 and 56 do not affect any rights that the contract provides for, if those are not inconsistent.

(2) In this section and section 55 a reference to a service conforming to a contract is a reference to—

(a) the service being performed in accordance with section 49, or

(b) [. . .]

(3) If the service does not conform to the contract, the consumer's rights (and the provisions about them and when they are available) are—

(a) the right to require repeat performance (see section 55);

(b) the right to a price reduction (see section 56).

(4) [. . .]".

[24] Notwithstanding the defender's failure to mention the operation of section 49, the defender does aver that: (i) the pursuer contracted with the defender to provide a service; (ii) the defender was acting as a consumer and not in the course of a business; and that (iii) the contract was a consumer contract. By virtue of section 49(1) of the 2015 Act, every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill. That term is implied, automatically, by operation of the statute and regardless of whether the defender makes reference to the particular provision of the 2015 Act in his pleadings. I am satisfied that it is implicit in the defender's averments that the parties' agreement was a contract to supply a service and, thus, one to which the 2015 applied. I consider that the defender's averments are sufficient to bring him within the ambit of the 2015 Act and, specifically, section 49 of the Act. Thereafter, it is not in dispute that the contract was a contract for a trader to supply a service. And for reasons to which I shall return, I have found that the defender was a consumer and not a person acting in the course of a business. Accordingly, I find that it was an implied term of the contact that the pursuer required to perform the service with reasonable care and skill.

(iii) Was this a commercial contract?

[25] I find that this was a consumer contract and not a commercial contract. I find that there is no basis on which to conclude that the defender was acting in the course of a business. The submission that this was a commercial contract is based solely on the fact that the site consists of former agricultural buildings. Indeed, in evidence, Mr McKeeman accepted that he engaged with the defender as a private individual and that the contract was treated as a commercial contract solely because the building was an agricultural building. I do not accept that that is a sufficient basis on which to conclude that the parties' transaction was a commercial one. There was no evidence to suggest that the defender presented or held himself out as a corporate entity. There was nothing in the evidence to suggest that the defender was a farmer. Neither was there evidence to suggest that buildings were in use for any agricultural purpose. The buildings formerly served an agricultural purpose but they are now entirely derelict and serve no purpose. It is widely known that domestic homes are commonly created from former farms, churches, factories or other non-domestic buildings. In these circumstances, I am satisfied that the defender was not acting in the course of a business, and that the pursuer was not entitled to charge late payment interest or late payment reasonable costs in terms of the Late Payment of Commercial Debts (Interest) Act 1998.

Was the service performed with reasonable care and skill?

[26] A considerable volume of evidence was led about the standard of work undertaken by the pursuer. First, I was shown photographs of the site as it was prior to work commencing on 4 July 2023. Those photographs made it plain that the site had been in a terrible state. I was then shown a recording of the site taken by the pursuer on 6 July 2023,

the day after work finished (the "walk-round recording"). The difference was stark; the site was unrecognisable following the work of Mr Shannon and his team. That evidence left me in no doubt that over the period between 26 June 2023 and 6 July 2023, Mr Shannon and his team cleared the site of a considerable volume of general rubble and asbestos material. However, the question is not whether the pursuer's employees did a lot of work or improved the site; the questions are whether they performed the service according to contract, and with reasonable care and skill. For the reasons that follow, I am satisfied that both questions must be answered in the negative.

[27] The pursuer submitted that the requirement to exercise reasonable care and skill focused on the way in which a service was carried out, rather than the end result. It was said that a trader who does not provide a service with reasonable care and skill is in breach of the requirement whatever the end result. I agree that that may be so. However, it was also submitted that, in this case, the defender's contention was with the end result and not with the way in which the service had been performed. It was said that the defender could not, therefore, argue that the works were not undertaken with reasonable care and skill.

[28] I do not agree that a complaint about the end result of a service precludes criticism of the way in which the service is performed. Indeed it might be thought that, more often than not, both will go hand in hand, and that, in many cases, a complaint about the result will necessarily imply criticism of the way in which the service was performed. In this case, the defender's complaint is plainly with both the way in which the service was carried out and the end result. The defender avers that: (i) the pursuer's contractual obligations were preformed "inadequately"; (ii) the pursuer refused to perform them "properly and completely"; (iii) asbestos remained on site after completion of the work; (iv) an environmental clean was not done; and that (v) as a result, a price reduction is due by virtue

of the 2015 Act. I am satisfied that, by these averments and, in particular, by the use of the adverbs "inadequately", "properly" and "completely", the defender criticises the way in which the job was done and not merely the result.

[29] There are three aspects of the service about which the defender complains: (i) the removal of debris from within the site building; (ii) the removal of asbestos from the site; and (iii) the undertaking of an environmental clean. I have considered, in turn, whether each of these parts of the service was provided with reasonable care and skill.

(i) The removal of debris from within the site buildings

[30] The pursuer agreed to remove all debris from within the site buildings. At proof, the defender relied on his recording of the site to show that that had not been done. From the defender's recording it is evident that there was rubble and debris in a number of areas within the site buildings when he visited the site after completion of the work. Those areas included: (i) on top of a wall; (ii) on a raised window ledge; (iii) in open cavities adjacent to certain troughs; (iv) on top of a blue tank; and (v) in a corner adjacent to the blue tank. In addition, there were pieces of corrugated metal sheeting on the ground, under which there were small pieces of debris, and there was a discarded bucket within a trough.

[31] I accept that the defender's recording of the site was taken on 19 July 2023, and so shortly after the work was concluded, because the state of the site as shown on the defender's recording is broadly consistent with the state of the site as shown on the pursuer's walk-round recording. Such differences as there are, appear to be explained by the fact that the recordings focus on different areas. In short, the pursuer's walk-round recording does not focus on the areas of debris shown in the defender's recording. Also, the new debris found by Mr McKeeman and Mr Shannon on their return visit is not shown on

the defender's recording of the site. That suggests that the defender's recording was taken either before the new debris arrived, or after it had been cleared. I accept the defender's evidence that his recording was taken on 19 July 2023 and before the new debris arrived because, for reasons to which I shall return, I accept his evidence about the chronology of events.

Did debris accumulate naturally after the pursuer's employees concluded their works?

[32] The pursuer suggested that any debris shown on the defender's recording had been introduced to the site after the conclusion of the pursuer's works. On viewing the defender's recording, Mr Shannon said that the site looked clean but not as clean as it had been left by his team. And Mr McKeeman pointed to the fact that between the works concluding on 6 July 2023 and the defender's recording of 19 July 2023, the site was exposed to the elements for a period of around 2 weeks. I accept that it is possible that some further debris accumulated on the site naturally over that period and I have not based my findings on the evidence of very fine particles, dust and cobwebs which were apparent on the defender's recording. But I am not persuaded that the more substantial pieces of debris shown in the defender's recording appeared after the pursuer's employees concluded their work. It is obvious that the debris within the building is restricted to very particular areas whilst the surrounding areas remain clear, apparently as a result of the pursuer's work. If the debris had accumulated naturally, by the forces of the elements, then it might be expected that there would have been debris over the wider area, and not neatly confined to the areas in question. Furthermore, the metal sheets and discarded bucket shown in the defender's footage are also visible in the pursuer's walk-round recording, disclosing that those items were left at the conclusion of the works. For these reasons, I find that several

areas of debris within the site buildings had either been overlooked or ignored by the pursuer's employees.

Was the debris caused by new works instructed by the defender?

[33] I was also invited to conclude that, after the pursuer's employees had completed their work, the defender had instructed new works which had resulted in the site having become strewn with fresh debris. That was said to have been the cause of the debris found on the return visit, rather than any lack of care and skill shown by the pursuer's employees. Further, it was submitted that by instructing new works, the defender had rendered it impossible for the pursuer to return to the site to address any legitimate concerns raised by the defender. It was said that the new debris would have made it impossible for the pursuer to clear any remaining asbestos without first clearing the new debris.

[34] In this connection I was invited to accept the evidence of Mr McKeeman and Mr Shannon that their return visit took place in late July, before storm Betty occurred, and to conclude that the debris on site was caused by new works instructed by the defender. I was invited to reject the defender's evidence that the new damage had been caused by the storm. The defender, on the other hand, invited me to conclude that Mr McKeeman and Mr Shannon's return visit took place after storm Betty and that the new debris they found was the result of the storm and, therefore, quite separate from the debris left by the pursuer.

[35] I prefer the defender's evidence about the timing of the pursuer's return visit. I find that it took place after 19 August 2023 and, therefore, after new rubble became strewn over the site as a result of storm Betty. I reach that conclusion for a number of reasons. First, the defender was clear that the visit took place after storm Betty precisely because, on his account, it was storm Betty that caused the new debris shown in the pursuer's recording. In

contrast, Mr McKeeman and Mr Shannon could not recall the date of their visit. Mr McKeeman believed that it was in late July 2023. Mr Shannon initially said that he had "no idea" when the visit took place but then appeared to be remarkably specific moments later when he said that he thought it was 26 July 2023. It appeared that he had been prompted by the date on the production which was in his hand at that point. I did not find his evidence on this matter to be reliable. Neither do I believe that the new debris which was strewn across the site was the result of new building works instructed by the defender. First, there was limited evidence to support that conclusion. The defender's evidence was that he had instructed a local builder to remove roof trusses to make the site safe following storm Betty and I found that to be a credible explanation. But there was no basis on which to conclude that the defender had instructed other work, nor was there any evidence to reveal what those works were, or why they were necessary. Furthermore, the rubble strewn over the site lay in a chaotic and haphazard fashion and appeared to consist of the brickwork of a collapsed or demolished wall lying *in situ*. It had all the hallmarks of having been caused by a storm rather than a programme of specific works. In these circumstances I am satisfied that the new rubble which was found by Mr McKeeman and Mr Shannon on their return visit was caused by storm Betty and was not the result of further work instructed by the defender.

Was it reasonably practicable for the remaining debris to have been removed?

[36] Mr Shannon suggested that it was not reasonably practicable to clear certain areas of rubble, such as that found on top of one of the internal walls. It was said that the wall in question was a cavity wall. From that, I understood Mr Shannon to suggest that the inaccessible cavity might be filled with rubble which could not be removed. The defender's

evidence was that none of the walls at the site were cavity walls and that it ought to have been reasonably practicable for that rubble to be removed.

[37] I am satisfied that it was reasonably practicable to remove the debris which was shown on the defender's recording. There was no suggestion that the pursuer's employees ought to have removed debris from within a cavity wall. All of the debris in question was loose and plainly visible. There appeared to be no reason for which it could not have been removed.

[38] Having considered this body of evidence I am left in no doubt that, at the conclusion of the job, there remained several areas in which uncleared rubble was obvious and, that being so, I am satisfied that the pursuer failed to take reasonable care to ensure that the whole interior of the building was cleared of debris as was agreed.

(ii) The removal of asbestos from the site

[39] It is evident from the defender's recording that asbestos remained within the curtilage of the site buildings when he visited on 19 July 2023. I accept Mr McKeeman's evidence that the pursuer could not guaranteed to remove every piece of asbestos from the site, and that that was made clear to the defender. That was also embodied in the contract by the "reasonable practicability" qualification. But, on the evidence, I was satisfied that on conclusion of the works there remained several pieces of asbestos in the area immediately adjacent to the buildings. Those pieces were obvious to the defender on his walk-round of 12 July 2023 and they were readily identified as asbestos by Mr McKeeman when shown the footage. Mr McKeeman accepted that he could see as many as four pieces of asbestos rubble in the external area around the buildings and Mr Shannon identified two piece of rubble which he thought were possibly asbestos although he could not be certain.

[40] I appreciate that, insofar as the external area was concerned, finding such pieces might have seemed like finding a needle in haystack. After all, this was an open site with rubble strewn everywhere and mixed with vegetation, earth, and loose stone. There is no doubt that the task was not an easy one, but that was always in the nature of the task and it is for that very reason that undertaking it with reasonable care and skill demanded a thorough and careful final inspection to identify any remaining asbestos. I am satisfied that, had a more time and care been taken, and had a thorough final inspection of the site been undertaken, it would have been seen, as the defender saw, that there remained asbestos on the site.

[41] In addition to the pieces of asbestos identified in the defender's recording, it was obvious from the evidence that there remained a significant number of other areas of uncleared rubble both within the buildings (as described at paragraph 29 above) and within the curtilage of the buildings. That debris was not only obvious from the defender's recording but some of it was also obvious on the pursuer's own walk-round recording. The evidence did not disclose whether asbestos was present in those piles of debris but I am satisfied that, by leaving that debris *in situ*, the pursuer did not exercise reasonable care and skill in clearing the site of asbestos, including any fine asbestos particles, as far as was reasonably practicable. On this site, it was believed that there might be fine particles of asbestos throughout the site including amongst the debris present. By failing to clear the site of all debris in which asbestos was potentially present, the pursuer failed to complete the works in the agreed manner and with reasonable care and skill. And whilst it is not known whether that particular failure resulted in asbestos particles remaining on site, this is an example of the situation identified in the pursuer's submissions, in which a trader who

does not provide a service with reasonable care and skill is in breach of the requirement whatever the end result.

(iii) The environmental clean

[42] The defender avers that the pursuer did not undertake an environmental clean of the site and in this regard his evidence focused primarily on the cleaning of the interior of the buildings. The defender understood that an environmental clean consisted of the cleaning of the site with vacuums and rags, and he regarded that aspect of the job as distinct from the site clearance. Ultimately, however, Mr Shannon's evidence was that the job was not done in that way. He regarded the whole job as an environmental clean, meaning that the term covered both the removal of the debris and the cleaning with vacuums and rags. His position was that his team would remove rubble from an area and then clean that area before moving on to the next. In other words, they cleaned as they went along. He explained that his team would use the vacuum first and then use the rags to pick up any remaining particles. He maintained that "every part of the site" was cleaned with a vacuum and rags and he pointed to photographs 40 and 42 (of 5/11) as areas which had been cleaned in this way. He estimated that around 3 or 4 days of the job were devoted to cleaning the site with a vacuum and rags.

[43] Ultimately, it may not matter how the expression "environmental clean" is interpreted because it is clear from the terms of the agreement, and specifically the parties' email exchange, that the environmental clean was to include the cleaning of all surfaces within the buildings with a vacuum and rags.

[44] On the evidence, I accept that a vacuum and rags were used during the works but I do not accept that all of the surfaces within the buildings were cleaned in that way. At the

very least, that is obvious from the presence of rubble within the buildings which makes plain that, whatever else was done, the areas under the rubble were not vacuumed and cleaned with rags.

[45] I have also concluded that the evidence disclosed a number of problems with the pursuer's method. The whole point of using a vacuum and rags was to remove from the site debris in the form of fine particles and dust. Regardless of how hazardous the particular material was, the defender was concerned about the risk it posed, including the possibility of fine particles of asbestos being present. It is for that reason that he contracted the pursuer to clear all of the rubble and, in particular, to clean all surfaces with vacuums and rags in order to eradicate any fine particles and dust that remained. Specifically, it was agreed that all debris within the buildings would be removed to enable a full clean to take place. It was implicit in that agreement that the debris would be removed first and that, thereafter, the area would be vacuumed and cleaned with rags. It was important to the defender that the job would be done in that way because he wanted to ensure that, insofar as was possible, all potential sources of asbestos were removed from the site. It is for that reason that the defender specifically mentioned the matter in his email of 22 June 2023, and it is on that basis that the pursuer agreed to provide the service. Not only was it agreed that the job would be done in that manner, but it is self-evident that it required to be done in that way. It is a matter of common sense that if contaminated rubble were to be left *in situ* after adjacent areas had been cleaned, or if contaminated rubble were to be removed following the cleaning of adjacent areas, there would be a risk of the clean areas becoming contaminated once again. That was a particular risk in an open site, such as this was, and in which, as Mr McKeeman said in evidence, fibres had the potential to be carried by the wind. For that reason, in order to undertake the environmental clean with reasonable care and

skill, it was necessary, first, to remove all of the general debris from within the buildings and, then, to clean the interior of the buildings with vacuums and rags. I find that by failing to approach the task in that manner and by failing to clear all debris from within the site buildings, the pursuer failed to complete the works in the agreed manner and with reasonable care and skill.

[46] Finally, it was plain from both the pursuer's walk-round recording and the defender's recording that there remained a number of piles of debris in the external areas around the site buildings. I have already recorded my view, at paragraph 40 above, that, by failing to clear that debris, the pursuer failed to take reasonable care to remove all asbestos as far as was reasonably practicable. For the same reasons, I also find that by failing to clear that debris, the pursuer failed to undertake an environmental clean of the external area with reasonable care and skill.

Is the defender entitled to a price reduction?

[47] If a service is not performed with reasonable care and skill, then, in terms of section 54(3) of the 2015 Act, the consumer is entitled either to have the job re-done, or to have an appropriate price reduction. Those rights are provided for by sections 55 and 56 of the 2015 Act as follows:

> **"55 Right to repeat performance**
> (1) The right to require repeat performance is a right to require the trader to perform the service again, to the extent necessary to complete its performance in conformity with the contract.
> (2) If the consumer requires such repeat performance, the trader—
> (a) must provide it within a reasonable time and without significant inconvenience to the consumer; and
> (b) must bear any necessary costs incurred in doing so (including in particular the cost of any labour or materials).
> (3) The consumer cannot require repeat performance if completing performance of the service in conformity with the contract is impossible.

(4) Any question as to what is a reasonable time or significant inconvenience is to be determined taking account of—
(a) the nature of the service, and
(b) the purpose for which the service was to be performed.

56 Right to price reduction

(1) The right to a price reduction is the right to require the trader to reduce the price to the consumer by an appropriate amount [. . .].
(2) [. . .]
(3) A consumer who has that right and the right to require repeat performance is only entitled to a price reduction in one of these situations—
(a) because of section 55(3) the consumer cannot require repeat performance; or
(b) the consumer has required repeat performance, but the trader is in breach of the requirement of section 55(2)(a) to do it within a reasonable time and without significant inconvenience to the consumer.

[. . .]".

These two rights are mutually exclusive and, in broad terms, the right to have the job re-done should be exhausted before a price reduction is sought. By virtue of section 59 of the 2015 Act, a consumer is only entitled to a price reduction if repeat performance is no longer an option because either: (i) completing performance of the service is impossible; or (ii) the trader, having been asked to repeat performance, has failed to do so within a reasonable time and without significant inconvenience to the consumer.

[48] I am satisfied that by his letter of 26 July 2023 (together with the enclosed letter of 11 July 2023) the defender was inviting the pursuer to contact him with a view to making arrangements for the works to be completed to the agreed standard. On the evidence before me, there was no response, at any time, to that letter. In those circumstances I am satisfied that the pursuer failed to provide repeat performance within a reasonable time. In this connection the pursuer submitted that following the damage caused by storm Betty on 19 August 2023, it would have been difficult to return to the site to correct any legitimate issues identified by the defender. The defender conceded that the job would have been more difficult after the storm damage, but not impossible. I agree with the pursuer that the

events of storm Betty would have rendered it impossible for the pursuer to repeat performance of the works. After the storm a substantial volume of new debris was introduced to the site. It became impossible to distinguish between the debris left by the pursuer and the storm debris, or even to access much of the original debris. That being so, on either analysis, I am satisfied that the defender was, and remains, entitled to seek an appropriate price reduction in respect of the pursuer's failure to perform the service with reasonable care and skill.

What is an appropriate price reduction?

[49] The 2015 Act does not prescribe the basis on which a price reduction is to be calculated. Instead, section 56 simply provides that the right to a price reduction is the right to require the trader to reduce the price by "an appropriate amount".

[50] On record the defender avers that he is entitled to a price reduction equal to the difference between the price of the service and the value of the service actually provided. In plain terms, he believes that he should pay the value of the service actually provided but no more. The defender's formula for calculating the appropriate price reduction is based on Explanatory Note 266 of the 2015 Act which provides:

> "A 'reduction in price of an appropriate amount' will normally mean that the price is reduced by the difference in value between the service the consumer paid for and the value of the service as provided. In practice, this will mean that the reduction in price from the full amount takes into account the benefit which the consumer has derived from the service. Depending on the circumstances, the reduction in price could mean a full refund. This could be, for example, where the consumer has derived no benefit from the service and the consumer would have to employ another trader to repeat the service 'from scratch' to complete the work."

[51] The defender has plainly assessed the value of the service provided as being in the sum of £4,000, thereby justifying a reduction of £6,800. That is evident from his decision to

pay £4,000 to the pursuer and retain £6,800, and by his explanation of the basis on which the reduction ought to be calculated.

[52] The defender sought to justify the sum by relying on a quotation from a new contractor for completion of the work. The quotation was in respect of a "full environmental clean" of the site for the sum of £5,850 plus VAT (£7,020 in total). For the pursuer it was submitted that the defender had failed to prove that a reduction in the sum of £6,800 is appropriate. I agree that little weight can be attached to the quotation. The contractor in question was not called to give evidence. The quotation fails to specify the work which would be undertaken or the basis on which the sum quoted was calculated. Furthermore, the quotation appears to have been prepared around 15 months after the pursuer's employees left the site and at a point at which the condition of the site is unknown. Quite apart from these limitations, I am also conscious that the right to a price reduction is different from a right, at common law, to compensation for loss arising from breach of contract. The defender does not seek damages; the defender seeks a price reduction in terms of the 2015 Act. In my view that does not necessarily entitle the defender to a reduction by a sum equal to that which it would cost to have the job completed by a new contractor.

[53] The pursuer submitted that no price reduction was justified but that, in the event of a finding that no environmental clean had taken place, then only a minimal price reduction would be appropriate. In evidence, Mr McKeeman estimated that it would take around half an hour to complete an environmental clean of the site at a cost of between £350 and £400. I do not accept that the work still to be done as at 6 July 2023 could have been undertaken within half an hour. That, in my opinion, is a significant underestimation of what remained to be done. I formed the view that, in answering that question, Mr McKeeman may have

been thinking about the time that it would take to complete the work which, in his view, required to be completed.

[54] I found the evidence from both parties on this point to be of limited assistance, but, in light of my findings, it is clear that the defender was, and remains, entitled to a price reduction of some measure because the agreed work was not undertaken with reasonable care and skill and was, therefore, incomplete at the time the pursuer's employees left site. The defender did not receive all that was promised for the price of £10,800. I have concluded that the proper and fair way to determine the appropriate price reduction is to have regard to: (i) the value of the work done; and (ii) the value of work not done as at 6 July 2023. I have concluded that the value of the work done, and that not done, should be assessed as proportions of the original price, and not according to the cost of instructing a new contractor to complete the works.

[55] As at 6 July 2023, the pursuer's failure to perform the service with reasonable care and skill resulted in the following work being required: (i) the site required to be cleared of all remaining debris, whether identified as asbestos or not, both within the buildings and externally; (ii) the interior of the buildings required to be cleaned with vacuums and rags to eliminate any re-contamination caused to previously cleaned areas; and (iii) the whole site required to be inspected carefully on conclusion of the remaining works.

[56] I have considered how long it would have taken a team such as that which undertook the original work to complete these remaining tasks. I have concluded that such a team ought to have been able to clear the remaining debris (both internally and externally) within a period of 1½ days. While debris undoubtedly remained to be cleared, it is obvious that the vast majority of the debris present had been cleared. I have concluded that, thereafter, a period of 1½ days would have been required to vacuum and clean with rags all

of the surfaces within the buildings. At proof, Mr Shannon estimated that around 3 or 4 days of the original job were devoted to cleaning the site with a vacuum and rags but I am not confident that he was able to give a meaningful estimate of that figure in light of his evidence that the cleaning was done in conjunction with the removal. If the vacuuming and cleaning were to have been re-done in an entirely clear site, then it is likely that the task would have been completed more efficiently. And while I have found that the whole interior required to be cleaned again with vacuums and rags, there ought to have been far less material to remove the second time as a result of such cleaning as was done during the original works. I am satisfied that the cleaning ought to have been capable of being re-done within a day and a half.

[57] In assessing the value of the work done by the pursuer, I acknowledge that it involved the removal of the majority of the debris and asbestos present on the site. That work took place over the nine working days between 26 June 2023 and 6 July 2023. According to my findings, when the pursuer's employees left the site there remained 3 days of work to be done. That being so, I have concluded that the pursuer's employees undertook 9 days of a 12-day job. Therefore, I calculate that the value of the work done was 75% of the price (75% of £10,800) which is the sum of £8,100. And I calculate that the value of the work not done was 25% of the price (25% of £10,800) which is the sum of £2,700. Accordingly, I find that the sum of £2,700 is an appropriate price reduction.

Conclusion

[58] In light of these findings, the defender is liable, under the contract, to pay a reduced price of £8,100 of which £4,000 has already been paid. He is now bound to pay the

remainder of that price which is the sum of £4,100. I shall grant decree against the defender, as first craved, but in that reduced sum.

[59] In the event that expenses are not agreed, the parties should lodge a motion with the sheriff clerk seeking a hearing thereon.