



SHERIFF APPEAL COURT

**[2025] SAC (Civ) 4
JED-SG84-24**

Sheriff Principal N A Ross

OPINION OF THE COURT

in the appeal in the cause

ALIAS SMITH & GARRETT LIMITED

Claimant and Respondent

against

JEAN GOLIGHTLY

Respondent and Appellant

25 February 2025

[1] In this Simple Procedure action the claimant and respondent (“the respondent”), a firm of surveyors, claims payment for services. The respondent and appellant (“the appellant” does not dispute that services were provided. The facts were found by the sheriff not to be in dispute, and he summarised these as follows:

[2] At some point in 2023 the appellant put her house up for sale. During the sale process it became apparent there was a boundary discrepancy between the extent of the property she occupied, and that shown on the Title Plan. In addition, an area of ground which she was told by the selling agent at the time of her purchase was included in the sale was not included in the Title Plan. She instructed the respondent to investigate the matter.

She wanted them to clarify her boundaries so she could be clear what she did and did not own. She had previously used the firms' services for an entirely separate matter in 2020.

[3] On Monday 3 July 2023, following contact made by the appellant, the respondent confirmed to her by email they would "review your title and report on that title, to see whether the plan correctly shows what you own before you accept an offer to buy the Lodge". Terms of Engagement were sent by the respondent to the appellant on 3 July 2023. These terms were accepted by the appellant. An estimate of fee had been given to her.

[4] The respondent proceeded to investigate the appellant's concerns about the true extent of her title. On completion, a report was sent to the appellant on 5 July 2023. It confirmed that the Title Plan "doesn't coincide exactly with your boundaries on the ground". It also confirmed the area of ground which she had been told was included in her title was outwith the title. Several supplementary questions were then sent by the appellant, which the respondent dealt with. On 31 July 2023 the respondent rendered their invoice to the appellant in the sum of £722.40. This was in accordance with their estimate of cost. The appellant refused to make payment.

[5] In refusing to pay, the appellant stated that the original issue was "unresolved". She stated that she "sought advice and did not receive adequate or even correct information". At the evidential hearing the respondent gave detailed information as to the nature of the enquiry they conducted and the basis upon which their conclusion was arrived at. It was clear they came to the only conclusion which was open to them in the circumstances, and the correct advice was given to the appellant about the extent of her title.

[6] The sheriff narrates that, at the evidential hearing, the appellant viewed the advice given to her as unhelpful. She conceded it had not been what she wanted to hear. She wanted the respondent to confirm she did own the area of ground which she thought she

had purchased. She conceded that she declined to pay the invoice because the advice was “no use to her” and “not what she had paid them to do”. Something had gone badly wrong with her title, to the extent she was unable to sell her house. She blamed the selling agents, Solicitors, The Keeper, and a variety of other people for this. The report had not solved this problem. She needed another report, which she had to pay for. She refused to pay for these reasons.

The grounds of appeal

[7] The appellant raises new matters on appeal which were not before the sheriff, namely a detailed discussion of previous dealings with the respondent in September 2020. She engaged them then to review the title map of her home, and they did not mention that the current boundaries did not match the Title Plan. She paid for this consultation. She had asked for a map to confirm the boundary and the surveyor did not supply one. She criticises the respondent’s principal for misinformation, for contacting the neighbours, for contacting the Keeper of the Registers. She blames him for placing her in a legal dilemma.

[8] Her complaint is that the sale of her property (purchased in 2016) has been prevented because the boundary is entirely different from the title map. Solicitors had subsequently pointed this out and a mortgage company had refused to lend against the property. Her title had been described as unmarketable. She states that she should not have been allowed to purchase the property in the first place and would not have done so “had the sales literature and conveyancing solicitor been honest in what I was purchasing”. Boundaries are incorrect and land is missing. She had engaged the respondent to clarify what she did and did not own. She criticised the surveyor for his failures in 2020 to confirm what she did

not own. She feels entitled to compensation for the action of the respondent's surveyor "and others".

The respondent's submission

[9] These are limited to (i) that the appeal is out of time; (ii) there is no reason given for that; (iii) there is no credible reason for not paying the invoice. The respondent also disputes the claims made in relation to the 2020 contract.

Decision

[10] In relation to lateness, decree for payment was issued on 21 October 2024. The appeal was lodged within the time limit for appeal, but on the wrong form. Because the time limit was observed, and the reason for late correction was excusable error, the appeal can be heard in exercise of the dispensing power under Rule 2.1 of the appeal rules.

[11] The appeal, however, is not truly an appeal. The appellant now places emphasis on earlier events in 2020. This appeal is an attempt to re-argue the case, on the basis of new material which was not argued before the sheriff. An appeal is not an opportunity for a second attempt at a better result. An appeal can only succeed if it is shown that the original court erred in some manner, whether in wrongly applying the law or reaching a conclusion on the evidence that no court ought to have reached.

[12] Even taking the most generous view of the appellant's position, the facts relied upon for the appeal are new. The sheriff made no error in considering the facts before him, was not invited to consider the effect of the 2020 contract, and indeed confirmed with the appellant that she had not paid the 2023 invoice because she did not like the result. No error is demonstrated and the appeal must fail for that reason.

[13] The appeal must also fail because, even if they were taken into account, the events of 2020 have no bearing on the present contract which was concluded in 2023. The 2023 contract was for services which were duly performed. The appellant does not claim otherwise. The fact that the news was unwelcome is not the fault of the respondent, and does not amount to breach of contract. The events of 2020, whatever these were, were the subject of a different contract. They do not provide a defence for non-payment of a later contract. Any remedy must be sought in relation to the 2020 contract. The 2023 contract price must be paid.

[14] The appeal must also fail because the appellant's complaint is that she is left with an unmarketable title. She makes no credible link with the performance of the present contract or, for that matter, with the 2020 contract. She blames the conveyancer, selling agent and others at around the time of purchase, namely 2016. It is entirely illogical to attribute any causal link to the respondent. The title, if it is truly unmarketable, was acquired in 2016. She has failed to show any breach of the 2023 contract.

[15] The appeal must also fail because, even if the 2023 contract had been breached, that does not render the 2023 invoice unenforceable. To justify non-payment the appellant would require to establish that she had suffered loss equal or greater to the contract sum. That would normally be by counterclaim involving retention and set-off. Counterclaims are not competent in Simple Procedure. There is, in any event, nothing in the facts presented which show the appellant would have had any arguable counterclaim. The appellant's title problems cannot be laid at the door of the respondent.

[16] This appeal must therefore fail, for any and all of the foregoing reasons. The question posed by the sheriff in the Appeal Report falls to be answered in the affirmative. I will find the appellant liable to the respondent in the expenses of the appeal, as taxed.