



SHERIFF APPEAL COURT

**[2026] SAC (Civ) 12
ABE-A352-24**

Sheriff Principal G A Wade KC
Appeal Sheriff D O'Carroll
Appeal Sheriff L Nicolson

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL GILLIAN WADE KC

in appeal in the cause

GRAHAM ROSS MCATEER

Pursuer and Respondent

against

MATTHEW CHYLA

Defender and Appellant

Pursuer and Respondent: J McKinlay, advocate; Raeburn Christie Clark & Wallace

Defender and Appellant: J Brown, advocate; Ledingham Chalmers LLP

18 February 2026

Introduction

[1] This appeal relates to a dispute over a Share Purchase Agreement ("SPA"). On 23 June 2023 the respondent, Graham McAteer, his wife, Heather McAteer, and the appellant, Matthew Chyla, entered into the SPA the purpose of which was to allow the appellant to acquire the share capital in Nicol Valentine Limited ("the company") from the respondent and Mrs McAteer. In exchange for the transfer of their shares in the company, the respondent avers in his pleadings that the appellant agreed to make the following

payments to him and Mrs McAteer: (i) an initial payment of £125,000 to the respondent; (ii) a second payment of £108,333.33 to the respondent, payable by monthly instalments; and (iii) a third payment of £116,666.67 to Mrs McAteer, albeit this amount did not require to be paid in full until January 2026. The total sum of those payments came to £350,000.

[2] The parties agree that the initial payment was paid to the respondent. The respondent also received payment of the sum of £3,611.11 (being the first contribution towards the sum of £108,333.33). No further payments have been made by the appellant to the respondent or Mrs McAteer under the SPA. As a result, the respondent raised proceedings in Aberdeen Sheriff Court on 10 September 2024 seeking: (i) declarator that the appellant was in breach of the SPA; and (ii) decree for payment in the sum of £50,555.54, the said sum being the value of the outstanding payments due to the respondent as at 30 September 2024. The action was raised in the name of the respondent only because at that time Mrs McAteer had not yet suffered a loss under the SPA (the sums payable to her not falling due until January 2026).

[3] In his defence to the action, the appellant averred that he had rescinded the SPA by way of a letter from his solicitor dated 24 August 2023 to the respondent's solicitor and, separately, that the SPA should be reduced *ope exceptionis* because the appellant was induced to enter into it by fraud and misrepresentation on the part of the respondent and Mrs McAteer. Upon lodging his defences, the appellant initiated a counterclaim seeking to reduce the SPA based on the alleged fraudulent misrepresentations of the respondent and Mrs McAteer. The respondent submitted the counterclaim was incompetent as Mrs McAteer was not a party to the action. That point was ultimately conceded by the appellant and the counterclaim was formally abandoned on 14 February 2025.

[4] Thereafter the respondent challenged the relevancy and specification of the appellant's defence. A debate was fixed and called before the sheriff on 2 June 2025.

The sheriff's judgment

[5] During the debate, the appellant conceded that he could not insist upon his fifth plea-in-law, namely that having been induced to sign the SPA by virtue of the alleged fraudulent misrepresentations of the respondent and Mrs McAteer, the SPA should be reduced *ope exceptionis*. The sheriff agreed that concession was correctly made: the remedy of reduction *ope exceptionis* was not available unless Mrs McAteer was a party to the action. Had he not upheld the respondent's first and second pleas-in-law the sheriff would have fixed a by order hearing to determine further procedure to resolve the issues posed by the appellant's fifth plea-in-law. However standing his decision on other matters there was no basis for such a hearing.

[6] As to the specification and relevancy of the appellant's defence, the respondent criticised the appellant's averments supporting his fourth plea-in-law. The fourth plea-in-law asserted that the appellant had rescinded the SPA by way of his solicitor's letter dated 24 August 2023. Therefore there was no contractual basis for the respondent to seek payment from the appellant under the SPA. On the one hand he offered to prove the SPA was void, but on the other that it was voidable. At debate, the appellant's counsel clarified that it was contended that the SPA was voidable only. Based on that clarification, the respondent submitted that the defence lacked relevant averments of any proper basis upon which the appellant had rescinded the SPA. Although answer 3.3 referred to the letter from the appellant's solicitors dated 24 August 2023, it had not been incorporated into the

pleadings. Nor were the terms of that letter averred. Moreover, the letter was not lodged in process. The sheriff held there was insufficient specification of the basis of rescission.

[7] Separately, the respondent submitted that the appellant's averments relating to rescission were fatally lacking in specification on how *restitutio in integrum*, a condition for rescission of a voidable contract, could be effected (ie how the parties could be returned to the positions they were in prior to the SPA). The only averment made by the respondent was simply that *restitutio in integrum* was viable. The sheriff agreed that there was insufficient specification, particularly having regard to the nature of the arrangements between the parties that would need to be undone. That determination was sufficient to dispose of the action.

[8] Nonetheless, the sheriff also accepted the respondent's submissions that certain of the appellant's averments alleging fraudulent misrepresentations lacked relevancy and specification. The appellant averred that the respondent and Mrs McAteer had made three separate fraudulent misrepresentations to him. The sheriff accepted that the averments in answer 3.1 would have been sufficient for enquiry at a proof before answer; however, the two other allegations at answers 3.2 and 3.3 were not. Had there not been an issue with the appellant's averments on rescission and *restitutio in integrum*, the sheriff would have excluded the averments in answers 3.2 and 3.3 from proceeding to probation.

Action for reduction

[9] After the sheriff's judgment was issued and this appeal had been lodged, the appellant proceeded to raise a separate action at Aberdeen Sheriff Court for the reduction of the SPA. That action has been served on the respondent and Mrs McAteer. Both parties

advised the court that, despite that development, neither of them sought a sist of the present appeal proceedings to allow determination of the action of reduction.

Submissions for the appellant

[10] Having determined, following the appellant's concession, that the remedy of reduction *ope exceptionis* was not available, the sheriff erred in proceeding to consider the respondent's challenge to the relevancy and specification of the appellant's averments. Counsel had submitted to the sheriff at debate that, in the circumstances, there were two remedies that would allow the appellant's fifth plea-in-law to be considered. These were: (i) that Mrs McAteer be convened as a party to the action, via amendment, which would then allow for a competent counterclaim to be made by the appellant. It was acknowledged that course was not within the control of the appellant; or (ii) that time be allowed for the appellant to raise a separate action of reduction of the SPA against the respondent and Mrs McAteer. The sheriff was invited to afford an opportunity for an action of reduction to be raised with a view to both that action and this one thereafter proceeding in tandem. The sheriff erred in failing to accede to that request. His interlocutors ought to be recalled pending determination of the action of reduction.

[11] Turning to the relevancy and specification of the appellant's defence, the sheriff erred in holding that there was insufficient specification by the appellant to instruct a claim in rescission. It had been averred that the appellant's solicitor had sent a letter on 24 August 2023. The respondent admitted that to be the case. The terms of the letter being in the knowledge of the parties, the appellant's averments of the letter being sent and the respondent's admission of the same were sufficient to provide fair notice to the respondent of the basis upon which rescission was sought.

[12] As to the relevancy and specification of the appellant's averments of *restitutio in integrum*, the averment "parties are capable of being placed in the position they were prior to the SPA being entered into" was sufficient to provide fair notice to the respondent that the appellant intended to lead evidence as to how to return parties to the positions they were in prior to the formation of the SPA. There was no precondition to inquiry on a claim for reduction that the party seeking it had to aver a precise and comprehensive scheme by which contingencies were to be weighed by the court. Evidence would always be required to allow a court to determine if the remedy was viable. The appellant (and indeed the respondent) submitted that there was no authority on the point. The court then drew counsel's attention to the opinion of the Lord Ordinary in *Somerville v 1051 GWR Limited* [2019] CSOH 61 at paras [37] – [38].

[13] Finally, the sheriff erred in holding that the appellant's averments in answer 3.2 and 3.3 lacked sufficient specification to provide fair notice of an allegation of fraudulent misrepresentation. Answer 3.2 contained sufficient averments regarding the misrepresentation by the respondent and Mrs McAteer as to the VAT liability of the company. The context was of pre-contractual discussions between the parties to the SPA. The appellant had averred that the respondent represented to him that the VAT liability would be settled. Fair notice was given to the respondent of a specific misrepresentation. The sheriff applied far too rigorous a standard in holding it irrelevant for inquiry. As for answer 3.3, the averments about the representation that the company was "99% certain" to win a substantial contract were relevant for enquiry. The representation by the respondent and Mrs McAteer was clearly intended to induce the appellant to proceed with the SPA.

Submissions for the respondent

[14] Following the concession that the appellant's fifth plea-in-law could not be sustained, no motion was made to amend the pleadings nor was any motion made to discharge the diet of debate or to sist the action pending the raising of a separate action of reduction by the appellant. The procedural difficulty in the appeal arose from the fact that it had taken the appellant so long to raise a separate action of reduction. He had abandoned his counterclaim seeking reduction on the basis it was incompetent on 14 February 2025. The note of the basis of preliminary pleas lodged by the respondent in February 2025 put the appellant on notice that, if he wished to reduce the SPA, he would need to raise a separate action. Notwithstanding that, the appellant had proceeded to a debate challenging the relevancy and specification of his defence to this action in June 2025. The action of reduction was not served until 24 November 2025.

[15] As for the submission that the sheriff should not have proceeded to deal with the relevancy and specification of the appellant's pleadings, standing the concession made on the appellant's fifth plea-in-law, there was no error by the sheriff. The appellant was prepared to proceed to debate and sought to defend the relevancy and specification of his averments on record. It was appropriate for the sheriff to provide his decision on the dispute between the parties on the relevancy and specification of those averments.

[16] The sheriff was correct to find the appellant's averments on rescission lacked specification. It was no answer to the lack of specification that the appellant averred that his solicitor had sent a letter on 24 August 2024 to the respondent's solicitor with no specification of its contents. Although receipt of a letter is admitted, the respondent made no further admission in relation to it. The respondent had not incorporated the letter into

the pleadings nor had he lodged it. As such, there were insufficient averments as to the basis upon which rescission was sought and no fair notice given to the respondent.

[17] The appellant's averments lacked specification as to how *restitutio in integrum* was viable. The single averment that it was possible was an insufficient basis upon which to lead evidence at proof or proof before answer and, in any event, failed to provide fair notice to the respondent. The onus to prove *restitutio in integrum* was, in the circumstances of this action, upon the appellant, given he sought to rely upon it: *Somerville v 1051 GWR Limited* [2019] CSOH 61 [37] – [38].

[18] The sheriff was correct to hold the appellant's averments on fraudulent misrepresentation at answer 3.2 and 3.3 were not fit for enquiry. In respect of answer 3.2, the sheriff was correct to find that there were no averments as to: how any representation was made; when they were made; whether the representations regarding the VAT liability and the overdraft were made together or separately; and the precise terms of any representation or the effect of any such representation on the appellant's decision making. As for answer 3.3, the sheriff made similar observations. The respondent was entitled to fair notice of when, where and how the representation complained of was made by the respondent, in addition to the effect of any representation upon the respondent's decision making. No such averments were made. In addition, the allegation of fraudulent misrepresentation at answer 3.3 was irrelevant absent an averment by the appellant that the alleged belief or opinion as to the likelihood of securing a contract was dishonestly expressed by the respondent: *Bradford Third Equitable Benefit Building Society v Borders* [1941] 2 All ER 205 at 211 A-E.

Decision

[19] The appellant seeks to avoid liability to the respondent in terms of the SPA entered into between them and to which the respondent's wife is also a party. He seeks to do so on the basis that he was induced to enter the SPA on the basis of fraudulent misrepresentations as to the true profitability of the company, which he claims was inflated by virtue of the inclusion of income from a flooring business; the position in relation to VAT liabilities; and the prospects of the company securing a lucrative contract to provide chauffeuring services to an energy company which were placed at "99% certain".

[20] In terms of his defences the appellant pled two legal mechanisms by which he sought to achieve this objective: (i) rescission based on a letter from his solicitors to those of the respondent dated 24 August 2023; and (ii) reduction of the SPA *ope exceptionis* as supported by his fifth plea-in-law. In addition the appellant lodged a counterclaim craving firstly a declarator that the SPA had been induced by fraudulent misrepresentations of the respondent and his wife and secondly reduction of the SPA.

[21] On the 14 February 2025 the appellant abandoned the counterclaim. He was bound to do so on the basis that it was incompetent as the respondent's wife, who was a signatory to the SPA, was not a party to the action at the instance of the respondent. That matter was explained to the sheriff at the outset of the debate and formed no part of the discussion at first instance.

[22] However having been obliged to jettison that particular line of attack attention then turned to the pleadings in support of the appellant's fifth plea-in-law to the effect that the SPA should be reduced *ope exceptionis*. In the course of the debate the appellant eventually accepted that it was not open to the court to reduce the SPA as the pleadings stood, again on the basis that the respondent's wife was not a party to the action. (Ordinary Cause Rules

1993 Rule 21.3; *Macphail Sheriff Court Practice 4th edition* paragraph 12.69; *Cavendish Pharmacies Limited v Stephensons Limited* 1998 SLT (Sh Ct) 66 per Sheriff Principal Hay at pages 67A-B and H-I, 68J-L and 69A-B).

[23] Counsel for the appellant acknowledged that either he should have taken a plea of “all parties not called” or he would have to raise a separate action of reduction, which he has now done.

[24] It is clear that by this stage of the debate the appellant’s counsel was somewhat on the back foot. In the face of an incompetent counterclaim and on the basis that his fifth plea-in-law would inevitably be repelled, while not making any motion to sist, to allow amendment or to discharge the debate, he invited the sheriff to take steps so as to allow the appellant to decide how best to overcome the various hurdles now in his path. In other words he wanted time to rethink his strategy.

[25] The sheriff declined to follow this course and proceeded with the debate, presumably on the basis that the respondent’s Rule 22 note foreshadowed other arguments anent relevancy and specification of the pleadings which could result in decree *de plano* being awarded in favour of the respondent and avoiding the necessity for any further procedure in the action before the sheriff.

[26] Before us the appellant maintained that although the sheriff was entitled to deal with the remainder of the debate, standing the concession that reduction *ope exceptionis* would not be available, he ought not as a matter of law to have done so and should have adjourned the debate at his own hand, despite not having been moved to do so and absent any motion to amend.

[27] At that stage there was no action of reduction pending. The sheriff was constrained to deal with the pleadings before him and the criticisms of them which had been made by

the respondent. The appellant seems to be suggesting that rather than allowing the debate to continue to its conclusion, the sheriff, having identified the legal difficulties in which the appellant found himself as a result of his own deficient pleadings, ought also of his own volition to have given the appellant time to put matters right. This would of course have deprived the respondent of his opportunity to secure decree *de plano* on the grounds that the respondent's pleadings did not disclose a properly pled defence.

[28] We do not accept this submission. Such a course would have been contrary to the interests of justice and contrary to the sheriff's duties to adjudicate on the matters before him. The purpose of debate is to enable all points of relevancy to be disposed of without spending time and money on a worthless enquiry. It is not open to the sheriff to assist the losing party by providing him with a way out. *Macphail (supra)* paragraph 13.16. As it happened counsel for the appellant continued to defend his pleadings at the debate. In those circumstances, it is unarguable that the sheriff erred in any way in proceeding to determine the matter which was squarely put before him by the parties. The sheriff was entitled if not obliged to proceed to determine the issues put before him in the absence of a positive motion by either of the parties not to do so. Even then it would have been a matter for his discretion. The respondent was entitled to a determination of the matters advanced in his Rule 22 note. We therefore reject this ground of appeal.

[29] We turn then to the appellant's second ground of appeal which focusses on the appellant's averments of rescission in answer 3.3. It is submitted that the sheriff erred in holding that they were fatally lacking in specification in relation to the letter of 24 August 2023. The averment refers to the said letter and goes on to state: "In that letter the defender made clear that he was holding the SPA as void and demanded to be placed in the position he was prior to entering into the SPA."

It is argued that as the letter was in the possession of the respondent as admitted in condescendence 3.3, its terms were in the knowledge of the parties and therefore the respondent had fair notice of the appellant's position.

[30] That argument is flawed in a number of material respects. The sheriff deals with this issue at para [41] of his judgment. In the first place the averment does not represent what came to be the appellant's position in law. The appellant accepted that if the SPA had been induced by fraud it was voidable not void. (Para [24] of the sheriff's judgment.) However, even adopting the generous approach afforded by the sheriff, the material terms of the letter, which form the foundation for the appellant's position on rescission, have not been averred or incorporated into the pleadings.

[31] The long-established requirements for incorporation of a document are fully explained in *Macphail (supra)* under reference to *Eadie Cairns v Programmed Maintenance Painting Ltd* 1987 SLT 777; *Grier v Lord Advocate* 2021 SLT 371; *Steelmek Marine Engineers v Shetland Sea Farms* 1999 SLT (Sh Ct) 30; and *Royal Bank of Scotland plc v Holmes* 1999 SLT 563. If a document is to be founded upon it must be produced, described and its provisions specified or incorporated *brevitatis causa*. If not, it cannot be looked at by the court. This was made clear to counsel for the appellant in the course of the appeal when he invited us to do just that, despite the fact that the letter has never been lodged as a production in this process.

[32] Finally, the terms of the respondent's response to the appellant's averments about the letter simply admit that the appellant's agents wrote to the respondent's agents. The terms of the letter are not admitted. That admission provides no support for the appellant's argument that they knew of or agreed its terms or its import. The sheriff was quite correct

to conclude that this critical aspect of the appellant's defence was not adequately specified and should not be admitted to probation.

[33] Turning next to the averments regarding restitution it was common ground that for the appellant to succeed in his attempts to have the SPA reduced, *restitutio in integrum* must be substantially possible (*Gloag and Henderson* paragraphs 7.02, 7.03 and 7.04). The only averment on record in support of the appellant's position is found at answer 3.3 which states, in bald terms: "Parties are capable of being placed in the position they were prior to the SPA being entered into."

[34] The sheriff held that averment to be insufficient to give fair notice as to how restitution could be effected. He said so particularly having regard to the nature of the arrangements which had taken place following the SPA and which involved the sale of a car owned by the respondent himself, and two cars owned by the company, to a third party in satisfaction of the first payment and the first instalment of the second payment due by the appellant to the respondent.

[35] Neither party was able to point to any reported authority on the matter, however the court asked for submissions on *Somerville v 1051 GWR Limited* [2019] CSOH 61 paras [37] - [38] where Lady Wolffe stated:

"[37] The observations and the outcome in *Spence* are redolent of the court taking a pragmatic approach in the exercise of its discretion in the context of an 'equitable jurisdiction' (as Lord Wright described it). It is a fact-rich or fact-sensitive exercise (e.g. because how *restitutio* is achieved 'must depend on the circumstances of the case'), which militates against this being capable of resolution at debate as a matter of relevancy. As Lord Thankerton observed, it is generally the defender who complains of the impossibility of *restitutio*. These comments are entirely consistent with the general rule of pleading in Scottish cases, that he who asserts a state of affairs (here, the impossibility of *restitutio* and other matters the defender preyed in aid) has the onus of pleading and proving that state of affairs. Accordingly, the defender's challenge in the form of the reduction issue is, in my view, ill-founded.

[38] In the light of these observations it is clear that it is for the party resisting reduction, or who asserts that *restitutio in integrum* is not possible, to put this in issue in *its* pleadings. In this case, that would be the defender. While *Spence* involved adjustments in order to achieve a state of affairs as close to restitution as possible, it should be noted that that was done after proof. In my view, having regard to the equitable character of the remedy and to the court's application of the doctrine of *restitutio* in a pragmatic and flexible way, it is unlikely that a court would be able to resolve this matter on the pleadings even if the defender had raised this. It suffices for the purposes of the argument presented at debate, to reject the defender's contention that the onus rests on the pursuer to aver that *restitutio* is possible."

[36] On one reading that tends to support the appellant's contention that the equitable nature of the remedy is such that there is no onus upon a party to do any more than to put the matter in issue and even then, he does not need to do so. The court will exercise its powers flexibly and pragmatically to find a remedy in order to do justice between the parties and restore the parties substantially if not precisely to the position that they would have been in but for the impugned contract.

[37] However that ignores what Lady Wolffe acknowledges to be the accepted position in relation to Scots pleadings namely that it is for he who asserts a position to aver and prove it. Applying the same logic in this case the onus is on the appellant who seeks reduction of the agreement to aver with sufficient clarity how restitution could be achieved whether it be by return of the cars or by virtue of some form of equitable compensation as in *Spence v Crawford* 1939 SC (HL) 52. As observed in *Somerville* the cases are, by their very nature fact specific. It may be difficult in every case to be precise about how restitution is to be achieved. That is the nature of the equitable remedy but in our view, in order to give the respondent fair notice of the evidence which the appellant intends to lead in support of his proposition that either precise restoration is possible or that an adequate compensatory remedy could be invoked instead, sufficient averments have to be placed on record to enable him to lead evidence in support of that position (since he has put it in issue) and to allow the

other party, in this case the respondent to make averments in response. That is particularly so where as in this case the steps taken by the parties subsequent to the making of the impugned contract materially alter their factual position and the means of restitution are not obvious.

[38] The court is not bound by *Somerville* which is, in any event, entirely consistent with the principle referred to by Lady Wolffe regarding the requirements incumbent on the party with the onus of proving the ingredient essential to the remedy sought. In this case that is the appellant. *Restitutio in integrum* is an essential ingredient of the remedy of reduction. That is a remedy which may only be granted if it is possible to restore the parties precisely or substantially to their pre contractual position or an equitable alternative can be achieved. In the instant case the means by which restitution could be achieved is not obvious from the factual matrix outlined elsewhere in the pleadings. In our view the appellant ought to have averred at least in broad terms what he offers to prove could or should happen to the shares in the company, the money that changed hands and how the issue of the vehicles would be dealt with. Before us counsel for the appellant asserted that to do such a thing would be impossible. That might suggest that restitution itself would be impossible. However, in his note of argument [paras 10 and 11] counsel goes into some detail to explain various mechanisms by which restitution could be effected in practical terms. Had he sought to amend in similar terms, his averments in relation to restitution may well have been sufficient to allow evidence to be led on the feasibility of these options. As matters stand the respondent is left in the dark as to how or by what means he is to be put back in the position he was in if the SPA were to be reduced. This would lead to inevitable objection in the course of a proof if a witness were to offer a range of proposals as the respondent, as a matter of practicality, would have had no opportunity to investigate whether any of these

mechanisms could in fact be achieved or whether there were any barriers to these proposals either in law or in fact.

[39] Accordingly we agree that in the circumstances, where the route to restitution is far from clear and would require to be explored at proof, averments providing fair notice of the potential means by which this could be achieved are essential. This ground of appeal is therefore refused.

[40] Having refused the appeal on these grounds we need go no further. However as the sheriff dealt with the relevancy of the averments regarding the three representations which are said to have amounted to fraud and the parties addressed us upon them, we shall proceed briefly to consider the sheriff's decision in that regard.

[41] The sheriff held that the appellant's averments regarding the inclusion of revenue from a flooring business in the company's accounts were sufficient for inquiry at proof. However in relation to the averments in answer 3.2 and 3.3 regarding the representations in relation to the VAT liability and the likelihood of securing a chauffeuring contract with an energy company the sheriff held that the pleadings fell short of the high standard which is required when pleading fraudulent misrepresentation. He would not have admitted those averments to probation.

[42] We agree with the sheriff. He clearly addressed the correct test and considered the authorities on the matter in some detail: *Bradford Third Equitable Benefit Building Society v Borders* [1941] 2 All ER 205, Viscount Maugham at page 211 A-E; *Kidd v Paull & Williamson LLP & Another* 2018 SC 193 per Lord Tyre at paras [25] and [33], *Leander CB Consultants Limited v Bogside Investments Limited* [2023] CSOH 26 per Lord Braid at paragraphs 5, 26, and 28; *Royal Bank of Scotland Plc v Holmes* 1999 SLT 563 per Lord McFadyen at pages 569K to 570E.

The appellant's submission to the effect that averments should be approached with a "high degree of generality" is not supported by *Marine & Offshore Limited v Hill* 2018 SLT 239. On the contrary, as the sheriff observes, the Inner House endorsed the dicta in *Royal Bank of Scotland Plc v Holmes (supra)*. We can identify no error in the sheriff's approach. The appellant's averments simply have not been properly made.

[43] The final argument advanced related to the lack of legal representation. Those averments are wholly irrelevant. There is no duty on the respondent to advise the appellant to obtain legal representation. The rules issued to solicitors by the Law Society of Scotland are irrelevant for these purposes.

Disposal

[44] We refuse the appeal and adhere to the sheriff's interlocutors of 14 June 2025 and 18 July 2025. Parties agreed that expenses should follow success. We will award the expenses of the appeal to the respondent.