

**SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT
HAMILTON**

[2025] SC HAM 80

HAM-A86-23

JUDGMENT OF SHERIFF J SPEIR

in the cause

CALLUM GILLIES

Pursuer

against

JACK FERGUSON BAPTIE

Defender

**Pursuer: R Mitchell, Advocate; Jones Whyte Law, Solicitors, Glasgow
Defender: Clarity Simplicity Ltd, Solicitors, Glasgow**

Hamilton 3 October 2025

The sheriff, having resumed consideration of the course, finds as follows:

1. The pursuer and his wife Holly are the proprietors of a two-storey semi-detached house in East Kilbride (“the property”). In the first half of June 2021 they decided upon the installation of a new and redesigned kitchen. This was the first major item in a planned renovation of the whole property.
2. The existing kitchen was in a poor decorative state of repair with patch repairs and dents to the existing plasterboard walls.
3. The intention was to create a new kitchen with a different layout in terms of the location of kitchen units including the blocking off an existing doorway to a walk in cupboard.

4. They decided to purchase the new kitchen from Wren Kitchens ("Wren"). A significant factor in this decision was the availability of interest free credit to meet the cost of the kitchen.

5. Representatives from Wren attended at the property to measure up the new kitchen space to be created and thereafter they prepared design drawings showing the dimensions of the new kitchen and the units to be installed therein.

6. The pursuer decided to employ his own contractor to carry out the necessary work to strip out the existing kitchen including the existing plasterboard walls before erecting new walls, fitting the kitchen including the necessary electrical and plumbing work. The pursuer had been advised by Wren that this would likely be cheaper than employing a Wren contractor.

7. On or about 9 June 2021 the pursuer contacted the defender, who was already known to him, to ascertain whether he would be interested in carrying out the work.

8. The defender responding confirming that he was interested in the job and advised that he could arrange for other trades to do the plumbing, electrics and plastering.

9. On the evening 21 June 2021 a meeting took place between the parties at which the detail of the works was discussed in order for the defender to prepare a quotation therefor. At said meeting the defender made his own measurements and confirmed them against the Wren plans. The defender found that the measurements on the Wren plans were more conservative than his own

10. Following that meeting and on the same date the defender sent the pursuer a WhatsApp message confirming the scope of the works and quoting a price of £4853.

11. In subsequent messaging the defender confirmed that the quote also included fitting flooring and plywood on the floor and that he would deduct £40 from the quote in respect of

the gas hob as it did not require to be capped. That gave a revised price of £4813. The defender advised that a price for the French doors and windows would follow.

12. The price agreed between the pursuer and defender included the sum of £1280 in respect of electrical work which the pursuer paid directly to the electrician.

13. Although there was no explicit acceptance of the defender's quote it can be inferred that it was duly accepted as discussion moved on to when the work could be started and a date of 20 September 2021 was agreed. On reliance of that the pursuer paid the deposit due to Wren and provisionally ordered the kitchen for delivery at the end of September.

14. On 9 July 2021 the pursuer accepted a further quote from the defender in the sum of £1360 for the supply and fit new French doors and a new kitchen window.

15. On or about 14 August 2021 at the pursuer's request the defender again attended at the property to review and sign off on the contract documentation which Wren required to be completed prior to installation. That documentation contained a checklist which *inter alia* required the nominated contractor to confirm:

- That all of the room measurements (length, width and height) had been checked
- That the correct number of décor panels had been ordered; and
- That the kitchen could be installed in line with the plan supplied by Wren.

16. The start date for the work to the kitchen required to be delayed and new start date of 27 September was agreed. The pursuer arranged to have Wren deliver the units on 4 October 2021.

17. On 1 October 2021 at the pursuer paid the defender, at his request, £1360 for the new French doors and kitchen windows.

18. The room in which the existing kitchen was located and into which new kitchen walls and unit were to be built was a trapezoid shape in that it was not a perfect square as the length of the north wall was shorter than the south wall.
19. The Wren plan showed the base units of the new kitchen were to be installed along the west, north and east walls. That installation relied on the northwest and northeast corners being at right angles to accommodate 90-degree corner units.
20. The length of the north wall as measured by Wren was 2790mm.
21. The defender's own measurement of said north wall prior to commencement of the work was slightly in excess of that value.
22. The absolute minimum length required to fit the planned kitchen base units to the north wall was 2744mm.
23. The absolute minimum length required to fit the planned kitchen wall units and decorative end panels to the north wall was 2790 mm.
24. The new west wall to be formed from plasterboard required to cover over an existing understairs cupboard door. This wall required to be formed on an existing internal partition wall.
25. The new east wall to be formed required to conceal central heating pipes.
26. Because of the need to accommodate the foregoing existing features of the west and east walls the new plasterboard walls erected thereon reduced the length of the north wall to 2756mm and thus 34mm less than the minimum required length for the wall units.
27. After erection of the new plasterboard walls the defender did not advise the pursuer that this reduction in length would cause an issue in fitting all parts of the new kitchen as specified and detailed in the Wren plan before proceeding to fit the kitchen units.

28. Because of that reduction in length there was insufficient space left to fit a décor end panel to the northeast corner.

29. In the course of the work the defender damaged three further panels which required to be replaced.

30. The defender fixed the new plasterboard wall linings to the stripped back bare north, east and south walls and to the stripped back internal west wall of the property without making any allowance for any of those walls being off the plumb and square.

31. All of the new plasterboard walls erected by the defender were not constructed plumb and square to varying degrees. The walls are visibly uneven especially at the reveals to the French doors and kitchen window on the east wall.

32. Because of the west, north and east walls being off plumb and square the northwest and northeast corners were not constructed by the defender at right angles to the north and west walls and north and east walls, respectively, contrary to the specification and design contained in the Wren drawings.

33. As a consequence of the failure to build plum and square walls and creating 90-degree corners the kitchen units as fitted by the defender were misaligned with visible gaps. The units and worktop are visibly off the square and level.

34. It would have been possible for the defender to have built plumb and square plasterboard walls with the use of straps, packers and spacers. The materials involved to do this could have been obtained at modest cost and the defender had all the necessary tools to carry out this work.

35. If the foregoing techniques were not suitable for the internal west wall then were alternatives available including building out that wall or use of the dob and dab plaster method.

36. If the walls had been built plumb and square it may have resulted in the job being more expensive and taking longer to complete. It may also have resulted in the available width of the kitchen being reduced which in turn would have required a change in the dimensions of the units. All of these quantities are unknown.

37. The defender did not discuss the issue of erecting plumb and square walls with the pursuer or the possible consequence in terms of time, cost and modification of unit size with the pursuer.

38. On 22 October 2021 and prior to completion of the contracted for work the defender requested payment from the pursuer in the sum of £4513 being the contract price of £4813 as referred to in finding in fact 11 less a £300 reduction he proposed in respect of the damaged panels. Said sum did not include extras that still required to be added. The defender further advised that it would take him a day to finish the job.

39. On same date the pursuer refused to make payment on the basis that the work as completed to that point was unacceptable. He invited the defender back to the house to discuss how the issues might be resolved.

40. The defender did not accept that invitation until 11 November 2021. Although the parties met on that date and had discussed the defender completing the job there was an impasse in relation to payment.

41. The defender was not prepared to complete the job until he received payment of £3491.85 broken down in terms of his WhatsApp message of 28 November 2021 as follows:

- Contract price £3533 (being £4813 less £1280 paid by the pursuer directly to the electrician)

- Extras of £465.82 being (a) Framing material and plywood for building out window wall for the central heating pipes (b) Supply and fitting of facings abs skirting (c) Moving extractor above guided height, and cutting of metal cover above (d) Removing gyproc from window cil for new stone cil; and additional electrician charge for supply and fit outside sockets and fit outside light
- Less the cost of 3 replacement panels at £506.97

42. The defender requested immediate payment of £3000 with a proposed retention of £491.85 for completion of the job. The pursuer refused to make that payment. There was a further failed attempt at resolution at a meeting between parties on 13 December 2021. Thereafter the defender did not return to the job.

43. At the point of leaving the job, in addition to the uneven walls and misaligned units there were a number of remedial and snagging works outstanding and there remained external debris on site.

44. On or about February and March 2022 the pursuer employed different plumbers and contractors to carry out certain of those remedial and/or snagging works including moving pipework and replacing the décor panels and then refitting the kitchen units to suit the worktop alignment. The pursuer paid a total of £1777 for this work.

Findings in Fact and Law

1. It was an implied term of the contract between the parties that the defender would exercise the reasonable skill and care of a qualified and experienced joiner.
2. The defender's failure to build plum and square walls was a breach of that implied term.

3. The defender's failure to discuss the reduction in width of the kitchen with the pursuer before proceeding to install the kitchen units was a breach of that implied term.
4. The defender's breach of contract caused the pursuer to suffer loss and damage.
5. That the scope of the necessary remedial works to remedy the defender's breach of contract are as follows: remove existing kitchen units, worktop, and wall linings; reconfigure plumbing and electrical installations; install new plasterboard walls to match Wren dimensions; fit new kitchen units and worktop; decoration and external clean-up of builder's debris.
6. The estimated cost of the foregoing remedial works is £20,040.
7. The defender had no contractual basis to demand payment in full less his assessed deductions as a prerequisite of returning to the property to complete the contract.
8. As a consequence of being in breach of contract the defender is not entitled to any further payment from the pursuer.

Findings in Law

1. That the 3rd and fourth pleas in law for the pursuer should be sustained and that all remaining pleas in law for both parties should be repelled.
2. That the pursuer's first crave for payment should be granted in the sum of £20,040.

Interlocutor

THEREFORE grants decree for payment by the defender to the pursuer of the sum of TWENTY THOUSAND AND FORTY POUNDS (£20,040) sterling with interest thereon from the date hereof until payment at the rate of eight per cent per annum; reserves meantime

the question of expenses meantime and appoints parties to be heard thereon at Hamilton Sheriff Court on a date to be afterwards fixed.

NOTE

Introduction & summary

[1] This case involves a dispute between a customer (pursuer) and tradesman (defender) arising out of a contract for the fitting of a new kitchen. Their dispute ultimately found form in two separate actions: the defender's action for payment of £3191.85 for the work he carried out (HAM-A222-23) and this action (HAM-A86-23) being the pursuer's action for damages in the sum of £20,040 on the basis that the defender was in breach of contract. It was agreed that for the purposes of proof that both actions would be heard contemporaneously as the factual matrix was the same and accordingly evidence in one would be evidence in the other. For convenience, not least because this was how the evidence was led, I am treating this action as the principal one for the purposes of setting out a detailed judgment. Accordingly I and propose to refer to this judgment for brevity in determination of the other action albeit a separate interlocutor will require to be pronounced therein.

[2] At the proof I heard evidence from each of the parties and two chartered surveyor expert witnesses, Mr Andrew Welch MRICS and Mr Alex Carmichael, FRICS. It had been agreed between parties that each would give evidence first followed by the experts rather than the more traditional form of the pursuer presenting the entirety of his case followed by the defender. I was content to agree to this proposal. In addition the parties entered into a joint minute of admission (no 29) agreeing the the terms of a report (with minor

modification) by a further expert, namely Mr Les Baird, Quantity Surveyor thus obviating the need for him to give evidence in person.

[3] As the evidence was heard over a prolonged period a transcript of the evidence was prepared and available in advance of the hearing on evidence and submissions.

Accordingly, I do not propose to rehearse the evidence here in any detail and in any event the essential facts which I accepted from the evidence heard are set out in the findings in fact. As will be seen therefrom together with the findings in fact and law and findings in law, I have determined that the pursuer in the present action should succeed and consequently the defender fails in his action for the contract price.

Evidence for the pursuer

The pursuer, Callum Gillies

[4] The pursuer, a cybersecurity consultant, resides in East Kilbride, with his wife Holly. In 2021, they planned a full renovation of their kitchen—their first major home improvement project. The defender, a joiner and long-term acquaintance of the pursuer had previously completed minor works at the property for them. The couple selected a kitchen from Wren Kitchens (“Wren”). Their existing kitchen was in poor condition, with significant interior wall damage. On 9 June 2021, the pursuer contacted the defender via WhatsApp to discuss the job and see whether he was interested in taking it on. The proposed work included stripping walls to brick, relocating electrical and plumbing fixtures, to “square up the room”, and installing the new kitchen. “Square up” referred to tidying and making walls flat and flush—not reshaping the room that was a trapezoidal shape with one end being 10 cm narrower than the other. The defender expressed interest but was unavailable to attend a meeting on site until 21 June. At that meeting, the pursuer showed Wren’s plans

and discussed additional storage and pipe relocation. The defender took his own measurements and reviewed Wren's drawings. He indicated that he was satisfied with the margin of tolerance available. Later that evening, the defender via WhatsApp confirmed what he understood the scope of the works to be: six downlights, induction hob, oven, microwave, extra sockets, radiator relocation, pipework integration, kitchen fitting, wall renewal, plastering, ceiling work, and rubbish removal. He quoted a price for the job of £4,853, with an estimated duration of 2 weeks. The defender would arrange for an electrician, plumber and plasterer as part of the works. The defender was also asked to quote for new French doors and a kitchen window, which he priced at £1,360 on 9 July. Before work began, the pursuer needed the defender to check and sign documentation from Wren, including a CAD pack and a checklist. The pursuer requested that the defender meet him to do that. A meeting took place on 14 August during which the defender confirmed that he was content with the measurements as set out in the plans. He signed off on all the relevant documentation. That included a requirement on installers to consider the impact of uneven walls and ceiling heights. During this meeting, the pursuer discovered a misunderstanding with defender regarding wall finishing. He had expected Gyproc plasterboard with skim plaster, which he hoped would provide insulation and a polished finish but the defender made it clear that he intended to use tape and fill. Though disappointed, the pursuer accepted the change. Despite visible damage, the original plasterboard walls prior to removal were flat and level. The pursuer paid Wren £17,361.47 for the kitchen which included a saving of just under £9000 on the full price. He paid a deposit of just over £1200 and covered the balance through interest-free finance. Photos documented the kitchen before and after stripping to brick. A doorway to a cupboard adjacent to the living room on the west wall was to be covered as part of the redesigned

kitchen. That had the effect of narrowing the dimensions of the room. Despite that no issue was ever raised by the defender or warning given that the kitchen as contracted for could not be fitted. The defender attempted to integrate boiler pipes into the east wall, but due to a joist, they remained exposed near the ceiling. The pursuer, working from home, was present during much of the work and became aware of apparent issues in the execution of the works. In addition he became concerned as to how aspects of the works were being carried out, in particular what he perceived to be excessive cutting of lower kitchen units, which he described as “butchering of the carcasses”. He was particularly concerned that the units were not sitting flush against walls. There were evident gaps. In addition to the contract price the pursuer had made payments separately of £1360 for the French doors and kitchen window and £1280 to an electrician brought on to the job by the defender. Beyond those payments no agreement existed for interim payments. Work began in late September/early October 2021. Completion depended on Wren fitting the worktop, which required precise measurements after unit installation. After installation of the units the defender requested full payment and an additional sum of £465.82 for extras less £300 to cover the cost of damage to panels for which he accepted responsibility. In response the pursuer raised concerns about the quality of work, in particular misalignment of cupboard doors, appliances not fitting under the worktop kitchen window handles needing adjustment and a missing extractor fan hood. He asked for a breakdown of costs as a prerequisite of payment. He considered £300 insufficient to cover the cost of the replacement panels. Critically the pursuer was concerned by the uneven appearance of the new walls which he likened to funhouse mirrors. The most visible flaw was beside the French doors, where a curve was noticeable—especially when blinds were down. Though the installed kitchen units looked average externally, internal damage and a narrower-than-

expected worktop were problematic. In addition a lot of rubbish on site had not been removed. Relations deteriorated. The defender refused to return without payment, and the pursuer was unwilling to pay without transparency. Ultimately, the defender did not return to complete the work. Subsequently the pursuer hired Garmond Building Services Ltd to finish the kitchen, incurring an additional cost of £1,327. With reference to Mr Carmichael's report the pursuer recalled that his inspection only lasted approximately 20 minutes and he had expressed support for the pursuer's position, commenting that the walls were "definitely not right.". Under a lengthy and somewhat repetitive cross-examination the pursuer added little to what had already been said. He did acknowledge that Wren fitters would have been more expensive and that he chose the defender due to trust and familiarity. He confirmed that the existing kitchen room was not square before renovation and that "squaring up" referred to tidying, not reshaping. He accepted that the new kitchen was functional but believed full removal and reconstruction of the walls was necessary to rectify the issues. He described the new walls as concave or convex, contrasting with the original flat walls constructed using dot and dab, which he thought might have allowed better adjustment than the defender's strapping technique. On re-examination, the pursuer reiterated his dissatisfaction with the final result. He emphasized that the old walls, though damaged, were flat and level, unlike the new uneven surfaces. He believed the chosen wall construction method contributed to the poor finish.

The defender – Jack Baptie

[5] The defender is a qualified joiner with over 12 years of experience, having completed a 4-year apprenticeship and a two-year HNC in construction management. He has fitted over 200 kitchens, including around 40 designed and manufactured by Wren. He had never

received complaints prior to this case. He knew the pursuer personally but they were not close friends. By reference to the WhatsApp message of 9 June 2021 the defender interpreted the phrase “square up the room” as meaning to tidy and improve the room, not to make it technically square and plumb. He stated that “squaring up” is not a technical term in joinery. On visiting the property on 21 June 2021, he checked the Wren drawings and found the measurements accurate with sufficient tolerances. He noted patchwork plasterboard on the walls but saw no issues preventing kitchen installation. He attempted to inspect the central heating pipe boxing but could not see the full extent due to structural limitations. He had been able to attach the central heating pipes to the stonework before rebuilding the wall but there had to be a gap at the top to accommodate bends in the pipes to go around ceiling joist directly above the line of the pipework. It would not have been possible to straighten out the pipes without opening ceiling and altering the structural joists. He discussed this with the pursuer at the time pointing out that it would have been a massive job to carry out structural alteration to the existing joist arrangement. The defender stripped the walls to brick and rebuilt them using 12.5 mm standard gyproc, not water-resistant gyproc, as it was not specified. He used tape and fill instead of plastering to save time and cost, which the pursuer agreed to. He considered that plastering would not improve heat retention unless an internal partition was built, which was never discussed. The ceiling was lowered only by the width of a plasterboard sheet to accommodate the wall units. He employed a company to remove debris, with the cost included in his quote. However, due to a dispute, some rubbish remained on-site. He had not received payment of the sum quoted of for the job but he had received payment of £1360 for the new window and French doors. He was familiar with the Wren documentation that he had completed before commencing the work. His measurements corresponded with those made by Wren and

although there was a small difference, his measurements produced a marginally greater leeway along the walls than those of Wren. The length of the units were fixed on the left-hand side at 2744 mm. By reference to the Wren drawings and asked to explain the process by which he would check the various dimensions he explained that certain units could be described as having a red alert. He initially seemed to suggest that there was a red alert in relation to the unit number 50 but then departed and from that. During the course of the work in fitting the kitchen the defender worked from a full-size drawing pinned to the wall as he worked his way around the room. He took delivery of the kitchen units when delivered by Wren and confirmed that there were no defects with them. The job began on 27 September 2021. He removed the old kitchen, the pre-existing double-sheeted plasterboard walls and flooring. For structural reasons he was unable to remove the existing "honeycomb" wall adjacent to the living room. He noted that the original walls were not square or plumb, which is typical in his experience. He had arranged for an electrician (Mark) to carry out electrical work and that included laying new cabling before wall erection. Timber strapping was fixed directly to the brick walls, which carried forward any deviations from square. While the strapping was straight, the underlying walls were not, which affected the final alignment. He explained that packing the timber to correct this could weaken it, and building a partition wall would reduce room size and increase costs. Squaring and plumbing the room was not part of the job and not standard practice for kitchen fitting. The critical aspect was ensuring the units were level and plumb at the front for the worktop. Kitchen units are designed with tolerances. The removed walls had been installed using the dot and dab method, which he does not use. Once the plasterboard had been installed, it had been tape and filled by the plasterer (Graham Scott) whom the defender had arranged to carry out this work. The pursuer had not raised any concerns

about the way the central heating pipework had been left. He agreed that the west wall which backed on to the living room was off angle but it had been like that before the new plasterboard was fixed to it. Thereafter base units were installed first, followed by wall units. Due to off-plumb walls, some base units had to be cut to fit. The pursuer objected to this, but the defender insisted it was necessary. He used a spirit level to ensure proper alignment and left protective film on units to prevent damage, which could cause temporary misalignment. He admitted to an error in cutting a panel between the dishwasher and washing machine, which needed replacement. He estimated that 95% of the work was completed, with only finishing touches remaining. He valued the remaining work at £300 and sued for £3,191.95. The defender felt let down by the pursuer, who had not paid for materials. He disagreed with Mr Welsh's assessment of his workmanship and maintained that making the newly formed plasterboard walls plumb and level was never part of the contract. He had been able to fit all of the kitchen units and that the room's overall width was less critical than the total of the units' width. He acknowledged that the kitchen was narrower than the Wren plan due to the need to build out the east wall for pipework. The pursuer was aware of this also. There was still enough space to fit the units. He accepted that kickboards were left with a finger-width gap for access, which the pursuer disliked. The defender disagreed with Mr Welsh's opinion that the room should have been made plumb and square or that he had not carried out his work with reasonable skill and care. The cost of removing the debris at the end of the job was £50 or not more than £200. He agreed with his own expert, Mr Carmichael. He was referred to and agreed with the terms of an unsigned letter from Howdens dated 21 June 2023. Under cross-examination, he confirmed that subcontractors were used and that stripping and refitting walls was part of his job. He agreed that plumb, level, and square are important in joinery but disagreed that

it was part of his duty in exercising reasonable skill and care to ensure that the plasterboard that was fitted to the new kitchen was plumb level and square. He admitted that the new plasterboard reduced the room's width below the 2790 mm specified in the Wren drawings, primarily due to extra timber on the kitchen window wall. He had informed the pursuer of the narrower room and reassured him that the units would still fit. He agreed that all the Wren drawings and measurements were available to him at the point when he signed the checklist. At that stage he also knew that there was new plasterboard to be fitted. He confirmed that he would have been aware that the new plasterboard could have had an impact on the dimension of the kitchen to be fitted. He disagreed that he had in fact not been able to fit the Wren kitchen within that width and as a result there was no room for the remaining end panel. He said that it could still have been fitted if filleted from (40mm) to a wedge of between 5mm to 15mm. He disagreed that end panels were necessary in order to achieve an aesthetically pleasing construction. He disagreed that the units had been squeezed in or buckled and maintained that the room's lack of squareness was pre-existing. He argued that making the walls plumb and square would have required significantly more work and cost. He accepted that the plasterboard walls that he installed were not square and plumb. To achieve that standard on the wall adjacent to the living room would have required an additional partition wall. He disputed that it was an important feature of the Wren plan that there be square corners at either end of the kitchen where the units were to be installed. But if it had been part of the contract then he could have done it. He accepted that timber strapping could be adjusted using inexpensive spacers and shaving techniques to form a plumb and straight plasterboard wall unless a partition wall was required. These were not minor alterations. He acknowledged that the plasterboard in the northwest corner was not square and could have been corrected with more work. The NHBC standards did

not apply to this job only to new builds and even there were tolerances. The Howdens letter was written by the manager of the East Kilbride branch at his request but accepted that it did not address the specific circumstances of this case. At the point he left the job all that remained was snagging which would take no more than one day's work on which he put a value of £300. At the meetings on 11 November and 13 December the pursuer did not complain to him about the state of the walls and the angles of the walls. He conceded that he never provided the pursuer with a detailed breakdown of the work that had been carried out and the value to be attributed to it. He accepted that certain panels required to be replaced and that the window handles needed changed over. There had been no agreement as to payment prior to completion. He disagreed that many of the problems that arose were because of fitted plasterboard having resulted in a narrowing of the kitchen. In re-examination, he clarified that the extent of wall build-out was not known until the pipes were fully exposed. He reassured the pursuer that tolerances were sufficient and there was no discussion about changing unit sizes for a neater finish.

Alastair R. Welch, MRICS

[6] Mr Welch is a chartered surveyor with some 28 years' experience. He spoke to and adopted his report dated 22 July 2022 (5/1/3 of process). He had prepared that report following his inspection of the property on 8 July 2022. His remit had been to assess the quality of kitchen installation work carried out by the defender.

[7] Mr Welch's main findings and conclusions may be summarised as follows:

- (a) the plasterboard wall linings were off-plumb, off-square, and uneven;
- (b) the kitchen dimensions did not match the Wren Kitchens' design plan which in turn caused fitting issues;

- (c) there was poor finishing around windows and doors;
- (d) poor workmanship was evident in the skirting boards, reveals, and corners which were misaligned;
- (e) moisture-resistant plasterboard had not been used near water sources;
- (f) the fitted kitchen units were misaligned due to uneven walls with gaps and visible blockwork evident behind units;
- (g) the pipework design was poor resulting in draughts;
- (h) electrical sockets and plumbing installations were substandard;
- (i) oven and washing machine units were not level.

[8] His primary and most important conclusions can be found in paragraphs 5.8 & 5.9 of his report as follows:

“The level of workmanship, due care and attention Mr Baptie has demonstrated constructing the new wall linings is poor. Mr Baptie has not taken due care and attention to ensure the walls are plumb, level, square and straight. Mr Baptie has not considered the critical sizes as set out on the Wren dimension drawing. As a result the kitchen units do not sit square, level nor even...The new walls and the kitchen units are off-plumb and not level to the naked eye.”

[9] To remedy matters he considered that the following works were necessary:

- Remove the existing kitchen units and worktop.
- Remove the off-plumb plasterboard wall linings.
- Re-configure the pipes to the East wall.
- Take set out sizes to match the Wren kitchen dimensions.
- Form plasterboard wall linings that are flush and square.
- Build replacement new kitchen units off the new square walls
- Fit new wall skirting boards and facings.

[10] In evidence in chief and thereafter in cross-examination and re-examination, he explained that it would have been possible for the defender to build plumb and square walls by adopting the common joinery techniques of using straps, packers and spacers. An alternative method was to dob and dab the bare walls with different sizes of plaster. That appeared to have been used previously on the internal west partition wall. Use of these techniques were standard practice. In the present case that may have risked reducing the width of the room to less than that required in the Wren drawings but if that was the case a discussion should have been had with the pursuer and the kitchen plan could have been redesigned as required possibly by the substitution of smaller units. It was generally more important to achieve plumb and square walls in a small space rather than a larger one because the larger the room the appearance of any deviation is less obvious. In the present case the kitchen walls being off square was obvious to the naked eye. Similarly the appearance of the north wall was more critical than the south wall as the former had the kitchen units and the latter did not. In cross-examination he was prepared to accept that some of his criticisms of the defender's workmanship might be described as snagging but most were not and certainly not the two principal ones as detailed in paragraphs 5.8 & 5.9. He could not say which of the walls forming the corners was the one that was off and that is why they would all have to be removed. All that could be said is that neither the northwest corner nor the northeast corner were at 90 degrees. Based on his reading of Mr Carmichael's report and his discussions with him, he postulated that Mr Carmichael might have been unaware that the contract was for replacement of the walls prior to fitting the kitchen.

Alex Carmichael FRICS

[11] Mr Carmichael is also a chartered surveyor. He has over 50 years' experience. He was formerly a principal in his own firm and thereafter a director in a national firm of surveyors. He had been retired from mainstream practice for over 10 years but continued to carry out work as an expert witness. He spoke to a brief report which he had prepared dated 17 July 2023 (6/5 of process) based on a site inspection that he conducted on 29 June 2023. He had been provided with a copy of the reports from Mr Welch and Mr Baird along with certain other information from the defender the nature and provenance of which was unclear. Overall he was prepared to adopt and adhere to his report but during cross-examination, made some departures therefrom as set out below. In terms of his report he noted *inter alia* that that (a) the door and window ingos had irregular finishes; (b) the kitchen worktop and unit edges were slightly off-square; (c) the dishwasher had been plumbed in flush by a third party. His principal conclusion and opinion in relation to the standard of the defender's work was that

“ the kitchen fitments are fitted to the room as existing and there is no requirement for the existing structure to be truly plumb and square; that the kitchen units are manufactured within tolerances allowing adjustable fitting to accommodate site irregularities...that (the) works , although no perfect, have been carried out within tolerable standards by a competent builder using reasonable skill and judgment.”

[12] He described his inspection of the kitchen as not being carried out to any depth or forensic detail. His remit was to asses “workmanship, standard of workmanship and functionality of the units etc”. In his view, repeated at several points, the workmanship was fair and reasonable and within tolerable standards. The kitchen as installed had no bearing on the marketability or saleability of the property. He accepted that the worktop was visibly off square. He considered that his task in assessing workmanship had been made more difficult because he was unclear what work had been done by the defender and what by

Garmond. He considered that this had “corrupted” the original contract. He speculated that the existing walls prior to fitting the kitchen had not been square and plum as in his view there is nothing which was. He considered the plasterboard walls as fitted by the defender to be not perfect but acceptable which he defined by reference to “general norms I would accept”. Plasterboard walls did not require to be plum and square in order to fit the kitchen. Perfection was rarely achievable unless by “fluke...but you will find perfections in Buckingham Palace or the Great Pyramid of Giza”. As far as there were issues with the workmanship then he considered these to be cosmetic or snagging.

[13] In cross-examination he accepted that Mr Welch had prepared a forensic report but his remit had been different. His remit was on “workmanship”. This distinction in remits was repeated on several occasions. He had approached the issue from whether there was any quantifiable loss in terms of the value of the property if marketed and sold. He had not considered the construction process. He was prepared to accept the accuracy of Mr Welch’s measurements. He accepted that during his inspection he might have made some criticisms of the angle of corner of the patio door corned not subsequently reflected in his report. He could not remember whether he had told the pursuer he was going to recommend that the other side drop their case and settle. He was prepared to defer to the pursuer’s recollection of what was said. He had assessed the standard of workmanship against “tolerable standards” was he considered to be subjective. By tolerable he meant what was an acceptable deviation from perfect. He accepted that when new plasterboard walls were being put up they should be plum and square to a certain extent and that that could be achieved by standard joinery techniques. He confirmed that prior to both he and Mr Welch giving evidence they had met over TEAMS on 9 December 2024 with a view to identifying areas of consensus. He confirmed that one point of consensus was that any deviation from

plum and square in relation to walls should not exceed 20mm over 3 metres. He initially denied that he had suggested this common acceptable standard. He was asked to consider a Minute of said Teams meeting prepared by Mr Welch (no 25 of process). Although not previously lodged as a production no issue was taken to it being put to Mr Carmichael for challenging his credibility and reliability. When confronted with this Minute he conceded that it accurately recorded that he had indeed proposed that figure. He accepted that after construction of the new plasterboard walls the kitchen was 34mm narrower than provided for in the Wren drawings. That difference was something which the defender should have raised with the pursuer and a failure to do would be below the standard of reasonable skill and care. He accepted that the south reveal to the French doors was off plumb by 16mm and as such, taken pro rata, it was in excess of his suggested tolerance of 20mm over 3 metres. He further accepted that it should not have been left like that and should have been adjusted. He accepted that the gap of 15mm between the wall unit and the wall on the northwest corner would be a breach of the standard of reasonable skill and care but maintained that parameter did not apply. He accepted that to comply with that standard the plasterboard walls at the northwest corner should have been created square in order to accommodate a 90-degree factory manufactured unit. The duty to exercise reasonable skill and care existed whether or not a client was able to point out a particular defect. In a brief re-examination he agreed with the proposition that all of the defects put to him in cross were capable of being remedied as snagging if access to the property had been permitted.

Credibility and reliability

[14] As between pursuer and defender the only significant issue of credibility or reliability was whether or not the pre-existing plasterboard walls were visibly uneven. I

have little hesitation in accepting the pursuer. In many respects he came across as querulous and prone to exaggeration. The most obvious example of that was his baroque description of the “butchering of the carcasses”. I have little doubt that his constant presence while the work was being carried out was an irritation to the defender. He was not however in my view a person who would create a complaint of uneven walls if they had been in that condition originally. Indeed if the walls had been visibly uneven I rather think that this is something he would have wanted the defender to fix as part of the job. Although the defender claimed the contrary he seemed to rely on the underlying unevenness of the structural walls after being stripped back rather than any measured assessment of the original walls before work began. He candidly accepted that he had simply erected those onto the bare walls making no allowance for any deviation from plumb therein. Thereafter on the whole the parties’ evidence was characterised by differences of perception. Although it was accepted for the purposes of submissions that determination of this primary issue would turn on which expert opinion I preferred, it was suggested on behalf of the defender that I could in addition accept his evidence as to whether his work had been performed to the required standard of reasonable skill and care. I do not agree with that submission. There may have been more force in the suggestion if the factual matrix had disclosed that the issue of the walls and reduced kitchen size had been discussed between the parties but it had not. Further I found the defender’s opinion that to have erected plumb and square walls would have drastically changed the shape and size of the room, required completely differently sized units and all at additional massive cost to be so lacking in any detail or specification as to be unreliable. He was not able to say what the extent of any encroachment into the room size would have been. In his experience there were no circumstances in which he would have advise a customer to square and plumb a room as it

was simply not necessary. It was never part of the job to square the walls. Such assertions were patently made in his own self-interest and are clear enough examples why it would be inappropriate to rely on his “opinion” evidence in addition to that of Mr Carmichael.

Submissions

[15] I am grateful to both parties for their extensive written submissions lodged in advance of the hearing on the evidence together with copies of the authorities relied on. Both sides respectively adhered to and adopted those submissions and accordingly what follows is a brief summary of the main points. As I have already observed it was a common position that the case turned on which expert evidence I preferred, subject to the caveat for the defender discussed in the preceding paragraph. Both sides were content that the experts as chartered surveyors were able to opine on the requisite standard of reasonable skill and care as applicable to a joiner.

[16] I should also note that both sides written submissions contained sections in relation to the pursuer’s motion to sanction both actions as suitable for the employment of junior counsel. It was agreed at the hearing however that argument on this be reserved together with expenses generally pending determination of the merits.

Pursuer

[17] For the pursuer two discrete cases were advanced: (1) that it was an express term of the contract between the parties that the new kitchen to be constructed would have square walls; and (2) that the defender had breached the implied term to perform the services for which he was contracted with reasonable care and skill under reference to section 49(1) of the Consumer Rights Act 2015 (“the 2015 Act”).

[18] The case based on an express term was advanced somewhat tentatively under reference primarily to the defender's evidence. As I understood the submission, however, the principal case was that based on the implied term of performance with reasonable care and skill. In accordance with that standard the defender should not have proceeded to install the kitchen units on new plasterboard walls that were not plumb and square. That case was developed with the further proposition, that if it was a consequence of creating walls that were plumb and square that the resultant available area required to be reduced, then that was an issue that the defender should have discussed with the pursuer before the units were installed. Consequently, the walls were uneven, the units were misaligned and there were departures from the Wren plans. Over and above that fundamental issue there were numerous other defects (as identified and set out in the report of Mr Welch) which demonstrated generally poor workmanship. It was submitted that the case turned on which body of expert evidence the court preferred in determining whether there had been a breach of the implied term. The evidence of Mr Welch should be preferred to that of Mr Carmichael. Because of those breaches, the pursuer was entitled to damages as performance was no longer appropriate (2015 Act, section 49). To the extent that a term of the parties contract is ambiguous then that more favourable to the pursuer should prevail (2015 Act, section 69(1)). For historical context reference was made to the Supply of Goods and Services Act 1982, Section 13. Reference was made to Chitty on Contracts (35th Edition), Sections [25-052], [41-608], and [36-046] as to principles on implied terms and professional standards. Reference was also made to *Bolam v Friern Hospital Management Committee* [1957] 1 W.L.R. 582 (standard of care for professionals judged by the ordinary skilled person in the field) and *Andrew Master Hones Ltd v Cruikshank & Fairweather* [1980] R.P.C. 16 (objective test for professional negligence). In support of the proposition that the defender had not been

entitled to demand payment prior to completion of all the work contracted for, and in the absence of an express term for interim payment, reference was made to *Hughes v Lenny and Croft (1839) 151 E.R. 79* (payment due only after completion and inspection of work)

Defender

[19] For the defender it was accepted that it was an implied term of his contract with the pursuer that he perform his services as a joiner with reasonable skill and care. While this requirement was now expressly stated in the 2015 Act the need to imply such a term was well established in contract law. Reference was made to *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* [1977] UKPC 13 for the criteria for implying terms into a contract. Thus while it was accepted that there was an implied duty to perform the work with reasonable skill and care that duty had been discharged by the defender save some items of snagging which he could and would have carried out. It would have taken no more than a day to complete those works had he been permitted back on site. Accordingly he was entitled to payment of the balance of the agreed contract price being £3191.85 being the sum of £3491.85 less £300 to cover the incomplete work.

[20] The defender accepted that the plasterboard walls had not been built square and plumb but the pursuer's claim was misconceived as that was not within the scope of the contract. That contract was for installation of a Wren kitchen and related joinery works. It was not an express term of the contract that the new walls be "true, plumb and square". Such precision was not standard practice. The defender performed his work within reasonable tolerances expected of a competent joiner. He was supported in that by Mr Carmichael whose opinion should be preferred to the overly rigid one expressed by Mr Welch. Further the court should be hesitant to accept the latter's opinion as it may have

been influenced by the joiner who accompanied him on his inspection and indeed by the pursuer who appears to have pointed out what he considered to be defects. The defender was not in breach of contract as he was denied the opportunity to finish the work. In any event the claim for full kitchen replacement is excessive and unreasonable as the existing kitchen is functional and whatever shortcomings it has which are said to be failings on the part of the defender had no impact on the overall value of the property. Further and in any event the pursuer had not on the evidence available discharged the burden of proof on him. Reference was made to *Rhesa Shipping Co. S.A v Edmunds (The Popi M)* [1985] 1 WLR 948 (per Lord Brandon of Oakwood at 955H and 956B) as followed in *Dundee City Council & Others v D Geddes (Contractors) Ltd* [2017] CSOH 108 for the proposition that a court is not bound to make a finding one way or the other unless the party on whom the burden lies has discharged it on the evidence. The pursuer had not established that it was a contractual requirement on the defender in the exercise of reasonable skill and care in the context of this contract to build plum and square plasterboards walls. The pursuer had obstructed the defender in his attempts to return to site and complete the works. Preventing performance does not constitute breach of contract by the prevented party: *McBryde*, *The Law of Contract in Scotland* at paragraph 20.16-20.18 (and cases loc cit.: *Mackay v Dick & Stevenson (1881)* 8 R (HL) 37; *T. & R. Duncanson v Scottish County Investment Co. Ltd (1915)* SC 1106; *Aktieselskabet Dampskibet Hansa v Alexander & Sons (1919)* SC (HL) 122). Even if the uncompleted snagging works could be considered to constitute a breach of contract (which was denied) it would not be a proper basis for the pursuer to rescind the contract without allowing an opportunity to remedy the breach: *Lindley Catering Investments Ltd v Hibernian Football Club Ltd (1975)* SLT (Notes) 56.

Decision and reasons

[21] As was candidly and properly accepted on behalf of the defender there was no issue that he had not constructed plumb and square walls prior to installing and fitting the kitchen units. I have little hesitation in accepting the defender's submission that there was no express contractual requirement to erect plumb and square walls. It follows that I reject the contrary submission on behalf of the pursuer. That submission rested on the use of the expression "square up the room" which originated from the pursuer. The pursuer accepted this meant only to tidy the room up. The defender understood in those terms also. I further accept in evidence that the expression has no technical meaning in joinery.

[22] Thereafter it was agreed that the contract between the pursuer and defender was a consumer contract and that in relation to performance thereof the applicable law was contained in section 49(1) of the Consumer Rights Act 2015 ("the 2015 Act") which states: "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."

[23] Although the contract had not been reduced to writing it was clear enough that the two main components of the work to be carried out by the defender for an agreed price were (a) to remove the pursuer's existing kitchen walls back to the brick work and thereafter erect new plasterboard walls; and (b) fit and install a new Wren kitchen within the new space created by those walls. It was recognised by both parties at the hearing of on submissions that the determination of first of these is the primary issue in the case. That issue may be reduced to the question: did performance to the standard of reasonable care and skill require that prior to building and fitting the Wren kitchen the new plasterboard walls had to be erected plumb and square? If the answer to that question is in the affirmative then the nature of the corresponding breach of contract by the defender in not so erecting the walls

would require the present walls to be reconstructed which in turn would require the existing kitchen units to be removed and replaced anew. In that eventuality the issue of whether the kitchen had been built and fitted fully in accordance with the specification and dimensions in the Wren drawing and to an acceptable standard of workmanship necessarily become of secondary consideration. If however the answer to the question is in the negative then then these “secondary” considerations will have a bearing on the assessment of damages and the defender’s entitlement to the agreed contractual payment.

[24] In my view the defender breached the required standard by erecting walls that deviated from the plumb and square to the extent that they did in this case. In short, I reached this conclusion based on my preference of the evidence of Mr Welsh to that of Mr Carmichael, the reasons for which are set out in the next paragraph. There are however two other adminicles of evidence which also have a bearing in relation to the obligation to erect plumb and square walls. The first of those is that I accept the evidence of the pursuer, and by corollary, reject the evidence of the defender that the pre-existing plasterboard walls were not visibly uneven. That is not to say that the walls were true plumb and square in the sense of there being no deviation at all, but that any deviation was not visible to the extent that the new walls were, in particular the window and door reveals on the east wall which not only the pursuer but Mr Welch and Mr Carmichael able to attest to. That being so, when the defender came to erect the new walls I do not accept that he acted with reasonable skill and care in simply attaching them to the wooden strapping struts he had fixed to the bare structural walls. He should at the very least have considered what the final effect would look like and if extra work was going to be required to achieve a better outcome then he should have discussed that with the pursuer. The second related point is that I consider that it may have been significant that all or some of the plasterboard walls removed by the

defender had been installed using the dob and dab method which can also be adapted to correct deviations from plumb and square in the structural walls. So to that extent what the defender was doing cannot truly be categorised as replacing like for like as he tended to suggest was the case. Clearly he was deploying a different method of wall construction to that which had been adopted previously and this necessitated consideration be given to managing deviations from plumb and square on the structural walls. Even if this was not self-evident to him it was specifically an issue he was directed to address in the Wren drawings and checklist.

[25] As I have noted, ultimately there was no difference between Mr Welch and Mr Carmichael in terms of the various technical measurements, with the latter accepting those of the former. In addition, and at the end of skilful cross-examination, Mr Carmichael made some further significant concessions, in particular that the following defects if left unattended would be in breach of a joiner's obligation to perform his work with reasonable skill and care:

- Not discussing the shortfall of 34mm from the minimum required in the Wren drawings after construction of the plasterboard walls
- The deviation from plumb in the south reveal to the French doors by 16mm
- The gap of 15mm between the wall unit and the wall on the north west corner that should have been created square in order to accommodate a 90-degree factory manufactured unit.

[26] Notwithstanding these concessions, Mr Carmichael maintained a position that the work carried out by the defender was "acceptable" by "general norms" and his personal opinion. In my view, what this came down to was an *ipse dixit*—unsupported assertions lacking analytical foundation. I do not consider that at any point in his evidence

Mr Carmichael was able to articulate a consistent, clear or objective standard by which he judged Mr Baptie's work. As counsel for the pursuer aptly put it, by focusing on his view that the work carried out to the kitchen had no adverse effect on the saleability of the property, he was looking through the wrong end of the telescope. Over and above that I formed an adverse view as to both his credibility and reliability and by extension his duty to be impartial. That was most evident in the contortions and inconsistencies in his evidence when confronted with his own proposed tolerance measurement of 20mm over 3 metres for assessing plumb walls. In addition, he was prepared to defer to the pursuer's recollection that during his inspection he had expressed support for the pursuer's case and recommend settlement. This against a background of him "being unaware fully of the reason" why he was carrying out an inspection. This all tends to suggest that his report was subsequently prepared from a partisan standpoint.

[27] By contrast, Mr Welch's exposition and reasoning was coherent, consistent, and aligned with the professional standards to be expected of an expert witness. Accordingly I had little hesitation in preferring his opinion evidence over that of Mr Carmichael. I do not consider that the unfocused criticism of Mr Welch based on his being accompanied by a joiner to have any merit. There was no suggestion that Mr Welch' opinion had been influenced by that individual whose sole and reasonable purpose was to practical assistance if required.

[28] Before leaving the assessment of the competing expert evidence, I would also express some disquiet as to why parties had been unable to enter into a joint minute to reflect the points on which the experts were able to agree at their meeting on 9 December 2024. In accordance with now generally accepted practice, I encouraged parties' representatives to arrange such a meeting in expectation that any points of consensus would be reduced into a

single document agreed by experts or alternatively a joint minute and therefore save time and expense of unnecessary evidence. There was some suggestion by counsel for the pursuer that the reason this did not happen was due to some obstinacy on the part of the defender or those representing him. While consideration of this issue played no part in the determinations I have made in relation to the issues it may well require to be re-visited in connection with the question of expenses.

[29] It was broadly a matter of agreement as to how the issue of quantum should be approached. If I determined the primary issue in favour of the pursuer then in terms of the joint minute (no 29 of process) the evidence of Mr Les Baird, Quantity Surveyor as to the cost of carrying out the remedial work specified by Mr Welch was agreed in the sum of £20,040. It further follows that the defender cannot be entitled to payment for the work he carried out.

[30] If however I had required to consider the “secondary issues” I would have determined that the defender had not performed the contract with reasonable skill and care in relation to the defects identified by Mr Welch and summarised at paragraph 7(b), (c) and (d) of this Note. Point 6(e) (moisture-resistant plasterboard) does not arise as it was not a term of the contract. Points 7(a) and (f) relate to the primary issue of the uneven walls. I am not persuaded that the points at 7g), (h) and (i) can properly be wholly attributed to the workmanship of the defender because of the subsequent involvement of Garmond and SCG who appear to have specifically charged the pursuer a total of £1777 for carrying out this and other remedial work.

[31] There was, however, no evidence led for the pursuer as to the cost of making good the defects listed at point 6(b), (c) and (d). Counsel for the pursuer suggested that in the event that this issue required being determined it was open to me in the exercise of

“discretion” to arrive at a figure. I do not agree with that submission. The exercise of judicial discretion is not a mechanism intended to make good a lacuna in a party’s case. There has to be a proper basis in evidence to entitle a court to assess damages: *Duncan v Gumleys* 1987 SLT 729, *Cherrie v Vaughan (t/a VIP Joinery)* [2024 SAC (Civ) 21. Accordingly had I not determined the primary issue in favour of the pursuer I would have found the defender entitled to the sum he sued for less the amount which the pursuer had paid to Garmond and SCG. I was not persuaded that the amount of snagging was as low as £300 as suggested by the defender.

[32] Both parties agreed that whatever the outcome I should reserve the question of expenses, including the pursuer’s motion for sanction for counsel, for determination at a hearing to be afterwards fixed. Accordingly that is what I shall do.