



SHERIFF APPEAL COURT

**[2025] SAC (Civ) 17
LIV-SG327-21**

Sheriff Principal N A Ross

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL N A ROSS

in the appeal in the cause

CABOT FINANCIAL (UK) LIMITED

Claimant and Respondent

against

STEPHANIE HUGHES

Respondent and Appellant

27 June 2025

[1] In this simple procedure claim the claimant (Cabot) seeks payment of a credit card debt. It is the assignee of the original debtor. Ms Hughes does not dispute that she signed an agreement with the assignor, the Bank of Scotland, and was supplied with a credit card. She admits that she used the credit card and accumulated debt to the Bank of Scotland. She admits the assignation of the debt was intimated to her.

[2] The response form states that Ms Hughes did not recall the debt, and describes Cabot's business model of purchasing debts for discounted rates and then seeking payment in full from debtors. The response form states that Ms Hughes "puts [Cabot] to strict proof [to] provide under the Consumer Credit Act the required documents to legally be able to enforce and bring this claim to court". The response form therefore does not present any

substantive defence, but “requires” full proof of the claim. It overlooks that the question of whether a claim is proved remains a matter for the court.

The evidential hearing

[3] The matter called at an evidential hearing. Ms Hughes was unavailable for the hearing. No witnesses were led. The hearing proceeded on the basis of documents and submissions alone, evidence for Ms Hughes being led first.

[4] The productions included: the signed credit agreement dated 18 June 2009; notices of assignation dated 7 July 2016; statements of account from July 2009 to April 2012 which show a balance due by Ms Hughes of £4,671.02; copy default notice addressed to her dated 16 February 2012; and copy assignation agreement between the Bank of Scotland and Cabot. The sheriff was informed that there was no dispute that the credit card agreement existed, that Ms Hughes had used the credit card facility, or that the sum claimed represented the sum owed by her to the Bank of Scotland under the original credit agreement. There was no dispute that she did not recall receiving a copy of the default notice.

[5] The sheriff also recorded (which is disputed on appeal) that he was told that the parties agreed that the productions “were what they bore to be”, and there was no demur. On appeal, the position for Ms Hughes was that there was no such agreement, and that her agent had said that Cabot proceeded “at their own peril”. The sheriff noted a closing submission that Cabot had not led evidence to prove the documentation.

[6] The defence as presented was that the original credit agreement was fundamentally defective, that the default notice was defective and that the assignation to Cabot did not confer title to sue. The sheriff rejected all of these submissions, and granted decree. These points were not insisted upon on appeal.

Submission for Ms Hughes

[7] The appeal founded on novel points. It was submitted that there was no evidential foundation for the award. The sheriff had wrongly thought that the parties had reached agreement about the provenance of the documents. They had not, and the position of Ms Hughes, that the evidential hearing could proceed in the absence of witnesses to speak to the documents, had been caveated with the words “at their peril”.

[8] The second ground of appeal was that the debt was unenforceable because it had been accepted for Cabot that the credit agreement would have been unenforceable due to lack of proper execution. An assignee could not be placed in a better position than the original creditor. Reference was made to the Consumer Credit Act 1974.

[9] The third ground of appeal was that the lack of evidence about the provenance of the documents meant the assignment was not proved. The copy assignment lodged was unauthenticated, incomplete and redacted. Cabot had not obtempered an interlocutor ordaining production of a copy of the assignment, because what was lodged was defective in these respects.

Submission for Cabot

[10] The respondent referred to the simple procedure rules of evidence. These are very different to the rules of evidence which apply in ordinary and other actions.

[11] In relation to enforceability, the appeal submission confused enforcement of an ongoing credit agreement with enforcement of a crystallised debt. The sheriff had explained this, and the point was irrelevant.

[12] Title to sue founded on whether the assignation had been effective to transfer the debt. The sheriff found that it had.

Decision

[13] It is extremely regrettable that this appeal founded in part, on alleged misunderstanding and nuances of what was, and was not, agreed at the evidential hearing, and the stated position of parties at the hearing. Ms Hughes' position was that the provenance of documents was not agreed. Cabot's position was that they understood that the documentation was uncontroversial, and that it had been agreed the hearing could proceed on submissions alone. The sheriff's understanding was that parties had agreed the matter could proceed by submissions alone, that parties had agreed that the documents were what they bore to be, and that the agent for Ms Hughes had not demurred from that position, albeit that the agent stated this was "at their peril".

[14] It meant that, at the stage of appeal, the factual basis for the sheriff's decision was unexpectedly, and unforeseeably, cast into doubt. The basis for dispute – reliant entirely on a statement that evidence was led "at their peril" – served to thwart the entire purpose of the evidential hearing.

[15] This is a situation which should never arise. It is the responsibility of the parties to make matters crystal clear to the court. Cabot's position, stated to the court, was that the provenance of the documents was agreed. The hearing proceeded on that basis. If Ms Hughes' position was that provenance of documents was not agreed, it was the agent's task to make that clear to the court, and not to acquiesce in a submission to the contrary, or to a form of hearing which was prima facie incompatible with evidential challenge. The appeal rested on the phrase "at their peril". Such Delphic phrases do not belong in the

mouths of lawyers. The phrase could equally refer to weight of evidence, competency of evidence, relevancy of evidence, or matters of no legal consequence. It is not a submission in law. It amounts to no submission at all.

[16] In any event, this evidential brouhaha, for which Ms Hughes' agents appear to bear responsibility, can be resolved on a statutory basis. In the context of simple procedure, special evidential rules apply. Section 77 of the Courts Reform (Scotland) Act 2014 provides: "Any enactment or rule of law that prevents evidence being led on grounds of admissibility before a court of law does not apply in simple procedure cases."

[17] The sheriff admitted the evidence listed above without it being spoken to by a witness. Section 77 permitted him to take that course. The evidence comprised: the signed credit agreement; notices of assignation; statements of account; a copy default notice; and a copy of the assignation agreement. These documents provided a complete and compelling account of: Ms Hughes' debt; her default on repayment; the basis of liability; and Cabot's entitlement to enforce. There was no basis on the evidence to doubt that decree was properly awarded. This ground of appeal has no merit.

[18] The second ground of appeal, that issues with execution mean the debt was unenforceable, was misconceived, and was not pursued in submissions. The debt was established on the foregoing documents. It was due to the assignor and assigned to Cabot. It was a crystallised debt, and the agreement had terminated. The terms of the Consumer Credit Act 1974 do not defeat a claim for debt by reason only of improper execution.

[19] The third ground of appeal related to title to sue, again founded on an alleged failure to prove the assignation. The assignation document was available for the sheriff to consider. Despite the criticisms of the document produced, the excerpts lodged proved the debt, the assignation and title to sue. The sheriff's findings cannot thereby be shown to be wrong.

Disposal

[20] The appeal is refused. There is a motion for sanction for counsel for Ms Hughes, but I will continue this until expenses are dealt with. Parties should discuss expenses and agree these if possible. If not achieved within 21 days, the clerk will invite further written submissions.

Postscript

[21] This was a simple procedure action. Such actions are meant to be speedy, inexpensive and informal. Courts must enforce that. This claim, for less than £4,000, commenced over 4 years ago in May 2021. Even allowing for a period of pause to await the outcome of other proceedings, there were 12 hearings before the matter came to an evidential hearing, and 6 hearings thereafter. Simple procedure unravels unless the court takes a proactive and determined approach in every case.