

**SHERIFFDOM OF NORTH STRATHCLYDE AT OBAN**

**JUDGMENT OF SHERIFF PATRICK HUGHES**

**in the cause**

**Lorraine Ludman  
Villa 92, 43D Mirdif Street  
Dubai  
United Arab Emirates**

**PURSUER**

**against**

**Andrew Kinmond McIlvride  
The Studio, Lunga Mill  
Ardfern  
Lochgilphead  
Argyllshire PA31 8UA**

**DEFENDER**

**Act: Upton, advocate; Thorntons Law LLP, Dundee**

**Alt: Jajdelski, advocate; Livingstone Brown Solicitors, Glasgow**

**OBAN, 8 November 2021**

The Sheriff, having resumed consideration of the Proof Before Answer, productions and whole cause, Finds in Fact:

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Findings in Fact in respect of the sums first and second craved

1. The pursuer is Lorraine Ludman, the owner of a theatrical lighting and translation equipment business in Dubai.
2. In 2006 the pursuer met the defender Andrew McIlvride through his older brother Graeme, who like the pursuer lives and works in Dubai.
3. The defender is an architectural illustrator and owns a property known variously as Lunga Mill, the Old Mill or the Old Sawmill, purchased by him in 2000 and registered in the Land Register under title no. ARG412 "the property".
4. The property consists of two plots of ground divided by a track, with a cabin and the ruin of an old mill on the easternmost plot (hereafter "the mill plot") while the westernmost plot (hereafter "the bottom plot" or "the land") is open ground.
5. In late 2006 the pursuer, the defender and Graeme McIlvride formed an unwritten agreement (hereafter "the 2006 agreement") whereby (i) the defender would convey the bottom plot to Graeme McIlvride; (ii) a house designed by the defender would be built on it at the expense of the Pursuer and Graeme McIlvride; and (iii) the house and plot would then be sold, with all three parties recouping the value of their investment and sharing the balance of any profit in proportion to their respective contributions.
6. The purpose of transferring the bottom plot into Graeme McIlvride's name was to use his expatriate status to avoid paying capital gains tax when the time came to sell the plot.

7. On or about 9 November 2006 the pursuer and Graeme McIlvride each paid £10,000 to the defender to be used as their initial contribution for costs such as obtaining planning permission.
8. By 6 June 2007 a solicitor and childhood friend of Graeme McIlvride named Alan Baillie, who had previously acted for the defender in his purchase of the property, was instructed to progress the conveyancing of the bottom plot to Graeme McIlvride.
9. The property was and remains subject to title conditions, which *inter alia* give the owner of the neighbouring Lunga Estate, Colin Lindsay-MacDougall, a right of pre-emption and a right to restrict the bottom plot from being used as anything other than garden or amenity ground.
10. Mr Lindsay-MacDougall was prepared to consent to the variation of these conditions if various issues relating to water, electricity and road access could be satisfactorily resolved.
11. By November 2008 Mr Baillie and Mr Lindsay-MacDougall's then solicitors, D.M. MacKinnon & Co., had agreed that the best way to split the bottom plot into a marketable stand-alone property, free from the said title conditions, would be for the defender to re-convey his entire property to Colin Lindsay-MacDougall, following which the latter would grant fresh dispositions of the mill plot and the bottom plot to the defender and Graeme McIlvride respectively.
12. On or about 1 October 2007 and 9 April 2008 the defender submitted applications for planning permission to the planning authority.

13. In 2007 the pursuer and defender entered into a romantic relationship which continued until around March 2015.
14. By 2008 no substantive progress had been made towards the splitting-off of the bottom plot into a stand-alone property and the pursuer, defender and Graeme McIlvride had lost interest in implementing the 2006 agreement.
15. From May 2008 onwards the pursuer began purchasing properties in the mid-Argyll area for redevelopment, and engaged Mr Baillie and his firm to act on her behalf in respect of the conveyancing related to these properties.
16. In October 2008 an individual named Jeremy Smith expressed interest to the defender in buying the bottom plot for £130,000.
17. The pursuer and defender discussed Mr Smith's offer, and on or about 21 January 2009 they agreed that instead of accepting it, the pursuer would buy the bottom plot from the defender for £140,000 and thereafter build a house on it (hereafter "the 2009 agreement").
18. By this point and pursuant to the 2006 agreement, Mr. Baillie and Mr Lindsay-MacDougall's solicitors had prepared conveyancing drafts on the basis of a re-conveyance of the bottom plot by Mr Lindsay-MacDougall to Graeme McIlvride.
19. To avoid rendering this work abortive, and also to avoid testing the patience of Colin Lindsay-MacDougall - whom the defender considered to be intimidatingly irascible - the 2009 agreement envisaged that the bottom plot would still first be transferred into

the name of Graeme McIlvride before thereafter being transferred into that of the pursuer.

20. The defender did not wish the entire amount of the purchase price to be paid to him at once because he was not good at managing money, and also because he wished to avoid paying tax, so he and the pursuer agreed that she would pay him an initial lump-sum and thereafter make payment in instalments as and when he required further funds.
21. On 20 February 2009 Graeme McIlvride confirmed by e-mail to the parties and Mr Baillie his consent to the 2009 agreement, and confirmed it again directly to Mr. Baillie on 22 February 2009, as the latter that day confirmed by e-mail to the pursuer.
22. The agreement was not otherwise reduced to writing.
23. From January 2009 Mr. Baillie and his firm acted for the pursuer, the defender and Graeme McIlvride in respect of the conveyancing which was to give effect to the 2009 agreement.
24. By e-mails to the pursuer of 18 February 2009 and 26 May 2009, Mr. Baillie sought the pursuer's instructions in respect of implementing the 2009 agreement.
25. The pursuer gave him instructions by, *inter alia*, her e-mails on 20 February 2009 and 26 May 2009.
26. By e-mail of 20 February 2009 Mr. Baillie accepted responsibility to the pursuer for the implementation of the 2009 agreement.

27. On 26 and 27 May 2009 Mr. Baillie effected payment of the first and largest instalment of the agreed price for the plot by the pursuer to the defender.
28. On and between 27 May 2009 and 9 June 2015 the pursuer paid the defender £140,000 in consideration of the conveyance of title by him and the acquisition of title by her.
29. The money was paid by the following instalments:
- (i) Mr. Baillie as the pursuer's and the defender's agent transferred £57,000 held on account for the pursuer to the defender on or about 27 May 2009.
  - (ii) Bank transfers were made by the pursuer to the defender as follows:-
    - £10,000 on or about 7 January 2010,
    - £10,000 on or about 24 August 2010,
    - £3,000 on or about 26 May 2011,
    - £1,000 on or about 2 June 2011,
    - £1,500 on or about 10 April 2013,
    - £4,000 on or about 5 May 2013,
    - £10,000 on or about 4 June 2013,
    - £10,000 on or about 10 October 2013
  - (iii) The pursuer paid the defender by cheque as follows:-
    - £5,000 on or about 25 August 2011;
    - £5,000 on or about 8 May 2012,
    - £3,500 on or about 6 August 2014;
  - (iv) The pursuer paid the defender in cash as follows:-
    - £3,500 on or about 6 August 2014,
    - £600 on or about 12 August 2014,
    - £600 on or about 29 August 2014,
    - £380 on or about 4 September 2014, and
    - £10,000 on or about 9 June 2015.
30. From about January 2012 to about September 2015 the pursuer allowed the defender and his minor daughter to live rent-free in the pursuer's house named 'Mansefield' at Manse Brae in Lochgilphead, with the pursuer paying the Council Tax and the utility bills.

31. In respect of specific items of work which he undertook, they agreed that he would be paid, and the pursuer paid him accordingly.
32. On 2 September 2014 the defender wrote to the pursuer by e-mail acknowledging receipt of £91,000.
33. Between 2009 and 2018 the pursuer did not ask the defender to repay any of the £140,000 because they both contemplated that the agreement would be implemented.
34. By e-mail of 22 February 2009 Mr. Baillie wrote to the pursuer that he had *"asked the other lawyers to have the deeds signed a.s.a.p."*
35. Between 2009 and 2016 the defender repeatedly assured the pursuer by word of mouth that he was having the 2009 agreement implemented so that she would be granted title to the subjects.
36. By exchange of e-mails between the parties on 10 November 2011, the defender acknowledged that the subjects were the pursuer's to sell on.
37. By e-mail from the defender to the pursuer on 14 February 2012, he acknowledged that the subjects were hers to sell on.
38. On 30 September 2014 the defender wrote by e-mail to the pursuer confirming that he would transfer title to the subjects to her.
39. On 5 October 2014 the pursuer wrote by e-mail to the defender asking that he contact Alan Baillie in order that their agreement be implemented.

40. On 26 January 2015 the pursuer wrote by e-mail to the defender reminding him about his agreement to transfer ownership of the plot to her, and by e-mail on 4 February 2015 the defender replied undertaking that he would do so.
41. On 25 February 2015 the defender wrote by e-mail to the pursuer stating that he would *"have the land deeds drawn up in your name"*.
42. On 11 March 2015 the defender wrote by e-mail to the pursuer that her name could be put "straight" on to the deeds because Graeme McIlvride's name was not yet on them, and that this was "a blessing".
43. The parties' personal relationship ended on or about 16 March 2015.
44. In July 2015 the pursuer presented the defender with a letter recording parties' agreement about the payments for the plot, and asked the defender to sign it, which he refused to do.
45. On 12 and 29 August 2014 and 9 June 2015 the defender signed receipts acknowledging his receipt of payments for the land.
46. On 11 July 2016 Mr. Baillie wrote to the pursuer by e-mail representing that the necessary conveyancing deeds had been sent to Mr. Lindsay-MacDougall for execution and that the defender "was to be chasing him up".
47. The defender has not conveyed to the pursuer title to the land.
48. The defender repeatedly represented to third parties that the pursuer was entitled to the land.



49. It was known by other residents of the Lunga area that the defender represented the pursuer as being entitled to the land.

50. The parties agreed that the sums totalling £140,000 were paid by the pursuer to the defender in consideration of the title to the plot being conveyed to the pursuer.

Findings in Fact in respect of the sum third craved

51. By agreement between the parties, the defender paid contractors for work on the pursuer's Scottish properties on her behalf and with her funds.

52. To facilitate this the pursuer gave him access to the bank account she operated in respect of her shop called "the Giving Tree".

53. From 12 September 2008 to 6 January 2015 the defender was an authorised signatory and had a debit card in respect of this account.

54. The defender had the pursuer's permission to use her account only for costs incurred on her properties.

55. The defender took other sums without the pursuer's authority or consent.

56. The sums which the defender took are shown in the spreadsheet entitled 'Spreadsheet for Pursuer' No. 5/17 of process.

57. From 2 February 2009 to 19 March 15 the defender took at least £47,693.62 from the pursuer's bank account without her authority or consent, through withdrawals or bank transfers.

58. By cheque dated 30 August 2015, the pursuer paid the defender £1,925 in respect of an application for a building warrant for the works to her property at No. 11 The Green, Craobh Haven.
59. The defender cashed the cheque on 1 September 2015.
60. The defender did not obtain a building warrant.
61. The defender has not reimbursed the pursuer in that sum of £1,925.
62. The pursuer did not intend that sum to be a gift.
63. In respect of the pursuer's flat at Poltalloch Street, Lochgilphead, the defender prepared a basic set of drawings.
64. The pursuer paid him to do so, and to secure planning consent for a change of use, which he failed to undertake.
65. In particular on or about 31 August 2015 the pursuer paid the defender £2,500 in respect of applications for planning approval in respect of the property which he did not pursue.
66. The pursuer gave her friend Carolyn Voisey eight blank pre-signed cheques in order to make the necessary payments in connection with the pursuer's Flat 1 at Erines House, Tarbert, in the pursuer's absence.
67. On 7 October 2014 the defender met Mrs. Voisey alone in the pursuer's shop at Craobh Haven and barred her exit from the premises until she complied with his demand to know the whereabouts of the blank cheques.

68. The defender said that Mrs Voisey should not tell the pursuer about this incident.
69. On or about 19 March 2015 the defender drew two of the said cheques for a total of £1,472.70 on the pursuer's account without her authority.
70. The pursuer's bank did not honour the cheques so she suffered no loss in this regard.
71. The total of the foregoing sums of £47,693.62, £1,925 and £2,500 is £52,118.62.

Findings in Fact and Law in respect of the sums first and second craved

1. From 20 February 2009 there was *consensus in idem* between the pursuer, the defender and Graeme McIlvride that:-
  - (i) the parties to the contract were the pursuer, the defender and Graeme McIlvride;
  - (ii) the subject of the agreement was the bottom plot;
  - (iii) title would be conveyed from the defender to Graeme McIlvride and then from Graeme McIlvride to the pursuer; and
  - (iii) the price to be paid by the pursuer to the defender was £140,000.
2. The pursuer did not make a gift to the defender of all or part of the sums of £10,000 and £140,000 referred to above in Findings in Fact 7 and 28.
3. The pursuer paid the defender these sums of £10,000 and £140,000 in contemplation of performance of the parties' 2006 and 2009 agreements respectively, and accordingly, in respect of the £140,000, in contemplation of the conveyance to her of title to the plot.
4. The pursuer has acted and refrained from acting in reliance on the 2006 and 2009 agreements.
5. The pursuer has done so with the defender's knowledge and acquiescence.
6. As a result of her conduct her position has been affected to a material extent.

7. The pursuer has been deprived of the sums of £10,000 and £140,000, and such other sums as they might have earned for her by way of interest or returns upon investment.
8. Had the defender sought to withdraw from the agreements, the pursuer's position would as a result have been materially and adversely affected, by losing the benefit of those payments.
9. The defender has sought to withdraw from the agreements, and the pursuer's position has as a result have been materially and adversely affected.
10. The e-mail of 11 March 2015 referred to in finding-in-fact 42 above expressed parties' agreement on the variation of the original agreement to the effect that the step originally contemplated of a conveyance by the defender to Graeme McIlvride could and should be omitted and that in lieu of that there could and should be a direct conveyance from the defender to the pursuer.
11. Had this Court had not found that that was a variation of the original agreement, then it would have found it expressed new agreement that there would be direct conveyance from the defender to the pursuer.
12. The defender knew or ought to have known that, if he breached the 2009 agreement by not conveying title to the pursuer, he was likely to cause her loss in the amount of £140,000.
13. Had he conveyed the title to her then the pursuer would not have suffered such loss.

14. Had this court not found that the pursuer has suffered loss because of the defender's breach of contract, it would have found that the defender has gained to the extent of those payments, and that the pursuer has suffered loss in equal measure.

Findings in Fact and Law in respect of the sum third craved

15. The defender knew or ought to have known that by taking the sums stated at Finding in Fact 71 from the pursuer's account he would cause the pursuer loss.

16. By taking those sums the defender caused the pursuer loss in the sum of £47,693.62.

17. Had the defender fulfilled his duties, the pursuer would not have suffered such loss.

18. The pursuer paid the defender the sums of £1,925 and £2,500 in consideration of his agreements to provide professional services to her.

19. The defender did not provide the contracted services and is therefore in breach of those contracts.

20. The defender has in any event gained to the extent of £47,693.62, £1,925 and £2,500, totalling £52,118.62.

21. The pursuer has suffered loss in equal measure.

22. Had this court not found that the defender wrongly caused the pursuer loss by breaching his delictual duty not to take, keep and embezzle her funds, *et separatim* by breaching his foregoing contracts, then the Court would have found that he was enriched unjustifiedly in the sum of £52,118.62.

Findings in Law in respect of the sums first and second craved

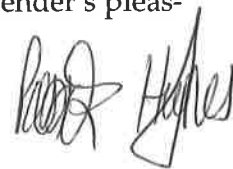
1. The defender was and is obliged to implement the 2009 agreement by virtue of section 1 of the Requirements of Writing (Scotland) Act 1995.
2. Standing the defender's 2009 agreement with the pursuer, the defender was and is obliged to have the land transferred to the pursuer.
3. The defender's failure to have the land transferred to the pursuer is a material breach of contract.
4. As a result of the defender's breach of contract the pursuer has suffered loss in the sum of £140,000.
5. Had this Court not found that the defender has caused loss to the pursuer by breach of contract, it would have found that the defender has been enriched unjustifiedly by his receipt of the £10,000 paid under the unimplemented 2006 agreement and the £140,000 paid under the 2009 agreement.
6. On the same hypothesis, the causes for which the pursuer paid the defender under the 2006 and 2009 agreements have failed because they have not been implemented.
7. On the same hypothesis, the defender's retention of those sums is inequitable.
8. On the same hypothesis, the defender has been unjustifiedly enriched in the sums of £10,000 and £140,000.

Findings in Law in respect of the sum third craved

9. It was the defender's delictual duty not to take money from the pursuer's bank account, or cause money to be taken from it, without her authority or consent.
10. It was the defender's duty not to embezzle money from the pursuer.
11. The defender is consequently obliged to make reparation to the pursuer in the sum of £47,693.62.
12. The defender's failure to provide the agreed contractual services to the pursuer is a material breach of contract.
13. As a result of the defender's breach of contract the pursuer has suffered loss in the sums of £1,925 and £2,500.
14. Had this court not found that the defender has caused the foregoing losses to the pursuer by delict *et separatim* breach of contract, then the Court would have found that the defender has been enriched unjustifiedly by his receipt of the foregoing sums of £47,693.62, £1,925 and £2,500, totalling £52,118.62.
15. On the same hypothesis, the Court would have found that there was no cause for his taking, receiving, spending and using the sums of £47,693.62.
16. On the same hypothesis, the causes for which the pursuer paid the defender £1,925 and £2,500 under the foregoing contracts for professional services have failed because they have not been implemented.
17. On the same hypothesis, the defender's retention of all of those sums is inequitable.

18. On the same hypothesis, the defender has been unjustifiedly enriched in the sum of £52,118.62.

Therefore sustains the pursuer's third, fourth and eighth pleas-in law as well as the ninth plea-in-law but restricting the amount payable to the sum of £52,118.62; grants decree in favour of the pursuer in terms of her first crave in the sum of £140,000, together with interest; grants decree in favour of the pursuer in terms of her second crave in the sum of £10,000, together with interest; grants decree in favour of the pursuer in terms of her third crave in the sum of the sum of £52,118.62 together with interest; repels the defender's pleas-in-law; Reserves all questions of expenses meantime.



#### Note

[1] The parties were in a romantic non-cohabiting relationship between 2007 and 2015. The pursuer claims that in the course of that relationship she and the defender agreed that he would sell her a plot of land, and that she paid him the agreed price of £140,000. She also claims that she paid him £10,000 towards an abortive previous scheme for development of the land. She further claims to have paid him £2,500 for planning approval for the land and £1,925 for a building warrant in respect of a separate property, neither of which were obtained. Finally she claims that he embezzled £56,628.82 from her bank account. In this action the pursuer craves the court to order payment of £140,000, £10,000, and £61,053.82 (the last sum being the aggregate of the amounts sought in respect of the embezzlement, building warrant and planning approval matters).



[2] Evidence was heard over fifteen days between 13 March 2020 and 23 April 2021. The Pursuer gave evidence and led evidence from Janine Holmes, Catherine Stewart, Andrew Sandilands; Colin Lindsay-McDougall, Carolyn Voisey, Svend Pedersen and Peter McLardy. The Defender also gave evidence and led evidence from Graeme McIlvride, Lee Buckley, Gilbert Ainsley, John McMillan, Robin Nolan, Alan Baillie and Yale Metzger. A hearing on submissions was held on 17 June 2021 and continued to 16 July 2021, when the court made avizandum. Due to the impact of the Covid-19 pandemic the greater part of proceedings took place using the Webex application. I am grateful to both legal teams, as well as court staff and SCTS IT support for their assistance in progressing matters.

The pursuer, Lorraine Ludman

[3] The pursuer gave evidence. She was 59 at the time of giving evidence and since 1993 had lived in Dubai where she owned and operated a theatrical lighting and translation equipment business. In Dubai she had become friendly with the defender's older brother Graeme who worked in the same field as her and who was based nearby. It was a matter of agreement that she had met the defender in 2006. From June 2007 they were in a relationship. Until then she had not been in the habit of returning to Britain, but thereafter she started coming back each year to visit him. He lived in Lunga near Ardfarn in Argyll, just one mile south of Craobh Haven. Between 2006 and 2016 she would come to Scotland in summer and spend three months in the country. To maintain her taxation status as an expatriate she could only spend 91 days in the United Kingdom each year over a block of four years. Initially her visits were transient and erratic, but latterly she would stay three months in one block, because she came to own a home here at No.11 The Green, Craobh Haven, as well as a shop called 'The Giving Tree' at No.1 The Green. To purchase these properties she instructed a Dundee solicitor called Alan Baillie whom she knew from socialising in Dubai; he was an old schoolmate of the defender's brother Graeme.

[4] The defender owned the property known variously as Lunga Mill, the Old Mill or the Old Sawmill. He lived there in a cabin which had originally been a caravan, and also owned the ruin of an old mill, which when the pursuer first saw it had three walls and no roof. Its renovation was an ongoing project of the defender's. The pursuer was referred to a copy title sheet for title number ARG412. This describes the property as consisting of two plots of ground divided by a track. The cabin and the ruined mill were in the easternmost plot; the westernmost plot with which this action is concerned was referred to by her as the "bottom plot". It was overgrown with bushes and trees.

[5] The pursuer first heard of the bottom plot when the defender's brother Graeme made a proposal to her for an investment. He explained to her that the defender owned this bottom plot, and proposed that the pursuer and Graeme McIlvride should jointly pay for the building of a house. The defender would provide the land and also the architectural services. She believed that this proposal was made in 2006 during a face-to-face conversation with Graeme McIlvride. She could not remember if the defender had been present although he would have been present at some point as matters progressed. She was informed that the land with planning permission and services was worth £140,000. The idea was that once the house was built on the plot it would be sold and each of them would receive a share of the profits.

[6] The agreement was not written down but there was correspondence with the solicitor Alan Baillie with all of them being copied in. Mr Baillie was asked to transfer ownership of the bottom plot into the name of Graeme McIlvride; because of his expatriate status, capital gains tax would not have to be paid. There was no suggestion that Graeme McIlvride would pay the defendant for the land.

[7] On 9 November 2006 the pursuer made a payment of £10,000 to the defender because he wanted money to pay for obtaining planning permission. Her understanding was that the defender's brother Graeme McIlvride made an identical payment at the same time. This payment was made prior to there being a romantic relationship between herself and the defender.

[8] In December 2007 the defender's application for planning permission to build a house was approved; a subsequent application to modify this by including more windows was rejected.

[9] The pursuer understood that the legal side of matters was being handled by Mr Baillie and that he was acting for all three of them. She was taken by her counsel to various correspondence between Mr Baillie and the firm of D.M. Mackinnon, solicitors for the owner of the Lunga estate Mr Colin Lindsay-MacDougall. The reason for this correspondence was that originally the defender's property had formed part of that estate until 1992, when it was sold to the defender's predecessors in title. As a result the title deeds contained certain burdens which could only be varied or removed with Mr Lindsay-MacDougall's consent.

[10] In particular the deeds provided that the bottom plot should be used only as garden ground, and gave Mr Lindsay-MacDougall a right of pre-emption whereby neither the property nor any part thereof could be sold to a third party without first giving Mr Lindsay-MacDougall the opportunity to purchase it.

[11] The correspondence between the solicitors showed that Mr Lindsay-MacDougall was prepared in principle to consent to the splitting of the property and the requisite variation of burdens. It also showed that the solicitors ultimately agreed that the best way of creating a separate free-standing title for the bottom plot was for the defender to convey his entire property back to Mr Lindsay-MacDougall, who would then grant two discrete conveyances of the mill plot and the bottom plot to the defender and Graeme McIlvride respectively.

[12] The correspondence showed that contact between Mr Baillie and Mr Lindsay-MacDougall and his agents began in June 2007, but progress was very slow; at the end of 2008 the re-conveyance to Mr Lindsay-MacDougall and the splitting of the property into two plots had still not been effected. It was a matter of agreement that all of the original three partners in the 2006 agreement lost interest in it due to the lack of progress. The pursuer and defender's relationship developed into a romantic one.

[13] Later, the defender received offers on the land which resurrected interest. In around October 2008 the defender told the pursuer that he had an offer on the land from a man

named Jeremy Smith. The defender was in a dilemma whether to sell; he copied the pursuer into emails between himself and Mr Smith. The defender told the pursuer that Mr Smith had offered £130,000 whereas the land was worth £140,000. She did not know whether Graeme McIlvride had been spoken to regarding this and believed that he had lost interest in the plot by then.

[14] When Mr Smith offered £130,000 for the bottom plot, the pursuer suggested to the defender that instead she pay him £140,000 for it, which would mean that the defender got an extra £10,000 to spend on his project of renovating the mill. The pursuer originally offered the defender a lump sum, but the defender said that he did not want the whole lump sum as he would spend it.

[15] The pursuer was told that because the documents were in place with Graeme McIlvride's name on already (due to the progress made under the 2006 agreement) it was best to leave them as they were. She understood that Mr Lindsay-MacDougall was "an older gent" who would "not have been very impressed" if yet another new plan was suggested.

[16] On 21 January 2009 at 11:54 hours she sent an e-mail titled "Andy's plot" to Mr Baillie; she confirmed that this referred to the bottom plot. The e-mail read:

"Hi there Alan, how are you doing? Just been talking to andy re the bottom plot in Lunga...as you know he is transferring it to Graeme and then we have today agreed that I would buy it...especially as the exchange rate is so good at the moment. So what I would like you to do, is seriously get moving on the transfer of deeds and I would like to put some money into your escrow account for the plot for Andy – around 50K sterling. Can you let me know if this is all OK? Thanks a lot Lorraine".

[17] Mr Baillie's responded on the same day that he was waiting for "the laird's ok" on title conditions, after which the transfer should not take long. The Pursuer replied again on the same date at 12:18 Dubai time:

"Hi there, It's 11<sup>th</sup> we arrive...I will txfer [sic] the money tomorrow...please let me have your bank details. Remember the transfer of the land goes to Graeme first. Thanks a lot and hurry hurry hurry Alan"

[18] In an e-mail again on the same date at 4.19 p.m. Mr Baillie provide the account number and sort code for his firm's client account. The pursuer was taken to one of Mr Baillie's client ledgers headed:

"Client Ledger: Ms Lorraine Ludman LUDM001.2 – P:12 the Green, Craobh Haven, Lochgilphead, Argyll".

[19] On 26 January 2009 this ledger recorded £59,498.58 as being received "from Lorraine Ludman to cover balance of price & expenses". On 30 January 2009 and again on 13 March 2009 two payments each of £690 were made to the defender's client account MCIL008.2 to cover "interim fee and VAT" and "fees and VAT" respectively.

[20] On 26 May 2009 at 2.33 pm Mr Baillie e-mailed the pursuer saying:

"Andy advised me you were happy to have the funds transferred to him now (and by coincidence I received the revised documents back this morning – Andy checking them now) – can you please let me have an 'official' e-mail to instruct transfer from your account to his, please?"

[21] On the same date the pursuer replied asking him to "transfer the sum of 70,000 to Andrew McIlvride". Mr Baillie replied again on the same day saying:

"You only transferred £59,498.58 for this one! I can use part of the £115k you sent for Erines House, if you like? Are you remembering you don't get title/ownership for this payment?"

[22] On 29 May 2009 the ledger records the sum of £57,000 being paid to Andrew McIlvride "re funds as agreed as per instructions".

[23] The pursuer confirmed that the financial transactions listed had nothing to do with No. 12 The Green. The first entry dated 26 January 2009 for £59,498.58 was the first instalment of

payment for the plot. In her e-mail she had referred to "50K sterling" but she must have received a better rate of exchange which would have been a round number in dirhams. The payment via Mr Baillie to the defender was made as a lump sum for him to start progressing the mill. The amount had not been discussed between the pursuer and defender; the pursuer had just said that she would pay a lump sum to get him moving.

[24] On 18 February 2009 Mr Baillie sent an e-mail to the Pursuer, Defender and Graeme McIlvride with the subject line "Lunga Mill Plots". It said:

"Hi Troops, Can I just make sure I have the arrangements right before we complete and register the deeds? Mill-site to be transferred to Andy's name (along with existing mortgage) and with new access rights etc as agreed. 'Building' site to be transferred to Graeme (who has paid pound;? [sic] as (a half share) with Lorraine's recent payment being the other (half share)? And also with new access rights as agreed. This plot later to be transferred to G and L jointly? But remember Laird will have a right of pre-emption (first refusal) on a later 'sale'. Thereafter, this plot to be sold on to a new buyer, either with or without a house constructed on it? My understanding is that G and L, being expats, aren't liable to pay Capital Gains tax on sale profits – but this should perhaps be double-checked?"

[25] Graeme McIlvride then responded at all parties on 20 February 2009 stating that his understanding,

"was that the plot was being transferred to me initially, then sold to Lori after that, don't know nothing about it being sold to me and lori in the first instance....i was last told that it had to be sold to me as laird / paperwork so far indicated this, sorry but haven't been kept up to date with the latest ideas"

[26] On the same date the Pursuer responded to Mr Baillie, copying in the Defender (and G?), saying:

"Hi Alan Sorry but you really need to get this finalised. I will retract my offer if the deeds aren't sorted in the next few weeks and take the money back...sorry to say but the length of time this all seems to be taking – i.e. years! doesn't really make me think

it will ever happen and I have other things I will invest in. Sad for Andy though as how can he ever sell it and start his mill if the paperwork takes years!!!"

[27] Mr Baillie responded:

"This is a bit uncalled for – I do have to make sure we get this right for you, Andy and Graeme and I don't want to have to go back to the Laird later because the deeds weren't set up correctly".

[28] The Pursuer apologised and explained that she was frustrated and asked when things would be "sorted out". On 22 February 2009 Mr Baillie replied:

"I know how frustrating some 'simple' things can feel! I've spoken to Graeme who didn't seem to be fully aware of the proposals but he seems ok with them. I've asked the other lawyers to have the deeds signed asap – hopefully this week, assuming the Laird is available. I need you to be aware that you have no formal 'security' for your payment at this stage, as the deeds will be held by Andy (for the Mill) and by Graeme (for the plot). I hope that's ok with you?"

[29] On 4 March 2009 Mr Baillie e-mailed both of the McIlvrides regarding the division of conveyancing costs and asked *inter alia* "is anything 'official' required for Lorraine's investment?"

[30] On 25 June 2009 D.M. MacKinnon sent Baillies an engrossed disposition in favour of their client to be executed by the defender, and at the same time returned the defender's Land and Charge Certificates.

[31] On 10 November 2011 the pursuer e-mailed the defender about a newspaper article about Arabs investing in UK property and suggested that she would sell the bottom plot and the defender would "get the commission", to which the defender replied "yes good idea".

[32] On 14 February 2012 the defender e-mailed the pursuer saying he wanted to "get the bottom plot sorted" and that he would suggest to a local couple that they contact the pursuer "to see if you want to sell".

[33] On 26 February 2014 the pursuer replied to the 2009 chain of emails between herself and Mr Baillie headed "Andy's plot" asking Mr Baillie "what happened here?" On the same date Mr Baillie replied:

"Not sure if the deeds are back yet re the transfer of Andy's plots (registration in rural areas takes ages!) but will dig out the file when I get back to work."

[34] On 3 March 2014 Mr Baillie wrote to D.M. MacKinnon in the following terms:

"In reviewing our files we find to our embarrassment that the Disposition in favour of your client which was returned by our client a considerable time ago had been wrongly filed and never sent to you. It is now, at long last, enclosed along with cheque for £600 to cover your fees plus VAT. Can you please, in exchange, let us have the executed Disposition in favour of Andrew and Graeme McIlvride which we assume must still be on your file so we can at last finalise this matter".

[35] On 11 March 2014 a further letter was sent asking for the disposition as soon as possible, stating that Baillies were "being pressed to deliver Andrew's titles to his lenders". This was followed by a letter dated 27 June 2014 from Mr Baillie directly to Colin Lindsay-MacDougall again asking for return of the completed dispositions.

[36] On 17 March 2014 the defender e-mailed the pursuer referring to re-applying for planning permission for the bottom plot which she understood to have lapsed by that point.

[37] On 2 September 2014 the defender e-mailed the pursuer listing eight payments dating from 2009 to 2013 that he had "found", starting with the £57,000 payment of 27 May 2009. In total the payments amounted to £91,000. He concluded that this was "a good start" and that he would continue checking the next day. The pursuer explained that she had asked him to check his account to see how much had been paid for the land; she was checking with "tax people" at the same time.

[38] On 30 September 2014 he e-mailed her saying:

"And of course the land will go in your name!!..I just can't afford to speak to Baillie right now!!"



[39] The pursuer understood this last comment to mean that a fee of £700 or £800 was required to "initiate transfer". On 6 November 2014 the defender forwarded the pursuer an e-mail that he had sent to Alan Baillie earlier the same day, in which he referred to a conversation that he and Mr Baillie had had the previous day "with regard to the land transfer to Lorraine" and asking him to chase things up.

[40] On 10 March 2015 the pursuer e-mailed the defender referring to a tree-house - which was a recent idea she had had for the plot - and asking what document it was that Colin Lindsay-MacDougall needed to sign for the transfer of the land. On 11 March 2015 the defender replied saying that:

"apparently Colin needs to pass something back to his solicitor (I don't know what). This has been a blessing as we can put your name straight on the deeds as it appears Graeme's isn't yet set on that [...] we have to bottom out balances there tho."

[41] The pursuer understood the last comment to refer to working out how much had been paid for the land. At this date their relationship was "ok" although it came to an end five days later when she discovered his relationship with another woman, following which her first reaction was to put her house 'Mansefield' at Manse Brae, Lochgilphead, in which the defender and his daughter had been living, up for sale.

[42] An unsigned document dated 23 July 2015 was put to the pursuer. It read as follows:

"I Andrew McIlvride have been paid the sum of 140,000 pounds sterling by Lorraine Ludman, for half of my plot of land at Lunga Mill, Lunga, Argyll [...] This sum was agreed on the condition of planning permission for this plot which I will reinstate. I will co-operate to transfer the deeds to [the pursuer] before the end of September 2015 and ensure no further delays will take place as this matter has been ongoing since 2009, as per e-mails from myself and Alan Baillie".

[43] The pursuer had written this in 2014 in an attempt to get security for the land, and then changed the date. She showed it to the defender around that date but he refused to sign it. She also spoke to a handwritten receipt dated 12 August 2014 which said: "Received - £600 re plot of land, Lunga. (Six hundred pounds)". The handwriting was hers but it had been

signed by the defender. She had given him that sum and obtained the receipt in exchange. A similar receipt, this time typed but signed by the defender, dated 9 June 2015, acknowledged "10,000 pounds received against plot". By this time their relationship had been over for three months but the defender had made overtures towards reconciliation so she gave him this final instalment to bring the total up to £140,000.

[44] The pursuer also spoke to a chain of e-mails between herself and Alan Baillie between 20 and 30 October 2015. The chain began with her asking him to set out his understanding of the "scenario of the land transfer". Mr Baillie replied that the defender had "matters in hand to comply with the laird's requirements". The pursuer observed that the problem was with the "paperwork", and was deeply upset to be informed that the defender had never asked for her name to be put on the documents. Subsequently Mr Baillie had refused to discuss matters further due to "client confidentiality".

[45] The pursuer went to speak to Colin Lindsay-MacDougall, who told her that there was an outstanding issue about road access that meant he would not be signing anything anyway, and also that he would not "sign over the land" without her authority. Later she learned that the defender had falsely claimed to Mr Lindsay-MacDougall to have reached an agreement with her which would allow the dispositions to be signed. The defender reproached her for speaking directly to Mr Lindsay-MacDougall, a course which he had repeatedly advised against in the past.

[46] On 16 February 2017 the defender obtained planning permission which would allow the existing cabin on the mill plot to be demolished and a replacement dwellinghouse to be erected. The pursuer had been unaware of this and commented that the progress of the application appeared to have been expedited.

[47] A spreadsheet had been agreed between parties, showing transactions from the pursuer's Royal Bank of Scotland account registered under her name trading as The Giving Tree ("the Giving Tree account"). It showed 120 entries. Withdrawals agreed to be the defender's were shown in yellow and amounted to £27,708.62. The pursuer's position was that a further £28,920.20 was also taken by the defender without authority. Authority had been given to him to use the accounts but only for her properties in Argyll. She did not have

online banking, so would leave signed blank cheques for the defender to use to pay contractors when she was out of the country. Normally they would be left in a desk in her shop; only the defender had access to them. He also had a debit card and pin. Her own receipts showed her to have paid £90,000 to contractors between 2009 and 2015.

[48] The pursuer suspected that the defender had started taking more money than he was authorised to around 2011, when he had begun a relationship with another woman. If he asked her to take cash, she would query what it was for – if he was labouring on her behalf and needed petrol she would say yes, but if it was to pay his tax bill that was not justified.

[49] There were a number of Paypal transactions which she identified as payments for toy soldiers (the defender collected these). Other payments related to travel insurance for the defender and his daughter; a new computer for the defender's daughter; Netflix (which was unavailable in the UAE); and the defender's electricity and telephone bills. All were unauthorised. In November 2014 she became suspicious and cancelled the defender's debit card, as well as removing him as a signatory on the account. However the latter request was not timeously actioned by the bank, which allowed the defender to transfer £1,000 to his own bank account on 28 January 2015.

[50] The last two cheques on the spreadsheet were both dated 19 March 2015. The first was to Walker Love for £392.70 and the second was to D & A McDonald for £1,080. The pursuer did not know what either of these sums related to. On the previous weekend she had discovered that since 2011 the defender had been seeing another woman. By 19 March 2015 he knew that she knew, and she conjectured that these cheques were an attempt by him to obtain money before his source of funds was cut off. The bank did not honour these cheques; she understood that the defender had gone to the local branch where again there was a refusal by the manager to transfer funds. The pursuer had previously telephoned the manager in anticipation of such an event.

[51] In cross-examination, the pursuer stated that any reference by her to her Scottish properties as "our future" did not indicate that she saw their ownership as shared in any way with the defender. Rather it was simply a normal expression for people in a relationship to use. Similarly, she might speak of "our company" to her employees. She

denied that the defender had renovated her properties. This was done by contractors whom she paid and who did not require to be supervised by him. Regarding the bottom plot, she had understood Alan Baillie to be acting for all three of them and did not anticipate any conflicts – if there had been, she would have expected him to tell her. She had repeatedly asked about the reason for the delay and been told that the laird needed to sign something and the defender was dealing with it, and she should not contact the laird directly. She had believed whatever the defender had told her; she had had no reason not to trust either him or Alan Baillie.

[52] She had had no concerns about obtaining title, having been repeatedly assured by both the defender and Mr Baillie that the laird's consent was a mere formality. She had trusted Mr Baillie, he was a lawyer and she had used him many times before. She also denied that her relationship with the defender had ceased to be a romantic one in 2012 – they had continued to go on holidays, share a bed, share a house and car, and she had bought presents for his daughter. They did not have a business relationship involving her properties. She had paid experienced contractors significant sums to renovate the Giving Tree; the defender's involvement had been limited to letting them into the property, they did not need his supervision. He had lent her some assistance, but as her boyfriend, not a business partner or employee - "I don't normally sleep with my contractors". She denied that the sums paid to him were gifts, payments for services provided, contributions to their joint business or reimbursement of expenses he had incurred on her behalf.

Mrs Janine Grace Holmes

[53] This witness worked as the office manager for the pursuer's company. She had met the pursuer towards the end of 2007, began working intermittently as her personal assistant and from 2016 had worked for her full-time. The witness was aware that the pursuer had bank accounts in Scotland. Before beginning to work for her full-time, she was already assisting the pursuer with confidential matters that the pursuer did not want the rest of the office to know about, and had access to a Scottish bank account to make transfers between Scottish accounts and pay tradesmen.

[54] When the witness met the pursuer the latter was in a relationship. The witness and her husband had socialised with the pursuer and defender on numerous occasions from 2009 including a 2012 holiday to Oman. They would talk about the bottom plot. The parties discussed their plans about the land, it was something that they were excited about, especially the pursuer who said how beautiful it was. In the conversations that the witness was part of, the plan was that the pursuer was buying the bottom plot and was going to build a house on it. The purchase was already agreed and money had started to change hands. Initially, money was paid to the solicitor that the pursuer had used for other projects, Alan Baillie. Then other payments were made periodically. The witness saw e-mails which it was her responsibility to maintain. She and the pursuer discussed the plan and on occasions she had seen bank statements. The pursuer told her that payments were made for the land and that the agreement was to pay £140,000.

[55] Conversations on the Oman trip included talk about the land. The witness was surprised that it was taking so long to get the land into the pursuer's name. The defender said that it was remote and things took a long time; Alan Baillie and "the laird" were causing problems. She asked what a "laird" was and was told that there were documents that he must sign. The witness knew that the pursuer had been making payments for three years. She was surprised because she had purchased properties herself and knew what was involved. She had many times heard the defender promise that the land would be put into the pursuer's name; he said it was Lorraine's land. There was no doubt in the witness' mind regarding this. That was what the defender called it; he never called it his land. He was being paid for it in instalments. There were possibly four times where he specifically talked about the land going to the pursuer, usually in passing. The intention was that there would be a house built with lots of windows which they would rent out. The witness never heard the pursuer talk of selling it.

Andrew Patrick Sandilands

[56] This witness was 60 years of age at the time of giving evidence. He was a fencing contractor who had got to know the Defender through his work. He also knew the pursuer. They were not social friends of his. His evidence was that a number of years ago, the

defender had asked him to come to look at fencing a building plot in Lunga, an area which he knew well. He identified the bottom plot on the land register plan after giving a brief description of it. The defender was the only person who spoke to him about the matter, saying that there was a proposal to sell the plot to his then partner the pursuer. The witness did not erect any fence there because the defender wanted him to do it "basically for nothing". There had been telephone discussions as well as a meeting on site. He was under the impression that that the purpose of the fence would have been largely to define the plot's boundaries. There was no significant livestock nearby which would have otherwise justified erecting fencing (and he commented that in any event it would have been the responsibility of the animals' owner to keep them fenced in).

Colin Lindsay-MacDougall

[57] This witness was 81 at the time of giving evidence. He was a landowner who also ran holiday lets. He had known the defender for about ten years as a neighbour and someone who had also done work for him. He had known the pursuer for about five years, after she had come to ask him for his help with a problem.

[58] He was taken to the deeds for the defender's property. Originally it had belonged to the witness, until he sold it in 1993 to Michael van der Lugt and Bella Green, the defender's immediate predecessors in title. These people had intended to set up an art school in the mill and use the rest of the mill plot as living space, which would have left them very little garden space; and they were strict vegetarians. They had asked for more land to use as a garden and the witness had agreed to include what was now the bottom plot, but accompanied by a title condition that it could only be used as a garden. The witness was aware that they had later sold the property to the defender in 2000; he had declined to exercise his right of pre-emption.

[59] After the defender moved in the witness hired him to do some work in respect of building warrants and planning permission. They had some discussions regarding the title conditions affecting the defender's land, some of which were thought to have become unenforceable following the abolition of feudal tenure. The defender was living in a caravan which was unsuitable. He wanted to sell the bottom plot to raise money. Extensive

discussions ensued regarding the changes in the law, planning law, the bottom plot's lack of water supply and its complicated access issues. The witness was also conscious that the defender proposed to sell the bottom plot for more than £50,000 and that if the witness agreed to vary the existing conditions he would be effectively gifting the defender £50,000. Therefore he insisted on a number of conditions to benefit the estate. The defender offered to do a considerable amount of work in exchange for little or no money. Before the witness was prepared to waive the title conditions there were a number of issues, primarily affecting road access and the impact on neighbouring properties, that would have to be resolved. These issues were "exceedingly complex but not insuperable".

[60] The witness found it difficult to say whether Graeme McIlvride, whom he did not know, had had an interest in the bottom plot. The defender had mentioned several times that he wanted to sell it, sometimes mentioning selling it to his brother, and on one occasion mentioning selling the entire property to his brother then renting it back from him. Then letters started coming in from the defender's lawyer regarding selling the plot to his brother. At the time the witness did not know of any interest held by the pursuer, only becoming aware of her existence substantially later, when she told him that she and the defender had had a personal relationship. He struggled to see how they could have been said to be business partners;

"she had extensive income and skills and he was a penniless draughtsman".

[61] The pursuer came to him four or five years ago and asked if he was aware that the defender had promised to sell the land for her. She said that she had paid the defender a substantial amount of money, around £150,000, and now understood that he was going to sell it to his brother instead. The witness agreed not to grant waiver meantime and told the defender that the issue needed to be resolved. The latter's response was that this was all in the pursuer's mind, that she was angry because he had "dropped" her as his girlfriend, and that she owed him money for work that he had done for her.

[62] The witness had suggested the appointment of an arbiter; the pursuer was happy with this but the defender refused, describing the pursuer as "a vicious woman" who was "after his blood", and asking the witness not to speak with her but to leave matters to him to

resolve. There was a hiatus and then the defender wrote saying that he and the pursuer had made a deal so waiver could now be granted. The defender also came to see him saying the same thing. The witness was suspicious and e-mailed the pursuer on 5 November 2016 to confirm this; she told him that it was untrue. The pursuer told him afterwards that she was making "tremendous efforts" to avoid a court case but without success. He was taken to an e-mail headed "life is short" sent by the defender to the pursuer on 8 November 2016, which referred to a recent meeting between the witness and the defender. He confirmed that the defender's claim to have told him that whether or not the pursuer built on the plot was "nothing to do with him" was not true. The defender had never said that, and "it seemed rather silly"; clearly anyone building something right in front of his house had something to do with him.

[63] The witness had never been against "doing the deal" (i.e. waiving conditions and allowing the bottom plot to be split off) provided that "the details were satisfactory and the pursuer had a fair hearing". He spoke to various items of correspondence between solicitors and himself. These seemed to reflect attempts to resolve the various issues to which he had referred. On being taken to a letter from Alan Baillie to the pursuer dated 20 October 2015 which stated "Andy has matters in hand to comply with the laird's requirements" he stated that this was not true; they had had various meetings to discuss matters but never reached agreement on how to resolve them. The witness did not recall mention of the pursuer until she came to see him. He could not remember when this was but if she said it was the summer of 2016 he would accept that.

#### Catherine Anne Stewart

[64] This witness had been introduced to the pursuer and defender in late September 2011 by a mutual friend, at a time when she had relocated from London to Applecross in Ross-shire. The initial meeting took place at a cafe in Oban. Her friend had thought that they could all share tips on their experience of building dream houses. The pursuer was building her house on her plot, the defender was building (or renovating) his mill and the witness had her own project. The pursuer and defender had presented as being very much in love, the epitome of the ideal couple. The witness was shown photographs of the mill and basic



plans for the pursuer's proposed house. She understood that their plan was to put up a new build on the pursuer's plot; for the pursuer to move in, and the defender to live with her whilst building the mill. It was a very happy few hours. During the course of the afternoon one or other of the parties referred to the bottom plot as "Lorraine's plot, Lorraine's house". The couple seemed very happy, planning to have two next-door properties to each other for when they grew old together. They were talking about what a simple quick build it would be. The witness understood that pursuer did not yet legally own the plot though she had paid for it. The witness remembered the pursuer gently teasing the defender about him not having his "legal admin" sorted out; there was some joking about artists being bad at admin. The parties did not go into detail with her, but she took from this light-hearted conversation that the pursuer had purchased the land and that the defender needed to do some paperwork to formalise this.

[65] The witness saw the plot later in 2012 on an occasion when she, her brother and the defender had brought a car from London to the mill. All the way up they all spoke about the land as "Lorraine's plot". They had had dinner with the pursuer beforehand, and the pursuer was present afterwards, but she was not there when the defender showed the witness the plot. The plot lay to the west of the mill which was important because of the sunset. The defender, showing to her, said "this is Lorraine's plot". He showed her the position where the house was going to be built, and explained what would be done with a clump of trees, some of which were going to be left in place for privacy. He discussed his plans for the "Lorraine and Andy compound". When the witness had been in the area everyone there knew that it was the pursuer's plot.

[66] In the last quarter of 2012 the defender came to her home to help resolve a problem she had with inadequate work that had been done on her drains. At this time the pursuer was on the phone saying that she was angry and frustrated because the planning permission had not yet been obtained. The defender commented that she was getting angry and he had begun to doubt whether he wanted to live next to her. He said to the witness in at least three conversations that he was worried about the relationship and worried that the pursuer would change the plans for the new house. He was concerned that if they broke up she would build a large two-storey house which would lie between his home and the sunset.

[67] He said more than once that he had a trick up his sleeve - the land was in his brother's name so there would need to be a transfer into his own name before any transfer to the pursuer. Also he had been on the verge of bankruptcy and thought that he could say that he had no money, as well as the land not being in his name, so how could there ever have been a deal. He referred to these two matters as his "failsafes", a kind of legal loophole. The witness was clear that the fact it was the pursuer's land was never in dispute until the defender felt that the pursuer, as a "woman scorned", might build a big house in front of him. The defender stated that the pursuer had not yet paid him in full.

[68] Simultaneously the witness was having telephone conversations with the pursuer, in one of which the pursuer mentioned that she had paid "north of" £100,000, which was either seven-eighths or six-sevenths of the price; she still owed him a final instalment. Ms Stewart was at pains to "state categorically" that in her conversation with the defender they were not talking about money that the pursuer had been providing to the defender with respect to other projects or to pay workmen. They had been talking about this land. The witness told the defender to "get it sorted" asking him "what's the big deal?" He had said that he would not do so until he got the last instalment. He was worried that the pursuer would be embittered about other women. The witness maintained a "firewall" between her conversations with both parties, though in retrospect considered that perhaps she should not have done.

[69] The pursuer saw the land transfer as a *fait accompli*. In 2012 she would moan about "the legals" but there was no anxiety in her mind. In 2013 and 2014 the pursuer also had investment properties where the defender was "helping her out". At the end of 2012 the pursuer phoned the witness to say that she had paid the defender money to in turn pay workmen, but the workmen had been in touch to say that they had not been paid. It was also "murky" with regards to other work that the defender had done for her.

[70] The couple had a volatile relationship, with several mini-breakups and reconciliations. In 2013 they had a "really big fight" which left the pursuer very upset. But in December 2013 things were better. The pursuer phoned and was "really sunny" telling the witness that the

defender had said that "the legals were sorted" and that the planning application was underway.

[71] In March 2014 the pursuer had phoned the witness, and was clearly very upset. There had been a "massive blowout". The defender had started to deny that the land had ever been intended for the pursuer, a claim which left Ms Stewart "absolutely gobsmacked". The pursuer had become suspicious after learning that the defender had used money that was meant to pay workmen to instead buy his daughter an iPad. She had contacted Mr Baillie directly and was crying because he seemed to know nothing about the transfer. The witness asked the pursuer if she had any proof to back up her claim about the transfer. In response, the pursuer had sent her an email chain from Alan Baillie headed "Lunga mill plots" which included the "hi troops" e-mail.

[72] Ms Stewart considered that "the whole thing was really dodgy at this stage" because the lawyer said he knew nothing; he was a friend of the defender and the pursuer had trusted him to be a neutral party. The pursuer wanted in the first instance to prove to Mr Baillie that he had known about the transfer. In May 2015 it emerged that the defender had formed a relationship with another woman. There was a second call between the witness and the pursuer during which the latter was very upset. The pursuer told the witness that the defender was very angry with the pursuer, accusing her of "deliberately impeding his dream to build the mill" and failing to support him as his partner by withholding the last payment. The pursuer felt that she should make this final payment. The witness advised her not to but the pursuer thought that if she gave him it, it would help her move forward.

[73] The witness referred to the defender as "silvertongue", a man with a real gift for bringing people together and acting as a mediator. He had persuaded her that the pursuer was controlling. It was only in March 2014 when she saw his absolute denial that he had planned to transfer the land, and when the lawyer said that he knew nothing about it that she changed her mind.

[74] It was put to the witness that the defender had never been selling the plot to the pursuer, but rather title was being transferred as security for money that was to be spent on a house. The witness responded that both parties acknowledged that the pursuer had paid

all but the final instalment. It was also suggested that there had never been a plan that the parties would move in together on her plot. The witness responded that at their first meeting at the Oban tearoom they had discussed how the defender would be able to live in her house while he took his time with the mill. She had been struck by how enlightened the proposal was. 2015 was not the first time that a purchase of the land by the pursuer had been mentioned. There was a parallel dispute regarding other money; the defender had been "dipping" funds to buy an iPad for his daughter. One of the pursuer's properties had a roof that was falling in. It was "disgraceful" that anyone could say that they were managing these properties. The pursuer was a woman in love. She had felt that if she made this last payment she would still be a desirable partner.

[75] The witness accepted that she was the pursuer's friend and no longer that of the defender. She had become alienated from the latter. He had come to her home in 2012 and had brokered an agreement with the contractor who had done poor work on her property. The agreement was that the contractor would redo the work and if it met with the approval of the defender, whom the witness then understood to be an architect, the witness would pay for it. The defender inspected the work and approved it, and the defender made payment. It subsequently emerged that the work was entirely substandard, so much so that her home was deemed unfit for human habitation; but since she had agreed to accept the defender's assessment of the quality of the work she had no legal recourse, and was left out of pocket to the amount of £14,000. She considered that he had pretended to knowledge that he did not have. The defender had also created a "beautiful, exquisite" staircase at her home. It had been the pursuer's suggestion that the defender should help the witness out. However "money was a very fluid matter" for the defender, and "helping out morphed into me having to pay him". He suggested that she pay him what she thought it was worth. She offered £5,000 which she considered to be "more than generous", but the defender was angry, asking if she did not "respect him as an artist". Ultimately the witness paid him £8,000 by instalments. Later, when she realised that his signoff on the drains had prejudiced her, she distanced herself from him and did not invite him to her home again.

Carolyn Jane Voisey or Kelly

[76] This witness was a retired marine scientist, born 23 June 1959 and lived in Troon. She had first met the pursuer when she was 15 or 16 years of age and they had played competitive badminton for Cambridgeshire. The pursuer introduced her to the defender at Craobh Haven in 2010, when they all sailed to the Crinan Canal. The witness did not understand the parties to be in a business relationship. She thought that the defender had his own architect's business and the pursuer's business was a lighting company in Dubai. In 2014 the witness was engaged by the pursuer to work on the latter's property at Erines House to prepare it for rental. There were a lot of jobs that had not been completed and she lived in the property while doing it up.

[77] In 2017 or 2018 she spent a couple of months working in the pursuer's other flat at Erines. She did a lot of cleaning, a lot of purchasing and organising fabric repairs and getting curtains made, and also communicating with subcontractors. The defender provided names for roofers and electricians and she was guided by him. A number of jobs had been started but not completed though the defender and contractors had spent time there. This was a concern because the property was to be rented out in the autumn.

[78] When she arrived the work already done was unsatisfactory. Heating, electrical and safety work remained outstanding. The witness did not know how much the defender was involved in a "hands-on" sense but the overseeing done by him was unsatisfactory. The pursuer was not in the country at the time but had agreed to leave eight signed blank cheques in the shop, hidden under an old piece of furniture, in order for the witness to pay costs.

[79] The witness did not use these cheques until the job was complete, when she settled up with herself with using cheque. She finished work at Erines house in early October 2014. On the day she left she had a prearranged meeting with the defender - he had a key for Erines because he was to let it out. The witness had a very uncomfortable conversation with the defender, he asked lots of questions about money, costs and how the witness was going to

be paid. It was just the two of them in the shop which was quite small. He stood at the door and demanded to know where the cheques were. The witness was uncomfortable and felt shut in and intimidated. She very reluctantly told him where the signed cheques were hidden. He told her not to mention to the pursuer that the witness had told him where they were. The witness felt that she was letting the pursuer down.

[80] The witness was with the pursuer at the latter's home in Dubai on holiday in March 2015 when the pursuer's relationship with the defender ended. The pursuer had had a very startling telephone conversation with the defender's other girlfriend who - like the pursuer - had thought that she was in an exclusive relationship with the defender. Clearly this had not been so for many years. The witness heard some parts of the conversation but found it uncomfortable and went out. The pursuer told her afterwards what had been said. The pursuer had become progressively more concerned that the defender was not being completely open with her which led her to call the other lady.

Sven Bjorn Lars Pedersen

[81] This witness was 53 at the time of giving evidence and was a self-employed lighting designer working in television and film. He had met the pursuer at a Makhtoum royal wedding in 2006 or 2007. They had done business several times since then and become friends; he would sometimes stay with her in Dubai. He had met the defender at around the same time in Dubai and knew him as the pursuer's partner. In summer 2009 or 2010 the witness came to Scotland to visit the pursuer. He went to visit the defender's property and was very impressed by the quality of the work that had been done on the mill. He remembered discussions regarding a piece of land that "Lorraine was getting". They had been laughing at the idea of having somewhere where the pursuer could serve teas and coffees with the savoury scones that she was then getting into baking. There was a path between the two areas of the property with one side being the defender's mill and the other side being the pursuer's land. The pursuer pointed it out - "that's my land, that's going to be my land over there". The defender was in earshot when she said this and did not at any point express disagreement. Mr Pedersen was able to identify the plot in question by reference to the land certificate.

[82] His second visit was around the time of the London Olympics. The witness understood that the pursuer was helping the defender with funding; he was facilitating work for her and being paid for that, and using that money on the mill. The witness explained that prior to that second visit he had spoken to the pursuer a few times and would ask about her Scottish projects, and she would say that she was still waiting for the land to be transferred. It seemed odd to the witness that it was taking so long, he did not understand there to be any reason for this other than "legal paperwork". His understanding was that because the pursuer was helping the defender fund the mill and his lifestyle, the payoff for these transfers of money was the transfer of the land to her name.

[83] The witness described the time in 2010 or 2011 when he and Catherine Stewart had been at the pursuer's property in Dubai. The pursuer had been in a good mood, but at the end of the trip got a call from the defender saying that he wanted them to split up. She came down from her bedroom very upset and said "Andy's just broken up with me". There was a discussion about whether the pursuer and defender were in any business partnership and the pursuer said "no the properties are all in my name". From conversations with the pursuer the witness understood that the defender had more of a supervisory role in the repair or maintenance of her properties; he was not working on them himself. The witness' understanding was that money was being paid to the defender as a combination of payment for the plot, and to help him work on the mill. The witness had had a lot of admiration for the defender when he met him, seeing him as a creative artist, and had been impressed by his skills and originality but had come to see him as a dishonest person.

Peter Turner McLardy

[84] This witness was almost 73 at the time of giving evidence and was a self-employed window-cleaner. The defender's wife had been his daughter's best friend, and he himself had had a passing acquaintance with the defender. He spoke to e-mails between himself and the defender in early October 2012 which referenced a recent discussion they had had in which the witness, then newly-remarried, had mentioned that he was looking for a building-plot to buy. In an e-mail of 4 October at 19:04 hours the defender had written,

"I have spoken with Lorraine and she might well be interested to sell the land we discussed".

[85] The witness and his wife drove out to Lunga to look at the plot. The matter was not ultimately pursued as the witness' wife disliked the Lunga area, describing it as being like a "hippy colony". Both verbally and by reference to the Land Register plan the witness was able to identify the land in question - which he had seen - as being the bottom plot.

The defender, Andrew Kinmond McIlvride

[86] The defender was 55 years of age at the time of giving evidence and was a self-employed architectural illustrator. His business over the last 20 years involved architectural work such as planning applications, building warrants, and overseeing property construction. He had never registered for VAT. He charged clients an hourly rate of £45 per hour but had worked at a reduced rate of £25 per hour for Mr Lindsay-MacDougall. The defender loved him dearly, but he owned all the land around the defender and could be terrifying. The defender would present a bill and Mr Lindsay-MacDougall would say that he was not paying and the defender would have to accept that. He had been delighted when Mr Lindsay-MacDougall suggested that he build a house on the bottom plot; he thought it was very generous of him, "the most fantastic thing that had just happened".

[87] He and his former partner had split up in 2002. She lived not far away and the defender continued to look after their daughter, born in 1997. They had a joint care arrangement, so for at least half of the time his daughter stayed with the defender. In addition to other jobs, he worked on his own dream project, the renovation of an old water mill on the land he bought in 2000.

[88] He was taken to his own land certificate. The plot on the eastern side was higher and sloped down to the bottom plot. The mill was a hundred or more years old and had been dilapidated when he acquired it. It remained uninhabitable and without services. The defender lived in a cabin where he had a studio. There were no buildings on the bottom plot; a portacabin had been there for some years but it was damaged by a storm and later removed.



[89] The defender had never committed to any plan for what to do with the bottom plot. His older brother Graeme suggested that the two of them build on the plot. The idea was that his brother would sponsor a building, the defender would build it, and they would sell or rent it out. So, the defender would provide the land and his brother would pay for the building on it. The defender expected that the costs of building a house would be about £120,000. He had a vague idea then that the land was worth £60,000 as it was, unserviced.

[90] A "mountain of work" was needed to put the plan into action. They would need planning permission; to establish what the site was; to clarify the access and road position; to get water from somewhere; to arrange an electrical supply and deal with all legalities. In 2005 or 2006 things started to get more serious. The defender had the land valued at £120,000 which was "an unbelievable amount of money"; his brother was putting cash into the deal and the defender told him that if he did he would transfer title to his brother for the latter's security, given that the defender was self-employed and financially precarious. There would be no security for the defender in this scenario but the brothers trusted each other. The valuation of the land referred to above took place in 2005. It valued the top plot at £150,000 and the bottom plot at £120,000; it was indicative only and based on a plot with detailed planning approval and services. It was purely coincidental that the value of the land was equal to the estimated cost of building a house.

[91] The defender explained how he anticipated he and his brother would have split the profits. If the brother ultimately spent £150,000 on building, the defender would still be contributing £120,000; so if the finished product was sold for £300,000 there would be a "pro rata" split, albeit the defender would also be contributing "sweat equity" to the project. It was also an opportunity for his brother to get money out of Dubai. It was an arbitrary country; although there was no tax, expatriates required to have an Emirati sponsor who would get 50% of the profits made by them. Tenure for house ownership was insecure, sponsors could remove passports and when expatriates ceased working they required to leave. Both the defender's brother and the pursuer were keen not to have money sitting in Dubai.

[92] The defender explained that the pursuer had been an associate of his brother and that they had met in 2006 on the last night of one of the defender's trips to his brother's house in Dubai. Their relationship started the following year in the summer of 2007 when she came to Scotland for the first time for a holiday. He would have mentioned the possibility of building a house on the plot during her first visit. His brother introduced the pursuer to the idea of building but soon warned the defender to be careful with her; he did not fully trust her and was taken aback when they later formed a relationship.

[93] The defender's brother sent him some money to "kick things off", explore legalities and get planning permission. The pursuer expressed interest in being part of the project and suggested that she and Graeme could sponsor the building of the house. This would make it less expensive for Graeme; the defender described it as a "notional chat, not an arrangement". Graeme sent £10,000 and so did the pursuer at some point. There was never a prospect of the defender selling the bottom plot to his brother. Title was to go into the brother's name but the money he was sending was not a payment for the land but rather money to help the defender facilitate the project. There was never any working out of how division of proceeds might work; as far as the defender was concerned, the pursuer was buying into Graeme's side of the deal.

[94] He agreed that if she were to contribute money to the costs then she would become vulnerable, however he never considered or discussed how she might be protected. If she wanted security she would have had to discuss matters with Graeme. He did not regard the money she sent as payment for the plot. At that point in their relationship he would see her twice a year, in Scotland in summer and in Dubai in winter.

[95] In hindsight the pursuer had been very focussed and determined to come and stay in Scotland with the defender. He was "a bit apprehensive" but happy to go along with that, describing it as being like a summer romance - a few weeks here and there which left him free to focus on his daughter. He was not interested in "a big relationship" but they had a lot of fun.

[96] None of them had truly understood the difficulties they faced in the project. The pursuer knew there was not a plot ready to develop but was not truly interested and had no

influence on design other than to ask that the planned house have bigger windows. Planning permission had been obtained in 2006 and lasted for three years. Both the pursuer and the defender's brother accepted that the defender was free to continue exploring alternative sales to third parties.

[97] The defender again confirmed that the intention was that he and his brother would split the value of the land, "valued when we got this thing going". His contribution would be the value of the land, his time and other contributions, with Graeme paying for materials and the cost of construction. So if they sold for £250,000 having spent £200,000 (including a land value of £100,000) they would split the £50,000 profit equally, otherwise it would be split according to their contribution. Some mechanism was needed for valuing their respective contributions. The defender considered that Graeme would have understood matters in the same way. The involvement of the pursuer did not make any difference from the defender's point of view; she would "go halves" with Graeme so she and Graeme would be on a quarter each. Graeme and the pursuer were both affluent and "taking a punt"; £10,000 was nothing to them. They were buying into a potential building project; "if it paid off, good; if not, whatever".

[98] The defender was taken to the email from the pursuer to Alan Baillie on 21 January 2009 at 11:54 hours with the subject "Andy's plot". The defender agreed that he had not been copied into this but either the pursuer or Mr Baillie had "sent something" to him afterwards so he was not unfamiliar with it. He recalled the discussions that were referred to in the email. These took place following an offer from Jeremy Smith who had offered £130,000, and another from Robin Parry for £140,000. The pursuer had said "don't sell to them, we'll carry on and build it, don't sell it cheaply". There had been no discussions about the pursuer buying the plot; in that e-mail she was talking about her taking over Graeme's share. He described her as "super-determined and focussed", in contrast to him and his brother who were "laid-back". She was pushing and talking about a transfer of money although they did not even have a deed. Although the bottom plot was for sale to third parties, it was not for sale to Graeme and the pursuer, who were simply investing in the building side of it. He described the email as "misleading"; the pursuer was trying to get money out of Dubai through him which he initially rejected, suggesting that she go to Alan Baillie instead.

[99] What the pursuer had talked to the defender about was a transfer of money out of Dubai for the project, not buying the plot. He thought the money was for the building, and they were nowhere near building, so he had said "give it to Alan, see if he'll take it". He did not, at the time, state that the terms of the email were incorrect because "I wasn't a party per se". Alan Baillie had asked "is it right that the plot is going to Graeme then Lorraine?" to which the defender responded "yeah no problem" but there was no detail, she was just keen to get money out of Dubai. He remembered feeling quite pressured regarding it. Alan Baillie said that they needed a reason to explain the money transfer, that there could not simply be a transfer of money to a lawyer for no reason; so perhaps the reference to buying the plot "was a reference for Alan's sake for his file, maybe". By now the pursuer had much more of a relationship with Alan Baillie than the defender did, as she was buying lots of flats through his firm.

[100] The defender was then taken to the "hi troops" email and agreed that this was Alan Baillie seeking to understand what was to happen. The defender thought that in it the solicitor was responding to the pursuer but there had been no payment for a site so he did not understand that. He thought that the pursuer's payment of £50,000 must be the payment that Alan Baillie was referring to. He was asked about the suggestion that the plot was to be transferred to Graeme and the pursuer and replied that he "did not remember that prevailing, that sort of thought". He accepted that Mr Baillie had thought that Graeme and the pursuer were paying him for a share of the plot but this was not correct. The building costs would be split 50/50 between Graeme and the pursuer but the transfer of title would not have been 50/50. He was asked about the suggestion made by Mr Baillie that the plot was later to be transferred to Graeme and the pursuer jointly, and commented that this might be a summary of conversations that Mr Baillie was party to but these had never been "ratified".

[101] The response from the pursuer was then read to him. He agreed that the part about the initial transfer to Graeme was correct. He was then asked about the subsequent sale to the pursuer. He said that this reflected other conversations that Mr Baillie may have had, previous "chat" on the basis that Graeme would get the plot and the pursuer would take on the deal after that. Possibly the bottom plot was going to be sold by Graeme to the pursuer

in exchange for the purchase price. It was absolutely not true that the plot was to be sold to Graeme, whose use of the word "sold" was just "lazy language". Graeme was expecting the land to be transferred to him, not sold.

[102] The defender was asked what the pursuer meant by "retracting her offer". He replied that the offer in question was the offer to build a house. She had "taken it on herself" to push Alan Baillie; they had all felt that Mr Baillie was lax and slow.

[103] The defender did not want money to build on the bottom plot when he did not even have title deeds for it as a plot. The suggestion that he did not want the price all at once because he might spend it was "entirely unfounded"; if she had been buying and he selling he would have been very glad to get it all at once. The money was not in part-payment of the plot. He did receive it three or four months after the pursuer sent it to Mr Baillie. The pursuer had been impatient because nothing was happening. The defender tried to move things forward but she was fed up that the money was in Alan Baillie's account. They were spending on the three flats that they had and she was about to buy another two. The defender accepted the money for servicing all the others. They had had conversations and it was very clear there was no chance of the money going towards building on the plot in the near future. The money was therefore used for the various contractors for the flats; also they were buying antiques and second-hand kitchens, and the defender was in the middle of negotiating the purchase of Flat 1 at 'Erines', a listed mansion that had been split into flats.

[104] The defender's counsel asked if there was a specific discussion about the £57,000 not being for the purchase of the bottom plot but for these other things. The defender replied that "we would have had conversations that I would accept the money". He did not think that they would have said it was definitely for this or that. The understanding was that it was partly also for his time, his wages – "I had to live". In the pursuer's absence abroad he had to hire contractors etc. so the money was "working capital". The money was sent to him "for myriad reasons" but none was for the land. The pursuer kept a record of any money spent by the defender.

[105] The defender described their relationship as being much more about business than anything else, about the buying and doing up of properties. They reached a verbal

agreement that he owned 20% of the flats in exchange for all his work. The putting of one property into his name was never discussed in detail, it was "just an idea, never got past conversation"; the pursuer paid for and became the legal owner of these properties. Their romantic relationship ended in 2011; he was becoming insecure, because the pursuer was "a bully".

[106] His role was to find flats, negotiate a price, "lead" Alan Baillie and the pursuer to the point of purchase and then do everything that the flat needed. He would often have to "completely gut" flats. His understanding was that he was doing it on the basis that he had negotiated the purchase of the shop i.e. 20%. He gave the example of the Broughty Ferry flat where he knew that his neighbour was selling and he negotiated the price down from £100,000 to £90,000; "So I'm doing it for £10,000", a 10% share. He never took a wage, his intention was to turn the flat around and they would share the rent. Although he was notionally entitled to a fractional share of the rent he did not in fact receive any rent, which instead would "go into the pot, the value of my investment, in theory". He understood that the pursuer was keeping records and that there would be a reconciliation of figures at some point.

[107] He was taken to the record where the payments received by him from the pursuer were listed. He accepted that these payments were made to him. One payment of £10,000 was a gift. In 2008 or so he started going into significant debt, equal to his turnover. This was purely because he was working on these flats. The pursuer would "top him up" periodically to get him back to breakeven. Most of these payments were not gifts but refunds of money he had spent on contractors and materials. In August 2010 she gave him money to buy a motorbike which cost £9,500. He did not recognise any of the other amounts listed until the bottom one which was another £10,000 sum dated 9 June 2015. By this point their relationship was poisonous. She turned up outside his cabin with £10,000 in cash, saying "there you go, that's for the mill because I feel sorry for you".

[108] He denied that any of these payments related to the plot transfer. As for the £57,000, she had retrospectively tried to get Alan Baillie to apportion this to the plot but he could not do so because it was not true; this was what Alan Baillie told him. He was taken to a

handwritten piece of paper dated 12 August 2014 which states "received" and then underneath that "£600 re plot land, Lunga" and was signed by the defender. He accepted that he had signed this and that when he did so the reference to £600 et cetera was already inscribed in the pursuer's handwriting. The money was not for the plot; he had bought a computer for his child using £600 of the pursuer's money and had agreed to sign this paper to prevent the pursuer telling his mother and his daughter about that. All it meant was that if he sold the land she would get £600 of the proceeds.

[109] He was taken to a typed document dated 9 June 2015. The typed words read "received" then under that "£10,000 received against plot" then his name, typed, and his signature. Again he accepted signing this document and that it referred to the bottom plot. He also accepted that it could be interpreted as an instalment of the purchase price. However during this time they were trying to come to some agreement regarding the flats and there was still some discussion regarding the development of the plot. This £10,000 referred to the cash that she had given him at his cabin. She had told him that this form was just for her tax purposes. It was "absolutely not" a true receipt. He had signed it because he was "in a terrible state".

[110] He stated that the Giving Tree account was not usually used as a source of funds to pay workmen. Instead the pursuer would just send money to him randomly, to his account; if he needed to top up he would go to the account.

[111] It was put to him that the pursuer claimed she had transferred £140,080 to him and that this corresponded to the agreed purchase price for the plot. He said that this was a "completely random bit of arithmetic pulled out of all the money sent here". He was administering her entire portfolio in Scotland, making payments to builders often in cash, picking up stock she had ordered for the shop and paying for it on his cards, also getting kitchens and bathrooms delivered. The payments were recompense for all that. Also there was wages for the people in the shop, the shop's website and fuel for running around and insurance and tax and maintenance for two cars.

[112] He was asked regarding occasions when he was said to have referred to it as "Lorraine's plot". He first met Janine Holmes in Dubai. He accepted that the four of them

had gone on a trip to Oman. There had never been a discussion "per se" of "Lorraine's plot" but reference had been made to the pursuer building a house on the defender's plot, and perhaps Mrs Holmes had drawn an inference from that. He would not have said that the plan was for the pursuer to buy the bottom plot. He did not think that the pursuer would have shared details with Mrs Holmes because she did not trust her. He had never told Mrs Holmes that he was transferring title to the pursuer. Nor had he discussed with her any transfer of title to Graeme.

[113] The defender accepted that the 2011 Oban coffee-shop meeting with Catherine Stewart had taken place. They had agreed that he would go and see her building project at Applecross, and he subsequently had great involvement with that project until 2013. Between 2011 and 2014 he must have spent at least six weeks there. They had a very close though platonic relationship but he was being paid for his work on the project at his normal rate of £45 an hour. On one occasion Ms Stewart said to him that the pursuer had told her that she was going to build a house on the bottom plot and would have lots of parties there. The defender told Ms Stewart that would never happen; the lack of a cordial relationship between himself and the pursuer meant that there would be no house. He did not remember the conversation in September 2012 described by Ms Stewart but he accepted that a conversation had taken place. However he did not say anything to her about the pursuer paying him in instalments. He thought that perhaps Ms Stewart was angry with him for not helping her in her legal action against the contractors who had worked on her project.

[114] The defender accepted that Andrew Sandilands had come to the bottom plot in 2012 or 2013 to have a look at the fence. The defender did not tell him anything about his agreement with the pursuer although he considered that Mr Sandilands would have "vaguely" known that she was going to build a house on the plot. However Mr Sandilands' account of the defender telling him of a proposed sale of the plot to the pursuer was no more than "misremembering" on his part. Any discussion would have been along the lines that it was the defender's plot but that the pursuer was thinking of building a house on it. The defender never told Mr Sandilands about money changing hands.



[115] The defender described Carolyn Voisey as "lovely but very scatty". He accepted that he had gone to the Giving Tree but there had been nothing oppressive as she had described it. He did not go into the shop because he was not comfortable but stayed at the door and said that he believed that there were cheques somewhere; he knew where they would be. Ms Voisey told him that they were in a specific drawer of the bureau. It was a fabrication to suggest that he had told her not to tell the pursuer.

[116] The defender described Colin Mr Lindsay-MacDougall as a neighbour with whom he was "sort of friendly". He had done architectural and planning work for him. In 2003 or 2004 Mr Lindsay-MacDougall had said suggested that the defender build on the bottom plot. The defender raised the issue of the deeds and Mr Lindsay-MacDougall answered that these could be adjusted. The defender therefore offered to work for him at a reduced rate. Until 2014 they met regularly but the plot was discussed very rarely. Neither the defender nor Alan Baillie suggested to Mr Lindsay-MacDougall that the plot would eventually be transferred to the pursuer. There was no reason to speak to Mr Lindsay-MacDougall about this because it was so far off; also the defender suspected him of being at the root of the delay. The pursuer had asked him if she should speak to Mr Lindsay-MacDougall and he had replied absolutely not. She was "super pushy" and Mr Lindsay-MacDougall, who was known for having a terrible temper, would not appreciate being "hassled". She complied with this until 2016 when she went to see him. The defender then had a heated conversation with Mr Lindsay-MacDougall in which the defender had told him that he had nothing to do with the pursuer and defender's arrangements for the land. He had not gone as far as to say that he and the pursuer had come to a deal; he had said that they needed to get the deeds done. Mr Lindsay-MacDougall had said that the pursuer was very upset; the defender replied that she had no claim on the land, and that any business the two of them had was settled, this meant the flats. No deal had been mentioned, but he would have said that they had come to an arrangement regarding their business, meaning the flats, which Mr Lindsay-MacDougall knew of.

[117] The defender accepted that Sven Pedersen had been present at the meeting in an Oban cafe in 2011 and that some time after that he had come to visit the defender at his property. He accepted that he had shown him the bottom plot and that he would have referred to it as

a plot on which the pursuer, or the pursuer and Graeme, were going to build a house. He would not have gone into detail. He denied that he had mentioned the house being sold.

[118] The defender confirmed that he was from the outset a signatory of the Giving Tree account which was specifically opened to give him direct access to finance. It was initially set up to pay for the properties that the pursuer owned, but its purpose "morphed"; so, for example, if the defender needed fuel money he could pay for it from this account. He would also use the money to pay for the house 'Mansefield' at Manse Brae in Lochgilphead. Either he would mention this to the pursuer or there would be a receipt waiting for her when she came to the country. He expected that she would have electronic access to the account in order to check its balance. He would also use cheques to "achieve cash"; the debit card only allowed withdrawals up to £250 so if he needed more than that he would use a cheque. The pursuer would see the bank records and other documentation once a year when she came in summertime. Also, if a big bill was coming up they would alert each other. Any references to "self" in the cheque stubs meant that he was withdrawing cash rather than for his own purposes. The cheque stubs were left in the Giving Tree shop.

[119] The explanation that he offered for the majority of the transactions on the account related to the payment by him to contractors or of other expenses linked to the pursuer's properties. He accepted that an £800 tax bill of his own had been paid because he did not have money for it but the pursuer would have known about it and would have been paid back later. However he went on to comment that this money would have been taken by him "in lieu of" something else – if, for example, he had not claimed for fuel for a while. He stated that there was always a "counter-performance".

[120] He had not known that the pursuer had been taking steps in 2014 to have him removed from the account nor did he know that he was removed on 6 January 2015. She told him the day after he took £1,000. This money had been for various expenses up to and after Christmas including an electrician.

[121] In cross-examination the defender accepted that in October 2006 the bottom plot in its unserviced state was valued at £120,000 although he commented that this valuation was "opaque".

[122] He accepted that the pursuer had sent him £10,000, but described this as her "taking a punt". He was taken to the application for planning permission which was made in October 2007. He accepted that if, in 2007, he had sold the bottom plot to Robin Parry and Amanda Hampton then the 2006 agreement could not proceed and the two payments of £10,000 paid by his brother and the pursuer respectively would have been for nothing. If he had sold it for £140,000 then he thought that he would have gone back to them for "a chat to see what could be done". He and the pursuer had never discussed her payment, it just came in; "it was Graeme's half of the deal not mine, but I would have been honourable about it".

[123] The defender accepted that he had told Jeremy Smith that the pursuer wanted to buy the plot but explained that this was done "as an incentive to him"; and the pursuer did have an interest in the plot.

[124] The defender was taken to the e-mail from Mr Baillie to the pursuer dated 26 May 2009 at 2:33 PM which asked the pursuer to formally instruct release of £57,000 to the defender. The defender's position was that this money was transferred for building expenses, "but by then other things had taken over".

[125] The defender said that Catherine Stewart slightly misremembered the conversation in Oban cafe in 2011. The pursuer had not paid the value of the land, also the land with which she was concerned was where the couple were going to build something. The "legals" were still not sorted out. He accepted that he had shown her the plot and said that this was the plot with which the pursuer was concerned but he would have said the same thing about his brother. With regard to her contention that he had referred in 2012 to having a "trick up his sleeve" he stated that the relationship between himself and the pursuer had been fractious, and that what he would have said was that despite that, "things were okay because the land was in his brother's name".

[126] He also accepted that he had had an email exchange in October 2012 with Peter McLardy regarding the possible sale of the bottom plot which referred to the pursuer not being opposed to the sale. He accepted telling people over a number of years that the pursuer was planning to build a house on the plot.

[127] The defender was taken to another email sent by him to the pursuer on 30 September 2014 which stated amongst other things:

“and of course the land will go in your name!! ... I just can’t afford to speak to Baillie just now!!!.. Mind you it will take him for ever”.

[128] He conceded that he was to transfer title to the pursuer, but on the same basis as had previously been envisaged as that to his brother. She was to build the treehouses and he would put the land in her name. He accepted sending an e-mail to Mr Baillie on 6 November 2014 asking him to progress “the land transfer to Lorraine”, and a further e-mail to the pursuer on 11 March 2015 to the effect that her name could go “straight on the deeds” because Graeme McIlvride’s name wasn’t on them yet.

[129] On 5 November 2016 Mr Lindsay-MacDougall sent the following email to the pursuer:

“Hope to hear from you as Andy is chasing me to deal with him, so he can package mill plot for sale. Before I go further I need to have you confirm what he tells me. That you have come to a deal and he is now free to sell.”

[130] The defender said that what he had in fact told Mr Lindsay-MacDougall was that the defender had nothing to do with the land; this was what Alan Baillie had told him. He told Mr Lindsay-MacDougall that he was free to sell the land because he had spoken to Mr Baillie, he was still speaking with the pursuer but had a free hand. It was put to him that Mr Lindsay-MacDougall’s evidence was that he had had a letter from the defender to say that he had made a deal with the pursuer and that it was okay for him to grant a waiver, and this had prompted his email. The defender’s comment on this was that Mr Lindsay-MacDougall had been “wording his truth” - the pursuer and he were in negotiations about what to do with the flats and the land. He accepted that he had gone to see Mr Lindsay-MacDougall himself in November 2016 “trying to get him to ratify his end”. Mr Lindsay-MacDougall had said that the defender needed the pursuer’s consent, and the defender said that anything between himself and the pursuer was nothing to do with Mr Lindsay-MacDougall. He stressed that the issue of the flats was “completely and utterly combined” with the bottom plot.

[131] The defender was taken to an email that he had sent to the pursuer on 15 November 2016 referring to her contacting Mr Lindsay-MacDougall and stating "unless you desist from troubling him I can assure you of the certain outcome that you will never own that site." However he denied that this showed that she expected to own the land:

"she and I were looking at all sorts of models, one suggestion was that she would buy the land."

[132] On 4 October 2014 the defender sent the pursuer an email setting out his thoughts on his contribution to their joint endeavours on the flats and how this should be rewarded in terms of properties using phrases such as:

"I do think I have a wee investment here [...] I would like to think I had an investment in that [...] It should be considered an investment of mine? [...] I would like to think I have a small % stake in the place?"

[133] It was put to him that the wording of this email suggested that there had been no prior agreement but he described this suggestion as "semantics". He maintained that the pursuer would have a large amount of paperwork including receipts regarding his various intromissions with her money. He could not explain why his agents had not sought to recover any of these documents.

#### Graeme George McIlvride

[134] This witness, the brother of the defender, was 63 at the time of giving evidence. Since 1988 he had lived in Dubai in the United Arab Emirates, apart from a five-year period of living in Singapore. He was a company director whose business, "Rave Audio Visual" involved leasing out LED screens for sporting events.

[135] He and the defender would phone each other a couple of times a month as well, and did so in the period 2005-10 as well. In that period he had done quite a lot of business with the pursuer, seeing her more than once a month, possibly even once a week. He had less contact with her now. They had also had some social contact outside of work.

[136] The witness did not know when the relationship between the parties began but it had been before his own marriage in 2008 and continued for four of five years thereafter. He had been to his brother's property at Lunga mill many times. They discussed building a house on the bottom plot, selling it and sharing the profits on a 50/50 basis. At this stage, which pre-dated his own buying of apartments, the witness had been quite happy to finance this project although he did not have enough funds to give his brother the entire amount at one time. His brother would contribute the land and deal with the architectural/planning aspects. The witness gave his brother £10,000 as an initial payment to progress the issues relating to planning and services. His brother was "thankful" and they discussed transferring the bottom plot into the witness' name to offer him some guarantee or protection. The witness had expected to put in £70-80,000 in total and so understood that the land would be worth at least that amount.

[137] In 2006 or 2007 the pursuer learned of the plan and expressed an interest in funding the project, on a 50/50 basis with Graeme McIlvride. The witness described his own initial payment of £10,000 as "an investment, also a gift" which he was not expecting to get back – "a punt, if you like". If the house was built he would get his money back but if it wasn't he accepted that the money would be lost. He repeated that it was "a punt". In Dubai, money did not earn interest; with his wedding upcoming he wanted to make more plans for the future. The favourable exchange-rate was also a factor in his thinking.

[138] The witness understood that his brother was dealing with Alan Baillie; for his own part, he did not give Mr Baillie any instructions and was unaware of the detail of his negotiations with Mr Lindsay-MacDougall's agents. There was never any discussion of the land going into the pursuer's name and the witness never expected to transfer the bottom plot to her. He was unaware of any agreement between the parties to sell the plot to her. He was referred to her e-mail of 21 January 2009 - in which she stated she was going to be buying the plot - and was asked who she would be buying it from, to which he replied "me, I guess", but there had never had been any mention of this to him, nor could there have been until the land was actually transferred into his name.

[139] He was then taken to the "Hi Troops" e-mail dated 18 February 2009 from Alan Baillie to the witness and both parties, and to his own reply to that e-mail dated 20 February 2009 at 9:58 am; notwithstanding what counsel for the defender suggested might be the "natural reading" of his own e-mail, he maintained that he had known nothing of any sale to the pursuer. There was to be a transfer, not a sale to him, following which they would all "sit down and have a conversation". He could not remember the subsequent discussion with Alan Baillie that the latter claimed to have had with him.

[140] The witness also stated that he understood that his brother had been promised a 10% share in the pursuer's flats "or something like that" and that she had been giving him payments to renovate the flats.

Lee Francis Buckley

[141] This witness was 48 at the time of giving evidence; he was the contract manager for a roofing company and had 30 years of roofing experience. He had known the defender professionally for 16 or 17 years and through him had come to know the pursuer. He had given the defender advice on the roofing issues of Erines House and the Clydesdale Buildings, and much later spoke to the pursuer on the same topic. He was not paid for his advice. The defender had told him he and the pursuer were in a kind of property-development partnership. He was not aware of the defender doing any work on the properties other than providing drawings. He was not cross-examined.

Gilbert Angus "Sid" Ainsley

[142] This witness turned 51 on the day of giving evidence. He now worked with boats but had formerly been in the construction industry. He had done jobs for the defender and also worked alongside him. He had spent a few months working on the roof of Erines House, and over the period of around four years had done a variety of different jobs there. He described Erines as "a castle split into five" (i.e. apartments); each owner paid a share of the repair costs and the defender "rounded them all up", explaining what was getting done and sorting out who owed what. Once this was done the owners would pay Mr Ainsley directly, generally in cash but sometimes by cheque or bank transfer, and he in turn would pay his

sub-contractors. They were all paid weekly. The weekly figure for wages could vary from £1,200 to almost £2,000. The initial roof repair cost £17,000, split among the owners, but the contractors had had to come back many times after that. The defender had sorted out most of the materials; the witness would give him a list of what he needed and the defender would pay for it. Invoices were issued to the defender for the work done. He had met the pursuer three times. Because she and the defender were a couple, he assumed they were joint owners of the properties. The only discussion he had had with her was regarding the water supply works, six years ago. The witness was not cross-examined.

John Douglas Macmillan

[143] The witness was 33 at the time of giving evidence. He was a plumbing and heating engineer. He had known the defender for a number of years and knew "of" the pursuer through the defender. He understood (from the defender) that the two were partners in property development. The defender paid the witness in cash but with bigger jobs, the pursuer would pay him by bank transfer. He did a week's work – "full-time, all-in" - in Erines; a week in the Clydesdale Buildings in Lochgilphead, though he "didn't do much"; and a couple of weeks at Manse Brae. For the first two jobs the defender paid him in cash; his rate was £30 an hour. For the third, he invoiced £8,000 which was paid by the pursuer through bank transfer. There were a few additional elements done there that had cost perhaps £2,000 or £3,000 for which the defender had paid in cash. He knew of a couple of other tradesmen at the properties who were paid in cash by the defender. He "would have" issued invoices or receipts to the defender, or at least given him a breakdown. In cross-examination he accepted that the true figure for Manse Brae was £7,000 and that he had sent a quotation to the pursuer on 22 August 2015. It "might well have been" that she had issued him with an instruction to proceed on 28 August 2015.

Robin Granger Nolan

[144] This witness was 50 at the time of giving evidence. He was a project manager in the construction industry who also worked as a general builder, as well as repairing yachts. He



had initially known the defender through college friends in Edinburgh and then re-connected with him on moving to the west coast in 2003 or 2004. The defender did architectural work for him and he in turn worked on various flats for the parties. The defender introduced him to the pursuer in 2009 or 2010 and, though nothing was said, he inferred from their behaviour that they were a couple.

[145] The witness carried out work on both flats at Erines as well as a few days' work at both the gift shop and the pursuer's Scottish home. Over three years, most of his contact was with the defender; he only met the pursuer around five times, "at critical points". He would be at Erines between 8am and 5pm, Monday to Friday. He spoke to an e-mail exchange between himself and the defender dated 24 May 2011 regarding a failure by him to attend work at Erines. He had had some personal issues and also hadn't been paid, which sometimes happened. He understood the pursuer to be his client but it was the defender who paid him through a mix of bank transfers and cash. At the time, he had owed the defender for architectural work that the latter had done, so only took £250 as half his weekly wage, with the defender retaining the other half. A spreadsheet entry referring to a cash withdrawal of £500 for "Rob Nolan" would correspond to two weeks' wages. He did not recall issuing invoices; the arrangement was a straightforward one of an agreed rate. In cross-examination he stated that he was not sure whether he had received payments after the e-mail exchange in May 2011, although in re-examination he thought he had done work on Erines until 2012.

#### Alan John Baillie

[146] This witness was 63 at the time of giving evidence. He was a solicitor who had been admitted to the Roll in 1980 or 1981 and was now in partnership at Baillie Shepherd solicitors, formerly known by other names including "Baillies Law". He had known the defender most of his life, he being the younger brother of his best friend Graeme McIlvride. He had first started to act on the defender's behalf some twenty years ago, in the latter's purchase of Lunga Mill. He had also acted on behalf of the pursuer in respect of her purchase of six or seven properties in the area. He had met her through Graeme McIlvride.

[147] Years after the defender bought his property, he informed the witness that he had agreed with the laird to amend servitude rights in order to sever the bottom plot from the rest of the property; the agreement was that the defender would convey the whole property to the laird who would re-convey two discrete plots to the defender and his brother respectively. This would allow the development and sale of the bottom plot. It would be put into the name of Graeme McIlvride because he had paid money to the defender previously, as some sort of joint venture.

[148] He had never acted for the pursuer in this transaction. Initially she was not involved, but later wished to become so. He was not sure what her involvement was to be, there was "a fair bit of chat" between her and the McIlvrides which never came to a resolution.

[149] On 22 November 2006 the defender's mortgage lender, Scottish Building Society, provided Mr Baillie with the defender's deeds "for inspection purposes", asking for their prompt return. There was extensive correspondence between himself and the laird's agent.

[150] On 21 January 2009 the pursuer sent him an e-mail headed "Andy's plot" referring to an agreement between herself and the defender that day that she would buy the bottom plot. The witness said that after receiving this he had checked the position with the defender who said that nothing was agreed at that point. Her offer to put £50,000 into the witness' account "came out of the blue"; no purchase price had been mentioned. His understanding was that its purpose was "a transfer over for the plot for Andy, whatever that meant". He could not remember if he had checked with the defender about this money.

[151] Later that day he provided her with bank details to facilitate the transfer of this money. His firm's practice was at the point of payment to ask the payer of money for details of what the money was for. The pursuer's e-mail might have been accepted as an explanation because she was buying flats at the time.

[152] The witness was taken to the same client ledger that the pursuer had spoken to. He stated that the £59,498.58 must have been received in respect of an abortive property transaction and then gone on deposit. He spoke to e-mails on 26 May 2009 between himself and the pursuer, the content of which has been discussed above at paragraphs 20 and 21.

Counsel for the defender took him to the question the witness had asked the pursuer - "are you remembering you don't get title/ownership for this payment?" Counsel asked him what it was that the pursuer wouldn't be getting title or ownership of. The witness replied "anything - it was unsecured, just a gift".

[153] He was next taken to his "Hi Troops" e-mail of 18 February 2009, which he explained was an attempt to "pull together chatter between the parties". The response from Graeme McIlvride suggested to the witness that agreement had not been reached among them. As for the pursuer's reference to retracting her offer and taking her money back, he did not know what this meant; there was no offer that he was aware of. He did not recall any subsequent conversation with Graeme McIlvride; they spoke all the time. With regard to his reminding the pursuer that she "had no formal security at this stage" this was simply flagging up that she got nothing tangible for the money she had paid to Andrew McIlvride. It was "not at all envisaged" that she would get security at a later stage. Possible forms of security might have included a contract or standard security but this was not discussed.

[154] The witness was taken to another e-mail exchange on 18 February 2009 between himself and the pursuer, copying in Graeme McIlvride, in which the pursuer referred to a chat with the defender and the need to "get this sorted" before saying:

"Mill plot to go into Andy's name. Bottom plot to go into Graeme's name for the value of 140K - what are the stamp duty and capital gains tax potentials here though? Yes both G and L ex pats but I am looking at spending more than 90 days in the UK so my status could change"

[155] Mr Baillie's e-mailed response noted that there could potentially be "CGT events" if/when Graeme McIlvride "transfers part to you" as well as if the plot/house were later sold. The witness confirmed that the pursuer at this point was claiming that she had agreed these terms with the defender and presumably also Graeme McIlvride. The figure of £140,000 meant nothing to the witness. There had never been mention that the £57,000 that the witness later transferred to the defender was the first instalment of the purchase price. Nor had the pursuer said to him that it was enable her and the defender to renovate the

other properties she was acquiring. He had never received instructions to transfer the bottom plot to her name.

[156] The witness was asked regarding the dispositions to be signed by the laird and stated that these were sent to the laird's agents, "presumably about that time" (i.e. 2009). On being presented with his letter of 3 March 2014 he accepted that they had in fact been mis-filed. He denied that there had been a deliberate attempt to delay matters. It had very much come as a surprise to learn that the dispositions hadn't been sent.

[157] In cross-examination it was put to him that following the pursuer's e-mail of 26 January 2009 there had been no conversation between himself and the defender to confirm its accuracy. His reply to that e-mail four hours after receipt was put to him, in which he had stated that they were just waiting for the laird and then "the transfer shouldn't take long"; he accepted that this was the transfer to Graeme McIlvride and then to the pursuer. It was pointed out to him that in his e-mail to the pursuer of 22 February 2009 at 16:37 he referred to her not getting security and also the dispositions for the plot in the same breath, showing the link between them. He reiterated that he did not know that her payment of £57,000 related to the land.

[158] It was put to him that on 13 March 2009 he had written to D.M. MacKinnon stressing urgency and stating "we are advised that we require to complete these transactions in the current tax year"; and that the only reference in other correspondence regarding the tax year had been the pursuer's e-mail to him of 20 February 2009 at 16:34 hours when she had stressed its importance to progressing matters. He replied that he did not know what her motive was.

[159] Under reference to the ledger entries referred to above it was put to the witness that he was using the pursuer's money to reimburse himself for work that he had done on behalf of the defender regarding the bottom plot; and that the reason for this was that he knew that her payment related to that plot. He denied this and said that his firm's cashroom might have done it without his knowledge; "there was no correlation between the two things". Any sums wrongly debited would be refunded.

[160] In the period 2009-2014 he had had "the odd phone call" from the defender enquiring as to progress, none being recorded in his file. When in 2014 the pursuer had e-mailed him regarding this he had been out of the office; he denied that his comment about registration delaying matters was a deliberate lie, rather it was a guess as to what was holding things up. He denied that his claim to D.M. Mackinnon that lenders were chasing for titles, a claim unvouched by anything in his file, was another deliberate lie.

#### Yale Hyder Metzger

[161] This witness was a lawyer whose permanent address was in Anchorage, Alaska. At the defender's request he had prepared an affidavit which was lodged in process. He owned flat No.4 at Erines and had met the defender shortly after buying it. Every time that the witness was at Erines, he found the defender working in either Flat No.1 or No.2. The defender had become a good friend. The house required expensive repair and maintenance work, and disputes regarding the costs for these had led to relations among the owners, particularly the witness and the pursuer, becoming acrimonious. Prior to the breakdown in relations between the parties, the witness had always understood them to be joint owners, due to the pursuer's references to the flats at Erines being "our flats". The defender had paid for "some smaller bits and pieces" of work then called for every owner to contribute. Sid Ainsley gave "receipts" to the defender who gave them to the pursuer. She undertook to send these to the Erines owners' committee but never did so.

#### Submissions

[162] Each party lodged detailed written submissions, supplemented by oral argument.

#### **Pursuer – Sums first and second craved**

[163] For the pursuer, it was submitted that she was a credible and reliable witness. On many critical matters she had not been cross-examined, for example the defender's representations to her and to third parties that the bottom plot belonged to her or was to become hers. The various witnesses called on her behalf were also commended to the court as honest and straightforward. The defender was criticised as being neither credible nor

reliable, with twelve specific examples of his "palpable and deliberate inaccuracy" being cited.

[164] The defender's attempts to distinguish between a "sale" and a "transfer" of the land were without merit. An agreement that ownership of land should pass for consideration was a contract of sale; if there was no consideration it was an agreement to gift. There was no suggestion by anyone that the bottom plot was ever to be a gift. The question was whether or not there was a contract of sale. The essentials of such a contract were parties, subjects and price.

[165] The parties here were the pursuer, the defender and Graeme McIlvride, all of whom agreed that the land would first be transferred to Graeme McIlvride who would then transfer it to the pursuer. It was a trilateral agreement for a two-stage transfer. The subjects were the bottom plot. They were clearly identifiable from the Land Register and had been identified without difficulty by a number of persons interested in them over the years, particularly the solicitors dealing with the conveyancing related to them.

[166] Any suggestion by the defender that the contract was void from uncertainty was baseless. There was a strong presumption against this, indeed such a plea could only be sustained if it were impossible to give an agreement a meaning – *R&J Dempster v. Motherwell Bridge & Engineering Co.* 1964 SC 308 per Lord President Clyde at pp 327-328; *Brown v. Gould* [1972] Ch. 53 per Megarry J. at pp. 56-58 and 61; *R&D Construction Group Ltd v. Hallam Land Management Ltd* 2009 CSOH 128 per Lord Hodge at paragraph 39; *Miller Homes Ltd v. Frame* 2001 SLT 459 per Lord Hamilton at paragraph 13. Here there was no difficulty in identifying the ground in question and it certainly could not be said to be impossible to do so. If however it were impossible then there was no contract and the defender had been unjustifiably enriched.

[167] Counsel then turned to the Requirements of Writing (Scotland) Act 1995, submitting that in terms of subsections 1(3) and (4) the pursuer had acted in reliance of the contract, been materially affected in so doing, all with the defender's knowledge and acquiescence.

[168] It was immaterial whether breach of contract arose from inability or unwillingness to perform – *'The Aello'* [1961] AC 135 (HL) per Lord Morris of Borth-y-Gest at p.222. If payment had been made but not reciprocated with performance then the payment fell to be returned. So if there was a contract then the remedy was damages for breach of contract – *McBryde on Contract*, 3<sup>rd</sup> edition, paragraph 20-132; *Pert v. McCaffrey* [2020] CSIH 5 at paragraphs 18, 22, 28-30 and 34. If there was no contract, then the defender was obliged to make repetition in unjustified enrichment. Reference was made to *Dollar Land (Cumbernauld) Ltd v. CIN Properties Ltd* 1998 SC (HL) 90 per Lord President Hope at p.98, *Morgan Guaranty Trust Co. of New York v. Lothian Regional Council* 1995 SC 151 per Lord President Hope at p.166B and *Shilliday v. Smith* 1998 SC 725 per Lord President Rodger at p.727F-G. If the conditions for neither *condictio indebiti* nor *condictio causa data, causa non secuta* were met, the pursuer's case nonetheless met the conditions for 'Melville monument liability' as set out by McBryde at paragraph 5-60.

[169] Unjustified enrichment was the pursuer's alternative case in respect of the £140,000 for the plot; but it was her primary case in respect of the £10,000 paid in 2006. The latter sum was paid in contemplation of the implementation of the tripartite 2006 agreement, an inchoate project where money was advanced in consideration of a cause which failed to materialise.

### **Pursuer – Sum third craved**

[170] A total of £61,053.82 was sought, comprising £56,628.82 embezzled by the defender, £1,925 paid to him to apply for a building warrant which he did not do, and £2,500 for a planning application which was not obtained.

[171] It was agreed that the pursuer had given the defender access to her bank account in order for him to pay contractors working on her properties. Her evidence was that access was granted only for that limited purpose. The sums withdrawn were shown on a spreadsheet; the withdrawals agreed to be the defender's were shown in yellow and amounted to £27,708.62. The pursuer's position was that a further £28,920.20 was also taken by the defender without authority. The pursuer's own reconciliation showed £39,000 taken for legitimate purposes, so that sum was not included in the claim. Attention was drawn by

counsel to certain items of expenditure which suggested that the payment had been for the defender's own purposes e.g. £175.89 to pay his accountant. The court was invited to reject the defender's suggestion that he had been allowed access to the account to use the funds "as he saw fit". Also there was no evidence to support his contention that "tens of thousands of pounds" had been used by him to pay contractors. It was submitted that a person who intentionally harms another by taking money without consent was liable in delict to pay damages. *Esto* this was not the law of delict, the same result would in any event follow from the law of unjustified enrichment.

[172] As for the £1,925, it was agreed that this sum was paid in respect of a building warrant for her property at no.11 The Green, Craobh Haven. He had given her an estimate and a fee-note for the sum; had been given a cheque in exchange; and had cashed it. It was also agreed that he had not obtained a building warrant. The pursuer had given unchallenged evidence that he had not repaid that sum.

[173] With regard to the £2,500, again it was agreed that the defender had prepared a set of drawings for the pursuer's flat at Poltalloch Street in Lochgilphead. A fee note from him on which she had written "paid" in August 2015 was lodged in process. Her evidence on this point was unchallenged.

[174] Both of these smaller sums were due to the pursuer under the law on breach of contract, failing which the law of unjustified enrichment.

#### **Defender – Sums first and second craved**

[175] For the defender, it was submitted that the pursuer was not a credible or reliable witness. A number of criticisms were advanced of her evidence, with regard in particular to inconsistencies and refusal to make concessions. It was submitted that the court should exercise caution with the evidence of her witnesses, the majority of whom were long-standing friends of hers and who were partisan on her behalf. Colin Lindsay-MacDougall was ostensibly a 'neutral' witness but had clearly waived his own legal privilege to assist the pursuer. In contrast, it was submitted that the defender was a candid and forthright witness. He had given plausible explanations as to why he may have referred to the bottom



plot as being the pursuer's plot or spoken about transfer of title to her. Graeme McIlvride and Alan Baillie were the only other witnesses directly involved in or aware of the purported 2006 and 2009 agreements. Their evidence was to the effect that there had never been an agreement to sell the bottom plot to either the pursuer or Graeme McIlvride, which was consistent with the defender's evidence. The evidence of the defender's other five witnesses was also commended to the court as having been given in a straightforward "no-nonsense" manner.

[176] As for payments alleged to have been made in respect of the bottom plot, it was "inherently unlikely" that there had been an agreement to sell it to the pursuer for £140,000. Whilst the plot was identifiable, it required to be "packaged" with new access and drainage, which would involve the consent of Colin Lindsay-MacDougall as well as Graeme McIlvride. The issues that would require to be resolved before Mr Lindsay-MacDougall would give his consent remained outstanding.

[177] Furthermore it was clear that the reason for transferring the plot to Graeme McIlvride was to give him security for his financial contribution to the construction of a house on the plot. This was a transfer of title, not a sale, and any references by the defender to the "pursuer's plot" should be seen in the context of her "effectively stepping into Graeme McIlvride's shoes". The plot was where she would be financing the construction of a house, not what she was buying from the defender.

[178] There was no evidence of the defender requesting instalments of the purchase price or of such instalments being linked to the development of the mill. Furthermore it was incredible that an experienced businesswoman like the pursuer would pay £140,000 over a number of years for a piece of land, yet not fully investigate the reasons for delay with her lawyer.

[179] The defender's position was that the sums now claimed to be instalments of the purchase price were in fact gifts, reimbursements of expenses incurred, the costs of materials for the pursuer's other renovation projects, money for contractors and £10,000 of wages for the defender. So there was no contract and no unjustified enrichment. Also, citing *Lipkin Gorman v. Karpnale Ltd* [1991] 2 AC 548 it was submitted there had been a change of position

since the funds were received by the defender; i.e. he had disbursed them on costs relating to the defender's other properties. Consequently it would be inequitable to reverse the enrichment.

[180] The pursuer's second crave sought repayment of the £10,000 paid to the defender in November 2006, at around the same time that Graeme McIlvride had paid an equivalent amount. These sums were meant to further the development of the bottom plot following discussions between the three of them. However the evidence of the defender and his brother showed that these discussions had been vague. There had been no expectation of any return of the investment amounts – at that stage there had, for instance, been no guarantee that planning permission would be obtained. Whether or not the word 'punt' had been used at that time, that was effectively what these payments amounted to. If there was an agreement to fund the defender in his preparatory steps, the cost of such steps compared to what the pursuer and Graeme McIlvride were prepared to send him "would go to how good a bargain it was for the three parties involved". If it was a bad bargain it could not now be the subject of a claim for damages. If however there was no contract but simply a payment "in contemplation" of commencing the project, it could not be said that there was a total failure of consideration, for the purposes of unjustified enrichment, given that planning permission had actually been obtained.

[181] In any event any obligation had been extinguished by prescription. By 2008 all three of the partners had lost interest in the project; any obligation would have become enforceable by 2008 at the latest, triggering the five-year prescriptive period – *Thomson v. Mooney* [2013] CSIH 115. This point had not been raised in pleadings but it was nonetheless for the court to take notice of.

#### **Defender – Sum third craved**

[182] The pursuer's crave in respect of embezzlement was characterised as "an afterthought", having been introduced by amendment two years after the commencement of the action. Embezzlement was not a recognised nominate delict in Scots law although it was accepted that the victim of an embezzlement ought to have a civil remedy. However the court was invited to find that the defender had been given permission to use the account not

only in respect of the pursuer's properties but also "for his own personal needs as he saw fit". The pursuer accepted in evidence that she had paid for his tax bill, money that she now claimed to have been 'embezzled'. Her current position arose from her disappointment at the end of their romantic relationship. The invoices lodged by the defender showed that he was paying monies to contractors in respect of the pursuer's properties. This was supported by the evidence of Rob Nolan. The cheque stubs showed him to have been diligent in recording when money was being to himself or others – there was no question of him hiding his actions.

### Decision

[183] In this action, payment is craved under three headings: (i) the £140,000 alleged to constitute the purchase price for the bottom plot; (ii) the £10,000 paid in furtherance of the 2006 agreement; and (iii) £56,628.82, £1,925 and £2,500, totalling £61,053.82 involving sums alleged to have been embezzled as well as the payments for planning permission and building warrants. I shall deal with these in turn.

#### **(i) Sum first craved**

[184] In respect of the first element I have no doubt whatsoever that the parties made the agreement described by the pursuer in her evidence. The pursuer presented well in the witness box and I have no difficulty in accepting her as a credible and reliable witness. Her account of forming an agreement with the defender to purchase the bottom plot for £140,000 finds corroboration from a number of sources.

[185] First, it is an undisputed fact that she has paid that amount to the defender.

[186] Second there is her email to the defender's solicitor Alan Baillie on 21 January 2009, stating that parties had agreed she would purchase the land and offering to make a significant payment for it; an email which the defender and Mr Baillie agree was brought to the defender's attention and which he did not seek to challenge.

[187] Third, far from challenging what the pursuer had said in that email, the defender subsequently instructed Mr Baillie to seek release of the funds to him, which Mr Baillie did,

having already deployed some of the transferred funds to pay for conveyancing work regarding the plots done on the defender's behalf.

[188] Fourth, when Mr Baillie emailed the pursuer and the McIlvride brothers on 18 February 2009, his understanding was clearly to the effect that all three people envisaged the pursuer obtaining ownership of the land in exchange for her recent payment (albeit he mistakenly understood that Graeme McIlvride would be co-owner).

[189] Fifth, when Graeme McIlvride replied to that email it was clear that his understanding was exactly what the pursuer claims was agreed, i.e. an initial transfer into his name and sale thereafter to the pursuer.

[190] Sixth, there is the fact that although the defender was copied into these emails he did not seek to demur from the contention that the land was being sold to the pursuer.

[191] Seventh, over a period of years the defender repeatedly referred to the bottom plot as "Lorraine's plot" or "Lorraine's land" when speaking or communicating with various people.

[192] Eighth, the defender repeatedly emailed the pursuer in terms suggesting that she was entitled to ownership of the land and that he was going to execute documentation to give her ownership of it.

[193] Ninth, there is the fact that between 2012 and 2014 both the defender and pursuer discussed with Catherine Stewart a purchase of the land by the pursuer paying in instalments, with the defender stating that the pursuer owed him a final instalment for the land and that he had some protection due to the land being in his brother's name.

[194] Tenth, the defender has repeatedly signed receipts acknowledging receipt of funds for the land.

[195] I did not consider that any of the pursuer's witnesses were seeking to mislead the court or had any difficulty in remembering key facts. Indeed to a large extent cross-examination of them did not claim dishonesty or poor memory, but rather that they had misunderstood what the defender had meant when he referred to the bottom plot as "Lorraine's plot" or

"Lorraine's land" – and that such phrases should have been taken to mean the land on which the pursuer was going to build a house, not the land which she would be acquiring ownership of. I reject this proposition. The evidence summarised above is clearly to the effect that all parties including the defender understood that the pursuer was paying to acquire ownership of the land. I do not accept that the payment of £140,000 was for any other of the "myriad" reasons suggested by the defender.

[196] The defender was an unsatisfactory witness whose evidence was characterised by vagueness, contradiction and implausibility. It makes no sense that Graeme McIlvride was taking "a punt" with £10,000 in the knowledge he might never see it again, yet at the same time was to be given half of the defender's land to hold in security. The defender e-mailed the pursuer on 30 November 2006 stating that they would need to decide whose name the land went in – "you, Graeme, one of yer cats???" This suggests that title could go in the name of either Graeme McIlvride or the pursuer; what mattered was not giving anyone security, but having it in the name of an expatriate who could avoid capital gains tax. The defender claimed to have had no idea why the pursuer initially decided to enter the 2006 agreement and never to have discussed any aspect of it with her, including the prospect of her possibly losing this investment, but at the same time claimed that she was happy to "take a punt"; this is both contradictory and illogical.

[197] The defender claims that the parties' romantic relationship ended in 2011 but this is belied first of all by his own position on record, which states that the true end date was 2012; by the nature of their correspondence which remained very warm after the purported endpoint; by their taking holidays together in South Africa, Slovakia and Denmark as well as a trip to Lancashire in the period 2012 to 2014, as well as by the fact that the pursuer allowed the defender to live rent free in her house at Manse Brae until 2015. It is also inconsistent with the pursuer's claim that in June 2015 the defender - whom he described in evidence as "vicious" "ruthless" and "a bully" - gave him a £10,000 gift out of pity notwithstanding that their relationship at the time was "poisonous" and that they had purportedly stopped going out with each other four years previously. It is also contradicted by the evidence of Catherine Stewart and Carolyn Voisey which was entirely believable. I am satisfied that any 2011 breakup of the relationship was temporary.

[198] I consider that the claim for a lasting end to their romantic relationship in 2011 is a deliberate falsehood, intended to present their dealings in the subsequent four years as being purely those of business partners, and thereby to justify the defender's intromissions with the pursuer's money as relating to that business partnership. In truth they had no business partnership; the pursuer's properties were purchased and refurbished using her own money, and I accept her evidence that the contractors who did the work did not require supervision. The defender's involvement with the properties was no more than the contribution that might be expected of any boyfriend - particularly one whose partner was giving him and his child a rent-free house to live in.

[199] From the combined evidence of the pursuer and Colin Lindsay-MacDougall it is clear that the defender lied to the latter about having reached an agreement with the pursuer. The defender's discussion of the bottom plot with Catherine Stewart shows that he was prepared to lie about there ever having been a deal if that suited his interests. On more than one occasion during his evidence he made statements which were not foreshadowed in pleadings, for example the claim that any reference to the bottom plot made at the time of the pursuer giving Mr Baillie £57,000 was a fiction to allow the solicitor to accept these funds. This statement was neither plausible nor logical and seemed to be a deliberate lie intended to explain away an unhelpful adminicle of evidence. I conclude that the pursuer is unburdened by any scruple about lying and I treat his evidence accordingly.

[200] Graeme McIlvride also made a bad impression as a witness. His manner was unforthcoming almost to the point of sullenness. He seemed determined to stick to a narrow formula whereby all he knew was that the land was to go in his name and after that they would all need to have a discussion. This is belied by his own e-mailed response to Alan Baillie's "hi troops" e-mail where his position is on all fours with that of the pursuer. He attempted to explain this away with a strained and counterintuitive reading of his own e-mail where "the plot [...] being sold to Lori" was re-ordered in the sentence so as to be part of the things he "didn't know nothing about". This evidence is wholly unconvincing, a falsehood intended to serve his brother's interests. The fact that both he and the defender should characterise in evidence the original 2006 investments using the word "punt", when

that term does not appear to have been used by anyone at the time suggests collusion between them in giving their evidence.

[201] I am unable to accept Alan Baillie's evidence as either credible or reliable. He seemed to be deliberately obtuse when faced with his firm's ledger entries from 2009 and the e-mails between himself and the parties in the first half of that year. These offer strong support for the pursuer's position but Mr Baillie was dogmatic in rejecting this, at one point referring to the £57,000 as "a gift", which is a claim that even the defender does not make. Why a gift should be made through a solicitor's firm remains both unexplained and inexplicable. I found the blaming of the cashroom for using the pursuer's money to pay for the defender's conveyancing work to be unconvincing, not least as their source of information or direction would have been Mr Baillie himself.

[202] I do not believe Mr Baillie's evidence that - following the pursuer telling him that she and the defender had agreed to a purchase of the land - he had been told by the defender that no such agreement had been reached. This evidence is contradicted by that of the defender set out at paragraph 99 above and also by Mr Baillie's own actions at the time. He provided his firm's account details in order to accept the proposed payment of £50,000; accepted £57,000 and retained it for months; then sought and obtained authority to release these funds to the defender. It is incredible that a solicitor should allow a client to use his firm to pay another client £57,000 in furtherance of an agreement, when the second client had told him that no such agreement existed.

[203] When giving evidence Mr Baillie had clearly forgotten that his firm had misfiled the deeds for around five years instead of sending them to D.M. MacKinnon. Whilst I accept this as an honest lapse of memory on his part I consider that to forget something so significant casts real doubt on his powers of recall generally. I also agree that when on 11 March 2014 he wrote to that firm asking for the disposition as soon as possible because he was "being pressed to deliver Andrew's titles to his lenders", this was a deliberate falsehood aimed at imparting a sense of urgency to them. There is no trace on his file of the lenders pressing him; they had provided the deeds years previously for inspection, and it is too much of a coincidence that after a half-decade of inaction the lenders should start seeking

the deeds' return at the same time that Mr Baillie, prompted by the pursuer, realised they had been misfiled and needed to be urgently progressed.

[204] I have no difficulty in accepting the defender's remaining witnesses but their evidence had no bearing on the land purchase issue and relatively little bearing on the embezzlement.

[205] I am therefore satisfied that there was an agreement about the parties, the subjects and the price. I did not understand counsel for the defender to argue that any agreement was void from uncertainty, but rather that the uncertainty arising from the plot's lack of separate title suggested that - as a question of fact - there was unlikely to have been any agreement. I reject this. The title issues were not seen by anyone as an insuperable barrier to sale of the plot. The pursuer's idiosyncratic approach to this transaction has proven to be ill-advised, but is understandable given that (a) she was transacting with her own partner and (b) her solicitor was involved.

[206] If voidness from uncertainty had been pled I would have rejected it. The subjects are easily identifiable, not least because the bottom plot has always been a discrete part of the broader property - it was not meant to be included in the original sale by the Lunga Estate, but was added on by Mr Lindsay-MacDougall as a favour to Michael van der Lugt and Bella Green. The bottom plot is clearly marked on the land certificate and no witness had any trouble identifying it. Nor did Baillies, D.M. MacKinnon or anyone else who expressed an interest in buying it over the years. The fact that it does not yet have its own title does not make the contract void from uncertainty and even if it did, it would simply mean that the pursuer was entitled to the sum craved on the basis of unjustified enrichment rather than breach of contract.

[207] The agreement between the parties was not a written contract for the transfer of a real right in land, but in terms of subsections 1(3) and (4) of the Requirements of Writing (Scotland) Act 1995 the pursuer has acted in reliance of the contract, most saliently by paying the agreed price of £140,000, and has been affected to a material extent in doing so. The defender has known of and acquiesced in these matters. If he were entitled to withdraw, her position would be adversely affected to a material extent. Therefore he ought



not to be allowed to withdraw; the agreement is valid, binding and enforceable as a contract. The pursuer is entitled to damages for breach of that contract.

[208] Had I not come to these conclusions, the pursuer would nevertheless have succeeded on the alternate basis of unjustified enrichment, either founded on *condictio indebiti* or *condictio causa data, causa non secuta*. In terms of the former,

“the *condictio indebiti* is available for the recovery of money paid or property transferred under an obligation which is void but was erroneously thought to be valid [...] it is not part of the law of Scotland that the error must be shown to be excusable [...] once the pursuer has averred the necessary ingredients to show that *prima facie* he is entitled to the remedy, it is for the defender to raise the issues which may lead to a decision that the remedy should be refused on grounds of equity” – *Morgan Guaranty Trust, supra*, per Lord President Hope at 155 H-I and 166B.

[209] The pursuer has established *prima facie* entitlement to the remedy and I see no basis to refuse it on grounds of equity. With regard to the defender’s citation of *Lipkin Gorman*, the decision is authority that a good-faith change of position offers a defence to restitutionary claims. Lord Goff of Chieveley gives the example of a thief who pays stolen money to a third party, who in turn gives it away to charity; the third party should have a good defence to an action for restitution because otherwise it would be unjust. The facts here are very different. As a matter of fact I do not accept that the defender used instalments paid to him for the plot to fund renovation of the pursuer’s properties. The pursuer was for the most part funding the renovations herself, and the whole point of the defender having access to the Giving Tree account was so that he could use that source of funds for the renovation of properties. *Lipkin Gorman* offers no assistance to the defender in light of this analysis of the evidence.

[210] Turning to *condictio causa data, causa non secuta*, in *Shilliday (supra)* Lord President Rodger noted that:

“the term *condictio causa data, causa non secuta* covers situations where A is enriched because B has paid him money or transferred property to him in the expectation of

receiving a consideration from A, but A does not provide that consideration. The relevant situations in this group also include cases where B paid the money or transferred the property to A on a particular basis which fails to materialise—for example, in contemplation of a marriage which does not take place.”

[211] As explained above it is clear that the £140,000 was paid by the pursuer in the expectation that the defender would give her title to the land. He has not done so. The reason for his failure is immaterial; the consideration – gaining title to the land – has not materialised so the money paid in in the expectation of receiving it falls to be returned.

[212] For completeness I agree that had there been no binding contract the pursuer could succeed on the basis of “Melville monument liability”. Such liability arises from the decision in *Walker v. Milne* (1825) 2 S. 379; it is a limited liability for wasted pre-contractual expenditure by one party,

“occasioned by the representations of another beyond the case where the former acted in reliance on the implied assurance by the latter that there was a binding contract between them when in fact there was no more than an agreement” – *Dawson International PLC v Coats Paton PLC* 1988 SLT 854 per Lord Cullen at 866.

[213] There must be an agreement, with representations or assurances rather than expressions of opinion, and no contractual remedy. All of these conditions would be satisfied here, had no binding contract been formed.

#### **(ii) Sum second craved**

[214] As counsel for the pursuer notes in his written submissions, parties are agreed that what was discussed between the parties in 2006-2008 did not reach the stage of an enforceable contract. But it is not disputed that the £10,000 was paid by the pursuer to the defender. No-one suggests that this was a gift. It was made on the same basis as Graeme McIlvride’s identical payment of around the same time. There was agreement that the bottom plot was to be developed and that initial payments were necessary to fund the initial stages, specifically the obtaining of planning permission. The defender knew why these sums were being advanced. The defender submits that discussions and plans at this stage

were very vague, but this in my view is immaterial; matters were advanced enough for each of his partners in the project to advance identical sums for the same purpose. He submits further that the payment was a “punt” with no expectation of any return or reimbursement if the project did not materialise. I do not accept this characterisation. No evidence other than the McIlvrides’ testimony suggests that the payment was seen by the pursuer in these terms, and there is no logical reason why she should have seen it thus.

[215] There was no reason to have concerns about getting this money back. A waiver by Mr Lindsay-MacDougall would require his conditions to be satisfied, but everyone involved expected that they would be satisfied and that waiver would follow. Once it did the defender would have a marketable plot worth six figures, in an area where the evidence suggested that building plots were keenly sought. Even if the 2006 scheme progressed no further and no house was built, the bare plot could be sold at a huge windfall profit for the defender. So where was the risk for the pursuer and Graeme McIlvride? The only risk would be that the defender, having accepted money for a specific purpose, would refuse to return it if that purpose failed to materialise. The defender himself disclaimed any such possibility, stating that had the plot been sold to Amanda Hampton and Robin Parry, thereby negating the 2006 scheme, then he would have been “honourable about it”.

[216] I agree with counsel for the pursuer that this aspect of the case is a paradigm example of the application of the *condictio causa data, causa non secuta*, failing which Melville Monument liability.

[217] The defender’s final argument under this heading is that any obligation has been extinguished by prescription. I will not consider this argument. The defender’s pleadings give no notice of it. Counsel for the defender submitted that it was unnecessary for prescription to be pled, as it was *pars judicis* – reference was made to the opinion of Lord Menzies in *Pelagic Freezing Scotland Ltd v Lovie Construction Ltd* [2010] CSOH 145 at paragraph 63 and Macphail’s Sheriff Court Practice at paragraph 2.114. However it is clear that in *Pelagic Freezing* that matter was identified in pleadings, and as Lord Menzies observed at paragraph 93, a court would only take notice of the absence of a legal right in the clearest of circumstances. The circumstances here are not so clear as to allow the court to

do so. There was a degree of overlap between the 2006 and 2009 agreements - for example the dispositions prepared in respect of the former would have been used to effect the latter - which might have a bearing on when the prescriptive period were deemed to begin. Counsel for the pursuer submitted that had he had notice of the point, the pursuer might have had "a lot to say" regarding error and fraud. There is no good reason why the point could not have been focussed by a plea-in-law and I consider that it would be unjust to the pursuer for it to be allowed to be raised at this stage.

**(iii) Sum third craved**

[218] It is a matter of agreement that by cheque dated 30 August 2015 the pursuer paid the defender £1,925 in respect of an application for a building warrant for her property at No.11 The Green, Craobh Haven. It is also agreed that the defender cashed that cheque; that he did not obtain a building warrant; and that he has not reimbursed the pursuer for the money. The pursuer gave unchallenged evidence that on or about 31 August 2015 she paid the defender £2,500 to obtain building warrants for her property at Poltalloch Street, Lochgilphead, that the work was not done and that she was not reimbursed. Her case for breach of contract in both matters is unanswerable and she is entitled to payment on that basis; had this not been the case she would have succeeded on the basis of unjustified enrichment.

[219] Turning to the question of embezzlement, parties were agreed that although there is no explicit authority for delictual liability for reparation of embezzlement, some form of civil remedy for a victim of embezzlement should exist, whether an action in delict or an action in unjustified enrichment. The dispute here was first the actual amount withdrawn by the defender, and second the extent of his authority to use the bank account.

[220] The defender accepts withdrawing £27,708.62 but denies taking the further £28,920.20 claimed by the pursuer. The pursuer has clearly been meticulous in checking her records and has identified £39,000 of expenditure by the defender from this account which was attributable to work on her properties. I accept Ms Voisey's evidence that she restricted herself to a single cheque recompensing herself for various outlays. I am satisfied on the

balance of probabilities that all of the withdrawals identified on the spreadsheet were made by the defender.

[221] I do not accept that the pursuer gave the defender authority to use the account "as he saw fit". The evidence shows her to have been significantly more prosperous than the defender, and to have been generous in sharing that prosperity, but she was not running a charity. The defender was an adult with his own business and bank account. For the reasons discussed above I accept the pursuer as credible and reliable and reject the defender as being the opposite. The evidence of their interactions over the years does not point to him having free rein over her account. Even by his own account this was not the original arrangement, but that apparently "morphed" - albeit without any express grant of consent by the pursuer that can be identified. It is significant that on 25 October 2014 she e-mailed him querying certain transactions; had he had the freedom he now claims there would have been no reason for such query. On 4 November 2014 she went further and cancelled his authority to operate the account. I accept the inference proposed on behalf of the pursuer, that she had become suspicious that the defender was using her account for his own purposes, and thereafter acted to prevent him from doing so. I conclude that the defender's authority to operate the account was indeed limited to withdrawing money required for her properties, and that when he was found to have exceeded that authority it was terminated.

[222] The next question is what withdrawals, if any, were justified by the terms of the original authority. The evidence of Carolyn Voisey regarding the incident with the cheques is instructive here, showing the defender's cavalier attitude to the pursuer's funds. He was clearly not meant to have these cheques but bullied his way into getting them. When the relationship was at an end he tried to use two of them for uses which had nothing to do with the pursuer and were purely for his own purposes. A number of the entries are very clearly for the defender's own interests, for example the payments for Netflix and a computer for his daughter - the fact that he had to explain the latter to the pursuer as his "finger slipping" again militates against having *carte blanche* to use the account. A large number of entries are for cash withdrawals with no further explanation. Having regard to the defender's attitude to identifiable entries and his obvious abuse of the limited authority which he had been given, I am satisfied on the balance of probabilities that all of the sums claimed under this

head were taken without authority, with the exception of the following, which I am prepared to accept were connected with the pursuer's properties:

- (i) Cheque 0099 dated 02/02/09 re "AM Hardware & labour" - £235.20
- (ii) Cash withdrawal on 21/01/11 re "Rob Nolan" - £500
- (iii) Cheque 368 dated 02/02/11 re "Cash to AM - Rob repayment" - £1,200
- (iv) Cheque 160 dated 07/03/12 re "cash per Erines" - £2,000

[223] These amounts total £3,935.20 and that sum will be subtracted from the amount craved. Furthermore, on the basis of John Macmillan's evidence I am prepared to accept that a further £5,000 of cash withdrawals is attributable to cash payments made to him by the defender on the pursuer's behalf. Therefore the sum of £8,935.20 will be subtracted from the amount craved, meaning that decree will be granted for the sum of £47,693.62.

[224] I was invited to reserve the questions of expenses and a hearing should be fixed to consider that matter. Also, whilst the pursuer is entitled to interest, the dates and calculation thereof will require further consideration, and this will also require to be addressed at that hearing.