

1. INDUSTRIAL SUPPLIES LTD v PLUMBING MATERIALS LTD

Payment — Debt — Sale of goods — Damages — Breach of contract — Satisfactory quality and fitness for purpose — Interest on qualifying debt — Interest on damages for breach of contract — Retention

a. Initial writ

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE
AT DUNDEE

INITIAL WRIT

in the cause

INDUSTRIAL SUPPLIES LIMITED,
a company registered under the Companies Acts and having a place of business at 35 Buccleuch Street, Glasgow

PURSUERS

against

PLUMBING MATERIALS LIMITED,
a company registered under the Companies Acts and having a place of business at 41 Devlin Street, Dundee

DEFENDERS

The pursuers crave the court:

1. To grant decree against the defenders for payment to the pursuers of the sum of six thousand nine hundred and eighty five pounds, fourteen pence (£6,985.14), with interest thereon at the rate of eight per cent a year over the Bank of England's official dealing rate in force on 30 June 2007 from 4 October 2007 until payment, together with the sum of seventy pounds (£70).

2. To find the defenders liable in the expenses of the action.

CONDESCENDENCE

1. The pursuers are a company registered under the Companies Acts with a place of business at 35 Buccleuch Street, Glasgow. The defenders are a company registered under the Companies Acts with a place of business at 41 Devlin Street, Dundee. They are domiciled there. This court accordingly has jurisdiction.

2. On or about 4 September 2007, the pursuers supplied the defenders with a number of cisterns at a total cost of about £6,985.14, conform to invoice no. 120192 enclosed therewith. The defenders have failed to make payment of the said sum, despite requests. This action is accordingly necessary.

PLEA-IN-LAW

The pursuers having sold and delivered goods to the defenders, are entitled to payment of the price thereof.

IN RESPECT WHEREOF

Enrolled solicitor
3 French Street, Glasgow
Solicitor for the pursuers

b. Reponing note (OCR 8.1(1))

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE
AT DUNDEE

Court ref no A13/2009

REPONING NOTE

for the defenders

in the cause

INDUSTRIAL SUPPLIES LIMITED,
a company registered under the Com-
panies Acts and having a place of
business at 35 Buccleuch Street,
Glasgow

PURSUERS

against

PLUMBING MATERIALS LIMITED,
a company registered under the Com-
panies Acts and having a place of
business at 41 Devlin Street, Dundee

DEFENDERS

The defenders apply to be reponed, under reference to the following:

The proposed defence

The defenders propose to defend this action on the ground that the goods sold to them by the pursuers were not of satisfactory quality nor fit for the purpose for which they were purchased, all as more particularly detailed in the defences and counterclaim produced herewith, and that therefore the pursuers are in material breach of contract; that that breach has caused the defenders to sustain loss and damage, as set forth in the defences and counterclaim aforesaid; and that the defenders are entitled to retain any sum due to the pursuers pending resolution of the counterclaim.

The explanation for the failure to appear

Decree in absence passed on 31 March 2009. Service of the initial writ was effected upon the defenders by the recorded delivery postal

service on 18 January 2009. The writ was signed for by an employee of the defenders whose employment was terminated that same day for reasons unconnected with the present proceedings. The employee left the writ in a desk drawer where it was discovered by chance on 2 April 2009. Steps were then taken without delay to make this application to be reponed.

IN RESPECT WHEREOF

Enrolled solicitor
1 March Street, Dundee
Solicitor for the defenders

c. Defences and counterclaim (OCR 19.1)

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE
AT DUNDEE

Court ref no A13/2009

DEFENCES AND
COUNTERCLAIM

in the cause

INDUSTRIAL SUPPLIES LIMITED,
a company registered under the Com-
panies Acts and having a place of
business at 35 Buccleuch Street,
Glasgow

PURSUERS

against

PLUMBING MATERIALS LIMITED,
a company registered under the Com-
panies Acts and having a place of
business at 41 Devlin Street, Dundee

DEFENDERS

The defenders crave the court:

1. To grant decree against the pursuers for payment to the defenders of the sum of twelve thousand eight hundred and eighty four pounds, twenty six pence (£12,884.26), with interest thereon at the rate of eight per cent a year from 1 April 2008 until payment.
2. To find the pursuers liable in the expenses of the counterclaim.

ANSWERS TO CONDESCENDENCE

1. The averments relating to the defenders and jurisdiction are admitted. *Quoad ultra* not known and not admitted.
2. Admitted that on the said date the pursuers supplied the defenders with the said cisterns at the said cost, conform to the said invoice enclosed therewith. Admitted, under explanation following, that

the defenders have failed to make payment of the said sum, despite requests. *Quoad ultra* denied. Explained and averred that the goods detailed in the said invoice were 50-gallon cisterns. To the pursuers' knowledge, they were to be installed in the workplaces of customers of the defenders for storage of water there. It was an implied term of the parties' contract that the cisterns should be of satisfactory quality and, further, that they should be reasonably fit for the purpose of storing water in workplaces. Reference is made to the Sale of Goods Act 1979, s. 14(2) and (3). In the event, the cisterns were neither of satisfactory quality nor reasonably fit for such purpose by reason of the defects more fully condescended on in the statement of facts hereunder, the terms of which are adopted and held as repeated herein *brevitatis causa*. The pursuers are accordingly in breach of contract. As a result of the pursuers' breach, the defenders have suffered loss and damage as more fully condescended on in the statement of facts. The defenders are in the circumstances entitled to retain the sum sued for pending resolution of the counterclaim.

STATEMENT OF FACTS

1. The defenders contracted with the pursuers for the sale by the pursuers to the defenders of certain cisterns specified in the pursuers' invoice number 120192, all as more particularly condescended upon in answer 2, the terms of which are held as repeated herein *brevitatis causa*. The cisterns were duly delivered by the pursuers to the defenders. The defenders then sold them to customers in whose workplaces they were installed. Thereafter, each cistern sprang a leak at the point of its junction with the premises' pipework. The cause of the leakages was the defective manufacture of the cisterns. The internal profile of each cistern was found to be of varying and irregular thickness. According to the specification issued by the manufacturers, the walls and base of the cisterns should have a consistent thickness of 4 mm. In the event, the thickness of the walls thereof varied from 3 mm to 3.5 mm and the thickness of the base from 3 mm to 4.75 mm. The variations occurred randomly over small areas, the profile thereof being irregular and 'hilly'. The irregularities exceeded normal manufacturing tolerances. As a result, it was impossible to achieve a watertight union of pipes with the cisterns. Consequently, the cisterns leaked.

2. In these circumstances, the pursuers were in breach of the implied terms set forth in answer 2 aforesaid. The cisterns were not of satisfactory quality. They were not reasonably fit for the purpose of storing water in workplaces. They had present in them defects which rendered them liable to leak when pipes were connected to them.

As a result, the defenders suffered the loss and damage hereinafter condescended upon.

3. As a result of the pursuers' breach of contract, the defenders have suffered loss and damage. As a consequence of the leakages, damage was caused to the said work places. The said cisterns required to be repaired. On or about 1 April 2008 the defenders paid their customers about £12,884.26 as reparation therefor. Accordingly, the defenders have suffered loss and damage as first craved.

4. The pursuers have been called upon to make reparation to the defenders for their loss and damage but refuse or at least delay to do so. This counterclaim is accordingly necessary.

PLEAS-IN-LAW

1. The defenders having suffered loss and damage through the pursuers' breach of contract and being entitled to reparation therefor, are entitled to retain any sum due to the pursuers pending resolution of the counterclaim for the defenders.

2. The defenders having suffered loss and damage through the pursuers' breach of contract, are entitled to reparation from them therefor as counterclaimed.

3. The sum sued for being a reasonable estimate of the defenders' loss and damage, decree should be pronounced in terms of the first crave of the counterclaim.

IN RESPECT WHEREOF

Enrolled solicitor
1 March Street, Dundee
Solicitor for the defenders

d. Motion for pursuers (limited company) to be ordained to find caution (OCR 27.2)

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE
AT DUNDEE

Court ref no A13/2009

MOTION FOR THE
DEFENDERS

in the cause

INDUSTRIAL SUPPLIES LIMITED,
a company registered under the Companies Acts and having a place of business at 35 Buccleuch Street, Glasgow

PURSUERS
against

PLUMBING MATERIALS LIMITED,
a company registered under the Companies Acts and having a place of business at Devlin Street, Dundee

DEFENDERS

The defenders move the court to ordain the pursuers to find caution in the sum of £15,000 or such other sum as the court thinks fit and to sist the proceedings until caution is found; all on the ground that it appears by credible testimony that there is reason to believe that the pursuers will be unable to pay the defenders' expenses if successful in their defence.

Documents lodged with the motion:
Companies Office documentation
Extract decree for payment

14 October 2009

IN RESPECT WHEREOF

Enrolled solicitor
1 March Street, Dundee
Solicitor for the defenders

2. THE IMPERIAL BANK PLC v HAMILTON

Payment — Debt — Bank loan — Guarantee — Joint and several liability — Interest on debt ex pacto — Defenders' whereabouts not known — Defenders' whereabouts ascertained after action raised

a. Initial writ

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT ALLOA

INITIAL WRIT

in the cause

THE IMPERIAL BANK PLC, a company incorporated by Royal Charter and having its registered office at 16 The Mall, London

PURSUERS

against

GEORGE ROBERT HAMILTON and
AUDREY ANNE HAMILTON, whose
whereabouts are not known

DEFENDERS

The pursuers crave the court:

1. To grant decree against the defenders jointly and severally for payment to the pursuers of the sum of six thousand four hundred and twelve pounds sixteen pence (£6,412.16), with interest thereon at the rate of two per cent a year above the pursuers' base rate applicable from time to time from 1 April 2009 until payment.

2. To grant decree against the defenders jointly and severally for payment to the pursuers of the sum of fifteen thousand six hundred and twenty pounds nine pence (£15,620.09), with interest thereon at the rate of three per cent a year above the pursuers' base rate applicable from time to time from 1 April 2009 until payment.

3. To grant warrant to cite the defenders by the publication of an advertisement in Form G3 in the Alloa Express newspaper.

4. To find the defenders liable in the expenses of the action.

CONDESCENDENCE

1. The pursuers are a public limited company incorporated by Royal Charter with its registered office at 16 The Mall, London. The defenders' whereabouts are not known and cannot reasonably be ascertained. Their last known residence was at 123 Alderbank Drive, Alloa. They removed therefrom in about early 2009 and left no forwarding address. Enquiry agents instructed by the pursuers have been unable to locate them. The pursuers in the present action claim payment of sums due to them by the defenders under and in terms of the contracts hereinafter condescended upon. These sums ought to have been paid by the defenders to the pursuers in Alloa. This court accordingly has jurisdiction.

2. The pursuers afforded to the defenders banking facilities at their High Street, Alloa branch. The defenders opened a current account there, numbered 261359, and borrowed money from the pursuers on the account. Interest was exigible on sums borrowed at the rate of two per cent a year above the pursuers' base rate applicable from time to time and applied quarterly. As at 1 April 2009, when interest was last applied, the total sum borrowed by the defenders was £6,412.16, which is the sum first craved.

3. The pursuers afforded banking facilities at their said branch to a company named George Hamilton Enterprises Ltd (hereinafter referred to as 'the company'). The company opened a current account there, numbered 461293, and borrowed money from the pursuers on the account. On or about 4 May 2006, the defenders guaranteed full and final payment on demand of all sums for which the company was or would become due or liable for to the pursuers. Copy guarantee of the said date is produced herewith and its terms held as repeated herein *brevitatis causa*. Interest was exigible on sums borrowed by the company at the rate of three per cent a year above the pursuers' base rate applicable from time to time and applied quarterly. As at 1 April 2009, when interest was last applied, the total sum borrowed by the company was £15,620.09, which is the sum second craved.

4. The pursuers have repeatedly called upon the defenders to make payment of the sums borrowed and guaranteed, respectively, by them. They refuse or at least delay to do so. This action is accordingly necessary.

PLEAS-IN-LAW

1. The defenders having borrowed money from the pursuers which has not been repaid, the pursuers are entitled to decree in terms of the first crave.

2. The defenders having granted a guarantee in favour of the pursuers of payment of all sums for which George Hamilton Enterprises Ltd are due or liable for to the pursuers, and the company being due or liable for to the pursuers in the sum second sued for, the pursuers are entitled to decree in terms of the second crave.

IN RESPECT WHEREOF

Enrolled solicitor
1 Market Street, Dundee
Solicitor for the pursuers

b. Minute of amendment (instance) (OCR 18.3(1))

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE
AT ALLOA

Court ref no A291/2009

MINUTE OF AMENDMENT

for the pursuers

in the cause

THE IMPERIAL BANK PLC, a company incorporated by Royal Charter and having its registered office at 16 The Mall, London

PURSUERS

against

GEORGE ROBERT HAMILTON and
AUDREY ANNE HAMILTON, whose
whereabouts are not known

DEFENDERS

DUNLOP for the pursuers craved and hereby craves the court to allow the initial writ to be amended by correcting the designation of the defenders in the instance to:

‘both residing at 461 Alexander Place, Alloa.’

IN RESPECT WHEREOF

Enrolled solicitor
1 Market Street, Dundee
Solicitor for the pursuers

c. Motion for minute of amendment to be received and for amendment in terms thereof and for warrant for re-service (OCR 5.6(3))

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE
AT ALLOA

Court ref no A291/2009

MOTION FOR THE
PURSUERS

in the cause

THE IMPERIAL BANK PLC, a company incorporated by Royal Charter and having its registered office at 16 The Mall, London

PURSUERS

against

GEORGE ROBERT HAMILTON and
AUDREY ANNE HAMILTON, whose
whereabouts are not known

DEFENDERS

The pursuers move the court to allow the minute of amendment, no. 7 of process, to be received and to allow amendment in terms thereof, and to grant warrant for re-service of the initial writ, as so amended.

Part of process lodged with the motion:
Minute of amendment

4 August 2009

IN RESPECT WHEREOF

Enrolled solicitor
1 Market Street, Dundee
Solicitor for the pursuers