



SHERIFF APPEAL COURT

**[2022] SAC (Civ) 10
EDI-SG1564-21**

Sheriff Principal M M Stephen

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL MHAIRI M STEPHEN QC

in appeal by

CHAZA AFANDI

Claimant and Appellant

against

THE CITY OF EDINBURGH COUNCIL

Respondent

Appellant: Party

Respondent: Scott, solicitor; Ledingham Chalmers LLP

4 March 2022

[1] This appeal has nothing to do with the merits of Ms Afandi's simple procedure claim against the City of Edinburgh Council. It is concerned with the rule that damages or compensation arising from one and the same obligation or cause of action must all be assessed and recovered in one action. It is also concerned with the application of that principle to simple procedure.

Background

[2] In this claim Ms Afandi is seeking to recover sums which she paid by way of hotel bills during the period from 3 September to 19 November 2016. Her claim is for £4,217. She states that as a severely disabled person in receipt of benefits the council must look after her. She also states that when she became homeless the council or one of its officers told her to stay in hotels and send the hotel bills to the council until she found a suitable property. She has provided a list of the hotels in which she stayed along with her son during the relevant period together with the actual hotel bills. Her homelessness arose following her eviction from her private rented tenancy in Huntingdon Place, Edinburgh.

[3] However, Ms Afandi has raised two further and separate simple procedure claims against the council in Edinburgh Sheriff Court under case references: EDI-SG345-21 and EDI-SG1075-21. Each of these claims proceeds on identical grounds namely that the council have an obligation to reimburse Ms Afandi as the law states she has the right to be reimbursed as a person in receipt of benefits and severely disabled. Further, in these cases she again alleges that the council or an officer on behalf of the council told her to stay in hotels and hand the bills to the council until she obtained suitable alternative accommodation.

[4] The three claims lodged by Ms Afandi cover specific but different periods in 2016. Simple procedure application EDI-SG345-21 relates to the period from 25 February to 30 April 2016. In that application Ms Afandi claims the sum of £4,855 from the City of Edinburgh Council. Claim No EDI-SG1075-21 relates to the period from 1 May to 2 September 2016. The amount claimed is £4,932. The action which is the subject of this appeal relates to the period 3 September to 19 November 2016. In each of the actions the council have lodged response forms and deny that they have an obligation to reimburse

Ms Afandi. Accordingly, *ex facie* all three claims arise in respect of the same obligation as contended for by Ms Afandi. The total of the sums claimed amounts to approximately £14,000. Claim No EDI-SG1075-21 is currently paused to allow further investigations and pending the outcome of this appeal. Claim No EDI-SG345-21 has been continued until 17 March 2022 pending the outcome of this appeal. There was reference to a fourth claim but I was given no specification or information as to that case.

The sheriff's order of 19 November 2021

[5] The sheriff considered the claim form, the response, together with the two other cases with the same cause of action. He dismissed this claim as incompetent and pronounced the following order:

"The sheriff, having considered the claim and response forms, dismisses the claim as incompetent (on the basis that the claim concerns the alleged entitlement of the claimant to be reimbursed for accommodation expenses by the respondent, and it is not competent to split the amounts claimed over different time periods in separate claims as the claimant has purported to do, there being at least two other claims raised so far under references EDI-SG345-21 and EDI-SG1564-21), and finds no expenses due to or by."

Appeal

[6] Ms Afandi has appealed the sheriff's decision to dismiss this action. The appeal is dated 5 December 2021. Ms Afandi acknowledges that this is the third in a series of three cases which she has raised against The City of Edinburgh Council about the same subject matter. She states that as she is not repeating either her claim or dates there is no illegality. She indicates that she has had difficulty obtaining a solicitor who is prepared to act but if she could have her own solicitor, she would put the whole case (ie the three claims) into one

action. She points out that the council in their response take no issue with the competence of the actions.

[7] The sheriff has prepared a report. He observes at paragraph 1.6:

"The reason for the present action being incompetent is that it concerns the same subject matter as the first two actions, namely the alleged right to reimbursement of the claimant's accommodation expenses by the respondent council. It is a well established rule that in both breach of contract and delict cases, the damages which arise from one and the same cause of action must all be assessed and recovered in one action. (See D M Walker, *The Law of Civil Remedies in Scotland*, pages 405-407, and *Stevenson v Pontifex and Wood* (1887) 15R 125 referred to therein.)".

The sheriff correctly observes that there is a £5,000 monetary limit in simple procedure cases. The sheriff has posed one question for the opinion of this court:

(1) In the circumstances, did I err in dismissing the present claim as incompetent under Rule 1.8(12)?

Submissions

[8] Ms Afandi submitted that the rule as to raising all claims in one action relates to actions for damages arising out of delict or breach of contract. This action (and the associated actions) do not fall into these categories. She is seeking reimbursement of the cost of hotel bills incurred whilst she was homeless and which the City of Edinburgh Council have an obligation to pay. She is severely disabled and furthermore disadvantaged due to the fact that no solicitor will take her case. Many solicitors have been sympathetic but none are keen on supporting a foreigner against local people or the council.

[9] Ms Afandi went on to suggest that the sheriff had damaged her reputation on the basis that he indicated that he considered that she was "scamming the council and the court". He gave an example of how somebody had raised an action in one court and then

went to a different city and raised another action of the same nature. Ms Afandi refuted any suggestion that she was scamming or repeating claims. Her claims were genuine and relate solely to the cost of hotel bills. Her difficulties began when she was evicted from her previous tenancy. She was critical of the sheriff who granted decree of eviction.

[10] Mr Scott, on behalf of the council, submitted that the law is well established on this point. He adopted his written submissions and referred to the authorities he had provided.

In particular *Walker: The Law of Civil Remedies in Scotland* at page 405 states:

"It is a general rule in both breach of contract and delict cases that the damages which arise from one and the same cause of action must all be assessed and recovered in one action. The pursuer may bring only one action and must recover the damages for all his loss, past, present and future, certain and contingent, direct and consequential, and that either in delict or breach of contract."

Turning to address the point made by the appellant he submitted that the principle applies to any action raised in respect of any wrong or obligation to make payment. This case involves reimbursement of hotel bills based on what the appellant claims to be an obligation on the part of the council. All losses must still be recovered in one action. Mr Scott submitted that the sheriff had been correct to notice the incompetency and the appeal should be refused.

Decision

[11] There appears to be little dispute as to the basis upon which this case proceeds against the council. The cause of action is identical to the other cases which Ms Afandi has lodged. The only difference is that the three cases relate to different periods of time in 2016 and for slightly different monetary claims. Ms Afandi asserts that the council have an obligation to reimburse her for the cost of using hotels when she was homeless. She seeks

payment of her outlays for these hotels bills over various periods between February and November 2016. Accordingly, all three cases arise from one and the same cause of action namely, the alleged obligation on the part of the local authority to indemnify Ms Afandi for the cost of her hotel bills whilst she was homeless.

[12] It is *pars judicis* for the sheriff to notice and have regard to any incompetency or, indeed, any lack of jurisdiction. *Pars judicis* simply means that it is the inherent jurisdiction of the sheriff to consider such issues whether or not raised by any party. The sheriff is entitled to dismiss an action as incompetent. The question is whether the sheriff was entitled to dismiss this simple procedure action as incompetent?

[13] In *Cabot Financial UK v McGregor & Ors* 2018 SC (SAC) 47 this court considered *pars judicis* in relation to undefended actions proceeding under simple procedure but also considered more generally simple procedure and its rules. Simple procedure is a new form of civil action in the Sheriff Court. Proceedings that may be brought under simple procedure are set out in section 72(3) of the Courts Reform (Scotland) Act 2014 and include:

- (a) Proceedings for payment of a sum of money not exceeding £5,000.

Simple procedure is designed for all actions of a value of £5,000 or less but can include certain other actions, including actions with craves *ad factum praestandum* and proceedings for the recovery of the possession of heritable property (provided that there is no crave for decree for payment of a sum of money exceeding £5,000 either in addition to or as an alternative to that crave). This is an action for payment which under simple procedure cannot exceed £5,000.

[14] Simple procedure is designed with unrepresented litigants in mind and the sheriff is encouraged to adopt an interventionist approach. Although the rules have party litigants in mind there is no change to existing law or practice which must be applied by the court in

simple procedure cases. Each party and the sheriff have responsibilities in terms of simple procedure rules. Simple Procedure Rule 1.8 sets out the sheriff's powers. In particular 1.8(12) is in the following terms:

"(12) If a claim, or part of a claim, obviously will not succeed because it is incompetent, the sheriff may dismiss the claim or that part of it at any time."

[15] Accordingly, the sheriff is not only entitled to consider questions of competency but has a duty to do so. In *Cabot* at paragraph [33] it is observed "*pars judicis* essentially means what a judge has a duty to do". It is settled law that any damages or compensation or reimbursement of losses which arise from one and the same cause of action must all be recovered in one action (*Stevenson v Pontifex and Wood* (1887) 15R 125, Lord President Inglis at page 129; Professor D M Walker: *Civil Remedies*, at pp 405 to 406, 529 to 530 and 878). Although the rule is most commonly encountered in cases for damages arising from breach of contract or in delict it is not limited to these types of action. The rule is that the damages or payment sued for which arise from "one and the same cause of action" must be assessed and recovered in one action. The rule is therefore not restricted to damages arising from breach of contract or from delict and applies to this action where the respondent is said to have an obligation to re-imburse the appellant for her hotel bills and has refused to do so. The key consideration is the subject matter of the action and if the claim for payment or damages arises from one and the same cause of action recovery should be in one action. The purpose of the rule is obvious and is designed to avoid a multiplicity of litigation directed at the same defender or in different courts leading to the risk of double counting. Repetitive actions in respect of the same underlying legal cause lead to unnecessary expense and inconvenience particularly for the defender but also for the court. It is not suggested that Ms Afandi has raised these proceedings as a party litigant deliberately with a view to

subverting the upper limit of monetary jurisdiction in simple procedure cases. However, to an extent, the rule may also protect a claimant such as Ms Afandi who is not legally represented from the plea of *res judicata*: namely if one of these cases is litigated to a conclusion or settled then that may prevent her from proceeding with her remaining claims if the plea of *res judicata* is stated. The aggregate value of the three claims raised by Ms Afandi exceeds the simple procedure limit of £5,000. Applying the doctrine that any payments due to the appellant by the respondent must be recovered in one action (*Stevenson v Pontifex and Wood* (1887) 15R 125) it is not competent to proceed to recover the sum said to be due by way of multiple simple procedure actions. This action and the associated actions therefore fall to be dismissed.

[16] I offer no comment on the merits of the claims or any defence. The period for which Ms Afandi seeks to be reimbursed for her hotel bills goes back to 2016 and there may be issues of prescription and limitation. Ms Afandi is not deprived of a remedy. She may raise proceedings by ordinary procedure in terms of the Ordinary Cause Rules 1993. However, it is also well settled that party litigants require to comply with rules of procedure in the same manner as represented parties (*Barton v Wright Hassall LLP* [2018] UK SC 12; *A.W. Applicant* [2018] CSIH 25 and *Khaliq v Gutowski* 2019 SC 136). It would be prudent if Ms Afandi sought legal advice and representation notwithstanding the observations which she repeats in the body of these cases and in her correspondence with the court about the unwillingness of solicitors to represent her.

[17] For these reasons the question of law falls to be answered in the negative. The sheriff did not err in dismissing the present claim as incompetent. The appeal, therefore, falls to be refused.

[18] It follows that this case simply falls, having been dismissed by the sheriff's order on 19 November 2021. However, the parallel actions to which I have referred both fall to be dismissed as incompetent for the same reason.