

## **COURT OPINION – SITEMAN PAINTING AND DECORATING SERVICES LIMITED AGAINST SIMPLY CONSTRUCT (UK) LLP [2019] SAC (CIV) 13**

### **Purpose**

1. To invite the Scottish Civil Justice Council (“the Council”) to:
  - consider the issues raised in the opinion of Appeal Sheriff Holligan in the case of Siteman Painting and Decorating Services Limited against Simply Construct (UK) LLP [2019] SAC (Civ) 13 provided in **Paper 5.2A**; and
  - agree that there is no requirement for changes to court rules.

### **Background**

2. The Secretariat has considered the opinion in Siteman -v- Simply Construct, issued by Appeal Sheriff Holligan on the 2<sup>nd</sup> of April 2019. The opinion invites the Council to review the issue of time limits for appeals in civil proceedings.
3. The substance of this case relates to the appellants, (Simply Construct) having lodged a note of appeal against two interlocutors: issued in December 2018 and January 2019. The December interlocutor repelled the appellant’s defences and found them liable to the respondents in expenses. The January interlocutor sanctioned the cause as being suitable for instruction of junior counsel and found the appellants liable in taxed expenses.
4. Appeal Sheriff Holligan noted that difficulties had arisen in this case relating to the applicable time limits for lodging an appeal against each of these interlocutors and whether leave was required. The debate surrounded the question of which of the two interlocutors was considered to be a “final judgement”. This being the determining factor which would trigger the relevant time scale for lodging of the related appeal.
5. The substance of the opinion addresses the question of what constitutes a “final judgement” and how the right of appeal without leave under section 110(1)(a) of the 2014 Act is thereby applied .

## Discussion

### *Current law*

6. Section 110 (1)(a) of the 2014 Act provides that in civil proceedings, an appeal may be taken to the Sheriff Appeal Court with leave, against the decision of a sheriff, as long as that decision constitutes as a “final judgement”. Section 136 of the 2014 Act defines a “final judgement” as,  
  
*“a decision which, by itself, or taken along with previous decisions, disposes of the subject matter of proceedings, even though judgment may not have been pronounced on every question raised or expenses found due may not have been modified, taxed or decerned for”*
  
7. The Secretariat notes that the definition of “final judgement” in the 2014 Act does not appear far removed from the definitions outlined in section 3 of the Sheriff Courts (Scotland) Act 1907 (“the 1907 Act”) and prior to that the Court of Session Act 1868 (“the 1868 Act”). Section 3(h) of the 1907 Act defines a final judgement as:  
  
*“Final judgment” means an interlocutor which, by itself, or taken along with previous interlocutors, disposes of the subject-matter of the cause, notwithstanding that judgment may not have been pronounced on every question raised, and that expenses found due may not have been modified, taxed, or decerned for;”*
  
8. Appeal Sheriff Holligan states in paragraph 23 of the opinion that the 2014 Act:  
  
*“Restates in more modern prose the structure of the 1907 Act which, in turn, follows some of the structure of the 1868 Act. I do not see that the current legislation can be said to be materially different from its earlier manifestations, particularly in relation to the essential architecture relating to appeals. It follows that the decisions to which I was referred **remain authoritative** [emphasis added]”.*
  
9. This position appears to be commonly understood both throughout historical case law and on the basis of previous iterations of the statutory definition. Appeal Sheriff Holligan suggests that the definition in the 2014 Act anticipates that liability for expenses of the process will have been considered prior to the final judgement being issued, but the quantification of expenses yet to be determined.

*Court rules*

10. There appears to be no specific issues arising in this case regarding the practical operation of the court rules relating to time limits. Rather the issues relate to eliciting what is a final interlocutor in a case and whether leave to appeal is required as these factors will determine the applicable time limit for the lodging of any appeal. There is no apparent requirement for changes to court rules.

*Primary legislation*

11. Should the Council consider that the statutory definition may benefit from review, it has a power to make a recommendation to this effect to Scottish Ministers under section 3(2)(f) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013. Any amendment to Section 110 of the 2014 Act would be for the Scottish Ministers and would require primary legislation.

12. The Secretariat and LPPO are of the view that the existing case law adequately supports the definition of “final judgement” and that prospective changes to the 2014 Act may risk losing accumulated knowledge. For these reasons the Council is invited to agree that there are is no requirement for changes to current rules of court and that it need take no further action regarding the issues raised in this opinion.

**Recommendation**

13. The Council is invited to:

- consider the issues raised in the opinion of Appeal Sheriff Holligan in the case of Siteman Painting and Decorating Services Limited against Simply Construct (UK) LLP [2019] SAC (Civ) 13 provided in **Paper 5.2A**;
- agree that there is no requirement for changes to court rules.

**SCJC Secretariat****August 2019**