

SCOTLAND / JUDGMENT

Manjit Ram against James Stirling

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SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT AYR AYR-A117-21
JUDGMENT OF SHERIFF M MACTAGGART

[2026] SC AYR 101 in the cause MANJIT RAM against JAMES STIRLING Pursuer Defender
Pursuer: Personally present Defender: Whyte (Thompson instructing agent) AYR, 10
August 2026 The sheriff, having heard parties on the issue of expenses and having
resumed consideration of the cause, allows the defender's inventory of productions, no 13
of process, to be received although late; grants decree of absolvitor in favour of the
defender; finds the pursuer liable to the defender in the expenses of the cause, except in
so far as already decerned for, on a party and party basis; thereafter grants an increase of
said expenses of 35% and allows an account thereof to be given in and remits the same,
when lodged, to the auditor of court to tax and to report. 2 NOTE

Background

[1] This note accompanies the foregoing interlocutor in respect of expenses. This follows a decision issued on 7 July 2026 in respect of the pursuer's action for damages said to arise from defamation and injuria. The pursuer was unsuccessful and decree of absolvitor has been granted in favour of the defender the court having upheld plea-in-law 4 for the defender. (The judgement erroneously refers to dismissal but that ought, in terms of the plea-in-law, have been absolvitor. The pursuer did not seek to argue against that). [2] The defender seeks the expenses of the cause on an agent/client basis, failing which on a party/party basis and seeks an uplift in fees. The defender seeks a finding of no expenses due to or by, failing which expenses in favour of the pursuer up to 15 August 2024, failing which a finding of no expenses up to 15 August 2024. She opposes expenses on an agent/client basis, any award of expenses to be on a party/party basis. She opposes any uplift in fees. [3] The following paragraphs of this note set out the broad submissions by the parties and my decisions thereon. Expenses in principle [4] The defender seeks an award of expenses, save as already decerned for, on the broad principle that expenses follow success. He accepted that an award of expenses is essentially a matter of discretion dependent on the facts of the case. In this case the defender was successful in his defence of the action based on qualified privilege. Such a defence, and the need to establish malice in the face of that, ought properly to have been known to the pursuer from the outset. 3 [5] The pursuer's principal submission was that there should be a finding of no expenses due to or by either party. There was divided success in that the court held that the statement issued by the defender to the

regulatory body was defamatory in nature, had a single meaning and was actionable. The defender failed in his defence of veritas. She accepted that the defence of qualified privilege had been upheld by the court and that she had failed to establish malice. That amounted to mixed success in her view and a finding of no expenses due to or by either party would reflect that. Further, she argued that, in fact, the pursuer should be awarded expenses up to 15 August 2024, when the defender first amended to include a plea-in-law of qualified privilege. That was the point at which, she submitted, the defender had focussed that defence. Her further fallback position was that the defender should not be awarded any expenses prior to 15 August 2024 and a finding of no expenses due to or by up to that point should be made. She referred the court to the case of *A Kelly Limited v Capital Bank plc*, an Outer House decision of Lord Carloway dated 13 December 2002. In particular she referred the court to paragraph 13 thereof in which Lord Carloway states: “The stating of appropriate pleas-in-law remains a cornerstone of the system of written pleading, designed primarily, in the case of a summons, to give any defender fair notice of the legal case against him and to state to the court the legal basis upon which the action proceeds.” She submitted that the defence of qualified privilege was not properly focussed prior to that point and it was not for the pursuer to anticipate the defender’s case. [6] I may have had some sympathy for the pursuer had it not been for the fact that qualified privilege and the issue of malice was part of the pleadings on both sides and before the court well before the 15 August 2024 amendment. Counsel accepted that the plea had only been inserted in answers to the pursuer’s minute of amendment, however the issue was 4 focussed in the pleadings prior to that and the pursuer had ample notice of it. It was not the introduction of a new defence, but rather a tidying up of the pleadings to put a relevant plea-in-law before the court. [7] The original record lodged 11 July 2022 contains a clear averment of qualified privilege in answer 6 which is then answered in some detail by the pursuer. Article 6 contains detailed averments by the pursuer on the issue of malice (page 23 paragraphs C to E, and again at paragraphs F to G). The issue of qualified privilege and malice were according in the minds of both parties as far back, at least, as July 2022. The pursuer had fair notice that the defender was presenting qualified privilege as a defence and that there would be a need, in those circumstances, to plead and establish malice. I do not consider, in these circumstances, that it is correct to say the defence was not properly laid before the court until the August 2024. I further note there was no objection taken to the amendment to include the plea at that point. The introduction of the plea-in-law, to tidy up the pleadings, did not present a new and hitherto unpled defence of which the pursuer had no notice. I do not, in the circumstances, accept the pursuer’s arguments on this point and see no need to make any division of expenses as at 15 August 2024. [8] The pursuer submits that there has been mixed success and that there should be a finding of no expenses due to or by either party. She further submits that the defender failed to prove veritas and although the pursuer failed to prove malice, she did establish that the statement was defamatory and carried a meaning of dishonesty. However, the single meaning to be attached to the statement was a finding the court had to make given the inability of the pursuer to identify such single meaning herself. The court did conclude that the statement was actionable as defamatory.

That finding made the action relevant, but the pursuer still needed to meet any defence put forward, to prove malice and to justify 5 quantum. She failed to meet the defence of qualified privilege and failed to establish malice. The finding by the court that the defence of veritas had not been established was as a result of the court being unable, on a balance of probabilities, to determine what had taken place at the Costa Coffee meeting. Neither party was able to establish what had occurred. However, the pursuer had to not only meet the defence of qualified privilege, but she had to establish malice, and she failed to do so. She failed to establish injuria and her quantification of her claim, even after amendment, was grossly overstated. In these circumstances, I do not consider that there was mixed success. The pursuer failed in her action and the defender succeeded in his defence and therefore I can find no basis upon which to conclude anything other than that expenses should follow success. I therefore award expenses in favour of the defender, save in so far as otherwise decerned. Scale of expenses [9] The defender's motion was for expenses to be awarded on an agent/client basis. Counsel referred the court to the opinion of Lord Hodge in McKie v Scottish Ministers [2006] CSOH 54 at para [3]: "The law on this issue is well settled. First, the court has discretion as to the scale of expenses which should be awarded. Secondly, in the normal case expenses are awarded on a party and party scale; that scale applies in the absence of any specification to the contrary. But, thirdly, where one of the parties has conducted the litigation incompetently or unreasonably, and thereby caused the other party unnecessary expense, the court can impose, as a sanction against such conduct, an award of expenses on the solicitor and client scale. Fourthly, in its consideration of the reasonableness of a party's conduct of an action, the court can take into account all the relevant circumstances. Those circumstances include the party's behaviour before the action commenced, the adequacy of a party's preparation for the action, the strengths or otherwise of a party's position on the substantive merits of the action, the use of the court action for an improper purpose, and the way in which a party has used court procedure, for example to progress or delay the resolution of the dispute..." 6 Counsel referred to, what he described, as intimidatory tactics by the pursuer to dissuade the defender from continuing with his complaint pre-action; to the conduct of the pursuer in raising such action in the Court of Session, given the very small audience to whom the statement would have been circulated; to the over inflated sum sued for both before and after amendment; to the failure on the part of the pursuer to identify the single meaning or any legal basis for the claim in respect of injuria; to the fact that it was not until August 2024 that the pursuer focussed her case on ground 17; to the pursuer's inconsistent position before this court and the law society; and to her conduct at proof. The case, he submitted was presented in a chaotic and unfocussed manner. In the first instance the defender sought agent/client expenses from 14 November 2023 onwards given the pursuer's overall unreasonable conduct and her maintenance of two fundamentally inconsistent positions on malice before the court and the law society. (14 November being the last date upon which her position would have been put before the law society). Alternatively, the defender sought expenses of the whole of the proof on an agent/client basis given the pursuer's conduct during the proof and submissions. [10] The defender opposed expenses being awarded on this basis. To do so

would be to unjustly penalise the pursuer for pursuing this action. Expenses are discretionary and should not be used as a vehicle for making serious collateral findings that were not present in the judgement. The judgement did not conclude that the action was an abuse of process, and indeed the court was not asked to find so. The court did not conclude that the action was irrelevant, nor that the pursuer had acted abusively, vexatiously or dishonestly. [11] The pursuer is correct in so far as the court's findings on the merits of the action are concerned. This however does not preclude the court, at expenses stage, from looking at the conduct of the parties in determining the scale of such expenses. The issue of expenses is a 7 discretionary one. The court is entitled to look at all the circumstances of the case and of the conduct of the litigation generally. This action commenced in the Court of Session and the reason for that was never fully explained. The pleadings, particularly those of the pursuer were extremely lengthy (unnecessarily so), verbose and lacking any true focus. At many callings of the case, the court asked both sides to consider the length and focus of their pleadings. Despite amendment, the pursuer continued to raise issues taken out of the pleadings in her cross-examination of the defender. The proof itself was, at times, unfocussed, in particular regarding the pursuer's cross-examination of the defender. The pursuer did not adequately explain her inconsistent positions to the court and the law society, nor her inability to produce a copy of the minute of agreement. I am not, however, satisfied that, even taking all of that into account, this reaches the standard of incompetence or unreasonableness. The pursuer at times lacked focus, particularly during the proof. Attempts to amend during the proof were ill-conceived and over all, much of the pleadings and evidence presented was not properly thought through and this may have a bearing on any potential uplift in fees, but I do not consider it reaches the test set out by Lord Hodge and I am not awarding expenses on anything other than a party and party basis. [12] The pursuer sought to have a number of areas excluded from the award of expenses including: all expenses attributable to veritas; all expenses attributable to the failed relevance and single meaning attack; all expenses attributable to the failed recording issue; all expenses attributable to the injuria and quantum insofar as not necessary for qualified privilege and malice. I refuse to do so. The defender was perfectly entitled to maintain a plea of veritas. The court could not decide what happened at the Costa meeting but this not preclude the defender from maintaining that position. The court had to determine the single meaning to be attached to the statement, given the pursuer's failure to do so. The recording 8 issue must be balanced against the pursuer's inability to produce a copy of the document she says she took to the meeting. The injuria claim failed completely and quantum was grossly overstated. The award of expenses will not be modified in the manner suggested by the pursuer. Defender's claim for increased fee [13] The defender sought an uplift in fees and referred the court to Rule 5.2 of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019. Subparagraph (6) sets out the issues to which the court is to have regard and the defender sought to rely on (a), (b), (e), (f) and (g) thereof. These related to the complexity of the proceedings and the number, difficulty or novelty of the questions raised; the skill, time, labour and specialised knowledge required of the solicitor; the importance of the proceedings or the subject matter of the proceedings to the client; the amount or value of

money or property involved in the proceedings; and the steps taken with a view to settling the proceedings, limiting the matters in dispute or limiting the scope of any hearing. [14] In support of head (a) it was submitted that particular legal issues arose in relation to qualified privilege and the overlap between that and the legal complaints regime; that novel issues of law arose in relation to the alleged application of the delict of injuria which required considerable work on the part of the defender due to the unusual nature of this delict and the pursuer's imprecision in her pleaded case; the pursuer's case involved pleadings which were opaque as to their legal basis in respect of the statement and the meanings involved; and the action involved two separate defences of qualified privilege and veritas both of which required extensive legal and factual examination. 9 [15] In support of head (b) it was submitted that this was an action for defamation which is an unusual occurrence in Scottish courts and required specialist time and effort to be deployed by solicitors throughout.

- [16] With regard to head (e) the subject matter was an important one dealing with rights and protections afforded to a lay client to make a complaint about what they consider to be professional misconduct. It was an important point of principle and had wider importance than simply the issues between the parties for that reason.
- [17] Whilst the sum sued for was reduced at a very late stage to a figure of £50,000 the pursuer had maintained her claim at a figure of £140,000 for a considerable period of time. Such a figure was vastly overstated but it was the headline level of liability the defender had to fact. [18] The defender's agents were proactive in seeking to engage with the court to identify the issues in dispute and to provide authorities in a timely manner in advance of the proof but the same could not be said of the pursuer. The pursuer could have done more to focus her case. Consideration should have been given to whether any competent legal basis existed for the delict of injuria or whether this was simply a duplication of the defamation. The pursuer ignored opportunities to do so. [19] [20] Taking all of this into account, the defender sought an increase of 50 to 75%. The pursuer opposed any increase in fees. In relation to complexity she submitted that much of this was generated by the failed defence of veritas, the failed relevancy and single meaning and the issue of the recording. Defamation may require specialist work but that is not enough to satisfy (b). The defender must show why ordinary remuneration is inadequate and must separate work on successful issues from failed issues. Counsel had already been sanctioned earlier in proceedings. The pursuer recognised that complaints to 10 regulators was important but highlighted to effect on the professional reputation of a senior solicitor advocate. With regard to the value of the claim, the pursuer considered the defender was critical of her with regard to the low level of quantum assessed by the court in terms of the reasonableness of her action, and now sought to use the high level of the claim as a ground to increase fees. She considered that position to be untenable. With regard to narrowing the issues, the defender had maintained a defence of veritas and failed and did not resolve the recording issue until diligence. None of that supported an increase in fees. [21] This was an action for defamation, injuria and damages arising therefrom. Actions of defamation are not routine in the sheriff court. This case in fact started in the Court of Session. The case involved issues of single meaning, veritas,

qualified privilege and malice. Quite separately there was the issue of injuria which seemed to be put forward as a separate head of claim, although that was less than clear from the pleadings and ultimately not made out. The delict of injuria alone would merit this being deemed complex. In and of itself it is an unusual delict but the way in which it was pled here made it difficult to understand as a stand-alone claim. The defender's agents had to plead a relevant defence to this case covering all the foregoing issues, to present it coherently at proof and to make cogent submissions. I am satisfied that this merits an increase in fees of 15%. [22] The singularity of this case, covering the issues identified in the immediately foregoing paragraph required skill, time and specialised knowledge on the part of the defender's agents. Verbose and voluminous pleadings on the part of the pursuer required time and a degree of skill to focus the issues. The issues arising in defamation actions are not routine, and this case had issues of qualified privilege, veritas, malice and injuria. The single meaning issue was not well focussed at all by the pursuer and required skill and 11 specialised knowledge on the part of the defender's agents to address. For the foregoing reasons I consider this head justifies and increase in fees of 10%. [23] The action may have been important to the defender, and it was to the pursuer, but that in and of itself would not justify an increase on that ground alone. The issue arose from a complaint to a regulatory body and that, in and of itself, is not unique nor do I consider that it gave rise to any point of principle or importance that would merit and uplift on that ground. [24] The value of the claim in the first instance was £140,000 and then reduced to £50,000. These are not vast sums in terms of sheriff court actions. It may have been an over statement of the value of this particular claim, but I do not consider that that, in and of itself, merits an uplift in fees. It has already been addressed in the award of expenses itself. [25] The parties entered into a joint minute which was lodged on 12 February 2026 and followed an interlocutor issued by this court on 27 January 2026 ordering same. This assisted to some degree in focussing matters, however the pursuer's case at proof remained unfocussed particularly in cross-examination of the defender. Of note is an exchange of emails lodged by the defender as productions 6/48 and 6/49 on 7 August 2026. By email of 10 March 2026 the defenders seek to focus the remaining evidence to be led and to give consideration of a joint minute. They set out clearly the areas for consideration in particular with regard to the evidence of the defender. The response from the pursuer's then agent was curt and did not seek to focus anything. I have already commented on the cross-examination of the defender which was lengthy, repetitive and unfocussed and the defender's sought by this email to avoid that. The pursuer did not. Further, it was not until very latterly, at submission stage, that the pursuer was prepared to consider the duplication 12 of her defamation and injuria claims. Consideration ought to have been given to that at an earlier stage. I consider all of this merits an increase in fees of 10%. [26] I have accordingly awarded the defender the expenses of the cause on a party/party basis, save in so far as already decerned for, and granted an uplift in fees of 35%.

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