OUTER HOUSE, COURT OF SESSION

[2018] CSOH 41

A476/13

OPINION OF LADY CARMICHAEL

In the cause

MUHAMMAD AHSAN KHAN

Pursuer

against

MOHAMMAD SADDIQUE AND OTHERS

Defenders

Pursuer: Sanders; Allan McDougall
Defenders: Turner; TC Young LLP

13 April 2018

Background

[1] This is an action for production and reduction of a pretended disposition of 78 Dixon Avenue Glasgow ("the property") granted in favour of the first defender on 6 November 2002. The second defenders are the heritable creditors in respect of a loan currently secured over the property, and the third defender is the Keeper of the Registers of Scotland.

[2] The pursuer and the second defender have agreed that in the event that reduction of the title of the first defender is granted as first concluded for, reduction of the standard security in favour of the second defenders shall only be granted when the sums due by the first defender to the second defenders have been repaid by the pursuer, that to a maximum sum of £70,000. That agreement is recorded in Joint Minute number 28 of process.

[3] As neither the second or third defenders took any active part in the proof, I have referred generally to the first defender as "the defender" in this opinion, for the sake of brevity, unless the context has made it necessary to specify which defender is referred to.

[4] The disposition bears to have been signed by the pursuer, and by his wife, Mrs Ayesha Ahsan Khan, in Glasgow on 6 November 2002. I have had no difficulty finding on the evidence that the signatures on it were not theirs.

[5] It is not disputed that the transactions for the sale and purchase of the property in 2002 were carried out by a single firm of solicitors, purporting to act for both parties. The firm in question was A D Murphy & Co ("ADM"), which was the business of a sole practitioner, Anthony David Murphy. It is a matter of public record that Mr Murphy's name was struck off the roll of solicitors in Scotland by an interlocutor of the Scottish Solicitors Discipline Tribunal in 2011. Mr Murphy did not give evidence, and I was told that he was understood to be outwith Scotland, although attempts had been made to secure his attendance as a witness.

[6] It appears from the evidence that a Mr Hassan, a financial adviser, was in some way involved in facilitating this transaction and in dealing with Mr Murphy. The testing clause in the disposition records that Shafiq Ul Hassan, financial adviser, was present when the pursuer and his wife signed the deed. He was not called as a witness.

[7] Another individual, a Mr Sharif, to whose name reference was made on a number of occasions during the evidence, had been due to give evidence. I was told on the second day of the proof that information had come to the pursuer's counsel's attention that Mr Sharif had been "called in for an MRI scan". No soul and conscience certificate was available, but counsel felt able to present the case without calling Mr Sharif. He mentioned the matter in part because there had been an expectation on the part of the defender that the pursuer

would lead evidence from Mr Sharif. Mr Turner indicated that he would not seek to lead Mr Sharif if the pursuer was not doing so.

[8] On the third day of the proof, the defender, when asked in evidence if he knew Mr Sharif, said that he did, and pointed him out in court, sitting close to the pursuer and Mrs Khan. I do not suggest any impropriety on the part of counsel, or that counsel gave to the court anything other than information that had been provided to him.

[9] Mr Murphy and Mr Hassan are individuals whose evidence might reasonably have been expected to cast some light on what actually occurred in November 2002. Mr Sharif is said by the defender to have been involved in communications with both the pursuer and the defender in 2013. The evidence actually available is principally that of the pursuer, Mrs Khan and the defender. I did not regard the evidence of any of those three as entirely credible or reliable.

[10] There was no difference between the parties as to the law that I required to apply. My decision turns largely on my consideration of the evidence, and on my assessment of the witnesses. I have therefore set out the evidence in some detail.

Issues

[11] The pursuer pleads that because his signature on the disposition was forged, the disposition falls to be reduced. He seeks associated orders in respect of the standard security in favour of the second defenders, and the proprietorship and securities sections of the title sheet for title number GLA 112738.

[12] The defender advances the following legal arguments.

(a) That his real right in the property is exempt from challenge by virtue of section 1 of the Prescription and Limitation (Scotland) Act 1973 ("the 1973 Act");

(b) that he purchased the property and registered the disposition in good faith and in accordance with the terms of an agreement between him and the pursuer;

(c) that the pursuer is barred by mora, taciturnity and acquiescence from insisting in the action;

(d) that the pursuer is personally barred by his words and actions from pursuing the action.

He moves that I sustain his first plea in law in part, and sustain his second, third, and fifth and/or sixth pleas in law.

[13] In response to the defender's reference to section 1 of the 1973 Act, the pursuer pleads that the defender cannot rely on that provision, because possession has been founded on a forged deed.

Joint minute of agreement

[14] There is a further joint minute of agreement in respect of certain of the documentary productions. So far as matters of fact are concerned, the following are the subject of agreement.

[15] The pursuer bought the property in October 1998 for £79,950. He borrowed £75,000 from Abbey National for the purchase. The loan was on an interest only basis with an endowment policy intended to pay off the mortgage at its term. The initial interest rate with Abbey National was 8.9% per year. The pursuer has never remortgaged the property.

[16] The first defender borrowed £58,000 from the second defender in respect of which a standard security over the property was granted. The amount paid to redeem the pursuer's mortgage was £80,806.05, consisting of a payment of £80,707.25 and a payment of £98.80 inclusive of a product-related charge of £3,923.88.

[17] The pursuer has never been registered landlord for the property, in particular in terms of Part 8 of the Antisocial Behaviour etc (Scotland) Act 2004. The pursuer did not pay any sums to ADM in respect of the transfer of title from the pursuer to the first defender.

[18] The numbering of productions in the joint minute is incorrect. What is referred to as 6/3 is in fact 6/4, a collection of documents recovered under specification of documents for the pursuer number 21 of process. Those documents (6/4) are internally numbered. They include the defender's mortgage application form.

Other matters not in dispute

[19] The defender avers that after the transaction settled a cheque from Standard Life in respect of the cancelled endowment policy was sent to the pursuer at the property, and the defender paid the cheque into the pursuer's Lloyds TSB account. The pursuer pleads that he believes those averments to be true.

Evidence

[20] The pursuer gave evidence on his own behalf, and led evidence from Ms Kathryn Thorndycraft, a forensic document examiner; Mrs Ayesha Ahsan Khan, his wife; Mr Donald Reid, solicitor; and Ian Donald, surveyor.

[21] The defender gave evidence, and led evidence from Mr Mohamed Iqbal.

The pursuer

[22] The pursuer was aged 59 at the time he gave evidence. He is a professor of surgery and lives and works in Lahore, Pakistan. He spent some studying in Glasgow in 1986 and 1987. During that time he met an individual called Mr Sharif. The pursuer returned to

Pakistan but returned to work in the United Kingdom in about 1993 or 1994. He worked for a period in Blackburn Royal Infirmary. It was during that time that he met the defender. He said that he was introduced to the defender by Mr Sharif. The pursuer's wife used to visit the defender's wife, and the pursuer had stayed in the defender's home.

[23] The pursuer purchased a property in Glasgow, namely the subjects. Although the pursuer was working in Blackburn at the time, he chose to buy a property in Glasgow because of friendships in Glasgow. His friends in Glasgow encouraged him, and told him that they would look after the property if he went back to Pakistan. He had no relatives in Glasgow, but he did have very good friends. He became interested in the subjects because Mr Sharif and the defender had identified it as a potential property for him to purchase. He obtained a loan from Abbey National plc. His address at the time was 6 Infirmary Close, Blackburn. He borrowed £75,000, with a monthly payment of £641.

[24] A copy of the standard security is produced (7/2). There are a number of curious features about it. In the first place, it refers to Dixon Parade, rather than Dixon Avenue, although the title number is the one that refers to the subjects. The testing clause narrates that the standard security was subscribed by the pursuer at Glasgow on 30 September 1998 in the presence of Mohammed Iqbal, of a particular specified address in Glasgow.

[25] In evidence the pursuer acknowledged that the signature which bore to be his was his. He said that the defender witnessed the signature. He said he did not know Mohammed Iqbal, although he had met him. The pursuer said that he had signed the standard security on 18 or 19 September 1998. He had required to sign it before leaving for Pakistan to visit his father, who was at that time about to undergo surgery. The pursuer referred to 7/8 of process, which he said was the death certificate relating to his late father, and which gives 23 September 1998 as the date of death.

[26] The pursuer had never lived in the subjects. The defender had come to Blackburn and offered to rent the subjects in his wife's name. The pursuer was very obliged and very happy that the defender was going to take care of the subjects.

[27] The pursuer was vague as to the arrangements for leasing the property. He referred to a "verbal" between himself and the defender. He said that he was concerned that the mortgage payment should be met. Any excess was to be kept by the defender to meet "maintenance or taxes or whatever". The money was coming from social security payments made to the defender's wife. The pursuer's evidence was that the defender was paying the rent into the pursuer's bank account. The defender knew how much the mortgage and insurance were.

[28] The pursuer was asked about 7/5, which contained statements from his Lloyds Bank account, held at a branch in Blackburn. The address for him on these statements was an address in Manchester. He said that the address was that of relatives of his wife. He had stayed there for a month. He had given the address to the bank when he was returning to Pakistan because he was concerned that if he gave the address in Pakistan the statements would not be sent there.

[29] The pursuer was shown various entries showing deposits made at the Crosshill branch in Glasgow: £575 on 29 May 2001; £580 on 27 June 2001; and £558 on 30 August 2001. During the same period there were regular payments out of the account each month: £443.32 to Abbey National; £99.09 to Standard Life; and £29.72 to Abbey Nat Ins Serv. The pursuer said that the deposits were payments of rent for the subjects.

[30] The pursuer was then referred to an entry showing a deposit of £4,500 on 18 March 2002. The reference next to it is "Chorley OSC". The pursuer said that he got a phone call from the defender saying that there was money that had come in from the Social Security

department and had been deposited in the pursuer's account. The defender said to the pursuer that it was for maintenance of the subjects, and had been paid to the pursuer's account because the pursuer was the owner. The defender asked the pursuer to send him a cheque for £4,500, which the pursuer did. The defender did not know why the payment had a reference "Chorley OSC". The pursuer did not know how the department of Social Security had obtained his bank details, and speculated that the defender had perhaps passed them on. The next entry is for a cheque payment out of the account of £4,500. The pursuer said that this was a payment to the defender.

[31] The next entry which featured in evidence was a deposit at Crosshill, Glasgow on 6 March 2003, of £2,972.16. The pursuer said he did not know what the payment was for. He had not received the bank statements for the account. He learned about the payment only in 2013.

[32] From 2003 there was virtually no activity on the account. The monthly payments out already referred to ceased, as did the deposits at Crosshill, Glasgow. The balance remained steady at sums just above and below £4,000 until July 2013.

[33] The pursuer was asked when, before 2013, he had last looked at the account. He answered that between 1999 and 2013 there were about three years when he "had knowledge". He did not explain by what means he had received the statements during that period. After that he was in verbal contact with the defender to ask him if everything was "OK with the house". He moved back to Pakistan in 1999. He had visited the UK in 2015 because of a job offer in London, and had stayed for a few weeks for a clinical attachment with a view to orientation in the new job, but had not in fact moved to the UK. He said he had been in regular contact with the defender after moving to Pakistan. At one

point this would be every two to three months, but the periods between contact increased so that contact was once or twice a year.

[34] Counsel asked the pursuer what the system was for making sure that rent was coming in. He said that the defender was living in the house, and that that circumstance was confirmed to him by others. If the rent had not been coming in the bank could have repossessed the property. The defender was a friend, and the pursuer believed that everything was going fine. It had never crossed his mind that ownership of the property could be transferred without his knowledge.

[35] In 2013 the pursuer's wife was talking to her cousin, who was in London. The pursuer's wife had been wondering what the current value of the property in Glasgow was, and the cousin had advised her to look it up on the Zoopla website. A search of Zoopla had shown that the property was transferred in 2002. The pursuer's wife had informed him of this, and he had thought that there must be some mistake.

[36] The pursuer then contacted the defender by phone in May 2013. He told the defender that he was planning to come to the United Kingdom and that he would be applying for a visa on the basis that he needed to come to the United Kingdom to maintain his property. The defender had paused, and then responded that the subjects had been transferred to him. The pursuer queried how this had been effected without his consent, and the defender replied that the pursuer's consent had not been required.

[37] The defender had said that the pursuer should know that he (the defender) had deposited "endowment money" in the pursuer's account in 2002. The pursuer said that that was the first he had known of the money that had been lying in his account for the previous ten years. I took that to be a reference to the deposit made in the pursuer's bank account of £2,972.16.

[38] Parties agreed that copies of documents should be treated as principals. A copy of the disposition by which ownership to the subjects was transferred from the pursuer to the defender is produced as 6/2. The pursuer stated that the signatures which bore to be those of him and his wife were not their signatures.

[39] The pursuer said he had never met a solicitor called Mr Murphy. He was shown correspondence from ADM to the defender narrating that the pursuer and defender were brothers in law. He gave evidence that they were not brothers in law. He was shown a copy driving licence in his name (7/7/1). Productions 7/7 and 8/4 were agreed to be the files of the former firm of ADM in respect of the sale of the property. The pursuer was asked whether he could explain how it had come to be on the file. He said that he had provided it for identification purposes when he bought the property, and that at that time it had come into the possession of the defender. He had not provided the solicitor with the information about the existing heritable security which appears at 7/7/2 and 7/7/3.

[40] A letter dated 14 October 2002 (7/7/4) bore to be addressed to a Mr S Khan residing at 78 Dixon Avenue. It narrated that the addressee had spoken by phone with Mr Murphy. It contains the following passages:

> "As our Mr Murphy explained to you under Law Society Rules we require to advise you that notwithstanding the fact that you are buying the house from your brother in law that should a conflict of interest exist at any time that either yourself or your brother in law will require to obtain independent legal advice."

[41] The letter, although addressed to a Mr Khan, refers to purchase, rather than sale of the property. Within the same production, at 7/7/7 is a document headed "Mandate", this time referring to the sale of the property by the pursuer to the defender, and referring to the two as brothers in law. It contains the following passage:

> "The deposit for the purchase has been paid direct to me by Mr Saddique and I instruct Mr Murphy not to obtain from him in respect of payment of any deposit [*sic*]."

[42] It bears a signature. The pursuer gave evidence that the signature was not his. He said he had never spoken to Mr Murphy, and that he and the defender were not brothers in law. The first he had known of the transaction was in 2013.

[43] In cross examination the pursuer acknowledged that he had once visited a car auction in Glasgow with the defender, in about 1994. He had bought a car which he took back to Blackburn. He was asked specifically about having been introduced to a Mohammed Iqbal, a car trader, on that occasion. He said he might have met that individual, but did not remember the name. He acknowledged that Mr Iqbal, in company with the defender, might have visited him in Blackburn to pay respects following the death of the pursuer's father. He did not accept that Mr Iqbal had given him a trader's discount at the car auction.

[44] There had been no fixed sum for rent of the property; he was interested only in obtaining enough to cover the mortgage payment. He had checked his bank account only for one or two years following 1999. He had then not checked it for 11 years. He had not checked whether the mortgage was being paid.

[45] He accepted that, because his mortgage lender did not have his up-to-date address, he would not be made aware of repossession proceedings. He maintained, however, that he would have known through the defender, and Mr Sharif. Although he gave evidence that he had been losing contact with the defender, he knew that the defender was living in the property and that Mr Sharif would have told him of any difficulties. He acknowledged that he himself had money worries, but maintained that he was happy that the rent was never increased, because he was not paying commission to a letting agent, and he was comforted that a friend was staying in the property.

[46] When asked about his apparent non-involvement with the upkeep of the property, the pursuer volunteered an account that the defender had come to Pakistan at some point between 2002 and 2013. The pursuer went to meet the defender where the defender's father lived (the pursuer did not specify the location). He had food with the defender and the defender's mother and father. This was in about 2008 or 2009. The defender told the pursuer that the property had "gone up" (ie, increased in value). The pursuer said that he felt "secure" about the matter.

[47] He said he had not known that there might be requirements associated with letting property, such as registration as a landlord, gas or electrical equipment safety checks, or the installation and maintenance of fire alarms. He said that he had been unaware of such matters until asked about them by counsel in the course of the proof, and said that if anything of that sort had arisen it would have been for the defender to inform him about it.

[48] The pursuer accepted that he had not been present in Scotland on 30 September 1999 when, according to the testing clause in the standard security, he had signed that document in Glasgow. He had in fact been in Pakistan, having left Scotland on 19 September when he learned his father was to undergo surgery in Pakistan. He had intended to return within about 10 days, but had had to stay in Pakistan for longer than he had planned, because his father had died during the surgery.

[49] In cross examination the pursuer offered further explanations as to how his driving licence might have come to be in the possession of the defender. He said that either the defender had "got hold of it", or that he, the pursuer, had given it to the defender when he bought the property. He said he might have given it to the defender as his "signature specimen" in 1998. He did not explain why the defender would have needed the licence, or

a specimen of the pursuer's signature in 1998. He had no recollection of giving it to the defender.

[50] It was suggested to the pursuer that 7/7/4 might have been sent to a Mr Hassan, who was involved with the transfer of the property. He said that he had no knowledge of that, and that he had never met Mr Hassan. As at the date of the proof, however, he was aware that Mr Hassan had arranged a mortgage for the defender. The pursuer's wife's cousin, Mohammed Arshad Khan, had contacted Mr Hassan. It was suggested to the pursuer that Mr Hassan had modified his evidence in the light of contact from a person or persons associated with the pursuer. The pursuer said that that was very unlikely.

[51] Mr Turner asked the pursuer whether he had thought that in the event of success in the action, he would receive the house mortgage free. The suggestion was that he had at least at one stage thought he would receive a significant windfall in the event of success. He had refused to enter into the joint minute regarding repayment of the mortgage until November 2016, three years after the action was raised. The pursuer's initial response was a little surprising. It was to deny that he had even at the date of proof concluded any agreement to that effect. He did, however, accept that he had given instructions for such an agreement. He said no-one during the first three years the action was in court had asked him to enter into such an agreement.

[52] The pursuer denied that he had reached an agreement with the defender to sell the property to the defender for £80,000. It was suggested to him that he had done so because of financial issues involving his brother, a suggestion which he denied. He said that he had nothing he required to pay to his brother. His brother was a member of the National Assembly in Pakistan and was doing well financially.

Kathryn Thorndycraft

[53] Ms Thorndycraft is a forensic document examiner who has worked independently in that capacity for 28 years.

[54] Her evidence was unchallenged. The defender objected to her evidence insofar as she was asked about the signature of the witness on 7/2 of process.

[55] Having compared the signatures on the disposition with sample signatures available to her, she had reached the view that there was a high probability that the signatures which bore to be those of the pursuer and his wife on the disposition 6/2 were forged. Her view was the same in relation to the signature which purported to be that of the pursuer on 7/7/7.

[56] She was asked to compare the signatures on 7/7/7 and 6/2 with a signature on 6/4 of process at page 6, which bore to be a mortgage application made by the defender and dated 22 September 2002. She did not see a similarity between the signatures on 7/7/7 and 6/2, and the signature on 6/4 at page 6.

[57] She had been shown 7/2 of process. The signature of the witness began, in relation to the first name, with a letter "M" and in relation to the second name, with an "S". The signature did not appear to include the name "Iqbal". She was asked to consider the signature on the standard security. She was asked to compare it with the signature on page 6 of 6/4/2. She said that she saw a similarity between the two, in that the arches were high in both. There was a probability of common authorship.

Ayesha Ahsan Khan

[58] Mrs Khan is the wife of the pursuer. She and he were married in 1989. She described herself as a housewife, but also a passionate writer, who has written for magazines. Her journalism has included political writing and analysis of current affairs.

She is the author of three works of fiction in the English language, and said she had also written poetry.

[59] She gave evidence that she knew Asya Saddique, the defender's wife, because their respective husbands were friends. She had met her in Glasgow on numerous occasions. The pursuer and she had stayed with the Saddiques in their apartment in Keir Street, Glasgow. They had stayed with the Saddiques on a second occasion, in the property in Dixon Avenue. She knew that the pursuer had been going to purchase the property. He had talked to her a couple of times about it. She knew that he wanted to buy it, and had told him that if he thought it was worth doing so, he should "go for it".

[60] She was asked at what stage the transaction had been when the pursuer's father died. She did not give a particularly precise answer, but did say that in the three months before she and the pursuer left for Pakistan, "the finalising was going on" between the pursuer and the defender. She said the defender visited the pursuer in Blackburn twice during that period, and that the pursuer had to travel to Glasgow on "weekdays in August" before his father died. Because the pursuer was a doctor, a professional person, he did not have time to make all the arrangements himself, and asked his friends to assist. The defender was to assist him. The property was to be purchased with a mortgage, and rented out so that the rent money would pay the mortgage over a period of about 20 years.

[61] The pursuer and Mrs Khan moved back to Pakistan permanently in 1999. The pursuer did not return until 2015, and Mrs Khan's attendance for the proof was the first time she had been in the UK since 1999. Her husband had never discussed selling the property to the defender. She would have expected him to do so had he had that in mind. Neither she nor her husband had ever become curious about the position regarding the property in the years between 1999 and 2013. When they moved back to Pakistan, there was initially very

regular contact by phone with the defender. After 2002 the contact decreased, so that the parties might call once a year, or on a special occasion such as Eid.

[62] In 2013 a friend of Mrs Khan's had been visiting from England. Mrs Khan asked her about the property situation in the UK. Her friend told her that property values had increased. Mrs Khan asked her friend how she would get the current values for properties in Glasgow, and her friend recommended that she use Zoopla, a website. Mrs Khan had not heard of it before. Her friend gave her a link to the website, and when Mrs Khan got home, she carried out a search, and found that the property had been transferred in October 2002. She contacted the pursuer, who was incredulous. The pursuer called her cousin, Arshad, who, she said, dealt with housing. As I understood her evidence, she sought to have Arshad convince the pursuer that the information on Zoopla was correct.

[63] Mrs Khan gave evidence that the signature on the disposition 6/3 was not hers. Her husband was with her in Pakistan. She had never been contacted by Mr Murphy.

[64] In cross examination, Mrs Khan gave evidence that the pursuer telephoned the defender in 2013. The phone was on loudspeaker, and she listened. The pursuer told the defender that he was coming to Glasgow, that he was going to apply for a visa and state that he was visiting in order to deal with the maintenance of his property. The defender hesitated, then said that the house had been transferred to him. The pursuer asked the defender how the transfer had been achieved, without the pursuer being present in the UK. The defender responded that he had had to maintain the property and that under Scots law it was possible to transfer the property without the pursuer's being present in Glasgow.

[65] Mrs Khan spoke to the defender herself, later. The defender had been trying to call the pursuer, who was not picking up the calls, so had called Mrs Khan's mobile. She had

told the defender that she and the pursuer would be coming to Scotland, because she had wanted him to know that their coming was a "confirmed thing".

[66] When asked about whether the pursuer had, over the years, done any checks in relation to the property, she responded that it was very difficult from Pakistan, and that the defender was a friend, and trusted by the pursuer. She was aware that bank statements were being sent to friends of hers in Manchester. She described Pakistan 20 years ago as a third world country where she would not have been confident of receiving mail from the United Kingdom. The friend who received the statements had brought them to Pakistan on a couple of occasions, but had not visited for a long time after 2002. He had visited in 2009 or 2010. She and the pursuer had asked him if he had the bank statements and he said he did not have any. She thought that probably he had not wanted to bring the bank statements. She and the pursuer had never followed the matter up.

[67] Mrs Khan's cousin, Mohammed Arshad Khan, had contacted Mr Hassan on two or three occasions in 2013.

Donald Reid

[68] Counsel for the defender objected to the whole of this witness's evidence, on the basis that his report (6/6) disclosed that he had addressed questions of professional negligence on the part of Mr Murphy which were irrelevant for the purposes of the present action. Counsel for the pursuer indicated that the intention was to lead evidence that the way in which the transaction was managed was highly unusual and consistent with a fraud having taken place. I considered that the evidence of the witness was admissible and repelled the objection. It was relevant, where fraud was alleged, to lead evidence to demonstrate that the practice of the solicitor involved in the transaction was irregular and

either consistent with fraud having been perpetrated, or of such a nature as to provide an environment in which fraud might more easily be perpetrated. I allowed the evidence to be led, without prejudice to any objection that might be taken to attempts to lead evidence assessing the solicitor's conduct against the *Hunter* v *Hanley* standard of care.

[69] Mr Reid is a solicitor, and a director of Mitchells Roberton LLP. He became a partner in 1978. His practice is and has been for many years principally in the area of commercial and domestic property transactions.

[70] Mr Reid adopted as an accurate chronology an account of particular features he had noted in the conveyancing files set out in tabular form at pages 2-4 of his report. He adopted his report as his evidence. He drew attention particularly to the following irregularities disclosed by his examination of the files of ADM.

(1) ADM accepted that the parties to the transaction were brothers-in-law without checking. Even if they had been so related, Mr Murphy would not, professionally, have been entitled to act for both of them. ADM were in breach of a provision of the Solicitors (Scotland) Practice Rules 1986.

(2) ADM sent letters to the pursuer at 78 Dixon Avenue, when the information on the file, in the form of the driving licence, indicated that his address was in Blackburn, Lancashire. They did nothing to clarify this apparent discrepancy, and did not meet in person with the pursuer.

(3) There was no exchange of missives. Where a single firm was acting there would generally be an exchange of missives between seller and purchaser, and at least one of the parties would be invited to sign as an individual.

(4) ADM had obtained a form 12 report, which includes a personal search in the Register of Inhibitions and Adjudications against persons who might be parties

to the transaction. It had disclosed the sequestration of a Mohammed Sadiq, one of whose stated addresses was similar to that of the defender. While there was no suggestion that the defender was not capable of granting a deed, further steps should have been taken to clarify the position.

(5) ADM agreed to the expenses of both parties being met by the pursuer. While this was a valid arrangement, the default position would be that each party paid his own expenses. It would be usual to advise a party such as the pursuer that it was not a normal feature that he be expected to pay all of the expenses, and that he should seek not to be made subject to this obligation.

(6) There was an early redemption charge of £3,923 in respect of the mortgage. It would be normal to advise the client of the effect of repaying the mortgage and invite him to consider deferring selling until the period when early redemption charges would be incurred had expired, but no such advice had been given.

(7) ADM did not account for £80.58 recovered from the Inland Revenue in respect of Stamp Duty. The duty was to account to the defender, but it appeared that the funds had been paid to Mr Hassan.

(8) At least three documents in the files referred to the deposit (meaning the difference between the loan the defender was receiving from Halifax, and the purchase price of the property) passing directly between the parties to the transaction, when it did not.

(9) ADM allowed the second defenders to proceed on the basis that the purchase price was £60,000, rather than £80,000, and told Halifax that the deposit – which Halifax must have understood to be £2,000, rather than £22,000 – was being paid directly between the parties.

[71] In cross examination Mr Reid gave evidence that where letters referred to contact such as a telephone call, he would expect the file to contain file notes recording what had passed during that contact, but he had not seen anything of that sort. He was referred to 7/6/40, a settlement statement addressed to Mr Hassan. It appeared that the funds required to settle the transaction, some £22,707.25, were being requested of Mr Hassan. The statement appeared to combine the statements which would normally go separately to a purchaser and to a seller in respect of a property transaction. There was no indication on the letter as to who Mr Hassan was acting for.

[72] Mr Reid was asked about 6/31, which appeared to be the same disposition as 6/2, except that the testing clause was in different terms. The testing clause on 6/31 purported to insert a certification that the transaction did not attract Stamp Duty. It would have been correct that it did not attract Stamp Duty, as the property was in an area designated as disadvantaged, and the transaction was therefore exempt. The better course would have been to have the document re-signed. He accepted that if a purchaser was happy, despite a solicitor's advice, to proceed without missives, there would be no reason for a seller to insist on them.

Ian Donald

[73] The purpose of leading evidence from this witness, as I understood it, was to demonstrate that the value of the property as at November 2002 was considerably in excess of the consideration that passed. If that were established, it would tend to undermine the defender's contention that the pursuer had contracted with him to sell the property for £80,000.

[74] Mr Donald is a surveyor. He is a self-employed consultant under contract to Allied Surveyors. His report, dated 28 September 2017, was 6/8 of process. He had been asked to provide an opinion as to the market value of the property as at November 2002. His opinion was that its market value at that date was £130,000.

[75] Using Propvals, which he described as a respected database, regularly used by valuers, he had recovered information about the sales of properties in the area at the relevant time. He reproduced the results of his research in appendix 4 to his report. He had also produced appendix 5, showing the sequential sales of the property.

[76] He had sought to identify subjects which were of similar character and size to the property and in the same location or an equivalent location. As to the condition of the comparator subjects and the property, he had made the assumption that all were in the same, average, condition. He had considered transactions relative to numbers 63, 64, 62, 88 and 80 Dixon Avenue. He was aware also that a colleague had valued number 70 Dixon Avenue at £130,000 in January 2003.

[77] I summarise the comparator subjects and values considered by Mr Donald as follows.

Property number	Price	Date
64	£79,000	March 1998
62	£86,500	August 1998
88	£55,000	October 1998

Of these, only number 88 was a property of the same type as the property. The other two were red sandstone houses. Mr Donald was cautious about using number 88 as a comparator because of the difference between its price and that of the other properties, including the property itself.

Property number	Price	Date
64	£160,000 (valuation) £171,250 (sale)	2003 August 2003
54	£90,000 (valuation) £110,510 (sale)	May 2002 December 2002
68	£131,000	October 2002
70	£130,000 (valuation) £162,000 (sale)	January 2003 September 2003

In 2003 number 64 had five bedrooms, arranged over three floors. Number 54 had four bedrooms and two public rooms, arranged over three floors. Mr Donald thought that it suffered from its position adjoining the gable end of a tenement. It was in poor condition, and Mr Donald and assumed that number 78 was in average condition. Number 68 had four bedrooms, and was of red sandstone type. Number 70 was also of red sandstone type, and had been extended. He attached most weight to the transaction at 68 Dixon Avenue.

[78] In cross examination, Mr Donald acknowledged that 62 and 64 Dixon Avenue are red sandstone buildings which form part of a terrace. He accepted that the property is of a slightly different character from those subjects. Numbers 80 and 88 are similar to the property.

[79] He had carried out two separate exercises, one in relation to October 1998, and a second in relation to November 2002. Only one of the comparator properties came within the scope of both those exercises, namely number 64, which was of a different character to the property. Many of the red sandstone houses, such as number 64, had been subject to alteration, changing them to five bedroom properties over three floors. In relation to number 64, Mr Donald had direct information from a colleague in Shawlands (an area of

Glasgow very near to the properties) that it was indeed a five bedroom property over three floors. In 1998 it had sold for £79,000. In 2002 it had sold for £171,000. Mr Donald did not know what the extent of the accommodation had been in 1998, but given the extent of the increase in value, he had assumed that it had been converted to provide more accommodation in the period between the two transactions.

[80] The four comparators referred to in part 7 of Mr Donald's report (numbers 54, 64, 68 and 70) were all part of the red sandstone terrace area, and none was a property of the same character as the property. He accepted that in relation to properties like the red sandstone houses, there was a value associated with their potential for expansion, even where they had not in fact been converted to provide more accommodation. He said that while he had not expressly accounted for the value associated with the potential for expansion, it was a factor that would ordinarily inform his judgment on value, without any express or particularly conscious process of reasoning.

[81] He was challenged as to whether it was legitimate to treat number 64 as a comparator both in 1998 and in 2002 when it appeared that it had undergone significant modification in the intervening years. He said that valuers daily made judgments about matters of that sort, and would have to compare a three bedroomed property with a five bedroomed property. They would not use any particular formula in doing so; it was essentially a matter of judgment to assess what effect enlargement of a property would have on its value.

[82] He had considered properties not in Dixon Avenue, but in the wider Crosshill area. He had not included those in his report because he did not consider they were good comparators. He said that it was accepted professional practice to look for three good

comparisons. In assessing which were the three best, there was an exercise of judgment. Comparators were rarely ideal or identical to the property being valued.

[83] Mr Turner asked Mr Donald about another potential comparator property, namely 80 Dixon Avenue, which was of a type similar to the property. It had sold for £69,500 in May 1999. Looking at the indices showing increases in house prices, there had been a rising market between October 1998 and November 1999.

[84] Mr Donald was then referred to the indices at appendix 2 of his report. These were indices that showed the quarterly growth or diminution in property prices in Scotland. Application of the seasonally adjusted index for house prices in Scotland would have produced a valuation of £106,909.

[85] If Mr Donald's valuation of the property were correct, it would have increased in value by 62.6% between the fourth quarter of 1998 and the fourth quarter of 2002. That increase was high by reference to what the application of the multiplier in the index would indicate. While Mr Donald accepted that it was in theory possible that this disparity could result from a poor choice of comparator properties by him, he did not accept that this was the case. He was cautious about using the indices to produce valuations. That was rarely done on a day to day basis.

[86] Mr Donald explained that Crosshill was an area in which property values had suffered following the financial crisis of 2008. Although the market more generally had improved since about 2010, Crosshill had remained at a disadvantage. It had suffered by association with the neighbouring area of Govanhill. It was in that context that the sale of 70 Dixon Avenue (which had sold for £162,000 in 2003) for £140,000 in 2012 should be viewed.

[87] Mr Turner referred to the information from Propvals about numbers 71 and 61`, while not suggesting that they were comparators. Number 71 sold for £50,000 in October 1998 and for the same price in January 2000. Number 61 sold for £115,000 in April 1999 and £99,370 in April 2001. He suggested to Mr Donald that this indicated that prices were not changing greatly in Crosshill in that period. Mr Donald maintained that prices were ticking gently upwards. Mr Turner also suggested that the better comparators were numbers 80 and 88, particularly number 80. If Mr Donald were incorrect in failing to use number 80 as a comparator, that would impact on his conclusion as to the value of the property in November 2002. Mr Donald responded by drawing an analogy between the assessment of value of a property and the process of making soup. He said that into the "cauldron" would go location, condition, aspect, facilities and other factors, with the valuation being analogous to the taste of a soup. I did not find the analogy particularly helpful in trying to understand the weight he had given to particular factors, or why he had chosen to give weight to some rather than others. I did, however, understand him to be saying that valuation involved some degree of intuitive judgment based on experience.

The defender

[88] The defender was aged 62 years at the time of proof. He is a retired taxi driver. For a period up until about 1995, although he was not certain of the dates, he lived in Keir Street, Glasgow. He moved abroad to live in Kashmir for a period of about two years, then returned to Glasgow in 1998. He and his wife separated because she did not wish to stay in Kashmir, and returned to the United Kingdom, with the defender following her about a year later.

[89] Before moving into the property with which this action is concerned, he lived with his brother for a period at an address in Langside Road, Glasgow. When the defender was living with his brother, the defender and his wife were living apart. The couple have a son who has a disability, and the flatted accommodation in which the defender's wife and son were living was not suitable for the son's needs. The defender was frequently in touch with his wife and saw her daily. The defender was looking for accommodation with a ground floor, and heard from Mr Sharif that the pursuer had a house. Mr Sharif was a person known to the defender, whom he had met at the mosque. The defender had met the pursuer once or twice at Mr Sharif's. When asked to describe his relationship with the pursuer, he said that he would not say he had a relationship with him, rather that the pursuer was a doctor, and that the defender respected him. He would not have called him a friend.

[90] The defender's wife and son moved into the property one and a half or two years before the defender joined them there.

[91] The defender was asked about the standard security 7/2 of process. He denied having signed as a witness. He said that neither signature on the document was his. He said his written English was not very good, that he had not gone to school, and that he did not join up letters when he wrote.

[92] He said that he had made arrangements on his wife's behalf to rent the property. He said "On the paper it was her", under reference to her position as the tenant. He thought the rent was around £600 per month. It had not changed at any time. He was referred to the sequence of bank statements in 7/5 of process showing payments made at Crosshill, and he agreed that those payments, in respect of which the sums varied, were in respect of payment of rent. He said that the council had a set rate, and that "we" had to make the rest up. The council paid Housing Benefit, he thought at a rate of about £500 per month. He had not

been working at the time. After the defender moved in with his wife, she remained the tenant. He said that in the beginning there had been a written lease. The pursuer had provided a written lease to give to the council. Every year or two years the council would review the matter and ask to see the lease. It was not clear from the defender's evidence whether he was saying that more than one lease or rental agreement had been provided to his wife.

[93] The defender said he first met the pursuer in Mr Sharif's house, in 1994 or 1995. After that they had met two or three times, perhaps in the street or at an occasion such as a wedding. After the defender's wife rented the property, the defender remained in contact with the pursuer. He would contact him by phone if he and his wife needed anything. He said that the property was in very poor condition, and that he would ask the pursuer for things, but never get them. He was not in contact with the pursuer on a regular basis, but once or twice a year.

[94] He had bought the property in 2002. The pursuer had telephoned him and said that he was thinking about selling the property. The defender had responded that his son was very settled in the house, and asked the pursuer to allow him to think about the matter, as he, the defender, might buy the property. Before that the defender had thought about buying a property – he was in a good position, working, saving and looking for a house. The pursuer had contacted him out of the blue. He had not given a reason for wanting to sell the property. The defender's evidence was that there had been a lot of problems with the property. It was very run down. The defender and his wife had asked for improvements to be made but none had. There was no double glazing and no central heating. A lot of work was required, but despite requests, the pursuer "never bothered".

[95] The defender decided to buy the property, following discussion with his wife and children. The pursuer telephoned again, and the defender told him of the decision to purchase. They agreed on a price of £80,000. The pursuer called back with further details saying that his solicitor was ADM, and that the solicitor was willing to work for both of them because "we" were the pursuer's tenant. The defender had never met Mr Murphy before and had not heard of him. The defender was looking for a broker to help him obtain a mortgage. Mr Sharif told him that Shafiq Ul Hassan could assist, that he was very good, and that Mr Sharif had used his services to obtain a mortgage. The defender contacted Mr Hassan by phone in the first instance, then went to his home. Mr Hassan worked from home. The defender gave Mr Hassan the details of the solicitor, and his own details for the purposes of seeking to obtain lending. He said that they completed forms that day. He was referred to 6/4 of process and said those must be the forms he meant. He confirmed that the signature on the fifth page of the mortgage application was his. It was dated 22 September 2002. Subsequently Mr Hassan told the defender that the mortgage had been approved. The defender never met Mr Murphy, but Mr Hassan told the defender that he knew Mr Murphy and had had dealings with him. Not only had the defender never met Mr Murphy, but he had never spoken to him or written to him. Mr Murphy had never written to the defender. As far as he knew, the pursuer and Mr Hassan were dealing with Mr Murphy. He had not spoken to the pursuer after the communication when the pursuer had told him that Mr Murphy would act for both parties. Mr Hassan asked him to sign papers for Mr Murphy after the transaction had been completed. He could not remember what papers they were, but he did recall going to sign some papers.

[96] Counsel referred to 7/6, and in particular to 7/6/39, which is dated 1 November 2002, but this did not assist the defender in remembering the date he might have signed

documentation. When asked if he had read the papers he had signed, he said that there were a few papers, and that his reading was not very good. He said he did not recognise any of 7/6/44-7/6/48.

[97] He was shown a mandate dated 11 November 2002 (7/6/8). He accepted that he had signed it. He accepted that it contained a statement that was not true, namely that he and the pursuer were brothers-in-law, but said that he never read it. He did not know why he had been asked to sign it, but knew it was to do with the sale of the house.

[98] The defender's evidence was that he had never seen the disposition 6/2 of process before commencement of the present action. It was not a document that he had signed at Mr Hassan's office. He did not recognise any of the signatures on it.

[99] Nobody else had been present when he signed documents in Mr Hassan's office. At the time his time had been very limited for attending appointments. He had small children, and one of the children had a disability. Although he was not on good terms with his wife, the defender took the children to school and the older child to a day care centre. He had not signed the document at 7/7/7 that bore to be a mandate signed by the pursuer. He had not been shown or asked about the document at Mr Hassan's house. He did not know who had paid the legal fees for the transaction. He had never discussed legal fees with the pursuer.

[100] Asked about the statement for settlement at 7/6/40 he accepted that the sum shown as to be received from Halifax was for the amount of his borrowing from Halifax. He said he did not know what the reference to Abbey National meant, or whether the pursuer had any borrowing in relation to the property. As to the sum shown as the net sum due, he said that that was the money he paid. That sum included the legal fees. He said he was very happy to have bought a house for his family, and that he did not ask many questions, but signed the papers. He had paid the funds to Mr Hassan, by cheque. He had borrowed

money from his extended family in Glasgow. Knowing of his circumstances, and in particular those relative to his eldest son, they had helped him. He had also had some savings, and sold some jewellery. He had paid back his relatives. He still had the mortgage, and the sum outstanding was £49,000.

[101] He did not recall receiving any letters from Mr Murphy. The only letters he received were from Halifax, informing him of the offer of lending. Mr Hassan received most of the letters. I understood the defender's evidence to be that Mr Hassan received letters by hand from Mr Murphy.

[102] The defender gave evidence that he had taken out insurance in relation to the property, and that he had been paying the mortgage for 15 years. As he put it, he had not gone anywhere. He first found out there was a problem in 2013. He had accepted service of the summons in the present action. He recalled that at on the day he received the summons there had been workmen in his house instructed by the local authority to make alterations to provide a shower and toilet for his oldest son. The only preceding communication from the pursuer had been a few weeks before he received the summons. The pursuer had telephoned to say that one of his friends had an offer of a job in Manchester, and that he was thinking of coming over. Either that same day, or the following day, Mrs Khan had telephoned. She said that the pursuer was coming to Scotland and that she and Mr Khan had not been able to get in touch with Mr Sharif. She wanted to see whether Mr Sharif's wife wanted anything brought from Pakistan, and in particular to check dress sizes. The defender went to Mr Sharif, and Mr Sharif telephoned the pursuer. The defender did not know what was said during that call, as he moved to another room. After receiving the summons the defender tried to phone the pursuer to find out what it was about, but he never got through to him. He telephoned Mrs Khan, who picked up. She said she did not

know anything about the summons. She said she was going to tell her husband when he came home from work, and that the defender could call him. In the years between 2002 and 2013 he and the pursuer had never been in contact.

[103] The defender was disparaging of Mrs Khan's description of Pakistan as a third world country. He said that Mrs Khan had a servant and chauffeurs in Pakistan. He and the pursuer were not in the same class. Class was very important in Pakistan. It was untrue that the pursuer had eaten with the defender and his mother and father in Pakistan as he had said he did. The defender's father had died in August 1996 in the Victoria Infirmary in Glasgow, and his mother had died in the same hospital in 2003. The pursuer had never visited the defender in Pakistan. The pursuer was from Faisalabad, which was about 400 miles from where the defender's family lived. He said, "It is the same thing Kashmiri and Pakistani, as we are here [ie Scots] with the English." The pursuer and his wife had never stayed with the defender and his family in Keir Street. The pursuer was a friend of Mr Sharif, not of the defender. There were a number of people in Glasgow, who, as I understood the defender, all had in common a family background in Faisalabad, and the defender saw himself as somewhat apart from them, and as being of lower social standing than they were. The pursuer had never come to stay with the defender at Dixon Avenue. The defender queried why a landlord would come to stay with his tenant.

[104] The defender's position was that he had bought the house in good faith. When he bought it, it was in very poor condition. The pursuer had not wanted to repair it and had not had the money to repair it. It needed gutting. There was a coal bunker and an outside toilet. Plaster was falling off and the roof was leaking. In relation to repairs, the pursuer had said, "I'll do it, I'll do it", but had been a "slum landlord". The defender had gradually put the house in good condition. He said that Mr Sharif could testify to its condition.

[105] In cross examination, the defender denied any contact with Mr Murphy. The terms of 7/6/1, a letter from ADM which bore to record that there had been a discussion between Mr Murphy and the defender, but he maintained that he did not have a discussion with Mr Murphy. He did not know where Mr Murphy got the impression that the pursuer and the defender were brothers in law. He had not received a terms of business letter from ADM. He had not received 7/6/3, which was the letter setting out what sums were required to settle the transaction. Mr Hassan had asked him to come in and bring the money. He had not received any advice about a conflict of interest. The date of entry mentioned on the documents was meaningless to him, as he was already living in the property. He had not advised ADM that he wished to proceed without missives as 7/6/9 seemed to suggest.

[106] He had sold about £5,000 worth of jewellery, something of which he was not proud. His evidence was that Asian families tended to have substantial quantities of jewellery. He said, "Have you seen our weddings?" Two of his daughters were married, and they had contributed jewellery to the fund. He was not the individual identified in the personal search as having been sequestrated. He pointed to the difference in spelling/transliteration of the surname, which he referred to as one associated with Arabic usage, and which resulted in a different pronunciation from that of the name "Saddique".

[107] As to whether the pursuer and his wife had signed the disposition, the defender's position was, variously, that he had no opinion on the matter, and that they had indeed signed it. He maintained that there had been an agreement between the pursuer and himself regarding the purchase and sale of the house. He repeated that it was untrue that the pursuer had met him and his parents in Pakistan in 2009.

[108] He was referred to 7/5 of process and accepted that he or members of his family had made the deposits at the Crosshill branch of the bank as payment of rent. He had no

knowledge of the entry relating to a deposit of £4,500. He accepted that he and his family knew the pursuer had an account with Lloyds Bank. To the suggestion that it may have derived from a social security payment of some sort, he said, "They don't give you that kind of money, are you kidding me? … I am showing you respect but you don't get £4,500 from social security."

[109] He said that if he had committed fraud, he would not have remained in Scotland to be detected, but would "be in Barbados somewhere". He then declined, to answer a question suggesting that he had almost succeeded in perpetrating fraud by means of the disposition of the property to him. He had been advised that he was not obliged to answer.

[110] In re-examination he indicated that he did not know that the pursuer's bank statements were being sent to an address in Manchester, and that the pursuer was not receiving them. He would have had no way of knowing that the pursuer would not immediately discover that the rental and mortgage payments were no longer being made.

Mohammed Iqbal

[111] The defender led evidence from Mohammed Iqbal. Mr Iqbal is self-employed. He owns a portfolio of properties. He renovates and rents out properties. His home address now and between 1989 and 2013 is the address given in the testing clause of 7/2 of process as the address of the witness, named there as Mohamed Iqbal. His evidence was that he had never seen the document before. He had not signed it. I note that it was in any event a matter of agreement that he did not witness or sign it: Joint Minute paragraph 8. There were no other persons of the same name residing at that address at the time the document bore to have been subscribed.

[112] Mr Iqbal knew the defender as someone who came from the same area of Pakistan as he did himself. He did not know him in Pakistan, but had come to know him in Glasgow over a period of about 30 years.

[113] He had met the pursuer a few times, briefly. He thought that he and the defender had gone to Manchester to pay their respects to the pursuer following the death of the pursuer's father. He had perhaps met the pursuer a few times at auctions.

Evidence - discussion

[114] I start with Ms Thorndycraft's evidence. I accept her unchallenged evidence in relation to the proposition that the signatures bearing to be those of the pursuer and Mrs Khan were forged and were not their signatures.

[115] Ms Thorndycraft was asked about whether there was any common authorship between the signature on the defender's mortgage application and the signatures which purported to be those of the pursuer on 6/2 and 7/7/7. She did not detect any similarity. I accept her evidence on this point.

[116] The other matter about which she was asked was a comparison of the signatures of the witness on 7/2, and the signature on the defender's mortgage application. She said there was a probability of common authorship as between these two. I accept her evidence on this point also.

[117] I did not regard the pursuer as a credible and reliable witness on material matters. A number of matters caused me to form that view.

[118] The pursuer's account as to his not having consulted his bank statements after 2002 is on its face a very strange one. His account that he initially checked his bank statements, but that he did not receive, and did not check bank statements for the period after the mortgage

was redeemed and the rental payments ceased. On his account, and that of Mrs Khan, there is a close coincidence in timing between the transaction and the point when the pursuer stopped looking at his bank statements. The timing is simply too convenient to be credible.

[119] It is near to inconceivable that an educated person like the pursuer would have had no concern as to whether or not the mortgage and insurance payments associated with his property were being met, and taken no steps to check whether matters were in order. It is also close to inconceivable that he would have been content to take no active interest in maintaining the property if he had believed that it remained his own. His position was that he was happy to leave the matter in the hands of the defender, and that the defender would inform him if anything needed done. The property is an older property and I do not accept that any owner of such a property would not have been well aware of the inevitability of ongoing, potentially substantial, costs of maintaining it and the need to carry out maintenance in order to preserve its value and prevent it from deteriorating.

[120] Mr Sanders asked me to take into account difficulties in communication with Pakistan, and Mrs Khan's evidence about that. Mrs Khan referred to Pakistan during the relevant period as a third world country, when she was seeking to explain why the pursuer had not simply given his bank his address in Pakistan for correspondence. I heard no other evidence about the reliability or otherwise of postal communication with Pakistan in the late 1990s or early 2000s. Her explanation, particularly against the background of the alleged coincidence in timing between the transfer of title and the point when the pursuer had no access to his bank statements, struck me as calculated simply to support the pursuer's case. It is difficult to see why a postal service, even one not perfectly reliable, would be a worse option than relying on delivery of mail by an individual who did not, on Mrs Khan's account, visit Pakistan at all between 2002 and 2009.

[121] The explanation given by the pursuer as to how a copy of his driving licence came to be in the file for the sale of the property is also very strange. There is no obvious reason why it should have come into the possession of the defender at the time the pursuer purchased the property in 1998. It was not suggested to the defender in cross examination that he had provided the driving licence to ADM, or that he had retained it since 1998.

[122] I regard the proposition that the £4,500 was a social security or housing benefit payment of some sort as inherently unlikely. There is no indication on the bank statement that the payer of the sum was a department of government, or a local authority. No evidence was led (for example from an official of Lloyds Bank) to explain the significance of the information in the entries in the bank statements. There was no evidence that "Chorley OSC" was a description of a transaction that indicated payment from a public authority.

[123] I did not believe the pursuer's evidence that he had met the defender and the defender's parents in Pakistan. The pursuer volunteered the account of the visit, which included an account that the defender had spoken to him about maintenance of the property, and assured him that the property had increased in value. The answer was given in the course of cross-examination. There was no mention on record of this communication between the parties. It did not feature in Mrs Khan's evidence. I had the impression that the pursuer manufactured the account with a view to bolstering his evidence, with the answer emerging as it did when the pursuer was being challenged about not having taken any part in maintaining the property over a protracted period. I did believe the defender that his father was dead at the material time. He spoke with particular feeling about that particular matter in a manner that I thought was genuine.

[124] The standard security 7/2 of process raises questions about the credibility of both pursuer and defender. The pursuer did not sign it when and where it bears to have been

signed. It bears to have been witnessed by an individual who did not witness it. The signature which appears where the signature of a witness should appear bears similarities to that of the defender. The pursuer was involved in signing a deed which came to be presented in a manner which did not reflect the true circumstances of its execution. The deed records that the pursuer signed the deed on a date when he did not do so, and in the presence of an individual who was not there. The defender also was involved. I believed the pursuer when he said that the defender witnessed the deed. Ms Thorndycraft's evidence did not conflict with that. There is no explanation as to how or why Mr Iqbal's name came into the testing clause. He did not witness the deed. I am satisfied that the defender was untruthful when he said that he did not witness the deed.

[125] There is, as counsel pointed out, no particular reason why the testing clause of the standard security should have been completed in the way it was. It was not necessary to wait until the pursuer's title was completed for him to sign. The standard security could have been properly signed and witnessed when the pursuer in fact signed it (before leaving Scotland), with the testing clause reflecting that: Conveyancing and Feudal Reform (Scotland) Act 1970, section 12; Land Registration (Scotland) Act 1979.

[126] Mrs Khan was a very articulate witness. For the reasons I have already given, I did not believe her explanation as to why the pursuer had not looked at his bank statements between 2002 and 2013. I did not believe her evidence about how she discovered that the property had been sold, or about the telephone communications in 2013 with the defender.

[127] There were inconsistencies between the evidence of the pursuer and Mrs Khan as to the way in which the alleged fraud had come to light. The pursuer said that Mrs Khan had been speaking to a male cousin in London, whereas Mrs Khan said that she had been speaking to a female friend who was visiting Pakistan from England when the question of

the value of the property came to be discussed. She had thereafter called a male cousin. I took those inconsistencies into account in forming the view that I did not believe the evidence of either of these witnesses about how the transaction came to their attention.

[128] It is clear from the evidence of Mr Reid that the conveyancing transaction was conducted by the solicitor concerned in a highly irregular manner. The way in which it was conducted was such as to lend itself to the commission of fraud and indeed of other offences, such as money laundering. The proper professional practices to which he referred in his evidence regarding the checking of identities of clients are intended to mitigate the risk of such offences being committed under the guise of regular property transactions. It does not follow, however, that the transaction was one in which the pursuer was defrauded or deceived. The lax professional practices were such also as to permit transactions which were intended to proceed in an irregular manner to take place. They are not inconsistent with an intention on the part of the pursuer to have a transaction proceed in an irregular manner.

[129] I have no more reason to believe that the defender received correspondence on the file that was addressed to him than to believe that the correspondence that bore to be addressed to the pursuer was ever sent. I am not prepared to infer that the defender had the discussions with Mr Murphy that are referred to in the correspondence. Both the conveyancing files have the appearance of having been constructed to resemble in some superficial respects what records of a property transaction should look like. Given the extent of the irregular practices identified by Mr Reid, I have no confidence that I can place reliance on any part of their content as reflecting accurately any contact that might have taken place with either of the parties, or as being a record that such contact actually took place at all. Mr Reid referred in his evidence to the absence of any file notes vouching the

discussions referred to in letters. He would normally expect such discussions to be recorded in a note. The absence of such notes in both the purchase and sale files seems to me to be significant.

[130] The only exception is that I accept that the defender did sign the mandate 7/6/8. He accepted that himself. The mandate contains inaccuracies. It refers to the parties as brothers in law. It refers to a deposit being paid directly from the defender to the pursuer, when in fact all funds seem to have passed through ADM. It is dated 11 November 2002, after the date of the disposition. Given its date, it has the appearance of having been created to provide a superficial veneer of regularity to ADM's file, albeit one that does not survive even minimal scrutiny. I was not convinced by the defender's protestations as to the extent of the limitations that he claimed as to his ability to read and write English. I do, however, consider it plausible that he had little interest in what the document said, and that he signed it at Mr Hassan's request simply as part of documentation presented to him as part of the paperwork associated with the transaction.

[131] I am not satisfied that the value of the property was £130,000 in 2002. I am unable to say on the evidence what its value was, but I am not satisfied, on the basis of the evidence of Mr Donald, that it was as high as £130,000. Cross-examination exposed a number of what I regard as weaknesses in his methodology. The properties which had increased most substantially in price during the relevant period were properties which he conceded had probably been subject to substantial modification, with the introduction of additional accommodation. Those properties, even before modification, were not precise comparators, being of a different character from the property. All of the properties regarded as comparators as at 2003 had four or five bedrooms, where the property itself had three bedrooms. None was of the same type as the property.

[132] Given the difference in property type and the significant difference in bedroom accommodation, Mr Donald did not explain to my satisfaction why he settled upon the value that he did for the property. I note that the comparator which Mr Donald regarded as most significant was number 68, but even that property had four bedrooms and was a red sandstone property. He did not provide a satisfactory explanation as to why he had not had regard to number 80 as a comparator, given that it was of similar type to the property. While it is understandable that he should put aside the sale of number 88, as the sale price was considerably out of line with the other properties, it is less easy to understand from his evidence why he should have taken that view in relation to number 80. While I accept that valuation will involve judgment based on experience, a valuer must still be able to explain with rather more precision than did Mr Donald just why a property, like number 80, which appears to be an apt comparator, has been left out of account, and others preferred. I consider it more likely than not that the value of the property increased between 1998 and 2002. That is in line with the position shown by the indices referred to by Mr Donald. I am not satisfied that it was as high as £130,000. I cannot, however, say on the basis of the evidence before me, what the value was.

[133] I did not regard the defender as entirely credible and reliable. As I have already said, I did not believe him when he said that he had not signed the standard security 7/2 of process. I did believe his evidence about having reached an agreement with the pursuer to purchase the property. Given my view about the value of the property at the material time, it is likely that this transaction was for less than full market value. I do not know why the pursuer agreed to sell the property for £80,000. The price was such as to relieve him entirely of the debt secured by the standard security in favour of Abbey National. He was also freed from any future liability for the maintenance of the property. On one view, the price is a

feature of the evidence that tells against the defender – the amount he paid was the minimum necessary to discharge the liability to the Abbey National and allow the transaction to take place. There is no obvious benefit to the pursuer, other than being relieved of his indebtedness.

[134] On the other hand, the defender has, as he said, not gone anywhere. There is no evidence that he knew that the pursuer did not receive his bank accounts. His fraud, if fraud it were, was simply waiting to be discovered, and could have been discovered at any time. If he has committed fraud, he has risked £22,000 of his own money to do so, and has continued to invest in the property by paying down the mortgage, and by effecting improvements to the property. He has throughout stood to lose his investment in the property at whatever point the alleged fraud came to be discovered. If it were a fraud, it could have been discovered at any time that the pursuer considered his bank statements, statements relating to his mortgage, or statements relating to his endowment policy. These are factors which in my view support the credibility of the defender's account that his payment followed upon an agreement between the parties for the sale and purchase of the property. In the context of his repeated positive assertions that he had not committed fraud, I did not regard his decision not to answer a question which specifically referred to fraud as damaging his credibility. I had the impression that he simply declined to answer it because he had been told he did not have to, rather than because his answer to it would have been different from the evidence he had already given.

[135] I consider that the defender's evidence reflected his genuine perception that he was in a different social class from the pursuer. As with the evidence about the death of his father and mother, the defender spoke with particular feeling about the class difference between himself on the one hand and the pursuer and Mrs Khan on the other. The first

defender's evidence was that he and the pursuer were from different classes. The pursuer was an educated man, and a doctor. The defender described himself as a working man. He regarded the gulf in social status between him and the pursuer and Mrs Khan as a very wide one. I regarded this part of the first defender's evidence as genuine and convincing. I am satisfied that there was some relationship between the pursuer and the defender before the property was purchased in 1998. Not everything the defender represented about that relationship was true, given that I have found that he was untruthful about having witnessed the pursuer's signature on 7/2. That said, however, I did not believe the pursuer's account of a relatively close relationship with the defender and his wife.

[136] On the matter of whether there was an agreement between the pursuer and the defender, I accept the evidence of the defender, and reject the evidence of the pursuer where he denied that there was any such agreement. I reject the evidence of the pursuer and Mrs Khan about the way in which they said the alleged fraud came to light, and their accounts of telephone contact with the defender in 2013.

Evidence led subject to competency and relevancy

[137] I allowed evidence to be led, subject to competency and relevancy, in relation to a matter in respect of which the defender raised objections. At the close of proof Mr Turner renewed his objection to evidence about telephone contact between the pursuer and the defender. I am sustaining the objection. As Mr Turner pointed out, specification in relation to the dates, the identity of the person making the call, and the number from which the calls were made had been the subject of calls on record for some time. The nature and extent of contact between the parties was a material matter insofar as the pursuer was seeking to suggest that he had had ongoing reassurance from the defender that all was well with the

property over a period of many years. With greater specification, the defender might have been able to recover records showing whether or not calls had been made.

[138] Even had I admitted the evidence, I would not have regarded the evidence of the pursuer on this point as adding anything to his case. He actually spoke to little contact after 2013, as did Mrs Khan. I did not believe him, or Mrs Khan, about the telephone contacts that they said took place after 2002.

Issues for determination

[139] I am satisfied that the pursuer did not sign the disposition. On this point I accept his evidence, supported as it is by the evidence of Ms Thorndycraft.

[140] Submissions focused on what I should make of the evidence, rather than any dispute as to the law that I should apply. My view of the evidence is set out above, and I do not repeat here the competing submissions about it.

[141] I therefore turn to the defences advanced by the defender. He relies, first, on section 1 of the Prescription and Limitation (Scotland) Act 1973. That provides, so far as material:

> 1(1) If land has been possessed by any person, or by any person and his successors, for a continuous period of ten years openly, peaceably and without any judicial interruption and the possession was founded on, and followed–
> …
> (b) the registration of a deed which is sufficient in respect of its terms to constitute in favour of that person a real right in—
> (i) that land; or
> (ii) land of a description habile to include that land,
> then, as from the expiry of that period, the real right so far as relating to that land shall be exempt from challenge.
> (2) Subsection (1) above shall not apply where–
> ...
> (b) possession was founded on registration in the Land Register of Scotland proceeding on a forged deed and the person appearing from the Register to have the real right in question was aware of the forgery at the time of registration in his favour.

[142] I accept that the defender has been in possession of the property since November 2002; that there has been no judicial interruption other than the present action; and that the disposition is sufficient in respect of its terms to constitute a real right over the property. The defender cannot benefit from section 1(1)(b) if possession was founded on registration proceeding on a forged deed, and he was aware of the forgery at the time of registration in his favour: section 1(2)(b). The pursuer's written submission referred to section 2(1)(b). That provision relates to situations where there has been possession for a continuous period of twenty years. I understood from oral submissions, however, that the pursuer accepted the defender's analysis that section 1 is the provision relevant to the present dispute.

[143] Mr Turner submitted that the onus was on the pursuer to demonstrate that the defender was aware of the forgery at the time of registration in his favour. Mr Sanders accepted that this was correct. Whether the defender was aware of the forgery at the material time was a matter of inference.

[144] I am not satisfied that the evidence demonstrates that the defender was aware of the forgery at the time of registration in his favour. The pursuer asks me to infer from the circumstances surrounding the transaction that the defender knew that the signatures on the disposition were forged. On the basis of the evidence I do not know what, if anything, the defender knew or thought about how the disposition was going to be executed or had been executed. I am not prepared to infer that he knew that the means by which it was to be executed, or had been executed, was forgery. There is no evidence that he forged the signatures himself. I believed his evidence that he did not write the signatures himself. It is not at all clear to me whether the defender appreciated that the conveyancing transaction was being carried out in a manner which was in any way irregular.

[145] I am satisfied also that the defender has established his case that the pursuer is personally barred from pursuing the action. The classic formulation of the plea of personal bar is that contained in the speech of Lord Birkenhead LC in *Gatty* v *Maclaine* 1291 SC (HL) 1, at page 7:

> "The rule of estoppel or bar, as I have always understood it, is capable of extremely simple statement. Where A has by his words or conduct justified B in believing that a certain state of facts exists, and B has acted upon such a belief to his prejudice, A is not permitted to affirm against B that a different state of facts existed at the same time."

[146] I am satisfied on the balance of probabilities that the pursuer and the defender reached an agreement orally for the sale and purchase of the property for £80,000, and that the payment made by the defender followed in reliance upon that agreement. I accept the defender's evidence that it was the pursuer who suggested that the firm of ADM be used as solicitors. The pursuer knew that he personally had not signed any document transferring title to the property. He did not challenge the transaction until 2013. The words and conduct of the pursuer in agreeing to sell the property to the defender caused the defender to pay money to purchase the property, and also to believe that the pursuer intended title to pass to the defender in exchange for payment. The defender believed that the transaction had been effective in transferring title to him. The defender has continued to act to his prejudice in reliance on those words and conduct, in paying interest on his mortgage, and by carrying out improvements to the property.

[147] The pursuer is therefore personally barred from seeking reduction of the disposition.

[148] The defender's fifth plea in law is one of mora, taciturnity and acquiescence. The plea could not succeed in my view unless the pursuer were aware of the transfer of the property. It is that transfer to which he is said to have acquiesced. I have already found that he agreed to sell the property to the defender, and that he knew that he had not

subscribed a disposition in relation to the sale. I do not accept his evidence that he only became aware of the transfer of the property in 2013. He did not speak out about the matter until 2013.

[149] Mr Turner submitted, and Mr Sanders did not dispute, that the law as to the circumstances in which the plea may be sustained is correctly expressed in the six propositions identified by Lord Tyre at first instance and endorsed by an Extra Division in *Kenman Holdings Ltd v Comhairle Nan Eilean Siar* 2017 SC 339 at paragraph 39:

> (i) In order for the plea to succeed, all three elements must be present.
>
> (ii) Whether delay on the part of the applicant is sufficient to found the mora element will depend upon the whole circumstances of the particular case, but is likely to be considerably shorter in cases of judicial review than the delay required to found the plea in cases concerning private rights.
>
> (iii) Taciturnity connotes a failure to speak out in assertion of one's right or claim.
>
> (iv) Acquiescence is not to be determined subjectively by looking into the mind of the applicant but is to be inferred objectively from the other two elements, ie delay and silence on the applicant's part.
>
> (v) Prejudice to, or reliance by, the person whose actions are challenged is not a necessary element of the plea, nor should prejudice be seen as an alternative requirement to acquiescence. Prejudice or reliance may however form part of the circumstances from which acquiescence may be inferred.
>
> (vi) The concept of detriment to good administration may have a part to play where administrative action has been taken in the belief that the applicant has acquiesced in the actings in question.

[150] The plea is made out in this case. The delay is considerable, amounting to nearly 11 years. Acquiescence falls to be inferred from the pursuer's silence for such a protracted period. I would be prepared to draw that inference absent any reliance by or prejudice to the defender. My conclusions regarding reliance and prejudice are set out above. Given my conclusion in relation to the first defender's other pleas in this case, and in particular that of personal bar, it is perhaps not strictly necessary for me to dispose of this plea. It is, however, supported by the evidence and I should therefore sustain it.

Disposal

[151] I sustain the first defender's first plea in law in relation to the evidence regarding telephone calls between the pursuer and the first defender in the years between 2002 and 2013 for lack of specification on record.

[152] I sustain the second, third, fifth and sixth pleas in law for the first defender, repel the whole of the pursuer's pleas in law, and assoilzie the defenders from the conclusions of the summons.