FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2018] CSIH 44
CA45/17

Lord President
Lord Malcolm
Lord Glennie

OPINION OF THE COURT

delivered by LORD CARLOWAY, the LORD PRESIDENT

in the Reclaiming Motion by

MUHAMMAD ASAD IFTIKHAR

Pursuer and Reclaimer

against

CIP PROPERTY (AIPT) LTD

Defenders and Respondents

Pursuer and Reclaimer: McIlvride QC; Balfour & Manson LLP (for Austin Lafferty, East Kilbride)
Defenders and Respondents: G Walker QC; Dentons UK MEA LLP

3 July 2018

Introduction

[1] This is a reclaiming motion against an interlocutor of the commercial judge assoilzing the defenders from the conclusions of the summons. These sought: (1) a declarator that the defenders were bound by a contract for the sale of subjects at 35 Argyle Street, Glasgow and that the defenders' purported rescission was of no effect; and (2) an order for implement by delivering a disposition of the subjects in exchange for the price. The essence of the dispute concerns the information, which the pursuer was required to, and

that which he did, produce in relation to his identity and the source of his funds. The pursuer contended that the commercial judge erred in holding, as the defenders had maintained, that the defenders were entitled to resile from the contract and that, even if they had not been entitled to do so, to proceed with the contract would have been illegal because of the operation of the Money Laundering Regulations 2007.

Facts

[2] According to the affidavit of the defenders' solicitor, the defenders are a subsidiary of "Aviva" whom his firm represented. Information gleaned from a detailed statement from the defenders' expert (Julian Korek; incorporated into the unchallenged evidence of Antony Christie, a senior director of Aviva Investors Global Services Ltd (AIGSL)) suggests that the defenders are a subsidiary of Citibank Europe plc, part of the global Citigroup Inc, who are the trustees of the Aviva Investors Property Trust (a unit trust scheme) established by Citibank Europe and Aviva Investors UK Fund Services Ltd, part of Aviva plc. Aviva Investors UK Fund Services Ltd were the managers of the scheme, although portfolio management has been delegated to AIGSL. The defenders act as the nominees of the Trust in holding title to the Trust's property portfolio.

[3] The defenders own commercial property at 35 Argyle Street. It was auctioned in London on 8 December 2016. The pursuer was the successful bidder at £500,000. The subjects were sold according to, amongst other things, articles of roup. These provided:

> "2.6.3 ... The purchaser ... shall ... pay a deposit representing 10% of the purchase price ... if the purchaser fails to pay such a deposit the vendor may treat such ... failure as a repudiation of the contract ... The purchaser shall be obliged to provide to the vendor's solicitor the KYC information at (*sic*) that on or before 15 December 2016. Further, the vendor shall be entitled at their sole discretion to deem that the deposit has not been paid until such time as the vendor's solicitor receives the KYC information ...

> 2.6.6 Settlement shall be subject to the purchaser procuring that the purchaser ... supply to the vendor ... the KYC information (with the applicable information and/or documentation specified in the initial due diligence form aftermentioned) to the vendor's satisfaction no later than 15 December 2016 ... ".

The KYC (know your customer) information was earlier defined (clause 1.9) as:

> "Such information as the vendor ... require[s] in relation to the identity of the purchaser and the source of funds utilised in respect of payment of the balance of the price and/or the deposit including, but not limited to, the verification certificate and initial due diligence form aftermentioned".

[4] Clause 2.39 provided that the purchaser was to deliver to the vendor a completed verification certificate and an initial due diligence form, each of which was set out in drafts annexed to the articles. The verification certificate was a document which was to be completed by the buyer's solicitor. The solicitor was required to certify that, in accordance with the UK Money Laundering Regulations 2007, they have verified the identity of the buyer. Notes attached to the certificate stated that the sellers were required, in terms of the Regulations, to obtain satisfactory evidence to verify the buyer's identity. The certificate was said to be an assurance that the solicitors have complied with the Regulations "with respect to" the buyer. The initial due diligence form contained a tick box form which, in relation to a "private individual", required "certified copy of passport ... and country of domicile".

[5] The deposit of £50,000 was paid by Robinco (Scot) Ltd; the balance being due at settlement on 13 January 2017.

[6] On 12 December 2016, the defenders' solicitors emailed the pursuer's solicitors requesting the following anti-money laundering documentation:

> "1. Certified true copy passport for Muhammad Asad Iftikhar ...
>
> 2. Certified copy utility bill for Muhammad Asad Iftikhar ...
>
> 3. Completed initial due diligence form – form attached.

4. Completed verification certificate – certificate attached".

On 15 December, the pursuer's solicitors replied by email and attaching:

> "Certified ID
> Certified proof of address
> Completed due diligence form ...
> Completed certificate."

The email stated that signed copies were in the post. The documents attached and enclosed were a United Kingdom passport and a driving licence, both of which were in the pursuer's name and the latter specified his address. Each was certified by his solicitor as a "true copy of original document". The address on the driving licence corresponded to that in a copy utility bill in the name of Mohammad Iftikhar and Mrs Shaista Chafoor, dated 6 May 2016. The verification certificate was signed by the pursuer's solicitors and confirmed that the solicitors had verified the identity of the pursuer. The initial due diligence form confirmed that the pursuer was a private individual.

[7] On 19 December 2016, the defenders' solicitors advised the pursuer's solicitors that the defenders wished to proceed with a sale to the pursuer, rather than a nominee, which had been belatedly proposed by the pursuer. They also stated that, for the defenders to complete their anti-money laundering checks, they requested that the pursuer's solicitors:

> "... provide a brief explanation as to [the pursuer's] source of wealth (how has he built up his funds to make the purchase), source of income etc. all of which could be supported by bank statements/annual accounts (if source of wealth is reflected in company accounts?) – personal accounts if not?"

The pursuer's solicitors replied, rather oddly, that the pursuer might be obtaining finance, so they were not sure if this would be possible, but they would check.

[8] On 22 December 2016, the defenders' solicitors wrote to the pursuer's solicitors giving notice that:

> "Due to your failure to fulfil your obligations in terms of condition 2.6.3 of the ... articles of roup, our clients have now exercised their right to resile from the contract and will not be proceeding with the sale of the property".

In a further email, they added:

> "Per the articles of roup your client was to provide source of funds information (as stated within the definition of KYC information) on or prior to 15 December 2016. This has not been provided.
>
> Furthermore, the articles of roup confirm that our clients can treat the deposit as unpaid until such time as [they have] received the required KYC information. On this basis the deposit has not been paid, and our clients are fully entitled to rescind on that basis."

[9] Although this was not known to the pursuer, the defenders had meantime been carrying out various checks on the pursuer's name and had come up with certain "adverse media reports" relating to individuals with the same or similar names. Anthony Besford-Land, who was a senior financial crime analyst with Aviva, had carried out the "due diligence measures" specified in the 2007 Regulations, which he considered to be mandatory in relation to the sale. These included establishing the identity of the buyer and the purpose of the transaction, discovering the source of funds, and, for "medium and high risk cases", how the wealth had been generated. A private individual was always at least a medium risk.

[10] Once contacted by the defenders' solicitors (on 14 December 2016) Mr Besford-Land had said to them that he would be able to advise only when the documents requested by the solicitors on 12 December (*supra*) were forthcoming. On receipt of the documents, he noted what he regarded as an inconsistency between the spelling of the name "Muhammed" on the passport and "Mohammed" on the utility bill, which was 7 months old. The prospect of a nominee company becoming involved caused him concern, because last minute changes of this nature were a common feature of money laundering transactions. Mr Besford-Land had

been concerned that it had been said (as it is in the summons) that the buyer was the current occupier of the subjects, yet the defenders' tenant was Wickton Ltd, whose sole director was not the pursuer. It was Mr Besford-Land who, on 19 December, decided that an explanation of the pursuer's source of wealth was required.

[11] The pursuer's solicitors' statement of uncertainty regarding the pursuer's source of wealth, in his email of 19 December 2016, had operated as a "red flag" to Mr Besford-Land as it suggested that the relevant information and vouching was not available. The adverse media reports about a person with the pursuer's name (or a variant thereof) "could not be negated". Mr Besford-Land had reported to the defenders that the transaction carried a "significant degree of risk". The defenders determined that they should not proceed with it.

[12] On 17 February 2017 the pursuer's solicitors wrote to the defenders' solicitors stating that the pursuer remained willing to perform, which failing he intended to take legal action. By letter dated 24 March 2017 the defenders' solicitors stated that the defenders were willing to provide the pursuer with a further opportunity to furnish the "KYC information to [their] satisfaction" within seven days. This included: (1) an explanation of why, if the pursuer was to be the purchaser, the deposit had been paid by Robinco; (2) an account of the relationship between the pursuer and Robinco's former and current director; (3) clarification of Wickton's involvement; and (4) evidence of where the funds, which were required to meet the balance of the price, were to come from.

[13] On 31 March 2017 the pursuer's solicitors explained, in a manner not readily understandable, that Robinco was "our client's trading company". He was to share the profits from Wickton with the then other director of Robinco, who remained its sole shareholder. The pursuer had "an interest in both the property and Wickton". A bridging loan through Together Commercial Finance Ltd and a re-mortgage of the house owned by

the pursuer and his wife and a loan from his wife were to provide the balance, with any shortfall coming from Robinco. Some vouching from Together and the Nationwide was provided.

[14] By letter dated 7 April 2017, the defenders' solicitors stated (in bold) that "The contract is at an end" and, in any event, the pursuer had still failed to provide the information as the defenders remained (again in bold) "dissatisfied with the KYC information provided". A detailed response to the letter of 31 March was provided. This stated that the Together and Nationwide vouching was inadequate to support the existence of a source of funds; the loan from the pursuer's wife was not vouched; no adequate vouching of Robinco's finances was available; the suggestion that the pursuer was deriving funds from Wickton lacked transparency; and the media results had not been negated (ie that it had not been demonstrated that the pursuer was not a "person of interest"). The defenders were not prepared to continue with the negotiations.

Legislation

[15] In terms of the Proceeds of Crime Act 2002, a person commits an offence if: (1) he converts or transfers criminal property (s 327). Property is criminal property if it constitutes a person's benefit from criminal conduct, or represents such a benefit, and the alleged offender knows or suspects that it constitutes or represents such a benefit (*ibid* s 340(3)); (2) he enters into an arrangement which he knows or suspects facilitates (by whatever means) the use or control of criminal property by or on behalf of another person (s 328); (3) he acquires, uses or possesses criminal property (s 329).

[16] The Money Laundering Regulations 2007 (now repealed, but having continuing effect) apply to "relevant persons" who are defined as, *inter alios*, financial institutions,

including lenders, financial lessors, insurance companies and independent legal professionals, eg solicitors, acting in the course of their business (reg 3(1), (3), Sch 1 Annex 1). Relevant persons must "apply due diligence measures" when they "establish a business relationship", carry out an occasional transaction, suspect money laundering or doubt the veracity of documents or information provided for the purposes of identification or verification (reg 7). Customer due diligence measures include verifying the customer's identity on the basis of documents, data or reliable and independent information (reg 5). The word "customer" is not generally defined, but it is elsewhere said to mean a "third party" (reg 3(3)).

[17] Regulation 11 provides that if a relevant person is unable to apply customer due diligence measures in relation to "any customer" he must: (a) not carry out a transaction with the customer through a bank account; (b) not establish a business relationship or carry out an occasional transaction with the customer; and (c) terminate any existing business relationship with the customer. A relevant person is entitled to rely on an independent legal professional to apply any customer due diligence measures (reg 17(1) and (2)). A person who fails to comply with the regulations is guilty of an offence (reg 45).

The commercial judge's Opinion

[18] The commercial judge held, first, that it was not a matter of dispute that as at 15 December the pursuer had not supplied "certified true copies" of the passport or utility bill. The original completed due diligence form and verification certificate had also not been produced on time. These conclusions flowed from the fact that the documents had only been emailed (and presumably posted) on 15 December 2016. On that basis the pursuer was in breach of contract and the defenders had been entitled to resile. The utility bill was not in

the pursuer's name and on this basis also there was a breach of contract entitling the defenders to resile. That was sufficient to dispose of the "whole matter", but the commercial judge correctly went on to address a number of the other arguments which had been advanced.

[19] The commercial judge held that the articles of roup fell to be construed in light of the 2007 Regulations. It did not matter whether the regulations were applicable to the transaction as a matter of law. The parties' intention was that they should be. The word "require" in Article 1.9 (*supra*) did not mean, as the pursuer maintained, demanded by the defenders. Rather, it meant that the pursuer had to provide:

> "what the defender needs in order to satisfy itself that it can comply with its obligations in terms of the 2007 Regulations. The defender ... is given an absolute unfettered discretion with respect to this issue. If information to its satisfaction is not provided then in its sole discretion it can repudiate ... [I]t is for the pursuer to produce such information as to satisfy the defender from an [anti-money laundering] perspective."

The onus was on the pursuer to produce evidence of his identity and his source of funds. It was not for the defenders to list the specific items that it required.

[20] The defenders had been entitled not to be satisfied with the KYC information because it was not certified as required and the utility bill was not in the name of the buyer, as required. There was no need for the defenders to go through any form of ultimatum process. In any event, the defenders could not be obliged to transact with the pursuer when they had been unable to apply their due diligence measures. A term ought to be implied into the contract to that effect.

[21] The commercial judge held that the 2007 Regulations applied to the transaction. Since the defenders were "relevant persons" and the transaction was an "occasional" one

within Regulation 7(1)(b), progression of the transaction would have been illegal and therefore, for this reason also, the defenders were not obliged to proceed.

Submissions

Pursuer

[22] The pursuer contended that the commercial judge erred in holding that the transaction was subject to the 2007 Regulations. The defenders were not a relevant person and the pursuer was not a customer. AIGSL's internal procedures did not alter that. The pursuer could not be classified as a customer of the defenders by entering into an arm's length transaction to buy property. The purchaser of heritable property cannot reasonably be described as the customer of the seller. Even if the regulations did apply, the transaction could have been proceeded with without illegality, since the defenders were entitled to rely on the pursuer's solicitors having applied the requisite due diligence measures (reg 17). In any event, the defenders had done all that was required in terms of customer due diligence. The measure was identifying the customer on the basis of information from a reliable and independent source. The defenders had been provided with certified copies of the pursuer's passport and driving licence. The other measures were not applicable. The regulations did not impose an obligation to obtain evidence of the source of funds.

[23] The commercial judge erred in holding that the defenders had validly resiled from the contract. The proper construction of clause 1.9 was that the KYC information was that which the defenders had requested the pursuer to provide. It extended only to facts or data and not documentary evidence. By 15 December 2016 the pursuer had provided the defenders with all the information which had been requested by the defenders' solicitors, including the completed verification certificate and an initial due diligence form. The clause

had to be construed in the context of the contract as a whole. If it had been intended that the pursuer had to provide by 15 December all information that the defenders were under a legal obligation to obtain, then a clause to that effect could have been framed. That is not how the reasonable person would have understood the expression. It was for the defenders to decide and to intimate what information they considered necessary. The commercial judge erroneously excluded documentation in electronic form. Unless the information had been required before 15 December, the defenders could not rely on any failure to provide it. No dissatisfaction with what had been provided by them had been expressed. Mr Besford-Land's concerns had no contractual significance.

[24] There was no request for the source of wealth information before 15 December, and no obligation to provide this, other than as contained in the due diligence form. Alternatively, having made the request, rescission would only have been lawful if time was made of the essence in relation to that request (*East Dunbartonshire Council* v *Bett Homes* [2012] CSIH 1; cf *Visionhire* v *Britel Fund Trs* 1991 SLT 883 and *Charisma Properties* v *Grayling* (1994) 1996 SC 556). This was an arm's length, single transaction, for the purchase of heritable property. There was nothing which would alert the purchaser to the defenders being a relevant person in terms of the regulations. The defenders' construction was inconsistent with the terms of the contract as a whole. The commercial judge erred in implying a term that the defenders could require further information. This was not necessary for business efficacy (*Marks & Spencer* v *BNP Paribas Securities Services Trust Co (Jersey)* [2016] AC 742).

Defenders

[25] The defenders maintained that the 2007 Regulations applied to the transaction. The

defenders were bound by the regulations. There was unchallenged evidence that the defenders were a financial institution; being part of AIGSL which had a £4.5 billion property portfolio including the Aviva Investors Property Trust, who conducted their business through nominees, namely the defenders. The group as a whole had to be considered; otherwise compliance could be avoided through the use of nominees, which would be absurd and hence a construction not to be preferred (*Inland Revenue* v *Luke* 1963 SC (HL) 65 at 80). The pursuer was a customer, in the ordinary and natural sense of that word. The defenders could not absolve themselves from compliance by relying on the pursuer's solicitors. The commercial judge accepted that the defenders' due diligence measures had failed to satisfy them that the transaction was not being used to launder the proceeds of crime. In these circumstances the defenders required to "cease transacting" (reg 11). To continue to do so would have been to commit a criminal offence. In these circumstances the defenders were entitled to resile (*Jamieson* v *Watt's Trs* 1950 SC 265 at 274 and 279). Even if the Regulations did not apply, the parties had intended that they should and the contract had to be interpreted on that basis. The verification certificate stated that the vendor was subject to the Regulations and the Joint Money Laundering Steering Group's guidance.

[26] The word "require" did not mean demand. The onus was on the pursuer to produce evidence of identity and source of funds. The defenders had an unfettered discretion on whether they were satisfied with what the pursuer chose to provide. It was not for the defenders to provide a list of requirements. This involved no hardship to a buyer, who would be best placed to know where the funds were to come from and how he could prove their legitimacy and his own identity. The pursuer was required to produce original certification and not copy documents with copied certification. The defenders had been entitled not to be satisfied about the information provided by the deadline of 15 December.

[27] The commercial judge had not said that a term should be implied. He had held that none was required. However, if the contract was construed differently, such a term would be needed (*Marks & Spencer* v *BNP Paribas etc* (*supra*)) to allow the seller to request further KYC information once it had received the first instalment. The defenders had still been dissatisfied at the date of the proof, which was when the matter fell to be tested.

Decision

Rescission

[28] The central issue is the proper interpretation of the articles of roup (auction) which, it is not disputed, governed the transaction. The court must ascertain the intention of the parties in agreeing to the articles by, put shortly, determining what a reasonable person, having the background knowledge of the parties, would have understood from the language used in the articles (*Midlothian Council* v *Bracewell Stirling Architects* [2018] CSIH 21, LP (Carloway) at para [19], following *Arnold* v *Britton* [2015] AC 1619, Lord Neuberger at para 15).

[29] The critical words are those in Article 2.6.3 which require the buyer to provide the "KYC information … on or before 15 December 2016"; that being "Such information as the vendor… require[s] in relation to the identity of the purchaser and the source of funds … including … the verification certificate and initial due diligence form". The reasonable man, with the parties' background knowledge, would interpret those words to mean what they say; that the buyer has to supply the seller with such information in relation to the stipulated matters as the seller requires. In order for this article to operate, the seller has to make the requirement by stipulating what he wants. Although the buyer may be able to make an educated guess about what the seller may require, he cannot know what that might be.

Contrary to the commercial judge's view, the buyer cannot be expected to do this in circumstances in which, for the purposes of the contract as distinct from those of the seller's or those of their agents, it is a matter for the seller to decide what type of information is likely to satisfy his requirements.

[30] Subject to overall considerations of reasonableness in the timing of any request, had the defenders required certain information prior to 15 December and had that information not been provided by then, it may have been open to the defenders to resile from the bargain. That may be so because it was expressly provided that a failure to pay the deposit amounted to a repudiation of contract and the defenders were entitled to deem that the deposit had not been paid until they had received the information. Failure to provide the information by a stipulated date allowed the sellers to treat this as a repudiation and thus may have allowed them to resile. However, it is not necessary to decide this point. Although rescission may have been an option open to the defenders, it was not one that they were bound to adopt. The bargain did not come to an end automatically because of any failure to produce certain documents or to do so by a particular date.

[31] Apart from the completed forms, what the defenders had requested were copies of the pursuer's passport and a utility bill; the latter presumably intended to constitute proof of domicile. The request would be expected to have involved the production of an original certification by the pursuer's solicitor of these copy documents, having been duly compared by him with the original passport and bill, together with completed due diligence form and verification certificate. Not unreasonably, the defenders' solicitors did not complain about the fact that all that they had received on 15 December were emailed versions; given that they had been assured by the pursuer's solicitors that the originals had been posted. After all, there was no reason not to rely on the pursuer's solicitors when they said that they were

emailing copies of the true (copy) documents and not forged materials. The originals were, presumably, received in early course. In the absence of objection being taken to what was provided at the time, the commercial judge's decision, which is essentially based on the provision of emailed copies, cannot be sustained.

[32] Similar considerations apply to the faults, which were later said to exist, in relation to the pursuer's name on the utility bill and its date. Whatever AIGSL may have thought, these apparently minor faults did not render the provision of the requested bill disconform in substance to what had been requested. The pursuer had produced additional proof of both his identity and his domicile (address) in the form of his driving licence. In these circumstances, the discrepancy in the pursuer's name on the utility bill was *de minimis* and the date limit was a matter internal to AIGSL and not one contained in the request made under the contract. In short, therefore, as at 15 December 2016 the pursuer had complied with the defenders' requirement for KYC information. The defenders had made no complaint about what had been provided to them. They had not elected to resile on this basis, even had they been entitled to do so.

[33] What did happen was that the defenders sought further information. Looking at the contract terms as a whole, this was a legitimate request which could be made within the confines of the existing articles. No additional term required to be implied. Since, on any view, in terms of clause 2.6.6 settlement on 13 January 2017 remained dependent upon the KYC information having been provided, it was open to the defenders to seek more information, having first studied, and not been satisfied with, that initially supplied. The pursuer's contention to the contrary, and his argument that the clause did not permit a request for the production of vouching materials, falls to be rejected. The defenders did request further information in the email of 19 December 2016, having confirmed that they

wished to proceed with the bargain (and hence not to resile on account of what had been provided to date), but needed "a brief explanation as to [the pursuer's] source of wealth … source of income etc".

[34] As a generality, given the money laundering requirements imposed upon solicitors by both statute and non-statutory guidance, a request of this nature cannot have been regarded as unexpected or unusual. This is especially so given the terms of clause 1.9, although it is confined to proof of the source of the purchase price and not the pursuer's wealth. A sellers' solicitors, conscience of their own position, might reasonably expect a buyer's solicitors to be aware already of not only the true identity of their client, as the pursuer's solicitors appeared to be, but also the method by which the client intended to fund the purchase of a £500,000 property. The pursuer's solicitors' response in their email of 19 December, that they might not be able to do this, may well have raised legitimate concerns. In that set of circumstances, the defenders would have been entitled to fix a reasonable deadline for the production of the relevant information. That deadline could have been relatively short. That, however, was not what was done. The defenders had sought "a brief explanation", but imposed no ultimatum in relation to when it had to be produced. They did not make the time for the production of the brief explanation (which was all that was asked for) an essential element in the bargain (see generally *East Dunbartonshire Council* v *Bett Homes* [2012] CSIH 1, LP (Gill) at para 27 *et seq*). In these circumstances, they were not entitled to rescind the bargain suddenly and without warning only three days later. Doing so without warning and on the stated basis, which concerned only the absence of the source of funds information, amounted to an unlawful repudiation of the contract. That would, in normal circumstances entitle the pursuers to decree in terms of the first conclusion; that is a declarator that the defenders are still bound by the contract

and the purported rescission of 22 December was of no effect. The additional feature which arises is the issue of whether a decree for implement on payment of the price is appropriate where performance by the defenders is said to be illegal.

Illegality

[35] It was not suggested that the agreement for the sale of the subjects under the articles of roup was itself illegal. When the defenders' pleadings are examined, there is no plea-in-law raising the issue of illegality. The matter appears, and then only by way of brief averment, as an *esto* position, on the hypothesis that the articles are construed in favour of the pursuer, as follows:

> "2.9 … such a construction would inevitably require the defender to proceed with a contract which they knew to be illegal, in that they had been unable to satisfy their obligations in terms of AML legislation. Any subsisting contract would therefore be unenforceable on the grounds of illegality."

Exactly what provision of the legislation was not specified. In due course, it was not suggested during argument that, were they to proceed with the bargain, the defenders would be in breach of the primary legislation (Proceeds of Crime Act 2002 (*supra*)), by, for example, suspecting that the purchase price was criminal property. Rather, the contention was limited to a potential breach of the Money Laundering Regulations 2007.

[36] Whether or not the Regulations were in some way incorporated into the bargain is not relevant to the question of illegality. That could only arise if they actually did apply to the performance of the bargain. Although the matter did not pose a difficulty for the commercial judge, it is by no means clear why the defenders, as a nominee company holding property for a unit trust, should be regarded as a financial institution carrying out one of the defined activities referred to in Regulation 3. It is even less clear how the pursuer

falls within the description of a “customer” of the defenders or the unit trust. They were certainly not customers of AIGSL.

[37] The Regulations are designed to apply to persons who are the customers of, *inter alios*, financial institutions, accountants, solicitors and other similar persons. They are designed to strike at persons investing, or otherwise dealing as (using a similar term) clients of these institutions. The pursuer is neither a customer nor a client of the nominee company (the defenders) or their principals (the unit trust). He is simply an arms-length purchaser of a property owned by them; that is all.

[38] In any event, even if the defenders were a relevant person and the pursuer was a customer, the parties had already entered into a bargain for the sale and purchase of the subjects, which was not itself said to be illegal. The defenders were content to proceed with that bargain, provided that they could be satisfied with the KYC information, including the pursuer’s explanation of his source of funds. It is only if the relevant person is unable to apply customer due diligence measures to the customer that he must “terminate any existing business relationship” (reg 11). The defenders were able to carry out “customer due diligence”, as defined in regulation 5, by verifying the pursuer’s identity on the basis of documents and information obtained from a reliable and independent source. They required to do no more than that. They had copies of the pursuer’s passport and driving licence duly certified by a solicitor as true copies. They were entitled to rely on the solicitor’s representation (reg 17). In these circumstances, proceeding with this transaction would not have amounted to a breach of the regulations and hence be deemed illegal. In short, the contract does not force the defenders to act unlawfully and the court is not requiring them to do so.

Conclusion

[39] The effect of this is that the pursuer is entitled to decree in terms of the first conclusion. It does not follow that he is entitled to decree ordering the defenders to implement the contract simply by delivering a disposition in exchange for the purchase price (the deposit having been returned). The decree could only be for implement: (1) on production of such KYC information as has been, and may be, requested by the defenders and in the event of the defenders' reasonable satisfaction in that regard; and (2) in exchange for payment of the price. Although it was a matter of concession at the proof that the defenders were entitled to be dissatisfied with the information produced as at the date of the purported rescission, and it was established that they remained dissatisfied by that produced after that date, the pursuer must, in light of the court's determination, be afforded a reasonable time in which to provide it now, in the current circumstances in which that rescission has been deemed unlawful. Whether the information is satisfactory may be a matter for the defenders' initial assessment, but it must also be subject to overall considerations of objective reasonableness. If the pursuer produces information which meets the request, and any subsequent questions, it will not be open to the defenders to resile, based on an unreasonable assessment of what has been provided.

[40] The court should accordingly: recall the interlocutors of the commercial judge dated 7 December 2017; repel the defenders' first plea-in-law and their third plea-in-law in so far as relating to the first conclusion; sustain the pursuer's second plea-in-law; and pronounce decree in terms of the first conclusion. The court will remit the cause to the commercial judge to proceed as accords; that will, in effect, be to await the outcome of the provision and consideration of the further KYC information. Whether decree ought hereafter to be granted

in terms of the second conclusion will be a matter for further consideration by the commercial judge after such procedure as is thought appropriate.