SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2021] SC GLA 49

GLW-CA27-20

JUDGMENT OF SHERIFF S REID

in the cause

VMS ENTERPRISES LTD

Pursuer

against

THE BREXIT PARTY LTD

Defender

Pursuer: Ms S Cargill; Mellicks, Glasgow
Defender: Mr R Watson; Clyde & Co Scotland LLP, Glasgow

GLASGOW 28 JULY 2021

The sheriff, having resumed consideration of the cause, MAKES the following findings-in-fact:

(1) The pursuer is VMS Enterprises Limited, a private limited company having its registered office at Flat 14/3, 34 Meadowside Quay Walk, Glasgow, G11 6EE.

(2) The pursuer supplies mobile advertising services in the form of vans and bikes carrying advertising boards and digital screens.

(3) The defender is The Brexit Party Limited, a private limited company, having its registered office at 83 Victoria Street, London, SW1H 0HW.

(4) The defender is registered with the Electoral Commission as a political party, originally under the name "The Brexit Party".

(5) In around May 2019, the defender began to select candidates to field for election in the forthcoming United Kingdom General Election, subsequently held on 12 December 2019.

(6) Most of the defender's selected candidates had no experience of political campaigning, still less of standing for Parliamentary election.

(7) In late August 2019, Howard Jones ("Mr Jones") was appointed by the defender to act as its "coordinator/district manager" for 12 electoral constituencies within central London; by late October 2019, his appointment was extended to cover a further six central London constituencies.

(8) Mr Jones was a volunteer for the defender, not an employee.

(9) Other volunteers were appointed by the defender to act in a similar capacity for other constituencies in London and elsewhere throughout the United Kingdom

(10) In this role, it was Mr Jones' duty to encourage, support and advise the defender's candidates within his designated constituencies; to help those candidates to engage with local volunteers there; to source and secure local campaign managers to assist with those candidates' election campaigns; to help coordinate activities with neighbouring candidates in order to increase campaign efficiency; and, if so requested, himself to act as campaign manager and/or electoral agent for any of the defender's candidates within those designated constituencies.

(11) In implement of his duties as coordinator/district manager, in the majority of cases Mr Jones acted as "campaign manager" for candidates within his designated constituencies; at the request of six candidates, he acted as their "electoral agent"; in a few other cases, he merely provided assistance and advice.

(12) In his role as campaign manager, Mr Jones managed the appointing candidates' election campaigns by assuming practical responsibility for the day-to-day organisation of

campaign activities, including the incurring of campaign expenditure on behalf of the candidates (*inter alia* by instructing, on behalf of those candidates, the supply of goods and services from third party suppliers, including the pursuer, to promote the candidates' election campaigns).

(13) Throughout his appointment, Mr Jones was authorised by the defender to communicate with third parties using an email address provided and maintained by the defender, namely central.london@thebrexitparty.org.uk, and this was the email address by which Mr Jones communicated in writing with the pursuer.

The Campaign Expenditure Instructions

(14) In or around September 2019, at a meeting arranged by the defender for its election candidates, the defender advised those candidates then in attendance that it would meet all of the candidates' campaign expenditure as allowed by the Electoral Commission.

(15) In around October 2019, at a subsequent meeting arranged by the defender for its election candidates, the defender changed its position regarding campaign expenditure, and instead advised those candidates then in attendance of the following instructions, namely, that each candidate was to be allocated a budget of only £5,000 towards that candidate's campaign expenditure, subject to the following conditions: (i) any request by a candidate to incur a campaign expense payable from that allocated budget required to be submitted in advance to the defender for approval (specifically, to a nominated individual within the defender's organisation called Deborah Stokes ("Ms Stokes") for assessment as to the "suitability" of the proposed expenditure); (ii) if the request was approved by Ms Stokes, she would provide a relevant purchase order ("PO") reference to the candidate to be allocated against that requested expenditure; (iii) the candidate would then require to

instruct the third party to issue an invoice for the requested expenditure, said invoice to be addressed to the defender and to bear the relevant PO reference; and (iv) the issued invoice was then to be sent to Ms Stokes for processing and payment.

(16) The defender's instructions to its candidates regarding the incurring of campaign expenditure on behalf of the defender were recorded in two documents: an information sheet circulated to candidates in October 2019, as subsequently amended and supplemented by an open letter from Paul Oakden, the defender's national campaign director, to the defender's candidates; the contents of those two documents were communicated to the defender's candidates on, among other dates, 4, 12 & 18 November 2019; true copies of those documents form items 6/1 & 6/2 of process, respectively; and the two documents are hereinafter referred to collectively as "the Campaign Expenditure Instructions".

(17) By October 2019, the defender's party treasurer (Mehrtash A'Zami) had granted written delegated authority to Ms Stokes to authorise the incurring of campaign expenditure on the defender's behalf in accordance with the Campaign Expenditure Instructions.

(18) By October 2019, Mr Jones was fully aware of the existence and terms of the Campaign Expenditure Instructions.

(19) The pursuer was unaware of the existence and terms of the Campaign Expenditure Instructions until after the date of the General Election, by which time the pursuer had already provided the advertising services purchased by the defender's candidates as referred to below.

The Orders

(20) Between 25 November 2019 and 12 December 2019, in total, twenty eight orders were placed with the pursuer by the defender's candidates (or by Mr Jones as campaign manager on behalf of candidates) for advertising services in various London constituencies.

(21) In each case, broadly the same procedure was followed: a request was received (by email or telephone) from the defender's candidate (or from Mr Jones as campaign manager therefor) for a quotation for the provision of the pursuer's advertising services; the pursuer duly provided a quotation applying the pursuer's uniform standard rates, varying only according to the number of shifts and hours of advertising requested by the candidate or Mr Jones; the candidate or Mr Jones, as the case may be, then accepted the quotation and provided the pursuer with a PO reference (which identified the constituency in which the instructed service was to be provided and to which the expenditure related); in each case, the candidate or Mr Jones, as the case may be, instructed the pursuer to prepare an invoice addressed to the defender at its registered office and bearing the designated PO reference, and to email that invoice to the candidate or Mr Jones for onward transmission to the defender (specifically, to Ms Stokes) to process payment; the invoice was duly issued by the pursuer; and the pursuer provided the instructed advertising services.

The Initial Invoices

(22) Between 25 November 2019 and 5 December 2019, the pursuer issued a total of ten invoices in respect of advertising services instructed by the defender's candidates or by Mr Jones as campaign manager therefor (hereinafter referred to as "the Initial Invoices").

(23) The Initial Invoices amounted, in total, to £22,490.

(24) The Initial Invoices were as follows: (i) invoice number 987 dated 25 November 2019 in the sum of £2,580 for advertising instructed by Scott Holman as candidate for the constituency of Kingston & Surbiton; (ii) invoice number 990 dated 28 November 2019 in the sum of £3,120 for advertising instructed by Martyn Nelson as candidate for the constituency of Feltham & Heston; (iii) invoice number 991 dated 2 December 2019 in the sum of £1,100 for advertising instructed by Harry Bopari as candidate for the constituency of Hayes; (iv) invoice number 992 dated 3 December 2019 in the sum of £1,140 for advertising instructed by Mr Jones as campaign manager for the candidate for South Hackney & Shoreditch; (v) invoice number 993 dated 3 December 2019 in the sum of £3,420 for advertising instructed by Mr Jones as campaign manager for the candidate for North Hackney & Stoke Newington; (vi) invoice number 994 dated 3 December 2019 in the sum of £3,420 for advertising instructed by Mr Jones as campaign manager for the candidate for Hampstead & Kilburn; (vii) invoice number 995 dated 3 December 2019 in the sum of £1,710 for advertising instructed by Mr Jones as campaign manager for the candidate for Westminster North; (viii) invoice number 996 dated 3 December 2019 in the sum of £1,140 for advertising instructed by Mr Jones as campaign manager for the candidate for Streatham; (ix) invoice number 997 dated 3 December 2019 in the sum of £2,280 for advertising instructed by Mr Jones as campaign manager for the candidate for South Islington; and (x) invoice number 1000 dated 2 December 2019 in the sum of £2,580 for advertising instructed by Mr Jones as campaign manager for the candidate for Central Croydon, the services in this latter invoice to be provided between 9 & 12 December 2019.

The seven Initial Payments

(25) Between 2 & 5 December 2019, without qualification or objection, the defender paid seven of the Initial Invoices in full, by seven separate bank transfer payments made direct from the defender's bank account to the pursuer's bank account (hereinafter referred to as "the Initial Payments").

(26) The Initial Payments amounted, in total, to £15,080.

(27) The Initial Payments related to the following seven invoices: (i) invoice number 987 dated 25 November 2019 in the sum of £2,580 (for which payment was received on 2 December 2019); (ii) invoice number 991 dated 2 December 2019 in the sum of £1,100 (for which payment was received on 5 December 2019); (iii) invoice number 992 dated 3 December 2019 in the sum of £1,140 (for which payment was received on 5 December 2019); (iv) invoice number 993 dated 3 December 2019 in the sum of £3,420 (for which payment was received on 5 December 2019); (v) invoice number 994 dated 3 December 2019 in the sum of £3,420 (for which payment was received on 3 December 2019); (vi) invoice number 996 dated 3 December 2019 in the sum of £1,140 (for which payment was received on 5 December 2019); and (vii) invoice number 997 dated 3 December 2019 in the sum of £2,280 (for which payment was received on 3 December 2019).

(28) In respect of each of the Initial Payments, unknown to the pursuer the candidates (and Mr Jones as campaign manager therefor) had complied with the Campaign Expenditure Instructions *inter alia* by obtaining Ms Stokes' prior approval to the incurring of the expenditure referred to in the related invoice.

The Email dated 5 December 2019

(29) On 5 December 2019 (at 1.36pm), the pursuer's director, Victor Shields, sent an email to the defender's Ms Stokes (copied to Mr Jones), a true copy of which forms item 5/51 of process ("the Email").

(30) In the Email, the pursuer's director acknowledged receipt of some payments from the defender, but advised Ms Stokes that several invoices (copies of which were attached to the Email) were then outstanding, and requested payment from the defender.

(31) The Email and attachments identified the following invoices of the pursuer as being then due and outstanding by the defender: (i) invoice number 990 dated 28 November 2019 in the sum of £3,120 (for advertising instructed by Martyn Nelson as candidate for the constituency of Feltham & Heston); (ii) invoice number 991 dated 2 December 2019 in the sum of £1,100 (for advertising instructed by Harry Bopari as candidate for the constituency of Hayes); (iii) invoice number 997 dated 3 December 2019 in the sum of £2,280 (for advertising instructed by Mr Jones as campaign manager for the candidate for South Islington); and (iv) invoice number 1000 dated 2 December 2019 in the sum of £2,280 (for advertising instructed by Mr Jones as campaign manager for the candidate for Croydon Central, said services to be provided between 9 & 12 December 2019.

(32) In fact, invoice number 997 dated 3 December 2019 had already been paid by the defender by bank transfer on 3 December 2019; invoice number 991 was paid by the defender during the course of the day on 5 December 2019; leaving only the pursuer's invoice number s 990 and 1000 then outstanding as at close of business on 5 December 2019.

(33) Unknown to the pursuer, in respect of the pursuer's invoice number 1000 dated 2 December 2019, Mr Jones had not complied with the Campaign Expenditure Instructions,

in that he had failed *inter alia* to obtain Ms Stokes' approval prior to incurring that expenditure to the pursuer.

(34) Upon receipt of the Email, the defender's Ms Stokes knew or ought to have known (i) that the pursuer believed that the defender's candidate for Central Croydon (and Mr Jones as campaign manager thereof) had actual authority to contract on behalf of the defender for the purchase of the advertising services referred to in the pursuer's invoice number 1000 dated 2 December 2019; (ii) that the pursuer was at risk of acting to its detriment by providing those advertising services several days later (between 9 and 12 December 2019) in the erroneous belief that the defender had authorised, and was committed to meet, the expenditure referred to in the said invoice; whereas, in fact, (iii) the defender's candidate (and Mr Jones as campaign manager therefor) had failed to comply with the Campaign Expenditure Instructions, had failed to obtain Ms Stokes' prior approval to the expenditure therein, and had acted without the actual authority of the defender.

(35) In the event, the defender did not reply to the Email.

(36) Specifically, the defender did not then notify the defender that, in respect of the pursuer's invoice number 1000 dated 2 December 2019, the defender's candidate (and Mr Jones as campaign manager) had failed to comply with the Campaign Expenditure Instructions, he had failed to obtain Ms Stokes' prior approval to the expenditure therein, and he had acted without the actual authority of the defender in incurring that expenditure.

The Subsequent Invoices

(37) Between 6 December 2019 and 12 December 2019, the pursuer issued a further eighteen invoices in respect of further advertising services instructed by the defender's

candidates and by Mr Jones as campaign manager therefor (hereinafter referred to as "the Subsequent Invoices").

(38) The Subsequent Invoices amounted, in total, to £18,870.

(39) The Subsequent Invoices were as follows:

(i) Invoice number 1002 dated 6 December 2019 in the sum of £3,600 for advertising instructed by Catherine Cui as the defender's candidate for Poplar, these services to be provided on 8, 10 & 11 December 2019;

(ii) Invoice number 1003 dated 6 December 2019 in the sum of £1,140 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for South Enfield;

(iii) Invoice number 1005 dated 6 December 2019 in the sum of £1,140 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for South Islington, these services to be provided on 11 & 12 December 2019;

(iv) Invoice number 1006 dated 9 December 2019 in the sum of £1,140 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for North Enfield, these services to be provided on 10 & 11 December 2019;

(v) Invoice number 1007 dated 6 December 2019 in the sum of £1,140 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for Vauxhall, these services to be provided on 10 & 11 December 2019;

(vi) Invoice number 1009 dated 10 December 2019 in the sum of £1,140 instructed by Neil Anderson, as the defender's candidate for North Enfield, these services to be provided on 11 December 2019;

(vii) Invoice number 1012 dated 6 December 2019 in the sum of £1,140 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for South Islington, these services to be provided on 12 December 2019 (between 7am and 3pm);

(viii) Invoice number 1013 dated 9 December 2019 in the sum of £1,140 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for Streatham, these services to be provided on 12 December 2019;

(ix) Invoice number 1014 dated 9 December 2019 in the sum of £1,140 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for Dulwich, these services to be provided on 12 December 2019 (between 7am and 3pm);

(x) Invoice number 1015 dated 9 December 2019 in the sum of £1,140 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for Vauxhall, these services to be provided on 12 December 2019 (from 7am to 3pm);

(xi) Invoice number 1016 dated 10 December 2019 in the sum of £1,140 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for South Hackney, these services to be provided on 12 December 2019 (from 3.30pm to 10pm);

(xii) Invoice number 1017 dated 10 December 2019 in the sum of £1,140 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for Dulwich, these services to be provided on 12 December 2019 (between 3.30pm and 10pm);

(xiii) Invoice number 1018 dated 11 December 2019 in the sum of £1,140 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for Vauxhall, these services to be provided on 12 December 2019 (between 3.30pm to 10pm);

(xiv) Invoice number 1019 dated 11 December 2019 in the sum of £510 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for Holborn, these services to be provided on 12 December 2019 (between 10am and 2pm);

(xv) Invoice number 1020 dated 11 December 2019 in the sum of £510 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for Battersea, these services to be provided on 12 December 2019 (between 2pm and 6pm);

(xvi) Invoice number 1021 dated 7 December 2019 in the sum of £570 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for Hammersmith, these services to be provided on 9 December 2019 (a half shift only);

(xvii) Invoice number 1022 dated 7 December 2019 in the sum of £570 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for Streatham, these services to be provided on 9 December 2019 (a half shift only); and

(xviii) Invoice number 1023 dated 7 December 2019 in the sum of £570 for advertising instructed by Mr Jones as campaign manager for the defender's candidate for Hammersmith, these services to be provided on 9 December 2019 (a half shift only).

The pursuer's actings in reliance upon the defender's conduct

(40) As a result of the defender's conduct in making the Initial Payments without qualification or objection *et separatim* in reliance upon the defender's conduct in failing to respond to the Email (specifically, as detailed in finding-in-fact (36) above) (hereinafter referred to collectively as "the defender's conduct"), the pursuer reasonably believed that the defender's candidates (and Mr Jones as campaign manager therefor) were indeed authorised to act as the defender's agent for the purpose of instructing and purchasing the pursuer's advertising services.

(41) In reliance upon the defender's conduct, between 9 and 12 December 2019 the pursuer duly provided the advertising services detailed in the pursuer's outstanding invoice number 1000 dated 2 December 2019 (to the value of £2,280), as previously instructed by Mr Jones as campaign manager for the defender's candidate for Croydon Central.

(42) *Separatim* in reliance upon the defender's conduct, between 5 & 12 December 2019 the pursuer accepted the further instructions from the defender's candidates (including from Mr Jones as campaign manager therefor) as detailed in the Subsequent Invoices, to provide further advertising services for the defender's candidates in various London constituencies on and shortly prior to the General Election on 12 December 2019; the pursuer then duly provided those further services; and the pursuer issued the Subsequent Invoices in respect of those further services.

The Final Payments

(43) On 9 January 2020, by bank transfer, the defender settled the pursuer's invoice number 990 dated 28 November 2019 (in the sum of £3,120) (for advertising services

instructed by Martyn Nelson as the defender's candidate for Feltham & Heston), being one of the Initial Invoices.

(44) On 9 January 2020, by bank transfer, the defender settled the pursuer's invoice number 1003 dated 6 December 2019 (in the sum of £1,140) (for advertising services instructed by Mr Jones as campaign manager for the defender's candidate for South Enfield), being one of the Subsequent Invoices.

(45) Unknown to the pursuer, in respect of each of the two invoices (numbers 990 & 1003) to which the foregoing payments ("the Final Payments") related, the defender's candidate and Mr Jones (as campaign manager) had obtained Ms Stokes' prior approval to the expenditure referred to therein, they had complied with the Campaign Expenditure Instructions, and they had thereby acted with the actual (express) authority of the defender in incurring that expenditure.

The Unpaid Invoices

(46) The defender refuses to pay nineteen of the pursuer's invoices, namely: (i) invoice number 995 dated 3 December 2019 (in the sum of £1,710); (ii) invoice number 1000 dated 2 December 2019 (in the sum of £2,580); (iii) invoice number 1002 dated 6 December 2019 (in the sum of £3,600); (iv) invoice number 1005 dated 6 December 2019 (in the sum of £1,140); (v) invoice number 1006 dated 9 December 2019 (in the sum of £1,140); (vi) invoice number 1007 dated 6 December 2019 (in the sum of £1,140); (vii) invoice number 1009 dated 10 December 2019 (in the sum of £1,140); (viii) invoice number 1012 dated 9 December 2019 (in the sum of £1,140); (ix) invoice number 1013 dated 9 December 2019 (in the sum of £1,140); (x) invoice number 1014 dated 9 December 2019 (in the sum of £1,140); (xi) invoice number 1015 dated 9 December 2019 (in the sum of £1,140); (xii) invoice number 1016 dated

10 December 2019 (in the sum of £1,140); (xiii) invoice number 1017 dated 10 December 2019 (in the sum of £1,140); (xiv) invoice number 1018 dated 11 December 2019 (in the sum of £1,140); (xv) invoice number 1019 dated 11 December 2019 (in the sum of £510); (xvi) invoice number 1020 dated 11 December 2019 (in the sum of £510); (xvii) invoice number 1021 dated 7 December 2019 (in the sum of £570); (xviii) invoice number 1022 dated 7 December 2019 (in the sum of £570); and (xix) invoice number 1023 dated 7 December 2019 (in the sum of £570) (hereinafter referred to collectively as "the Unpaid Invoices").

(47) The Unpaid Invoices amount, in total, to £23,160.

(48) The Unpaid Invoices comprise one of the Initial Invoices, and all, but one, of the Subsequent Invoices.

(49) Unknown to the pursuer, in respect of each of the Unpaid Invoices, the defender's candidates and Mr Jones failed to obtain Ms Stokes' prior approval to the expenditure referred to therein, they thereby failed to comply with the Campaign Expenditure Instructions, and they therefore acted without the actual authority of the defender in incurring that expenditure.

Events from early December 2019 onwards

(50) From early December 2019, as the General Election approached, affairs within the defender's organisation became increasingly chaotic; pressure upon candidates (and their campaign managers) mounted; and communication with Ms Stokes (to obtain approval of requested campaign expenditure) became slower and more difficult.

(51) In this context, in the case of the Unpaid Invoices so far as instructed by him, Mr Jones decided to place orders with and incur expenditure to the pursuer, without obtaining the defender's prior approval thereto (via Ms Stokes or otherwise).

(52) In those cases, Mr Jones provided PO references to the pursuer, without obtaining any prior approval from the defender.

(53) Mr Jones did so in an effort to facilitate the candidates' campaigns, and in the belief that the expenditure so instructed by him was unobjectionable and would, in due course, be approved and paid by the defender.

(54) Other candidates (such as Catherine Cui and Neil Anderson, in respect of the Unpaid Invoices instructed by them) also misapplied the Campaign Expenditure Instructions, in that they purported to incur expenditure on behalf of the defender without first obtaining prior approval from Ms Stokes.

(55) Unknown to the pursuer at the time, Mr Jones (and some of the defender's candidates) neglected to forward to Ms Stokes copies of the Unpaid Invoices when they were issued by the pursuer.

(56) As a result, with the exception of invoice number 1000 dated 2 December 2019 in the sum of £2,580, the defender first became aware of the Unpaid Invoices on 17 December 2019, when further copies thereof were sent direct to Ms Stokes by the pursuer's director, Mr Shields, who was by then pressing for payment of the overdue invoices.

(57) Thereafter, from around 17 December 2019 until 17 January 2020, various communications were exchanged between the parties to seek to clarify the circumstances in which the Unpaid Invoices (and others) came to be issued by the pursuer.

(58) By early January 2021, in a series of telephone discussions between Mr Shields and the defender's Paul Oakden, Mr Oakden disclosed to the pursuer, for the first time, that the delay in settling the Unpaid Invoices was attributable to the fact that the expenditure referred to therein did not appear to have been approved in advance by the defender in accordance with the Campaign Expenditure Instructions.

(59) By email dated 17 January 2020, Mr Oakden formally advised the pursuer that the Unpaid Invoices would not be paid by the defender *inter alia* because Mr Jones (and the defender's candidates) had not followed the Campaign Expenditure Instructions, and the pursuer's services had been instructed without the knowledge or authority of the defender.

(60) Prior to 12 December 2019, the defender took no steps to make the pursuer aware of, or otherwise alert the pursuer to the existence of, any limitation or condition upon the authority of the defender's candidates (or of Mr Jones as campaign manager therefor) to contract with, instruct advertising services from, or otherwise incur expenditure to, the pursuer on behalf of the defender.

(61) If the pursuer had been made so aware prior to 12 December 2019, it would not have supplied the services referred to in the Unpaid Invoices or incurred out-of-pocket expense in so doing.

MAKES the following findings-in-fact and in-law:

Jurisdiction

(1) The pursuer seeks payment of sums said to be due to the pursuer under contracts between the parties concluded through the agency of the defender's candidates (and the candidates' campaign manager).

(2) Absent express agreement to the contrary, it was an implied term of the parties' contracts that sums due to be paid by the defender to the pursuer under the contracts were payable at the pursuer's principal place of business, being its registered office in Glasgow.

(3) Accordingly, this court has jurisdiction in terms of the Civil Jurisdiction and Judgments Act 1982, section 16, schedule 4, rule 3(a), and section 20, schedule 8, rule 2(b).

Actual authority

(4) By virtue of nominating or fielding candidates in the General Election, the defender did not thereby grant to, or confer upon, any such candidate implied authority to contract, or to incur expenditure, on behalf of the defender.

(5) In terms of the Campaign Expenditure Instructions, the defender granted to its candidates express authority to contract with third parties (such as the pursuer) on behalf of the defender for the supply of goods and services to promote the candidates' election campaigns, provided prior approval therefor was obtained from the defender and otherwise subject to the compliance with the Campaign Expenditure Instructions.

(6) Between around June 2019 and January 2020, Ms Stokes was a person who was authorised in writing by the defender's party treasurer to authorise the incurring of campaign expenditure by or on behalf of the defender, in terms of section 75(1)(c) of the Political Parties, Elections and Referendums Act 2000.

(7) In instructing the pursuer to provide the advertising services referred to in the Unpaid Invoices, the defender's candidates (and Mr Jones as campaign manager therefor) acted in breach of the Campaign Expenditure Instructions and without the express authority of the defender, in respect that the defender's prior approval to the incurring of that expenditure was neither sought from, nor granted by, the defender (via Ms Stokes).

Apparent authority

(8) The defender's conduct in making the Initial Payments to the pursuer, without qualification or objection, constituted a representation by the defender to the pursuer that the defender's candidates (and Mr Jones as campaign manager therefor) were authorised to

contract with the pursuer on behalf of the defender for the supply of the pursuer's advertising services to promote the candidates' election campaigns.

(9) *Separatim*, in the circumstances narrated in finding-in-fact (34) above, it was the duty of the defender, upon receipt of the Email, to correct the mistaken belief of the pursuer as to the extent of the candidates' authority by alerting the pursuer to the true position, namely that the defender's candidate for Central Croydon (and Mr Jones as campaign manager therefor) had failed to comply with the Campaign Expenditure Instructions in incurring the expenditure referred to in the pursuer's invoice number 1000 dated 2 December 2019, that they had failed to obtain Ms Stokes' prior approval to the incurring of that expenditure, and that they had concluded the contract for the supply of the pursuer's advertising services without the actual authority of the defender.

(10) By taking no steps, prior to 12 December 2019, to make the pursuer aware of, or otherwise alert the pursuer to, the true limited and conditional nature of the candidates' authority to incur expenditure on behalf of the defender, the defender failed to discharge the foregoing duty (as referred to in finding (9) above).

(11) The defender's conduct in failing to so act following receipt of the Email constituted a representation by the defender to the pursuer that the defender's candidates (and Mr Jones as campaign manager therefor) were authorised to contract with the pursuer on behalf of the defender for the supply of the pursuer's advertising services to promote the candidates' election campaigns

(12) The foregoing two representations of authority (in findings (8) & (11), above) were general, unqualified and unconditional in nature.

(12) The defender failed to make the pursuer aware of, or otherwise alert the pursuer to, the limitations or conditions upon that general and unqualified apparent authority of its candidates, as so represented by the defender's conduct.

(13) The foregoing two representations of authority were, in good faith, believed and relied upon by the pursuer, with the consequence that, between 5 & 12 December 2019, the pursuer changed its position to its detriment (i) by accepting further instructions from the defender's candidates (including from Mr Jones as campaign manager therefor) to provide the further services as detailed in the Subsequent Invoices, (ii) by duly supplying those further services, (iii) by duly supplying the services referred to in the pursuer's earlier invoice number 1000 dated 2 December 2019, and (iv) by incurring out-of-pocket expense in so doing.

(14) In the foregoing circumstances, the defender is personally barred from denying that its candidates (and Mr Jones as campaign manager therefor) had authority to contract with the pursuer on behalf of the defender for the supply of the services referred to in the Unpaid Invoices.

Claim for payment of campaign expenditure

(15) The total sum due to the pursuer by the defender in terms of the Unpaid Invoices is £23,160 (though the sum first craved is limited to £22,020).

(16) The sum first craved by the pursuer was due and payable by 12 December 2019.

(17) For the purposes of section 77 of the Political Parties, Elections and Referendum Act 2000 ("the 2000 Act"), the sum first craved is a claim for payment in respect of campaign expenditure incurred by or on behalf of the defender during a relevant campaign period and it was sent to the defender's party treasurer (and to Ms Stokes, being a person authorised

under section 75 of the 2000 Act) not later than 30 days after the end of the relevant campaign period.

(18) The sum first craved by the pursuer is also a qualifying debt in terms of the Late Payment of Commercial Debts (Interest) Act 1998.

MAKES the following findings-in-law:

(1) The pursuer, having agreed to supply advertising services in accordance with instructions from the defender's candidates and in reliance upon the apparent authority of the defender's candidates to issue such instructions as agents of the defender, and the defender being personally barred from denying such authority, is entitled to payment therefor under contract.

(2) The sum first craved for being due and resting owing, decree therefor should be granted as craved;

(3) The sum first craved being a qualifying debt in terms of the Late Payment of Commercial Debts (Interest) Act 1998, and the said debt having not been paid on the due date, the pursuer is entitled to payment of a fixed sum in accordance with section 5A thereof, as second craved;

THEREFORE, Repels the defender's pleas-in-law number s 1, 2 & 3; Sustains the pursuer's pleas-in-law number s 1, 2 (in part only) & 3; ACCORDINGLY, Grants decree as first and second craved whereby, (i) *quoad* crave one, Grants decree against the defender for payment to the pursuer of the sum of TWENTY TWO THOUSAND AND TWENTY POUNDS (£22,020) STERLING with interest thereon at the rate of 8.75 per cent per annum from 26 February 2020, being the date of citation, until payment; and (ii) *quoad* crave two, Grants

decree against the defender for payment to the pursuer of the sum of ONE HUNDRED POUNDS (£100) STERLING, in terms of the Late Payment of Commercial Debts (Interest) Act 1998; Finds the defender liable to the pursuer in the expenses of the cause as taxed, so far as not already dealt with; Allows an account thereof to be given in, and Remits the same, when lodged, to the Auditor of Court to tax and to report; *quoad ultra* Grants decree of absolvitor in favour of the defender whereby, Assoilzies the defender from craves 3 & 4 of the writ.

SHERIFF

NOTE:

Summary

[1] The defender is a political party. It fielded numerous candidates at the General Election on 12 December 2019. Ahead of the election, the defender agreed to meet its candidates' campaign expenditure up to a maximum sum of £5,000 each, provided the expenditure was approved by it in advance in accordance with a prescribed internal process. If so approved, candidates were to obtain an invoice from the third party supplier, addressed to the defender, which the defender would settle direct with the supplier.

[2] The pursuer supplies special vans and bikes that are designed to carry advertising boards and digital screens. In the weeks leading up to Polling Day, many of the defender's candidates (personally or through their campaign manager) instructed the pursuer to arrange for these vehicles to drive or cycle around constituencies displaying Brexit Party advertisements. Invoices were issued by the pursuer, addressed to the defender.

[3] Some of the pursuer's invoices were paid, many more were not paid.

[4] The defender refuses to pay certain invoices because the expenditure therein was not approved by it in advance. It claims that, in these cases, the candidates (and their campaign manager) have gone off on a frolic of their own and engaged the pursuer's services without obtaining the defender's prior approval.

[5] The defender has a second line of defence. It argues that, by virtue of constraints imposed on political parties by the Political Parties, Elections & Referendums Act 2000, the candidates' contracts with the pursuer are either void or unenforceable by reason of illegality. In any event, the defender also claims to be barred by statute from settling these unauthorised invoices, absent an order of the High Court of Justice.

[6] The action raises a number of interesting puzzles involving the law of agency. The answers turn upon a consideration of the actual and apparent authority of the defender's candidates to act as agents of the fielding political party, viewed in the peculiar statutory context in which political parties and election candidates operate.

[7] In summary, in my judgment, firstly, the mere nomination of an election candidate by a political party does not thereby confer upon the candidate any actual (implied) authority to act as agent of the fielding political party to conclude contracts between the party and third parties. There was no evidence, and there is no judicial precedent, to support such a proposition.

[8] Secondly, however, it is perfectly conceivable that a political party may confer actual (express) authority upon a nominated candidate, as agent, to bind the party, as principal, to contractual obligations with third parties. In the present case, in my judgment, the defender did just that: it conferred express authority upon its candidates to bind the party, as principal, to certain contractual relationships with third parties. However, that express authority was limited. It required *inter alia* that the candidate obtain the party's prior

approval of the proposed campaign expenditure. In the present case, the candidates (and their campaign manager) failed to obtain the defender's prior approval to the contracts with the pursuer on which it now sues. Accordingly, the defender is not bound, as principal, to those contracts by virtue of any actual authority (express or implied) conferred upon its candidates, as agents.

[9] But that is not the end of the story.

[10] Thirdly, notwithstanding the absence of actual authority on the part of the candidates, in my judgment the defender is nevertheless bound by the unauthorised acts of its candidates (and of the candidates' campaign manager) because the defender, by its conduct, "represented" or held out to the pursuer that the candidates were indeed authorised to contract with the pursuer as agent for the defender.

[11] Unusually, the conduct which constitutes these "representations" takes two different forms. First, it comprises the defender's course of conduct in settling, in full, seven of the pursuer's earlier invoices, without qualification or objection. Second, it comprises the silence or inaction of the defender, following an email communication from the pursuer on 5 December 2019, in circumstances where the receipt of that communication placed a duty upon the defender to "speak up" and act to correct the pursuer's disclosed mistaken belief as to the extent of the candidates' authority.

[12] A further interesting issue emerges at this juncture. On a proper analysis, these "representations" of apparent authority are general, unqualified and unconditional in nature. That is significant because, once a third party (such as the pursuer) has established that such a representation has been made, and that the third party has reasonably relied upon it, the onus shifts to the putative principal (in this case, the defender) "to show that the third party had actual or constructive knowledge of any limitation upon it" (Reid & Blackie,

Personal Bar (2006), para 13-10; Macgregor, *The Law of Agency in Scotland* (2013), para 11-21; G. Spencer Bower, *The Law of Reliance-Based Estoppel and Related Doctrines* (5th ed), para 9.10; *Gregor Homes Ltd* v *Emlick* 2012 SLT (Sh Ct) 5, para [42]). On the evidence, the defender has failed to discharge that onus.

[13] Between 5 & 12 December 2019, the pursuer, reasonably and in good faith, relied upon these representations of a general apparent authority, and changed its position to its detriment (i) by accepting further instructions from the defender's candidates (and their campaign manager) to provide yet more advertising services and (ii) by then supplying those further (and some previously instructed) services right up to Polling Day, incurring out-of-pocket expense in doing so. It would also be prejudicial to allow the defender now to deny the apparent authority of those candidates.

[14] In these circumstances, the defender is personally barred from denying that its candidates (and their campaign manager) had authority to contract with the pursuer on behalf of the defender for the supply of the advertising services referred to in its unpaid invoices.

[15] Traditionally, such cases are treated as instances of a principal conferring apparent authority upon an agent. This can be a misleading analysis. The candidates had no actual authority, express or implied, to commit the political party to the contracts with the pursuer. Rather, by its conduct, the defender has clothed its candidates with merely the appearance of authority, where none truly existed. The more technically correct analysis is that the defender's conduct, when acted upon by the pursuer, operates as a form of personal bar, preventing the defender, as principal, from asserting that it is not bound by the contract (*Freeman & Lockyer* v *Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480; *Bank of Scotland* v *Brunswick Developments (1987) Ltd (No 2)* 1998 SLT 439 at 444 per Lord President Rodger).

[16] As regards the second line of defence, any illegality that may arise from the incurring of unauthorised campaign expenditure by or on behalf of the defender, as a registered political party, has no effect on the validity or enforceability of the related contracts by the pursuer as a third party creditor. This conclusion is based on section 114 of the 2000 Act, which expressly preserves the rights of third party creditors. It also derives from an application of the principles in the ground-breaking decision of the Supreme Court in *Patel* v *Mirza* [2017] AC 467.

[17] For the foregoing reasons, I have granted decree in favour of the pursuer for the principal sum sued for. I explain my reasoning more fully below.

The pleadings

[18] The pursuer avers that, in advance of the 2019 General Election, it was instructed on behalf of the defender to provide mobile advertising services (on "Ad Vans" and "Ad Bikes") within various constituencies in central London. It is averred that the defender, which had fielded numerous candidates for the election, had allocated to each candidate an "allowance" of £5,000 for use of campaign expenditure; that the candidates were permitted to use this allowance to promote their campaigns "as they saw fit"; and that an additional sum, over and above this allowance, was available to the candidate in each constituency "subject to approval by the defender". The £5,000 allowance was said to be held centrally by the defender.

[19] The pursuer refers to a series of orders placed with it between late November and 12 December 2019, resulting in 28 separate invoices issued to the defender. The first three bookings are said to have been placed directly with the pursuer by three Brexit Party candidates; a further 24 orders are averred to have been placed with the pursuer by

Howard Jones ("Mr Jones"), a "campaign manager" acting for a number of the defender's central London candidates (though engaged to do so by the defender); and another order is said to have been placed directly by a candidate called Catherine Cui, introduced to the pursuer by Mr Jones. Of the 28 invoices, the pursuer avers that nine were paid in full, of which seven were settled by bank transfers received from the defender between 2 & 5 December 2019.

[20] On the instructions of each candidate (or Mr Jones, as the case may be), each of the invoices contained a purchase order ("PO") reference, identifying the constituency in which the advertising was to be provided. The pursuer avers that the candidates (or Mr Jones) passed the invoices to an individual within the defender's organisation called Deborah Stokes ("Ms Stokes") to process the payments; that Ms Stokes in turn passed the invoices to another individual called Paul Oakden; and that Mr Oakden allegedly "approved" payment of the invoices in consultation with the defender's party treasurer.

[21] The defender's accounting system was said to be shambolic; payment of the pursuer's invoices stopped around the date of the General Election; and, despite promises, no further payments were made.

[22] The pursuer avers that the defender subsequently refused to settle any of the unpaid invoices because the expenditure had not been approved in advance or instructed by the defender; because the unauthorised incurring of such campaign expenditure was illegal under statute; and because payment of the invoices at this late stage would require separate judicial sanction from the High Court.

[23] For its part, the defender challenges the jurisdiction of this court.

[24] Further, it avers that its election candidates were neither employees nor members of the defender; neither the candidates nor Mr Jones had any authority to conclude any

contract between the pursuer and defender; and insofar as Mr Jones had purported to incur expenditure on behalf of the defender he was acting "entirely on a frolic of his own" and had "completely by-passed" the defender's "internal process". It averred that the defender had an internal process whereby candidates could make their own arrangements with third party suppliers, and provided the defender's party treasurer (or his designated deputy) had granted prior approval to those arrangements, the defender would indemnify the candidate against that cost. As regards the pursuer's unpaid invoices, this internal process was not followed. As for the invoices that were paid, the defender had "simply fulfilled pre-approved purchase order numbers".

[25] Further, the defender averred that it was statute-barred from settling any of the pursuer's invoices, without prior leave of the English High Court of Justice. Section 76 of the Political Parties, Elections and Referendums Act 2000 ("the 2000 Act") was said to prevent the defender, under sanction of criminal penalty, from making payment of any campaign expenditure incurred by or on behalf of the defender, unless that expenditure was authorised by the party treasurer, or deputy treasurer, or a person authorised in writing by either of them. Section 77 of the 2000 Act was said to prohibit, again under sanction of criminal liability, the payment of any campaign expenditure incurred by or on behalf of a political party unless the claim had been sent to the treasurer, deputy treasurer, or authorised delegate within a defined time-limit after the end of the relevant election campaign.

The evidence

[26] At a diet of proof before answer over three days in February and March 2021, I heard evidence from 11 witnesses together with parties' closing submissions.

[27] The proof was heard at the height of the second national lockdown. It was conducted remotely via WebEx, with all parties participating simultaneously by electronic means from various remote locations between Glasgow and London. To the credit of everyone involved, it proceeded very smoothly, even with the delightfully entertaining appearance on camera of Ms Cargill's cat.

[28] Signed written statements of all witnesses were exchanged and lodged in advance. The content was deemed to constitute the evidence-in-chief of the signatories thereto, subject to supplementary examination-in-chief, cross-examination and re-examination, all under reservation of issues of competency, relevancy and admissibility. This evidence was supplemented by oral testimony of each witness given remotely.

[29] There were seven witnesses for the pursuer: Victor Thomas Shields (the pursuer's sole director); Howard Russell Jones (a Brexit party volunteer); Rosamund Catherine Beattie (a Brexit party volunteer and latterly an election candidate); Cyrus Parvin (a researcher and Brexit candidate); Patrick Hannam (a journalist and Brexit candidate); Richard Christian Ings (an actor and Brexit party candidate) and Daniel James Lockwood (managing director of a newspaper publishing business).

[30] There were four witness for the defender: Paul Oakden (the defender's head of campaigning); Roger Gravett (the defender's London Regional Organiser for the 2019 General Election); Deborah Stokes (former executive assistant to Paul Oakden); and Mehrtash A'zami (the defender's party treasurer).

Victor Thomas Shields

[31] Mr Shields (51), the pursuer's sole director, explained the process by which, between late November 2019 and 12 December 2019, instructions had been received from Brexit Party

candidates (personally and through Mr Jones) for the pursuer's mobile advertising services in various London constituencies ahead of the General Election. Bookings were placed either personally by Brexit Party candidates (through personalised "brexitparty.org.uk" email addresses or by telephone) or through Mr Jones as campaign manager for candidates (through his email address at "central.london@thebrexitparty.org.uk" or by telephone). He spoke to the circumstances behind each invoice. Broadly, the same procedure was followed in each case: a quotation was sought from the pursuer with details, such as the precise routes to be followed, the shifts to be covered, and the vehicles to be used, being discussed and agreed; the quotation would be provided and accepted by the candidate or Mr Jones; the candidate or Mr Jones would provide a PO reference to Mr Shields (such as "SouthIsli", where the advertising was for the South Islington constituency; or "NorthLifo" where the advertising was for the North Enfield constituency; or "SurbitKing" for the Kingston & Surbiton constituency); on the instruction of the candidate or Mr Jones the invoice, bearing the relevant PO reference and addressed to the defender at its registered office, would be emailed to the instructing candidate or Mr Jones as the case may be, to be forwarded by them to the defender; and the mobile advertising was then supplied on the agreed date(s). He acknowledged some errors and alterations to some of the invoices and PO references.

[32] He understood Mr Jones to be the defender's "central London coordinator", but was clear that he was acting for individual candidates. Mr Shields understood that the invoices (once issued by him to the candidates or Mr Jones) were passed to Ms Stokes for processing, who passed them to Paul Oakden for approval. He understood this to be the defender's "internal process for invoices". As far as he was aware, the same process was followed with all the pursuer's invoices.

[33] Twenty eight invoices were issued, nine were settled in full without issue, the rest remain outstanding. From 5 December 2019, the defender "just stopped paying the invoices".

[34] He spoke to his email dated 5 December 2019 to Ms Stokes (item 5/51 of process). No reply was received. Further invoices were settled that day. Numerous bookings continued to be placed, mostly by Mr Jones, in the last few days of the election. He spoke to communications with the defender after the election, culminating in an email dated 17 January 2020 from Mr Oakden repudiating liability.

[35] In cross-examination, Mr Shields confirmed he was, at the time, unaware of the defender's internal process for candidates to engage third party suppliers. He first learned of this long after the election. Full payment of the first five or six invoices ("They were firing money into our bank account") gave Mr Shields "confidence" that the candidates were indeed authorised to so act. To meet demand, he had to sub-contract some of the bookings to third parties. All PO references were provided to him by the candidates or Mr Jones. He acknowledged errors in some invoices as originally issued.

Howard Russell Jones

[36] Mr Jones (55), a company director, testified that in early August 2019, having volunteered to support the Brexit Party election campaign, he was appointed by the defender as "coordinator/district manager" of multiple central London constituencies (initially 12, later increased to 18). His job was to support the defender's candidates there. He reported direct to the defender's Greater London campaign office, and in turn to Paul Oakden. In exercise of his duties, he acted as campaign manager for many candidates,

as electoral agent for a few others, and otherwise in an advisory capacity. Most of the defender's candidates had no political experience.

[37] Each candidate was given basic merchandise (t-shirts, stickers, flyers) and allocated a £5,000 budget from central funds to spent on their campaign (subject to a "charge" or deduction to cover each candidate's allocated share of the cost of the "central electoral address", originally estimated at £1,200 but subsequently increased to £2,200 for each constituency). This apart, they were left to their own devices.

[38] He was informed of the defender's process for approval of candidate expenditure. The defender's candidates had also been informed of that process, both at candidate meetings and by email and WhatsApp group chats.

[39] The defender's organisational structure "visibly started to fall apart" in late summer as the pace of events increased. He described it as "beyond chaotic", "shambolic" and "very unprofessional", exacerbated by the subsequent withdrawal of hundreds of Brexit candidates from Conservative-held seats. It became "near impossible" to contact anyone in head office to obtain approval of anything. Ms Stokes was the "single point of contact for hundreds of campaigns being run simultaneously". Suppliers were not being paid.

[40] He said candidates were allowed to use their £5,000 allowance to promote their campaigns "as they saw fit". They could instruct suppliers "without seeking approval of anyone in the party" as long as the cost fell within the allocated allowance. As for the pursuer's unpaid invoices, he had placed those bookings on behalf of the candidates for whom he acted; he had provided the PO references; he had timeously forwarded those invoices to Ms Stokes for payment; she had raised "no objection" to any of them at the time; he was repeatedly assured by her that they would be paid. After the election, he contacted

senior Party figures and donors to enlist their assistance to obtain payment for the pursuer, but to no avail.

[41] In cross-examination, he reiterated that the defender's internal process had been explained to him at meetings with Mr Gravett. The Campaign Expenditure Instructions contained the defender's "accepted and established process". He said "in the beginning", up to "the last few days" prior to the election, he would seek prior approval from Ms Stokes for the incurring of campaign expenditure, but "when the pace starting going aggressively" and the "dynamic was just crazy", he would send invoices to Ms Stokes before getting prior approval because "there just was not enough time" and "due to the impossibility of getting an email response or phone call answered". He did so on the "assumption" that head office could not object. He and other campaign managers "assumed" that the pursuer was not a "prescribed supplier" since the earlier invoices had been paid. The defender did not object to these deviations from its Campaign Expenditure Instructions. Each candidate had absolute discretion as to how spend their allocated £5,000 budget, provided it was "relevant" to their campaigns. All the pursuer's invoices were forwarded to Ms Stokes, "certainly by the day after the election".

[42] In re-examination, Mr Jones reiterated that the Campaign Expenditure Instructions had been issued only to candidates (not co-ordinators) in October 2019; that he had not previously seen them, but was aware of them "anecdotally"; and that none of his candidates exceeded their allocated budgets (though Catherine Cui did).

Rosamund Catherine Beattie

[43] Ms Beattie (46), an agency worker and former Brexit Party volunteer, was one of the defender's six constituency area managers in London ahead of the 2019 General Election.

Her role was to "manage constituency managers" within about 12 constituencies. She did not deal with any suppliers in this role.

[44] She testified that the issue of the candidates' budgets was "slightly confused at the start". In September 2019, candidates were told that the defender would pay all campaign expenditure up to the maximum permitted by the Electoral Commission but, in October 2019, the limit was reduced to £5,000, from which a further sum of £1,200 was to be deducted to cover the cost of their "electoral address". The defender then unexpectedly increased the charge attributable to the electoral address. She explained her understanding of the defender's invoicing process and its rationale.

[45] Late in the campaign, she became a Brexit Party candidate. She did little campaigning. She instructed services from only one third party supplier (a leaflet delivery company). In advance of instructing the supplier, she obtained prior approval, and a PO reference, from Ms Stokes; she then finalised the order with the supplier and directed the supplier to insert the PO reference in its invoice; the invoice (addressed to the defender) was sent to Ms Beattie, forwarded to Ms Stokes, and paid by the defender.

[46] In cross-examination, Ms Beattie confirmed that, as a candidate, she had obtained approval from Ms Stokes prior to instructing the third party supplier and that Ms Stokes would only give a PO reference to a candidate if a *pro forma* invoice had been exhibited. Two processes were distinguished: first, the process whereby the defender could be requested to meet a proposed expenditure "up front"; second, the process whereby a candidate could meet the expenditure but later seek request reimbursement. Many candidates had "stumped up" for travel expenses or the £500 election deposit from their own funds and were later reimbursed by the defender.

[47] Ms Beattie understood that each candidate could spend their allocated £5,000 (less the £1,200 charge applicable to the electoral address) on any campaign expenditure they considered most appropriate Two systems were running "in parallel": a candidate could follow the defender's internal process to settle third party expenditure direct; alternatively, the candidate could meet the cost personally in the first instance, and later seek reimbursement.

Cyrus Parvin

[48] Mr Parvin (37), a researcher, was the Brexit Party candidate for Westminster North. Candidate meetings were held in August and September 2019; more than 100 prospective candidates attended each event; party representatives, including Paul Oakden, addressed the meetings; campaign budgets were discussed. He understood that candidates were entitled to spend up to £5,000, on "whatever we wanted in our campaigns". He spoke to his email exchange with Ms Stokes (item 5/66 of process) in which he sought to access the allocated budget. She explained the dual processes of either seeking reimbursement of out-of-pocket expenditure or of seeking direct payment of supplier invoices. He appointed Mr Jones as his campaign manager; with Mr Parvin's consent, Mr Jones engaged the pursuer; and the defender settled the pursuer's invoice.

Patrick Hannam

[49] Mr Hannam (23), a journalist, was the Brexit Party candidate for Islington South and Finsbury. He spoke to his attendance at some of the defender's "big events" prior to the election, attended by prospective candidates, and to the defender's email communications about campaign finances. He recalled he had been allocated "campaign funds" (though he

could not remember exactly how much) and the Party paid his election deposit. Candidates were left to organise themselves. He was "assigned" Mr Jones as his campaign manager who engaged with all suppliers (including the pursuer, a leafleting company and a graphic designer) and coordinated post-election paperwork. Given his lack of political experience, Mr Hannam "deferred" to Mr Jones on all such matters. The witness had no personal dealings with the pursuer though he was aware that Mr Jones had booked its services.

[50] In cross-examination, Mr Hannam confirmed that Mr Jones handled all his campaign expenditure (the witness was not "massively involved"). He assumed that the defender would have had an internal process to access the allocated budget, but he did not know what it was. He testified that he was given no clear guidance on any such procedure. He understood Mr Jones would monitor his available budget. He did not recall being specifically asked by Mr Jones whether the pursuer should be instructed. He certainly did not know what the cost would be. He recalled that the pursuer's invoices were included in the return submitted by him to the Electoral Commission.

Richard Christian Ings

[51] Mr Ings (50), an actor, was the Brexit Party candidate for Hackney North and Stoke Newington. Mr Jones (who was said to be "in charge of central London's candidates") was Mr Ings' campaign manager, and booked services from third party suppliers including the pursuer. Mr Ings never dealt with the pursuer directly. He knew that campaign funds were available to him; he could not recall any limit on such funds, though he thought it was set by the Electoral Commission. He understood that any election expenditure incurred by him would be paid from the defender's central funds. His election deposit was paid by the defender.

[52] In cross-examination Mr Ings said that Mr Jones had first suggested using the pursuer's Advans; the witness had agreed; Mr Jones arranged it. Mr Ings had no idea of the cost involved. He assumed Mr Jones would ensure his expenditure limit was not exceeded. He was not aware that his budget was capped at £5,000 (he thought the limit was around £12,000). He had no involvement in seeking approval of supplier invoices. He was unaware of the defender's internal process. He put his trust in Mr Jones.

Daniel James Lockwood

[53] Mr Lockwood (61), managing director of The Press News Limited, spoke to the circumstances in which an advertisement was placed in his newspaper by a Brexit Party candidate prior to the 2019 General Election; no payment was received; the defender repudiated liability, claiming it was statute-barred from settling the invoice as it was not timeously received; the matter was referred to the Electoral Commission; months later, the defender agreed to pay the outstanding debt, but only by means of a payment channelled through the candidate.

Paul Oakden

[54] Mr Oakden, the defender's Head of Campaigning, was responsible for supervising the Brexit Party's national election campaign, supporting candidates and constituency campaigns, and ensuring effective communication between the defender's head office and local candidates and volunteers. He spoke to the defender's organisational structure; to the statutory constraints within which it operated; to the defender's internal process for approval of campaign expenditure; and to the steps taken by him and others to communicate that process to candidates and volunteers. He had investigated the pursuer's

claim. He found no record of any attempt by Mr Jones to obtain prior approval from Ms Stokes to the expenditure, so the claim was rejected.

[55] In supplementary examination-in-chief, Mr Oakden expanded on the detail and rationale of the defender's internal process (which he described as "absolutely clear"). It was put in place to ensure compliance with the defender's obligations under the Political Parties, Elections and Referendums Act 2000. The defender had merely agreed to underwrite candidates' election expenditure up to a maximum of £5,000 each, less a deduction to take account of the cost of the electoral address, thereby reducing each candidate's "pot" to about £3,000. All campaign expenditure on behalf of the defender had to be "signed off" by the party treasurer or Ms Stokes as delegate. This allowed the defender to monitor expenditure; it ensured that the party and candidates operated within their respective statutory financial limits; and it ensured that money was put to best use. If no prior approval had been obtained, a candidate could request reimbursement, but this was entirely at the defender's discretion. Even if prior approval had been sought for this expenditure, it would probably have been refused.

[56] In cross-examination, Mr Oakden defended the internal process, Ms Stokes' role in that process, and the defender's track record for paying third party suppliers. The process had worked well in the vast majority of cases. He understood that nine of the pursuer's invoices were paid because prior approval of that expenditure had been sought and obtained; in contrast, the defender had no knowledge of the remaining invoices until many days after the election. The Campaign Expenditure Instructions did not deal with discretionary reimbursement (such as for travel expenses). In his communications with Mr Shields, he acknowledged he may have sought to distinguish "generic" expenditure

from candidate-specific expenditure but, if so, it was only for the purpose of highlighting the different statutory deadlines applicable to the payment of such expenditure.

[57] In re-examination Mr Oakden confirmed that Mr Jones acted on behalf of candidates only and that he had no authority to bind the defender to any campaign expenditure. All candidates were made aware of the Campaign Expenditure Instructions on several occasions. All candidates and senior staff (including some "trusted" campaign managers) were allocated a personalised email address (bearing their name and the defender's name) which was "very valuable politically". In contrast, Mr Jones was given only a generic email address (central.london@thebrexitparty.org.uk).

Roger Gravett

[58] Mr Gravett was the defender's London regional organiser. His task was to oversee the defender's team of candidates and volunteers within the London area. Mr Jones was one such volunteer. He testified that both he and Mr Oakden had informed candidates of the defender's process for approval of campaign expenditure. He said he had "actually warned" Mr Jones that he needed to follow the process and was assured by Mr Jones that he was doing so. He insisted this had been communicated to Mr Jones "in writing and verbally more than once".

[59] In supplementary evidence-in-chief, Mr Gravett said that the defender's process was laid out "very simply" to candidates, namely that all campaign expenditure had to be authorised through Ms Stokes or Mr Oakden. An application had to be made in writing to Ms Stokes, or by a phone call to Paul Oakden, but that a written communication was "better". He identified Mr Oakden as the "key person" who could authorise candidate

expenditure. He was not sure whether anyone other than Ms Stokes or Mr Oakden could authorise such expenditure.

[60] In cross-examination, Mr Gravett acknowledged that third party suppliers would be unaware of the defender's process but he assumed they would take necessary steps to check that any candidate or campaign manager booking a service was duly authorised.

Deborah Stokes

[61] Ms Stokes described herself as the defender's "candidate liaison point" for facilitating payments. She had been granted delegated authority by the party treasurer to approve the incurring of campaign expenditure by candidates on behalf of the defender. The defender had agreed to "underwrite" its candidates' campaign costs up to a maximum of £5,000 in accordance with a disclosed process. The "key point" to this "simple and transparent" process was that the candidate had to obtain Ms Stokes' prior approval to the proposed expenditure; she would give the candidate a purchase order ("PO") reference "at the point of agreeing the spend in principle"; and the candidate would then arrange for the supplier to issue an invoice, bearing that PO reference, addressed to the defender at its registered address. (The PO reference was unique to each constituency, but did not change as between different items of expenditure.) In this way, the defender was able to keep "a close eye on spending levels" and ensure compliance with the defender's statutory obligations. Ms Stokes testified that for every individual item of expenditure for which a candidate (or campaign manager) had sought and obtained approval in principle, she would have issued an email to the candidate (or campaign manager) confirming that approval. She kept spreadsheets detailing all items of candidate expenditure approved by her.

[62] She testified that Mr Jones had made "unilateral decisions" to incur campaign expenditure on behalf of his candidates without first seeking approval from her. She was not even aware of the pursuer's Unpaid Invoices until after the election. All candidates were aware of the proper process and the vast majority had engaged with it.

[63] In supplementary oral evidence-in-chief, Ms Stokes spoke to the email communications with the pursuer between 5 & 17 December 2019 (items 5/51 & 5/52 of process). She acknowledged that it was "possible" that she had seen "a couple" of the pursuer's Unpaid Invoices prior to the election, but insisted that "the majority" of invoices had not been seen by her until many days after the election. She was "a hoarder of emails"; she had searched her records "thoroughly"; she had found no communications from Mr Jones (or his candidates), prior to the election, seeking or granting approval to the expenditure referred to in the Unpaid Invoices. Only those of the pursuer's invoices which had been seen and approved by her in advance of the election had been paid by the defender.

[64] In cross-examination, she acknowledged that the candidates' allocated budget of £5,000 was "a little bit of a red herring" as she had been told "early on" that a deduction would be made from that sum to cover the cost of the electoral address. In reality, each candidate had only "a ball-park figure of £3,200 to play with". Upon receipt of a request for approval, she would check her "enormous spreadsheet" to ascertain whether sufficient funds were available in the candidate's budget. Certain "core" categories of expenditure were unobjectionable and could readily be approved by her (such as leaflet printing, distribution, and advertising). If a "time-critical service" was required, the candidate may well choose to pay for the service himself, and thereafter seek reimbursement from the defender, but that procedure was not normally followed as the candidates were generally

were unable or unwilling to meet the expenditure from their own pockets. Nine of the pursuer's invoices were paid because that expenditure had been approved by her in advance, either by email or telephone. The Unpaid Invoices had "come as a surprise" to her. She conceded some "banking issues" had occurred around 6/7 December 2019 that caused a delay in the payment of suppliers, but this had been resolved.

Mehrtash A'zami

[65] Mr A'zami, the defender's party treasurer, testified that all campaign expenditure incurred by or on behalf of the defender required to be incurred with his authority or that of a person authorised in writing by him. He had delegated authority to Ms Stokes to approve candidates' campaign expenditure in accordance with an internal process. The process had been communicated to candidates on four different occasions in advance of the election. He spoke to his understanding of it. In his view, the process ensured that the defender complied with its statutory duties under electoral law "whilst not directly entering into any contracts with suppliers". Instead, all contracts were to be made between the candidate and the supplier. Where a candidate followed the process, the party honoured its commitments to underwrite the payment. In each such case "candidates would have had written approval from Ms Stokes to proceed". He testified that the expenditure incurred to the pursuer was not known to him or to Ms Stokes until after the election; the defender's prior approval to incur the expenditure had not been obtained; the defender's process had not been followed; so no contract existed between the pursuer and the defender in respect of that expenditure.

Discussion

[66] This case concerns the law of agency, specifically the alleged authority, actual and apparent, of certain Parliamentary election candidates to bind the political party, by whom they were nominated, to contracts with a third party.

[67] Agency involves three parties and (usually) two contracts. The three parties are the principal (on whose behalf the transaction is allegedly entered into), the agent (who purportedly acts for the principal in the transaction) and the third party (the person with whom the agent purports to transact on his principal's behalf). The two contracts usually involved are the contract between the principal and the agent (by which in many, but not all, cases their relationship is constituted) and the contract with the third party (entered into by the agent on the principal's behalf).

[68] The relationship between principal and agent is characterised in Scots law as contractual, and more often than not it is indeed constituted by a contract. But it need not be so. The contractual analysis should not be misunderstood as requiring the identification of a contract between principal and agent. Rather, the essential feature of the relationship is consent. The relationship between an advocate and a client does not involve the constitution of a contract but, by virtue of mutual consent, the relationship of agency (or, more properly, mandate) undoubtedly exists (*Batchelor* v *Pattison & Mackersy* (1876) 3 R 914 at 915). Historically, slaves or married women lacking contractual capacity might yet act as agents for a principal by virtue of the benefit of a *praepositura* (a type of agency arising by operation of law). Likewise, an admirable child may validly bind its parent in contract (for example, to the purchase of a Sunday newspaper from a newsagent) even though, due to the child's lack of contractual capacity, no contract could be entered into between the parent and the child, provided the child had sufficient capacity to consent and to understand and accept the

nature of the authority bestowed by the parent (Gow, *The Mercantile and Industrial Law of Scotland* (1964), p516). Therefore, the essential defining feature of legal agency is not the existence of a contract as such but rather the existence of mutual consent, whereby one party (the principal) consents to another party (the agent) acting on his behalf to create or affect legal relations between the principal and a third party. This analysis is consistent with the origins of agency in Scots law, which derives from mandate, a relationship characterised by the institutional writers as a contract perfected by "sole consent" (Stair, *Institutions*, I, 12, 1; Bell, *Principles*, 218), which consent could be inferred from "word or deed", or from "any other sign, as with pointing with the hand, or beckoning with the head", or even by silence, as he who "suffereth another to manage his affairs without contradiction gives thereby a tacit mandate…" (Stair, *Institutions*, I, 12, 2 & 12; Erskine, *Institute*, III, 3, 33). More recently, in *Garnac Grain Co Inc.* v *HMF Faure and Fairclough Ltd* [1968] AC 1130, Lord Pearson stated (at 1137):

> "The relationship of principal and agent can only be established by the consent of the principal and the agent. They will be held to have consented if they have agreed to do what amounts in law to such a relationship, even if they do not recognise it themselves and even if they have professed to disclaim it… but the consent must have been given by each of them, even expressly or by implication from their words and conduct".

[69] I dwell on the point because, in the present case, there was no evidence of any contract as such between the election candidates and the defender as the fielding political party. Nevertheless, as I explain below, I am satisfied that the necessary mutual consent existed to constitute an agency relationship between the two.

Was an agency relationship created by virtue of the candidates' nomination?

[70] I begin by considering whether an agency relationship was constituted between The Brexit Party Limited (as principal) and its nominated candidates (as agents) by virtue of the candidate's nomination by the party.

[71] In ordinary parlance, an election candidate fielded by a political party may be said to "represent" that party, and to speak for it, and to promote its interests and manifesto. Under statute, a person may become a candidate for parliamentary election when he is nominated for election "in the name of" a registered party (Representation of the People Act 1983, section 118A). Conversely, a person who does not purport to "represent" any party is referred to as an independent candidate (Political Parties, Elections & Referendums Act 2000, section 22).

[72] This terminology is indicative of some sort of agency relationship between the two. However, in my judgment, in law there appears to be no true relationship of agency between a political party (as principal) and its fielded candidate (as agent) arising merely by virtue of the nomination of latter by the former. A key element of agency, in the legal sense, is missing, namely the grant of some sort of authority by the political party to the candidate to act on behalf of the party (as principal) to create or affect legal relationships between the principal and third parties. Distributors, concessionaires, franchisees and the like are often described as "agents" or "selling agents", but often they are not true agents in the legal sense because they merely purchase goods from a manufacturer and re-sell them on their own account to their own customers. It is not uncommon for a person to be appointed to act as an intermediary for or to "represent" another, but with no authority or power to alter the principal's legal relations with third parties. The appointee may even be described as an "agent". A classic example is the estate agent, who introduces purchasers to vendors, or

tenants to landlords, or vice versa; or the canvassing or introducing agent, who is remunerated by commission on the basis of introductions made to the principal. Such "agents" sit on the fringe of true legal agency because their power to alter their principal's legal relations with third parties are at best limited. Often they have authority to receive and communicate information on their principal's behalf, and, indeed, in so doing, the potential exists to alter the principal's legal position in a broad sense. They may also act in a capacity which would involve the repose of trust and confidence and, to this extent, agency principles may apply; but they are not true agents because of the limited nature of their external powers to affect their principal's legal relationships with third parties.

[73] In law, the appointment of a person to a particular position or role or office can sometimes be sufficient to establish an agency relationship between the two parties, such as the appointment of a solicitor, or the master of a ship, or a partner, manager, mercantile agent, or warehouseman. The mere appointment would generally imply the constitution of an agency relationship, though arguments may arise as to the nature and extent of the authority thereby impliedly conferred. However, I am aware of no reported decision in which the mere nomination or fielding of an election candidate by a political party has been held to create such an agency relationship. I also heard no evidence as to the usual practices or custom in this area.

[74] For the foregoing reasons, I conclude that no true relationship of agency is constituted between a political party (as principal) and its fielded candidate (as agent) arising merely by virtue of the nomination of latter by the former, because the nomination does not *per se* involve the conferring of any authority or power upon the candidate to affect binding legal relations between the party and third parties.

[75] Before leaving this issue, it observe that in the esoteric context of election law there has been much discussion over the years of the concept of "electoral agency". It was comprehensively reviewed in the fascinating judgment of Commissioner Richard Mawrey Q.C. in *Erlam* v *Rahman* [2015] EWHC 1215 (QB), which involved a petition to set aside the result of a mayoral election in the London Borough of Tower Hamlets. However, electoral agency is different from legal agency in at least two respects: first, it attributes liability to a candidate (as principal) for the acts of a broad range of canvassers, committees and supporters (as agents), which may include the candidate's nominating political party (*Halsbury's Laws of England* (5th ed), Vol. 37 (Elections & Referendums), 249; *Taunton Case, Williams & Mellor* v *Cox* (1869) 1 O'M&H 181); and second, electoral agency is much wider than true legal agency.

[76] I mention this tranche of law because agency, in this expansive sense, is plainly well-recognised in the context of electoral law but, critically, it is an agency in which the candidate is the *principal*. There is no judicial precedent for the converse proposition, that the candidate is the *agent* of the political party by dint merely of his nomination by the party.

Was an agency relationship created by express grant of authority?

[77] Notwithstanding the foregoing, in my judgment an agency relationship did arise between the defender and its candidates by virtue of the grant of actual (express) authority by the defender upon its candidates to effect relations with third parties, albeit within a limited sphere.

[78] This conclusion is founded upon the two documents produced by the defender (items 6/1 & 6/2 of process) which bear to set out the process for payment of candidates'

campaign spending. They are in broadly similar terms. I refer to them collectively as "the Campaign Expenditure Instructions".

[79] The first document (item 6/1 of process) appears to be a candidate information sheet. Under the heading "Spending against your grid", the defender advised candidates of "the process" to "submit campaign invoices". (The "grid" was a plan that was to be drawn up by candidates in advance of the election with a "wish list" of items to be purchased to promote their campaigns, all subject to review and approval by the defender). It states:

> "Many of you have now submitted your campaign budget grids and we've started to look through them with a view to getting items approved. Once we've completed that review and confirmed with you, the process for any spending will be as follows:-
>
> 1. You will need to submit a request detailing the item you wish to purchase and the amount to debs.stokes@thebrexitparty.org. Debs will then cross check the item against the agreed budget grid and will provide a purchase order number (PO number) which any supplier will need to show on their invoice if it's to be paid.
>
> 2. You will then ask the supplier to provide an invoice for the item you require. This invoice should include the registered address in the 'to' field: The Brexit Party, Registered Office: 83 Victoria Street, London, SW1H 0HW. The invoice should also include the purchase order number that you were given following your initial request.
>
> 3. The completed invoice should then be sent to debs.stokes@thebrexitparty.org for processing.
>
> Accounts have agreed to a turnaround of 7 days from the point of receiving the invoice to payment being made…".

[80] The second document (item 6/2 of process) is in the form of an open letter written to candidates from Mr Oakden. It appears to have been issued a little later than the first document. It records that the defender has "now increased party funding to spend against your campaign to £5,000". The letter bears to "set out the process through which you [the

candidate] can access that money and what you can spend it on". It then sets out the "Process and Rules" by which the candidate can "get access to that £5,000". It states:

> "The confirmed process for you to submit campaign invoices is as follows.
>
> 1. You will need to submit a request detailing the item/service you wish to purchase and the amount to debs.stokes@thebrexitparty.org. This request will be assessed on its suitability by a member of the national campaign team and if approved, we will provide a purchase order number (PO number) to allocate a payment against that item. No payments can be made without a relevant PO number. Any supplier will need to show the relevant PO number on their invoice if it's to be paid.
>
> 2. You will then ask the supplier to provide an invoice for the item you require. This invoice should include the registered office in the 'to' field: The Brexit Party, Registered Office: 83 Victoria Street, London SW1H 0HW. The invoice should also include the purchase order number that you were given following your initial requests to purchase that item.
>
> 3. The completed invoice should then be sent to debs.stokes@thebrexitparty.org for processing.
>
> Accounts have agreed a turnaround of seven days from the point of receiving the invoice to payment being made".

[81] It can be seen that the "process" described in each document is broadly similar. True, the process in the later document (item 6/2 of process) is slightly tighter in certain respects than in the earlier document (item 6/1 of process): it states that the candidate will need to submit a request detailing the "item/service" that the candidate wishes to purchase (not merely the "item"); it states that the request will be "assessed on its suitability" by a member of the national campaign team (as opposed to Ms Stokes merely "cross check[ing] the item against [the candidate's] agreed budget grid"; and, more explicitly perhaps, it discloses that the PO reference will only be provided for the request "if approved". (If a requested expenditure did not feature in a previously "agreed" budget grid, then it likewise

could not be said to have been approved.) In my judgment, these are minor changes of emphasis.

[82] On a plain reading, the crux of the process is the same in both documents: the defender's liability to meet a "request" for a proposed purchase from a third party is subject to, and conditional upon, the defender granting prior approval to that "request".

The status of the Campaign Expenditure Instructions

[83] There was some controversy as to the status of these documents. Mr Oakden testified that he communicated the content to candidates on multiple occasions both by WhatsApp messages and in face-to-face presentations at large group meetings in London of the defender's candidates. He was specific as to when, how and where had had communicated the process to candidates, though no paper trail was produced to vouch any of this. (Oddly, his written statement also makes no reference to the documents that comprise the Campaign Expenditure Instructions.) Mr Gravett, a generally unimpressive witness, insisted that candidates were aware of the defender's "clear process", but could offer no specific recollection as to how or when it was ever communicated and, indeed, disclosed no convincing familiarity with the detail of the process. Mr A'zami and Ms Stokes, both excellent witnesses, testified that the process was, respectively, "communicated to candidates on four different occasions in advance of the election being called" and "clearly outlined to candidates on a number of occasions", but neither could specify how, when, or by whom, this was done. The documents themselves give no assistance: they are undated; they are unsigned; they are not addressed to any particular person; the first document (item 6/1) has no heading or other title even to identify its purpose; the second document (item 6/2) purports to be a general circular letter from Mr Oakden to the defender's official

parliamentary candidates (addressed "Dear Team"); and there was no paper trail to vouch whether, when, or to whom, either document was ever sent or delivered.

[84] If matters had rested there, I might have had some misgivings as to whether the defender had established the provenance and intimation of these documents to their candidates and volunteers. However, any evidential deficiency was salvaged by the fact that, in his own testimony, Mr Jones candidly acknowledged that, although he had not seen these documents personally (because they were communicated to candidates, not to campaign managers), he was aware of their content and volunteered in oral testimony that they constituted the defender's "accepted and established process" for candidates to obtain access to the defender's promised funding. He also accepted that Mr Gravett had advised him of the process for "getting [suppliers'] invoices paid by the [defender]"; that the defender's candidates were also informed of the process at "large gatherings at a hall hired by The Brexit Party HQ" during which they were given "tutorials on the process" and "how to address invoices and get them paid"; and indeed "in the beginning" he had followed the defender's process, until administrative delay and campaign pressures intervened. Further, Ms Beattie and Mr Parvin, who struck me as careful and measured witnesses, also confirmed their awareness of the defender's process and described specific instances of having themselves followed it by, among other things, seeking prior approval from Ms Stokes before committing to expenditure to third parties. (Mr Parvin did also speak to an instance where an IT supplier had provided services without Ms Stokes' prior approval and was nevertheless paid by the defender, but Mr Parvin did not seek to assert that this was in compliance with the defender's process.)

[85] In contrast, I attached no material weight to the testimony of Mr Hannam and Mr Ings. Their testimony was vague; their involvement in the electioneering appears to

have been superficial; neither displayed any detailed understanding of the relevant financial issues (such as limits on expenditure, how to access funding); and both appear to have deferred almost entirely to Mr Jones as their campaign manager in the day-to-day running of their respective campaigns including in the hiring of the pursuer's advertising vans, of which they knew next to nothing at the time.

[86] Ms Beattie summarised the position most accurately. The issue of candidates' budgets for campaign expenditure was, she said, "slightly confused". She explained that at a candidates' meeting in September 2019 (to which the constituency area managers, such as herself and Mr Jones were not invited) candidates were told that the defender would pay *all* their campaign expenses up to the limit allowed by the Electoral Commission; but at a subsequent candidates' meeting in October 2019, this position was "revised down" so that candidates were told that they had only £5,000 to spend on campaign expenditure (a misleading figure in itself, because a "charge", then estimated in the region of £1,200, was to be deducted from that budget, representing each candidate's allocated share of the cost of the "electoral address"). She could not recall "how or when exactly" she was told about the defender's process, but thought that it was at "one of the area manager meetings" in London, of which there were about eight in total. In any event, the crucial point in her testimony was that she was well aware of the substance of the Campaign Expenditure Instructions, and, it can reasonably be inferred, so too were the defender's candidates and other coordinators/district managers (notably, Mr Jones).

[87] In my judgment, the Campaign Expenditure Instructions (comprising items 6/1 & 6/2 of process) do indeed constitute a true record of the defender's process for payment of third party suppliers, the substance of which was communicated to the defender's candidates and coordinators/district managers, including Mr Jones.

The interpretation of the Campaign Expenditure Instructions

[88] The next battleground that emerged at proof concerned the proper meaning of the Campaign Expenditure Instructions.

[89] For the defender, it was asserted that, on a proper reading, the Instructions required that candidates obtain prior approval from Ms Stokes *before* finally instructing the third party supplier and committing to the expenditure. For the pursuer, it was asserted that Ms Stokes' "approval" was administrative only: if the candidate had sufficient budget available to meet the expense, the defender was obliged to settle the third party invoice (provided it was addressed properly and contained the requisite PO reference). In other words, the pursuer's interpretation (based on the testimony of Mr Jones) was that the candidates could spend their allocated £5,000 budget as they saw fit in the promotion of their local campaigns, and that the defender was bound to "pick up the tab", provided the expenditure fell within that budget.

[90] I am in no doubt that the defender's interpretation is to be preferred.

[91] First, it is consistent with the plain, ordinary reading of the Campaign Expenditure Instructions. The natural meaning to be placed on the words used in the Instructions is that the defender's liability to meet a "request" for a proposed purchase from a third party is subject to, and conditional upon, the defender granting prior approval to that "request". The defender's interpretation would involve a strained construction of ordinary language, if not a wholesale re-writing of the documents.

[92] Second, it is consistent with the rationale for the Instructions. Their purpose was to allow the defender to monitor, and maintain a degree of control over, the candidates' campaign expenditure, to ensure that the defender's funds were applied appropriately and

to best advantage. Besides, the defender was in the best position to reach a judgment on such issues, the majority of the candidates being politically inexperienced. The pursuer's interpretation would tend to defeat the underlying logic and purpose of the Instructions, by relegating Ms Stokes' role to that of a rubber-stamp, processing payment of third party invoices with no prior opportunity to scrutinise, question or control the expenditure already incurred.

[93] Third, the pursuer's interpretation appeared to be founded solely upon Mr Jones' unilateral implementation and interpretation of the defender's process, at least at the latter stages of the campaign. No other witness followed that course of conduct or sought to justify it. Ms Beattie (who held a similar position to that of Mr Jones, and was latterly also a candidate) was clear that Ms Stokes' prior approval was required to the incurring of such expenditure, if it was to be met by the defender; and that was also the procedure followed by Mr Parvin.

[94] Besides, Mr Jones' own conduct was inconsistent. By his own admission, "in the beginning" he followed the process as advocated by the defender. By his own admission, he chose to depart from that process only at the latter stages of the campaign and to purchase services from the pursuer without awaiting prior approval from the defender. I therefore attach little weight to Mr Jones' evidence in this regard.

[95] There was, of course, a glaring weakness in the defender's process in that, while a PO reference (such as "SouthIsli" for South Islington, or "NorthLifo" for North Enfield) required to be obtained from Ms Stokes for each approved request, it was the same PO reference that was given to the first and all subsequent approved requests emanating from that constituency. In other words the PO reference was unique to the constituency, but it did not vary on each invoice referable to that constituency, with the result that, once the PO

reference was disclosed to the candidate (or the candidate's campaign manager) it might, in theory, be misused again and again by the candidate (or manager) on subsequent invoices without reverting to the defender for prior sanction of those further items of expenditure. In my judgment, again on a plain reading of the Instructions, such repeated use of the disclosed PO reference would have been unwarranted. Each item of expenditure required separate approval by Ms Stokes (albeit use of the same PO reference may have been sanctioned on each occasion).

The legal effect of the Campaign Expenditure Instructions

[96] If I am correct in my interpretation of the Instructions, in my judgment the fundamental consequence is that an agency relationship is thereby created between the candidate (as agent) and the defender (as principal). The agency relationship arises once a candidate's request for approval of a purchase is approved by Ms Stokes (on behalf of the defender). At that point, the defender thereby confers upon the candidate an express authority to purchase the sanctioned item or service (that is, to conclude a contract with the third party) - and, critically, to do so on behalf of the defender as principal. What other meaning is to be taken from the express instruction that the candidate must procure that the third party's invoice is to be addressed to the defender at its registered office?

[97] The defender submits that it assumed nothing more than an obligation to indemnify its candidates. I disagree. With indemnity, the indemnified party has contracted with, and is primarily liable to, the third party creditor, and, by a separate contractual obligation, is entitled to seek indemnification, relief or reimbursement from the indemnifying party. The third party creditor and the indemnifying party have no direct contractual connection. In contrast, on an ordinary reading, the plain import of the Campaign Expenditure Instructions

is that the candidate is envisaged *never* to incur a personal liability to the third party creditor. Indeed, it is not envisaged that the candidate will ever be asked for payment by the third party (because the third party's invoice is to be addressed to and settled direct by the defender). On a proper analysis, the candidate is merely the middle-man in affecting binding legal relations between the third party and the defender, a situation more aptly characterised as agency. The agency relationship may be a limited and conditional one, but it discloses the requisite mutual consent for the candidate (as agent) to exercise an actual (express) authority to bind the political party (as principal) to legal relations with the third party.

Did Mr Jones act within the candidates' actual authority?

[98] The next question is whether the candidates (and Mr Jones as campaign manager and agent for them) acted within the scope of the actual (express) authority conferred upon those candidates, in incurring the expenditure referred to in the Unpaid Invoices. Specifically, did Mr Jones (or the candidates) seek and obtain prior approval from Ms Stokes to incur that expenditure?

[99] This question arises because, unusually perhaps, the pursuer's primary case is that, in placing the orders, the candidates (in most cases, through Mr Jones) acted within their actual authority. In addition, although Mr Jones sought to argue that no such prior approval was required on a proper reading of the defender's process, he nevertheless insisted in his testimony that he had indeed sought and obtained Ms Stokes' prior approval of the Unpaid Invoices. He insisted that he had sent the Unpaid Invoices to Ms Stokes prior to the work being carried out by the pursuer, that Ms Stokes had acknowledged receipt of those invoices, and that she had told him they would be "positioned for payment".

[100] In my judgment, no such prior approval was ever sought or obtained. In placing the orders and incurring the expenditure to which the Unpaid Invoices relate, Mr Jones (and the candidates) acted without the defender's actual authority.

[101] Where a third party, in pursuing a putative principal, founds upon an agent's alleged actual authority, the onus lies on the third party to prove (i) the existence and extent of the agent's actual authority and (ii) that the agent has acted within that actual authority. The pursuer has failed to discharge that onus because Mr Jones' testimony on this issue is neither credible nor reliable, and falls to be rejected. With that testimony gone, there is no other evidence to support the conclusion that these orders were ever approved in advance by Ms Stokes in accordance with the Campaign Expenditure Instructions and thereby placed with the actual authority of the defender.

[102] To explain, firstly, Mr Jones' testimony (that he had requested approval for the disputed expenditure) was unvouched by any documentary trail. Not one copy email is produced from Mr Jones to Ms Stokes, sent prior to close of polling on 12 December 2019 (by which date the work had been carried out), seeking her approval of this expenditure. From 17 December 2019 onwards, it was clear that Ms Stokes queried whether the disputed expenditure had been approved by her. Mr Jones knew this. In her email dated 19 December 2019 (item 5/54 of process) she states:

> "I definitely have never seen half of these invoices. I will need to take some time to check all of these off against those that have been submitted to accounts which I will do tomorrow…"

The best that Mr Jones could offer (by reply email dated 19 December 2019 to Ms Stokes) was to state: "We should check with tech as I have sent all of these to you and have the emails". At proof, Mr Jones was asked what he meant by this email. He explained that he was gently reminding Ms Stokes that she had already received (and approved) these Unpaid

Invoices and that a review of the email traffic by the defender's IT Department would be prove it to be so. That was an unsatisfactory response. If, as he stated, Mr Jones did indeed already "have the emails", it seems strange that he did not simply retrieve them and re-send them to Ms Stokes. He knew that the invoices were now being disputed. He knew Mr Shields was pressing for payment. He had full access to his email facility at that time (and well into January 2020 when the defender finally terminated his account), so he could readily have recovered the relevant communications himself. Yet, inexplicably, no such emails were ever produced. The unsatisfactory absence of documentary vouching that was said to exist, and which ought readily to have been capable of being produced, undermines my confidence in the reliability of this tranche of oral testimony.

[103] Secondly, recurring contradictions in Mr Jones' testimony undermined both its credibility and reliability. He seemed intent on riding several horses at once. On the one hand, he insisted that, on a proper interpretation of the defender's process, Ms Stokes' prior approval was not required before instructing third party suppliers; on the other hand, he claimed that he had indeed sought such prior approval in respect of the now-disputed invoices. On the one hand, his practice at the beginning of the campaign had indeed been to seek Ms Stokes' prior approval to the incurring of campaign expenditure; on the other hand, in the latter stages of the campaign he conceded that had he had not necessarily sought such prior approval as the payment process "slowed". Other nuances emerged in his testimony amounting to subtle but significant and unwarranted glosses by him on the Campaign Expenditure Instructions. When pressed in cross-examination to clarify whether the defender's "prior approval" was required before a third party supplier should be instructed to carry out any work, Mr Jones' intriguing reply was:

> "To an extent. Some suppliers needed payment in advance. But with [the pursuer] they were being used throughout London. The first few invoices were paid, so we assumed they were not a prescribed supplier".

The concept of a "prescribed supplier" finds no place in the defender's process. He was pressed on the point: was it his practice to seek prior approval from the defender before work was carried out by a third party supplier? He testified:

> "In the beginning, yes. Then when the pace started going aggressively, sometimes we would send the invoices the day after because there just wasn't enough time".

Later in cross-examination he said:

> "Where services were paid for before, the assumption was that it couldn't be objected to by Head Office, because it was still within budget".

[104] All this shillyshallying was unsatisfactory. Overall, the impression I gained from his testimony was that Mr Jones understood perfectly well that, if the defender was to pick up the tab, Ms Stokes' prior approval was required before campaign expenditure was incurred to a third party. By his own admission, "in the beginning" he followed that process. By his equally candid admission, he chose to depart from that process at the latter stages of the campaign and to purchase services from the pursuer without awaiting prior approval from the defender. He sought to justify that course of action, of course: he blamed it upon the exigencies of the situation; he blamed it upon a breakdown in the defender's internal lines of communication; he blamed it upon the defender's inadequate staffing; he blamed it upon Ms Stokes' lack of training; he blamed the defender for "walking away" from its own rules; but, in reality, it was Mr Jones who was departing from the rules (and the safe confines of his candidates' actual express authority) by choosing, on his own initiative, in the heat and smoke of the election battle, to instruct and incur expenditure to the pursuer, a

third party supplier, without first seeking or awaiting approval from Ms Stokes; and he did so on the precarious "assumption" that the defender would not object.

[105] In my judgment, two conclusions are properly to be drawn from this tranche of testimony. First, Mr Jones' assertion that he sought and obtained Ms Stokes' prior approval to the incurring of the expenditure in the Unpaid Invoices falls to be rejected as neither reliable nor credible. Second, by inference from his own candid concessions in cross-examination regarding his practice at the latter stages of the campaign, I conclude that Mr Jones did not in fact seek prior approval of the expenditure in the Unpaid Invoices. I am fortified in that latter conclusion by the evidence of Ms Stokes, who testified that she had carried out an exhaustive search of her records and could find no trace of any request from Mr Jones (or any candidate) for approval of the expenditure in the Unpaid Invoices. She impressed me as a careful, straightforward and truthful witness, whose testimony could be relied upon. I also find support for the conclusion in the fact that Mr Jones did not even provide PO references to the pursuer for certain of the Unpaid Invoices until 13 December 2019 (that is, the day after the election), by which date the work had already been carried out (item 5/50 of process); and that it was only in emails dated 12 December 2019 (timed at 2.24 pm and 3.38 pm) that he first provided to the pursuer PO references for seven other invoices, by which time those advertising services would already have been underway, if not completed. What is missing, of course, is any documented communication between Mr Jones and Ms Stokes seeking and obtaining approval to the expenditure in those invoices, no doubt, I infer, because it was neither sought by Mr Jones nor granted by Ms Stokes.

[106] For these reasons, the pursuer's first ground of action fails, because it has not proved that the contracts on which it now sues were concluded within the scope of the actual (express) authority of the defender's candidates (as alleged agents for the party).

[107] The focus then turns to the issue of the candidates' apparent authority.

Personal bar (or apparent authority)

[108] Actual authority and apparent authority are quite independent of one another. The classic modern judicial exposition of the concept of apparent authority in agency appears in the judgment of Diplock L.J. in *Freeman & Lockyer* v *Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 at 502 – 503, cited with approval in *British Bata Shoe Co Ltd* v *Double M Shah Ltd* 1980 SC 311 at 317 per Lord Jauncey; *Dornier GmbH* v *Cannon* 1991 SC 310 at 314 per Lord Hope; *Bank of Scotland, supra*, 444 per Lord Rodger; *Ben Cleuch Estates Ltd* v *Scottish Enterprise* [2006] CSOH 35 at [127] per Lord Reed; and *Gregor Homes Ltd* v *Emlick* 2012 SLT (Sh Ct) 5).

[109] Apparent authority is a convenient term to describe the situation where a person has no actual authority (express or implied) to act as agent for a principal in dealings with a third party, but the principal is personally barred by its words or conduct from founding upon that person's lack of authority (Rankine, *A Treatise on the Law of Personal Bar in Scotland* (1921), p217; Reid & Blackie, *Personal Bar*, 13 -03). It is a misleading term because it tends to suggest that some sort of authority has been conferred upon the agent. It has not. This whole area of law is dogged by inaccurate and inconsistent terminology. The terms "apparent authority", "ostensible authority" and "holding out" are used interchangeably, and further confusion is often caused by the misuse of the terms "implied authority" and "usual authority" for what is truly "apparent authority". The critical issue is that the

concept of "apparent authority" only arises where no actual authority exists. Apparent authority is not a form of real (actual) authority at all. Rather, it is merely the appearance of authority, attributable to words, action or inaction of the principal, which gives rise to a type of personal bar against the principal, and thereby precludes the principal (in a question with the third party only) from denying the existence of authority on the part of the putative agent (Rankine, *supra*, p217; Gloag, *Contract* (2nd ed), p152; *Bank of Scotland*, *supra*; *Morgan Utilities Ltd v Scottish Water Solutions Ltd* [2011] CSOH 112 at [54] per Lord Hodge).

[110] Apparent authority does not constitute an agency relationship as such, where none otherwise exists. So, a supposed agent, who acts without or in excess of his actual authority, does not step into all the rights and liabilities of an agent if apparent authority is established; nor does the principal become entitled to sue upon the contract with the third party, unless the principal first ratifies the unauthorised contract. Personal bar (on which apparent authority is based) has a defensive rather than a constitutive effect (Macgregor, *The Law of Agency in Scotland*, para 11-12); it "suppresses rights, rather than creates them" (E. Reid, *"Personal Bar: Case Law in Search of Principle"* 2003 7 Edin. L.R. 340 at 341); it is an instrument by which the principal is prevented from denying the authority of the agent in a question with the third party who has been misled by the principal's words or conduct as to the existence or extent of the supposed agent's authority.

[111] To establish personal bar, in the context of apparent authority in agency, the onus lies upon the third party to prove the following (Macgregor, *supra*, 11-14 to 11-23):

(i) that a "representation" (by word, act or omission) has been made by the supposed principal to the third party that the supposed agent had authority to act for the principal in the matter in question;

(ii) that the third party relied upon that representation in entering into the disputed transaction, or in doing, or omitting to do, the disputed act;

(iii) that the third party acted reasonably and in good faith in so relying upon the representation;

(iv) that the third party would suffer loss or prejudice were the principal to be permitted to now deny the agent's authority. (It is said though that the requirement of prejudice in the context of personal bar in agency is rather more diminished than in conventional personal bar, and may generally be "self-evident" (Reid & Blackie, *Personal Bar*, para 13-11; *Gregor Homes Ltd, supra*, paras. [42] & [43]).

I shall address each of these requirements in turn.

The two "representations"

[112] There must be a "representation". It may be by word or conduct. Conduct can take a variety of forms, active or passive, an isolated act or a course of conduct. The most common form of representation by conduct involves "permitting the agent to act in some way in the conduct of the principal's business with other persons" (*Freeman & Lockyer, supra*, 503). Often this might be done by appointing the supposed agent to some office, post or position carrying with it a usual "actual" authority. This not such a case. As explained above, there is no evidence of any "usual" authority attaching to the position of an election candidate to affect binding relations between the fielding political party and third parties.

[113] In my judgment, in the present case, two other forms of conduct by the defender constituted "representations" to the pursuer that its candidates were authorised to contract with the pursuer as agent of the Brexit Party.

[114] The first representation comprises the defender's course of conduct, between 2 & 5 December 2021 in settling seven of the pursuer's Initial Invoices, promptly, in full, and without qualification. That a representation of apparent authority can be made by means of a "course of dealing" between the third party and the putative principal is well-established (*International Sponge Importers Ltd* v *Andrew Watt & Sons* 1911 SC (HL) 57; *The Ocean Frost* [1986] AC 717 at 777 per Lord Keith "Apparent authority may arise where the agent has had a course of dealing with a particular contractor in which the principal acquiesced, or dering transactions arising out of it"). The second representation comprises the silence or inaction of the defender, following an email communication from the pursuer on 5 December 2019, in circumstances where the receipt of that communication placed a duty upon the defender to "speak up" and act to correct the pursuer's disclosed mistaken belief as to the extent of the candidates' authority to bind the Party.

[115] Looking at the first representation (by course of conduct), the seven Initial Payments (detailed in finding-in-fact (27)) were all paid by the Party direct into the pursuer's bank account between 2 & 5 December 2019. They totalled £15,080, a considerable sum. As Mr Shields observed, the defender was "firing money" into the pursuer's bank account. Of course, these Initial Payments were made because, on each occasion, the candidate (or Mr Jones, as their campaign manager) had complied with the defender's internal process *inter alia* by obtaining prior sanction from Ms Stokes. But that specific limitation on the candidates' authority was not disclosed to the pursuer. Viewed objectively, from the perspective of the third party, the candidates (direct or through Mr Jones as campaign manager) were concluding contracts on behalf of the Party and instructing the issuing of invoices to the Party, all without any disclosed or evident constraint on their authority, and the defender was duly honouring those contracts by promptly settling the invoices.

[116] The reasonable, objective inference to be drawn by the pursuer from this course of conduct, comprising the seven Initial Payments, is that the candidates (directly or through their campaign manager) did indeed have authority to bind the defender to contracts of this nature with the pursuer.

[117] Where such a course of dealing with an agent and principal is established, it is reasonable for a third party to assume that the apparent authority of the agent thereby created remains constant and is continuing in nature. If, in fact, the agent's authority is terminated or limited, the principal must notify the third parties if it wishes no longer to be bound by the agent's actions, since a failure to disabuse third parties of their reasonable continuing belief in the authority of the agent is sufficient conduct to form the basis of personal bar (Reid & Blackie, *Personal Bar*, 13-08; Macgregor, *supra*, 11-15). The classic illustration is of a partner who leaves a partnership. The remaining partners are bound to notify all those who have had dealings with the firm; and if they fail to do so, those third parties are entitled to regard the former partner as still being within the firm and as having apparent authority to bind it (Partnership Act 1890, section 36).

[118] The next significant point concerns the scope of the apparent authority that was "represented" to the pursuer as the third party. Logically, the scope of the apparent authority is defined and circumscribed by the course of dealing. In this case, the course of dealing was of a general and unconditional nature, in the sense that it disclosed no specific constraint or limitation on the candidates' authority. In other words, there was nothing in the course of conduct (ie the making of the seven Initial Payments) that disclosed to the pursuer that the candidates' authority was fettered by any requirement to obtain, for example, express prior sanction from the defender or was otherwise curtailed by any particular requirement of an internal process. True, the course of conduct might be said to

have communicated certain other boundaries to the candidates' apparent authority, such as that the authority extended only to the placing of orders for services of a similar nature to the kind detailed in the seven Initial Invoices, or of a similar value, or in the same general geographical area, or placed by a similar process. A previous or future order of significantly greater value, for a different kind of service, in a different geographical area, or placed by a different process, might fall outwith the scope of the candidates' apparent authority as represented by the course of conduct in settling these seven (broadly similar) Initial Invoices. But this case does not involve such issues. Aside from those inherent parameters, the key point is that the "apparent" authority defined by the seven Initial Payments (and thereby "represented" to the pursuer) was otherwise of a general and unqualified nature – that is, it was unfettered by any specific limitation or requirement such as to obtain prior sanction from Ms Stokes.

[119] This conclusion is significant because when a "representation" is established of an apparent authority that is general or unlimited in nature, and has been relied upon by the third party (as discussed below), the onus shifts to the alleged principal to show that the third party had actual or constructive knowledge of the relevant limitation upon that apparent authority of the agent (Spencer Bower, *The Law of Reliance-Based Estoppel and Related Doctrines* (5th ed), para 9.10; Reid & Blackie, *supra*, 13-10; Macgregor, *supra*, 11-21). It is logical to treat the onus as shifting to the alleged principal in such circumstances because the principal, by its conduct, has created a situation whereby, from the perspective of the third party, the agent is clothed with an apparent authority sufficient or habile in its scope to conclude such transactions on behalf of the principal. Having created that situation, the onus should shift to the principal to establish that the third party had, or ought to have had, notice of the specific limitation on the agent's authority on which the principal now founds.

[120] The issue of onus in this specific context has not received much judicial attention. In *Dornier, supra,* the Inner House acknowledged that it may arise but the matter was held over to be determined after proof in that case. The *Stair Memorial Encyclopaedia* (Vol 1, Agency, 76) states that where ostensible authority is in issue, the onus of proof lies on the defender (the alleged principal) to show that the agent was not authorised, but this may over-simplify the proposition. More helpfully, part of the submission advanced for the successful pursuer in *Gregor Homes Ltd, supra* (with reference to the careful analysis in Reid & Blackie, *supra*) was that, once the third party had established a representation of a general nature, then the onus shifted to the supposed principal to show that there was some limitation on the agent's authority. Sheriff Holligan accepted the proposition that:

> "… once representation and reliance are established the onus of proof shifts to the defender to establish, on the balance of probabilities, that [the agent] was not authorised by [the principal] to act as he did. The defender has not discharged that onus…"

though the learned sheriff concluded, on the facts, that the issue of onus was not of particular importance (paragraph [45] I-J).

[121] Having heard the whole evidence at proof, I am satisfied that the issue of onus does indeed arise sharply in this case, that it shifted to the defender, and that the defender singularly failed to discharge it. There was no evidence that the defender had taken any steps to bring to the pursuer's attention the existence of the specific limitation on the candidates' authority upon which it now founds. It could readily have done so. Before or shortly after making the Initial Payments, it could have advised the pursuer (by standard form of wording on a payment remittance perhaps, or by email or otherwise) that, for example, its candidates had no authority to contract on behalf of the Party except with the defender's express prior sanction, or that payment of any invoice was not to be taken as

constituting any continuing authority on the part of the candidates to place other orders with the supplier except with the defender's written approval, or wording of a similar nature. The defender has failed to prove that notice of any such limitation on their candidates' general apparent authority was ever conveyed to the pursuer prior to polling day. I accepted Mr Shields' testimony that he had no idea that the candidates' authority was so limited. He had no knowledge of the defender's internal process, nor frankly did he care about it. In his own words, the defender was "firing money" into the pursuer's bank account and this gave him "confidence" that the candidates had authority to so act on behalf of the Party.

[122] Turning to the second representation, silence, or an omission to act, in circumstances where there was a duty to speak up or to do something may itself constitute the requisite conduct (or "representation" of apparent authority) necessary to found a plea of personal bar in this context. Such a duty would arise, most obviously, in circumstances where a principal has knowledge that the purported agent is asserting authority sufficient in scope to bind the principal. The key issues are knowledge and acquiescence: a supposed principal who fails to speak up, or to act, when he knows that a third party is or may be under a misapprehension as to the existence or the extent of an alleged agent's authority may subsequently be personally barred from denying the existence or extent of such authority (Reid & Blackie, *supra*, 13-05; Macgregor, *supra*, 11-16). The authors of *Bowstead & Reynolds on Agency* (21st ed) state (at paragraph 2-105) that the principle is "persuasively stated" in the Australian case of *City Bank of Sydney* v *McLaughlin* (1909) 9 CLR 615 at 625:

> "In general a man is not bound actively to repudiate or disaffirm an act done in his name but without his authority. But this is not the universal rule. The circumstances may be such that a man is bound by all rules of honesty not to be quiescent, but actively to dissent, when he knows that others have for his benefit put themselves in the position of disadvantage, from which, if he

> speaks or acts at once, they can extricate themselves, but from which, after a lapse of time, they can no longer escape".

[123] In the present case, on 5 December 2019 (at 1.36pm), the pursuer's director, Mr Shields, sent an email to the defender's Ms Stokes (copied to Mr Jones) with copy invoices attached (item 5/51 of process) ("the Email"). In the Email, Mr Shields chased Ms Stokes for payment of those four invoices. (In fact, payments for two of those invoices appear to have already been credited to the pursuer's bank account or were in the pipeline: see excerpt of transactions from pursuer's bank statement, item 5/30 of process.) Significantly, one of the invoices referred to in the Email was invoice number 1000 dated 2 December 2019 in the sum of £2,280 for advertising instructed by Mr Jones as campaign manager for the candidate for Croydon Central. Those services were due to be provided by the pursuer several days later, between 9 & 12 December 2019. Unknown to Mr Shields, Mr Jones had not complied with the Campaign Expenditure Instructions in respect of that invoice.

[124] The critical point is that, as at 5 December 2019, Ms Stokes knew or ought to have known that (in respect of invoice number 1000) the candidate (and campaign manager) had "jumped the gun" by purportedly committing the defender to expenditure without first obtaining her prior approval. In short, crucially, at that date she knew or ought to have known (i) that the defender's Croydon Central candidate (through Mr Jones as campaign manager) was asserting an unwarranted authority to bind the defender to a contract with the pursuer, (ii) that the pursuer was evidently labouring under the misapprehension as to the candidate's authority, and (iii) that the pursuer was at risk of acting on that erroneous belief to its detriment by providing its services several days later (between 9 and 12 December 2019).

[125] In those circumstances, there was a duty on the pursuer to speak up or to act.

[126] In the event, the defender did nothing. It did not reply to the Email. It did not alert Mr Shields to the fact that the candidate (and Mr Jones as campaign manager) had not complied with the proper internal process, that they had not obtained Ms Stokes' prior approval to that expenditure, that they had no authority to place the order, and that the defender was not liable to meet the invoice. The only reasonable conclusion to be drawn by the pursuer from the defender's silence at that stage was that the candidate (and his campaign manager) did indeed have authority to bind the defender to the contract (to which invoice 1000 related) and to contracts of a similar nature.

[127] The defender's position at proof was not only that none of the Unpaid Invoices had been approved by it, but that none of them had been seen by Ms Stokes prior to Polling Day. The Email of 5 December 2019 scotches that argument. It refers explicitly to invoice 1000, which remains outstanding.

[128] Again, it is important to consider the scope of the apparent authority represented by the defender's omission. The second representation (by silence/inaction) was also of a general and unconditional nature, in the sense that it disclosed no specific constraint or limitation on the candidate's authority. In other words, there was nothing in the second representation (by silence and inaction) that disclosed to the pursuer that the candidate's apparent authority (to purchase the advertising referred to in invoice 1000) was fettered by any specific limitation (for example, to obtain express prior sanction from Ms Stokes, or otherwise curtailed by any other particular requirement of an internal process).

[129] Again, the result is that, once the pursuer establishes (as it has done) that it relied on that second general representation, the onus shifts to the defender, as the putative principal to show that the pursuer, as the third party, had actual or constructive knowledge of the

relevant limitation upon the apparent authority of the agent. There being no evidence to that effect, the defender has failed to discharge that onus.

[130] In my judgment, this case has parallels with *International Sponge Importers Ltd* v *Watt & Sons* 1911 SC (HL) 57, the leading Scottish authority on apparent authority (by silence or inaction). In that case, Mr Cohen, the pursuer's travelling agent, was in the habit of calling upon Watt & Sons (a firm of saddlers) to sell packets of sponges. Payment was always by cheque made payable to the principal and sent by the customer directly to the principal (or, occasionally, handed to the agent). The agent had no authority to accept payment from customers in cash or by cheque made payable to the agent. Crucially, on one occasion in 1905, the agent persuaded the principal to make payment direct to the agent by means of a cheque drawn in favour of the agent, on the pretext that this allowed the customer the benefit of a discount. Thereafter, on three subsequent occasions (in 1906, 1907 & 1908), the agent again induced the customer to pay the agent direct, twice by cheque made payable to the agent and on a final occasion in cash. On each occasion, the agent absconded with the money. On discovering the fraud, the principal sued the customer on the basis that this method of dealing with the agent had never been authorised. The principal's claim failed.

[131] The Law Lords and the Inner House were clearly influenced by the principal's lack of objection to the first (unauthorised) method of dealing in 1905. At the time, there had been sufficient direct communication between the third party and the principal regarding this first unauthorised transaction to put the principal on notice that something was amiss. Specifically, the principal had sent a statement to the customer recording that the price for this transaction was still outstanding; the customer (no doubt slightly confused, because it had paid the agent direct) had replied in writing to the principal explaining that no invoice

had ever been received by it and requesting such an invoice; the principal did not then reply; and in the subsequent statement of account from the principal, this transaction was omitted entirely. Having failed to challenge the agent's first (unauthorised) act (of which it had, at least, sufficient knowledge to justify further enquiry), the principal was not entitled to impugn the later three "similar transactions in good faith" in 1906, 1907 & 1908 (of which it knew nothing at the time) (page 65 per Lord Low (Inner House); page 67 per the Lord Chancellor; page 69 per Lord Shaw of Dunfermline).

[132] Admittedly the legal analysis in the House of Lords is scant. The primary basis of the decision seems to be that the principal had represented to the customer that the agent had apparent authority by virtue of the agent's appointment to a particular position bringing with it a usual authority to accept payment in cash (or to negotiate better terms, including by means of cheque payments to the agent himself). However, the case also constitutes authority for the proposition that where a principal has sufficient knowledge of an agent having acted in excess of his actual authority (ie claiming an unwarranted authority), the silence or failure of the principal to act may itself constitute a representation to the third party of the agent's apparent authority to so act, and preclude the principal from subsequently disowning the agent's apparent authority, if relied upon by the customer. In *International Sponge Importers*, the "attention" of the principal had been drawn to the (unauthorised) dealing in 1905 and "a question arose about it", yet it was "allowed to stand and no objection was taken" (at 67 per the Lord Chancellor), or, as the Second Division put it, the third party customer "never got any notice that the first transaction was objected to or that anything was wrong" (per Lord Low at 64-65) and having "got no answer" to their letter to the principal in 1905, the customer was "entitled to assume" that the (unauthorised)

transaction was in order (per the Lord Justice Clerk at 69). The parallels with the defender's failure to reply to the pursuer's Email are clear.

Reliance

[133] The third party must rely upon the principal's representation of apparent authority. The requirement of actual reliance establishes the necessary causal connection between the representation and the third party's decision to enter into the purported contract through the agent. The third party cannot hold the principal liable if it did not believe that the agent had authority (*Criterion Properties plc* v *Stratford UK Properties LLC* [2004] 1 WLR 1846 at 1856 per Lord Scott). "Apparent authority loses of all its apparency when the third party knows that actual authority is lacking" (*Home Owners Loan Corporation* v *Thornburgh* 106 P.2d 511 at 512 (SC OKl., 1940), cited in *Bowstead & Reynolds on Agency* (21st ed), para 8-024).

[134] The evidence on this issue was not subject to serious challenge. In cross-examination, Mr Shields stated that the defender's conduct in "promptly" making the Initial Payments ("they were firing money into my bank", he said) gave him "confidence" that the candidates had authority to commit the Party to such expenditure. He stated:

> "The first five or six [invoices] were all paid totalling £12,000, so why would I not think he [Mr Jones] had authority?"

Further, in his witness statement, he testified that Ms Stokes did not respond to his email dated 5 December 2019. When asked in cross-examination whether it was possible that Mr Jones had no authority to place some of the orders with the pursuer, Mr Shield stated: "Surely they [the defender] would have brought that to my attention sooner…", from which it can also reasonably be inferred that he placed reliance on the defender's failure to respond to the Email.

Reasonableness and good faith

[135] The third party must demonstrate that it acted reasonably and in good faith (Macgregor, *supra*, para 11-21; Reid & Blackie, *supra*, para 13-10). Much will turn on the facts of the particular case.

[136] This third requirement probably best explains those cases in which the existence of suspicious circumstances has been held to place a duty of enquiry on the third party to ascertain the extent of the agent's authority. The third party's failure to discharge that duty precludes reliance upon the agent's apparent authority (*Thomas Hayman & Sons* v *The American Cotton Oil Company* (1907) 45 SLR 207). When might circumstances be "suspicious"? The "more extraordinary" the transaction, the less likely it is that the agent has authority to enter into it (*Dornier GmbH* v *Cannon* 1991 SC 310 at 315 per Lord Hope). Likewise, the further a transaction strays from normal business practice, or from the commercial interests of the principal, the more difficult it is for the third party to prove that he acted reasonably in believing the agent to be authorised (*British Bata Shoe Co Ltd* v *Double M Shah Ltd* 1980 SC 311; *Criterion Properties plc, supra*, p1856). So, when a third party was asked to send cheques to an employee of the principal with the payee's name left blank, sometimes at short notice with no explanation for the urgency, sometimes by rail rather than by post, the circumstances were inherently abnormal and suspicious. This was not "a normal method of dealing", it was "unusual", "odd", not "common practice", and "of such an unusual nature that any reasonable person would have been put upon his enquiry" (*British Bata Shoe Co Ltd, supra*, 318 per Lord Jauncey). Where a partner, in excess of his actual authority, purported to grant promissory notes in favour of a moneylender at an extraordinarily high interest rate (40%), the Inner House concluded that by reason of the

nature of the transaction itself the third party "must have had suspicions aroused that things were not alright", that the third party had it in his power "to ascertain whether [the agent] was dealing fairly by him and with his co-partners" and whether he had authority to act, but that the third party had chosen to "abstain from enquiry of any kind". The third party's claim against the firm failed.

[137] On the evidence, I can discern no circumstances that ought to have raised suspicions on the part of the pursuer, still less circumstances sufficient to place a duty of enquiry upon the pursuer to investigate the existence or extent of the candidates' authority. All of the contracts to which the Unpaid Invoices relate were of a similar nature; all of them were of similar value; all were in the same geographical area (in central London); all were concluded in the same general manner with direct communication from the candidate (or Mr Jones as campaign manager), and the provision by the candidate (or Mr Jones) of a PO reference and instructions to address the invoice to the defender, all in like manner to the seven Initial Invoices that were promptly paid by the defender in full and without qualification. From the perspective of the third party, all of the transactions followed the same basic format; none of the transactions was peculiar or "extraordinary" (per *Dornier*), or strayed beyond the bounds of either normal business practice, or of the confines of this particular course of dealing between the parties. Nor did any of the transactions bear to be adverse to the commercial interests of the defender as the supposed principal. On the contrary, all of the transactions appeared, in similar manner, to be advancing the interests of the defender by promoting its agenda and the election prospects of its candidates.

The relevance of the email addresses

[138] The pursuer submitted that by permitting the candidates (and Mr Jones) to use email addresses bearing to emanate from the defender such conduct itself constituted a "representation" of the candidates' apparent authority to conclude the contracts in question on behalf of the Party. (Mr Jones communicated with the pursuer using the email address "central.london@thebrexitparty.co.uk" and the candidates communicated using similar though personalised addresses in the form "[name of candidate]@thebrexitparty.co.uk".)

[139] The ubiquity of letter-headed notepaper, physical or electronic, within most businesses probably means that it would normally be unsafe to rely on the use of letter-heading alone as a "representation" that the writer has authority to bind the principal whose letterhead is used (*Bowstead & Reynolds on Agency*, 8-018). By extension, the same logic would apply to the use of the principal's email address. The most that can be inferred from the common-place permitted provision and use of such an email address or headed paper is that the writer is authorised to *communicate* with third parties on behalf of the principal using such stationery or electronic facilities, but not to *bind* the principal in legal relations with third parties. There is some Commonwealth authority to support that conclusion: *Harvey* v *State of New South Wales* [2006] NSWSC 1436, [176], where the supposed agent made use of government stationery; *Quikfund (Australia) Pty Ltd* v *Chatswood Appliance Spare Parts Pty Ltd* [2013] NSWSC 646, where the agent had possession of a lender's blank loan forms. A similar conclusion may arise from the mere permitted use of a principal's liveried or branded vehicles or equipment.

[140] However, the use (or non-use) of such letter-heading, or email addresses, or branded equipment, may at least be a factor, of varying weight, to be taken into consideration in

deciding whether the third party came under a duty to make further enquiry as to the agent's actual authority.

[141] In my judgment, the permitted use by the candidates (and Mr Jones) of an email address bearing the defender's name did not, of itself, amount to a "representation" by the defender of the candidates' (or campaign manger's) apparent authority to bind the defender to contracts with the pursuer. However, that does not mean that the use of such an electronic correspondence facility is irrelevant. Rather, it seems to me that it represents a further *indicium* of authority, permitted by the defender, which is relevant to the reasonableness of the pursuer's reliance upon the defender's two representations of apparent authority. It contributed to the absence of grounds for suspecting that anything was amiss. If the communications from the candidates (or Mr Jones) had come from some personal or otherwise entirely unconnected email address (not bearing to have any link with the defender), that might have been a circumstance which would have put the pursuer under a duty of further enquiry; and if no such enquiry was made, the pursuer's reliance on the other representations may not have been reasonable. That was not the case here.

Prejudice

[142] The fourth requirement is that the party founding upon the alleged apparent authority has suffered prejudice by relying upon the impugned acts, words or deeds.

[143] In the context of personal bar arising from apparent authority, this final requirement is fulfilled relatively easily. Reid & Blackie, *Personal Bar*, para 13-11 state:

> "In most cases it is self-evident that the third party would suffer prejudice were the principal to be permitted to deny the agent's authority, and therefore the issue of prejudice does not require to be addressed".

In *Gregor Homes* v *Emlick*, *supra* (paragraphs [41] & [43]), the learned sheriff agreed that the full rigour of the concept of personal bar does not apply to this "particular formulation of personal bar" involving ostensible authority.

[144] I am also attracted to the analysis advanced by Reid & Blackie in *Personal Bar, supra*, that, once the third party has established a representation and reasonable reliance thereon, the onus of proof shifts to the principal to prove that no prejudice or loss is or will be suffered by the third party if the principal were to assert its right to disown the purported agent or the purported agent's unwarranted act. There was no such evidence in the present case.

[145] Besides it is self-evident that the pursuer would suffer prejudice if the defender were now to be permitted to deny its candidates' (and Mr Jones') authority, leaving the pursuer to pursue payment from a series of individuals whose means and whereabouts may be unknown. That apart, though not strictly necessary for this purpose, it can readily be inferred from the evidence that between 5 & 12 December 2019, the pursuer, reasonably and in good faith, relied upon the defender's representations of a general apparent authority, and changed its position to its detriment (i) by accepting further instructions from the defender's candidates (and their campaign manager) to provide yet more advertising services in terms of the Subsequent Invoices, and (ii) by then supplying those further (and some previously instructed) services right up to Polling Day. Mr Shields also testified that the pursuer had incurred out-of-pocket expense to sub-contractors in doing so, in respect of which he was compelled to sell equipment to meet the debt.

[146] For the foregoing reasons, I concluded that the defender is personally barred from denying that its candidates (and Mr Jones as campaign manager therefor) had authority to

contract with the pursuer on behalf of the defender for the supply of the advertising services referred to in the Unpaid Invoices.

Illegality

[147] Illegality forms a separate plank of the defence. It arises in three ways.

[148] First, in terms of section 75 of the Political Parties, Elections & Referendums Act 2000 ("the 2000 Act"), no campaign expenditure shall be incurred by or on behalf of a registered political party unless it is incurred with the authority of the party treasurer, deputy treasurer or a person authorised in writing by either of them. A person commits a criminal offence if, without reasonable excuse, he incurs any expense in breach of that rule. Accordingly, as Mr Jones had acted on "a frolic of his own" and had "completely by-passed" the defender's internal process, it was said that the contracts with the pursuer, being expressly or impliedly prohibited by statute, were void by reason of illegality (defender's written closing submissions, paras. 29, 34 & 39–42). Reference was made to *Whiteman* v *Sadler* 105 ER 707, *Cope* v *Rowlands* (1836) 2 M&W 149 and *Ashbury Railway Carriage & Iron Company Ltd* v *Riche* (1874) 75 LR 7 (HL) 653.

[149] Second, no payment may be made in respect of campaign expenditure incurred by or on behalf of a registered political party during any relevant campaign period unless it is sent to the party treasurer, deputy treasurer or a person authorised in writing by either of them not later than 30 days after the end of the relevant campaign period (2000 Act, section 77). Payment in breach of this statutory restriction constitutes a criminal offence. It was averred that the pursuer's claim had not been submitted timeously and that, accordingly, payment was statute-barred and illegal. The defender averred that a separate application to the High Court or county court (in England & Wales) or to the Court of Session or sheriff court (in

Scotland) would be necessary for leave to settle the claim late, provided "special reason" could be shown that it was "appropriate" to do so.

[150] Third, in an argument that emerged only in the defender's closing submissions, it was submitted that two of the invoices (relating to Mr Hannam and Mr Ings), for which the pursuer sought payment, did not comprise the Party's "campaign expenditure" at all, within the meaning of section 72 of the 2000 Act. According to their testimony, the expenditure formed part of the candidates' individual election returns.

[151] The issue of illegality can, I think, be dealt with briefly.

[152] Notwithstanding the illegality of incurring and paying campaign expenditure in circumstances falling foul of sections 75 & 77, section 114 of the 2000 Act expressly provides that the rights of third party creditors are unaffected. Section 114 was not referred to in averment or submission, but it would seem to be an absolute answer to the defender's primary argument in this respect. The pursuer, as a third party creditor, is entitled to enforce the contracts. That is the end of the matter.

[153] Even if section 114 did not determine the issue, I would have concluded that the penal provisions in sections 75 & 77 of the 2000 Act do not prevent the pursuer from suing for payment under the contracts. This is a question of statutory interpretation. The statute makes no express provision for the invalidity or unenforceability of contractual rights and obligations undertaken in breach of sections 75 or 77. Absent express provision, it is necessary to determine whether the statute, by implication, forbids or invalidates such contracts (McBryde, *The Law of Contract in Scotland*, para 19-34; *Whiteman* v *Sadler* [1910] AC 514; *B* v *D* 2018 SLT (Sh Ct) 70). In my judgment, it does not. Formerly, the courts took a more rigid approach to the invalidity of contracts tainted by any sort of illegality. The modern trend of authority is more nuanced, as exemplified in *Patel* v *Mirza* [2017] AC 467, in

which a majority of the Supreme Court finally sought to place the unruly doctrine of illegality on a new and principled footing under English law. Applying the principles in *Patel*, I conclude that the purpose of sections 75 & 77 of the 2000 Act is merely to criminalise the stated conduct and perhaps to trigger additional potential consequences under electoral law, all with a view to ensuring a fair election. Its purpose is not to interfere with or regulate private civil rights or obligations arising between contracting parties (specifically with bona fide third party creditors), or to divest legal persons of contractual capacity.

[154] Separately, in his testimony under cross-examination and re-examination, Mr Oakden conceded that the Unpaid Invoices had indeed been submitted to the defender prior to expiry of the relevant campaign period. This stymied the defence under section 77 of the 2000 Act.

[155] Lastly, the defender's belated argument concerning the nature of the expenditure incurred by Mr Hannam and Mr Ings failed because I attached no weight to the testimony of those witnesses on what was, or was not, included in their electoral returns. On this issue, their testimony was vague and unreliable. They displayed no real depth of understanding of the legal or financial issues relevant to their campaigns. Both deferred to Mr Jones in the completion and submission of their electoral returns. Copies of the returns were not lodged.

Conclusion

[156] For the foregoing reasons, *quoad* crave one, I granted decree against the defender for payment to the pursuer of the sum of £22,020 with interest thereon from the date of citation (26 February 2020) until payment.

[157] The sum first craved is a little less than my calculation of the aggregate value of the Unpaid Invoices. There was no motion to amend to increase the sum sued for. (The

discrepancy appears to relate to internal payment allocations unilaterally made by Mr Shields, notably in relation to invoices 995 & 997. In any event, this minor tranche of testimony from Mr Shields was not accepted by me as it was vague, unvouched and inconsistent with the documented payments to account detailed in the pursuer's own bank statement excerpt (item 5/30 of process). My arithmetic proceeds on the face-value of the lodged documents.)

[158] *Quoad* crave two, I have granted decree against the defender for payment to the pursuer of the sum of £100 in terms of the Late Payment of Commercial Debts (Interest) Act 1998. I refused decree in terms of crave 4 (for "reasonable costs" under the 1998 Act) because there was no evidence to vouch the incurring of any such pre-litigation costs. I likewise refused decree under crave 3 (for statutory interest) because of the absence of supporting explanation or evidence of its calculation.

[159] I award the taxed judicial expenses of process in favour of the pursuer as the successful party.