

29 Overall, I found Mr Jenkins' evidence to be credible, reliable and straightforward and supported by the documentary evidence.

30 **James Snowball** was the second witness for the pursuer. He started out in business as JS Builders, and taught roof works at college. He'd set up Snowcast Limited in about 2006 with Chris Keatings as his business partner, to exploit a business opportunity to provide roofing works to the GHA as subcontractor to Connaught. They did "*really well*" in 2007, and turnover was £300,000 in the first year. He was operations manager.

31 GHA increased their requirements, but Snowcast could not meet these. Mr Snowball and Mr Keatings had a meeting with Connaught to discuss matters. Mr Keatings thereafter told Mr Snowball that he knew someone who could help, and introduced him to Mr Whyte at a meeting in Bath Street, Glasgow in March 2008.

32 At that meeting, Messrs Snowball, Keatings, Craig Whyte and Tom Whyte were present. Mr Snowball gave an "*in depth report*" about business and said that they needed finance. Craig Whyte would be happy to meet with Connaught and another roofing contractor, Lovells.

33 Mr Snowball organised a meeting with the same parties at the Connaught offices. They met with the finance manager, contracts manager and operations manager of Connaught. Craig Whyte wanted to know if work was available. The Connaught representatives confirmed they were happy for Snowcast to carry out all of the roofing work. Mr Snowball's recollection was that Craig Whyte and Tom Whyte reassured the Connaught representatives that "*finance would not be an issue if all the work was issued to Snowcast*". Mr Snowball's assessment was that the work value would increase from £300,000 per year to over £2 million per year. Mr Whyte said he was interested in putting something back into the community.

34 Mr Snowball spoke to the formation of Snowcast UK Limited. Mr Whyte did not want to invest in Snowcast Limited where something could "*come and bite him*" – he wanted a clean, new company. He also specified that the new company must have a gross tax certificate (where payments can be received gross, rather than

company was set up, namely Snowcast UK Limited, with Mr Keatings as director. He did not know what happened to the old company.

- 35 They set up a meeting with the pursuer to discuss supplies. Mr Snowball and Mr Keating were excited to take the business to a new level. They could not do this without Craig Whyte's involvement, and this would alleviate their financial burdens. They could take on new squads of tillers and buy new materials. A meeting at the pursuer's offices took place in April 2008. Present were Mr Snowball, Mr Keatings, Mr Jenkins, Craig Whyte and Tom Whyte and William Brown (of the pursuer).
- 36 Mr Jenkins said that the pursuer could not get cover on Snowcast sufficient to finance the purchases, as it was a small company. Mr Snowball said "*that's when Craig and Tom said they'd finance this under the cover of Tixway*". They discussed supplies of £60,000 per month. Craig Whyte said he'd produce the defender's accounts for the insurers, and that this was to allow Snowcast to get the materials. There was one stipulation – that the invoices be sent to the defender at Grantown-on-Spey, and that if Mr Snowball placed an order, copies would go to the pursuer and also to the defender. This was so the defender could marry the order up at the end of the month (by which I understood him to mean matching the orders with the monthly invoice). Craig Whyte said that the defender would become Snowcast's parent company. In the event, Mr Snowball thought he took a 51 per cent shareholding in Snowcast, and that the papers were signed in May 2008. Mr Snowball was clear that the pursuer's customer was now the defender, rather than Snowcast.
- 37 There was no discussion of VAT invoices at the meeting. Craig Whyte and Tom Whyte stipulated that any invoices were to go to Grantown-on-Spey, so they could see what was being ordered.
- 38 Thereafter, payment was made by Snowcast to the pursuer. Tom Whyte would write Snowcast cheques, and Mr Keatings would sign them. Tom Whyte was involved in Snowcast to look after his son's interests as Mr Snowball put it. They used the same arrangement with Keyline Limited, another supplier to Snowcast, and the invoices went to Grantown. Mr Snowball was not privy to how VAT was

dealt with. Their company accountant was Charles Bryson. Mr Snowball gave evidence that Mr Bryson had expressed disquiet with the arrangement. Craig Whyte's response was that he would do as he was told.

39 Mr Snowball spoke to trading up to December 2009. There was a delay in the pay arriving for the workers. He spoke to further management and financial problems. Mr Snowball spoke to the two credit applications (5/6/8 and 5/4/4) and the terms and conditions (5/4/5). He confirmed that Mr Jenkins had made in "perfectly clear" that Snowcast by itself could not get credit levels to the value of £75,000.

40 In cross-examination, Mr Snowball confirmed his own role in Snowcast. As operations manager, he would get the list of jobs from Connaught, go to the programme meeting, then pass a list of required materials over to Willie Brown of the pursuers. He would place a bulk order with the pursuer, and then draw down on it as required. Orders would go by email to the pursuer, with a copy to Tom Whyte at the defender. This was to comply with Craig Whyte's instructions about keeping the defender informed.

41 He was referred to various orders. He confirmed that Mr Keating's name appeared only on the template, as having authorised the entirety of the order, but that Mr Snowball placed individual orders. He confirmed that reference to "Snowcast Limited" on some of the orders was a misprint, as it was in fact "Snowcast UK Limited".

42 He confirmed that the meeting at the pursuer's offices had taken place before the end of April. He remembered this as they hadn't "*signed up on financial control*" of Snowcast. The four men – Craig Whyte, Tom Whyte, Mr Snowball, and Mr Keatings - he referred to as the "four amigos", who would go everywhere to deal with Snowcast matters. Craig Whyte had stipulated that the defender be invoiced, as this was the only way they could keep an eye on matters.

43 Overall, I was able to accept Mr Snowball's evidence as credible and reliable.

44 **Paul Martin** is a company director of the pursuer. He is also manager of Albion Rovers football club. He has been in business with Mr Jenkins for 20 years, and share an office. They have a consensual approach to business – if one doesn't

agree with an action, they don't do it. He spoke to the Snowcast credit application 5/6/8 of process. He confirmed that Snowcast had obtained GHA work, and that their requirements were greater than the original account. At that stage the defender was introduced. Craig Whyte saw the opportunity for Snowcast to take all the GHA work, but that they were not well enough funded to do so. The pursuer would not do business with Snowcast above the £8,000 limit. It was therefore agreed that the defender would become the customer.

45 Craig Whyte signed a credit account opening form, and then they began trading. The pursuer's directors were excited, as it was an opportunity to grow. The pursuer's directors were content with the situation – they had a credit risk account for the defender, they had seen the defender's balance sheet which showed substantial cash assets.

46 Initially, trading was successful. After a time, however, payments slowed. They tried to support the customer, against a background of Craig Whyte and Tom Whyte verbally reassuring the pursuer that "*they'd not be left behind*". There was a clear line of communication between them – he had met Tom Whyte several times, and Craig Whyte met Mr Jenkins in London. It was for that reason they simply let the insurance lapse, and did not make a claim.

47 Mr Martin spoke to the schedule 5/3/3, which had been prepared from the pursuer's SAGE accounting system. He confirmed the sum currently outstanding. Invoices were sent to Castle Grant, but the materials were not. In any event, they were not suitable for a listed building.

48 When the account was opened in April 2008, the pursuer's directors did not know who Craig Whyte was. Mr Martin had never met him; but had communicated by email and text. It was only eventually that the penny dropped that the defender was not going to pay, so they went the legal route. Never previously had anyone at the defender denied liability to pay, and the hundreds of invoices which went to Castle Grant were never queried. He had met Tom Whyte, who had never denied the debt. He confirmed being in the office on the date that the terms and conditions (5/4/5) were signed. He confirmed Craig Whyte was in the office that

49 In cross-examination, he confirmed that any insurance claim had to be invoked within 60 days from the date of non-payment. He was not challenged on his other evidence. I was able to accept his evidence.

The defender's evidence

- 50 **Christopher Keatings** was the first witness for the defender. Mr Keatings was a director of Snowcast Limited and Snowcast UK Limited, but is presently unemployed after they ceased trading. He spoke to the history of Snowcast Limited. He also spoke to the importance of gross payment status for tax reasons – it allowed payment to be received without the otherwise automatic deduction at source of 20 per cent tax. A tax bill would be paid at the end of the tax year. HMRC require, however, timeous submission of monthly tax returns – three late returns and the status is removed. This status is extremely important in providing cash flow for a business.
- 51 He confirmed that production 5/6/8 was Snowcast Limited's application for a credit limit, and that the date of 15 January 2008 was when they started trading with the pursuer. This trade ceased at "switchover" to Snowcast UK Limited, almost overnight, in 2008. He confirmed that the defender did not invest in Snowcast.
- 52 He and Mr Jenkins knew each other well, and Mr Jenkins was aware how Snowcast Limited was doing. Mr Keatings convinced Connaught to "flip" the contract to Snowcast UK Limited, which was set up. Mr Keatings was not a director of the latter, for tax reasons – as director of a company (Snowcast Limited) which had lost its tax status, he could not, for a period of two years, be a director of any other company which enjoyed such status. His wife became director instead.
- 53 He spoke to the ordering process, and was referred to the large number of invoices. He confirmed he had little involvement in ordering, as this was Mr Snowball's task. Problems arose due to slow payment from Connaught. The real problems started in February 2010. The pursuer supplied materials up until the last minute. Snowcast UK Limited stopped trading in July 2010.

- 54 He spoke to the Snowcast bank statements (6/1/1). Money was "dripped in" by the defender, not regularly, but as required to pay wages and crucial materials. Snowcast did not perform well, due to trading conditions, created mainly by Connaught not paying. This was a huge problem. They "got by", with the defender's contribution and gross payment status.
- 55 He had told Mr Jenkins that Snowcast UK Limited had succeeded Snowcast Limited.
- 56 He had a vague recollection that there was a single meeting in April 2008, with Mr Jenkins, Craig Whyte and himself and possibly Mr Snowball. The purpose was to give a level of comfort to the pursuer, relating to investment in Snowcast. He portrayed Mr Whyte as an investor. Mr Keatings did not suggest that any supplies be invoiced to the defender, as he had no authority to do so. He had said to Craig Whyte that they needed a mechanism to secure supplies. How that was obtained was "entirely up to him". They were the pursuer's biggest customer.
- 57 He was asked if Craig Whyte told him about an agreement about the pursuer's invoicing supplies to the defender. Mr Keatings could not recall this, but it would surprise him, as he viewed Mr Whyte as risk averse (- I note here that Mr Keating's evidence on the crucial point, namely what was agreed, was too vague to be of assistance. I comment on this further below). Mr Jenkins had not discussed this with him, although they spoke regularly.
- 58 He was referred to the invoices and delivery notes. He noted that the invoices were sent to the defender, but he "had no idea why". He knew that Mr Whyte worked mainly in London. The invoices were being paid by Snowcast, and they did not see these invoices. Mr Keating at no stage queried why the invoices were made out to the defender, as they were his lifeline, and could be "made out to Mickey Mouse". He was mindful that this was paying his salary, and acted out of self-preservation. Snowcast would be "finished" without materials. Snowcast paid these invoices as quickly as possible. Some he paid with his personal credit card.
- 59 He was taken to a comparison between the Snowcast bank statements (6/1/1) and the schedule of payments (5/3/3) and identified a number of coinciding entries He agreed that the company was paying invoices he had never seen. There was an

element of trust. Payment was made, for example of round sums of £14,000 or £10,000, when Snowcast got payment from contractors. He spoke to the defender's credit application (5/4/4). He confirmed it was his handwriting, but that he would only have completed this on instruction from Craig Whyte. He would not query such an instruction. He confirmed he would "*do anything possible*" to keep his salary coming in.

60 He was asked again about payment for supplies. He said that Mr Jenkins had confirmed with him that it was difficult to get a suitable level of credit for a new company like Snowcast. It was resolved by Craig Whyte "*finding a resolution. It was obviously between the two of them*". Mr Keatings only knew that Snowcast was obtaining materials, and he didn't ask how. He did not make an issue of it, as it was their only lifeline. Overall it was clear, in my view, that Mr Keatings simply did not trouble with the detail of the arrangements between the pursuer and the defender – all that mattered was that Snowcast was getting supplies.

61 Towards the end, the debt from Connaught was at £123,000 when Connaught went into administration. Cracks appeared in his relationship with Mr Snowball, who did not like to take a necessary salary cut. There were arguments, including a real argument in the office over levels of holiday pay for the workers. This led to the end of their business relationship.

62 In cross-examination, Mr Keating confirmed his long friendship with Mr Whyte, since 1998. He thought the Snowcast credit limit was higher than the £5,000 to £8,000 shown in 5/6/8, as this would be built up over time. He was familiar with the practice of bad debt insurance, as Snowcast had it also.

63 He said Craig Whyte appeared on the scene in April 2008. He agreed that there was scope for profits from the GHA contract. Mr Whyte said he could take the business to a new level. A new company was formed, although the main driver for that was the need for gross payment status, or the business model would not work. Mr Whyte met with Connaught as they wanted reassurance if Snowcast were to be awarded the roofing sub-contract for all GHA works. They wanted to know, he thought, that there was investment in Snowcast. He was not privy to any meeting, however.

- 64 Mr Keating confirmed that, if the invoices were made out to the defender, that the defender was effectively the customer. That was clear common sense. It also made sense that no supplier would supply 60,000 to £80,000 per month of materials without comfort they were to get paid. It was crucial for Snowcast to secure a regular supply. He also accepted that it appeared that 5/4/5, the terms and conditions for the defender, showed that some supply to the defender was in contemplation. I note that, however, Mr Keating was vague on much of this material. He did claim to have any knowledge of the parties' discussion at the meeting on 29 April 2008. On that evidence he was not involved in any agreement between the pursuer and the defender, and was simply glad to secure a supply of materials. He was, understandably, indifferent to the mechanism whereby the pursuer continued to supply, as long as that supply continued.
- 65 He was asked about materials being supplied to Castle Grant. He thought that extensive refurbishment works were being carried out, as the roof of a wing of the castle was destroyed by fire. Snowcast had supplied a load of felt and battens, and also bathroom suites and some other equipment. He had once made a delivery to site, accompanied by Larry Dunn. It had been arranged between Craig Whyte and Snowcast, and Mr Whyte was not invoiced for it. This supply was by Snowcast, not the pursuer.
- 66 He confirmed that he received none of the invoices. He did not know about the structure or officers of the defender. Mr Whyte was of the nature that "*if you don't need to know, you don't get to hear.*" It was of no consequence to him.
- 67 He could not speak to how VAT was reclaimed – this was a matter for the company accountant, Charles Bryson. Mr Keatings did not know about any invoices passing between the defender and Snowcast. Craig Whyte had access to the Snowcast bank account, and could do "*as he saw fit*".
- 68 When pressed, he confirmed that Mr Whyte had complete access to the Snowcast account. That would enable Mr Whyte to remove money from the account. Mr Whyte would sums back when the account was in a healthy condition. There had been a flow of money from the defender. He was referred to the statements (6/1/1), and agreed that there was a flow of cash between defender and Snowcast.

At least £50,000 was removed by Mr Whyte in a series of transactions on 11 March, 24 March, 14 April, 15 May and 29 July 2009.

- 69 He was asked about ownership of Snowcast UK Limited. He thought that the defender had a majority shareholding, but was not clear. He confirmed that the defender put money into Snowcast, and that Mr Whyte "*called the shots*" for Snowcast's supply.
- 70 In re-examination, he confirmed that Connaught would have taken comfort from Mr Whyte injecting funds into Snowcast. He did not think he had been present when Mr Whyte had signed the terms and conditions (5/4/5), but he could not be sure. He thought that Mr Whyte had put about £150,000 into Snowcast over the whole period, and had recovered that sum, plus about £21,500 (i.e. £171,500 in total). He conceded that the operation of Snowcast towards the end had been "*a bit kamikaze*", and Mr Keatings ordered supplies to keep the business going as long as possible, but was only staving off the inevitable.
- 71 **Craig Whyte** was the second and last witness for the defender. Mr Whyte is the sole director of the defender, which is a holding/managing company and doesn't trade.
- 72 He was referred to the copy terms and conditions (5/4/5). He said it looked like the defender accepting the pursuer's conditions of sale. It appeared to be his signature, and his writing. He did not recall completing this, but accepted that he had. He explained that he would have done so only because he was refurbishing Castle Grant, which was in substantial disrepair, and needed supplies. He was introduced to the pursuer by Mr Keatings. Notwithstanding the date of 29 April 2008, the Castle Grant project had started in late 2006 and continued to this day.
- 73 The defender had not invested in Snowcast Limited, but had provided Snowcast UK Limited with some funding. He was referred to the bank statement (6/1/1). His involvement with that business came about when Mr Keatings approached him and sold him the idea of the business. Snowcast was struggling for cash flow, so he lent him some money, which he would then get back. He thought this sum was about £200,000, in a facility which would be paid when required. He contradicted Mr Keatings' evidence that there was any shareholding – the defender was not a

shareholder in Snowcast. It had "*no involvement at all*". The relationship was solely a "*loan we'd make a return on*".

74 He'd known Mr Keatings for about 20 years. He introduced Mr Whyte to the pursuer. He met only Mr Jenkins. They had a meeting, but Mr Whyte could not recall the date. With reference to the copy conditions (5/4/5) he did not know if he'd signed those at a meeting. He met Mr Jenkins only two or three times in total.

75 He was asked about an arrangement whereby Snowcast supplies would be invoiced by the pursuer to the defender. He rejected this absolutely, as the defender had no involvement with Snowcast, and he wouldn't have agreed to such an arrangement in any event. If he wanted to put money in, he would give cash – he would not hand a blank cheque to a supplier. That had "*no commercial logic whatsoever*". I will return to discuss the logic, below, The defender would pay for materials ordered by the defender, not by anyone else. He did not remember discussing Snowcast credit limits.

76 He was referred to the credit application in the defender's name (5/4/4). He did not complete that form, and had not asked Mr Keatings to complete it. He assumed it related to an account for Castle Grant. It was possible that amount would be spent, as it was a considerable project.

77 He was referred to the many volumes of invoices and delivery notes. He accepted it was unlikely that these were for Castle Grant, and he noted the delivery addresses to sites in Glasgow. They were addressed to the defender. Mr Whyte, however, would have seen the first batch, and these would be forwarded to Mr Keatings, and he would be told to make sure they went to the right party. Mr Whyte did not live at Castle Grant on a regular basis (only 3 or 4 days a month), and his staff would send them on. That had happened with the first batch. He was "*not aware*" of seeing more batches of invoices. He'd have had a conversation with Mr Keatings, to get it sorted out. The invoices showed the materials were not for Castle Grant.

78 He accepted the invoices, nonetheless, seemed to have sent to Castle Grant for many months. He was clear that his staff would have sent them on. He only saw the first batch. He did not sign any cheque, and they'd only have been paid if they