evidence when he seeks to be clear that there was *"absolutely not"* such an agreement.

118 Significantly, Mr Whyte did not remember Snowcast credit limits being discussed at that meeting. However, all the other witnesses' evidence points to the Snowcast credit limit being the whole reason for the meeting. Logically, it is difficult to see that Mr Whyte's position is correct - Snowcast was, after all, the only thing in which those attending had a common commercial interest. That meeting was Mr Jenkins' chance to speak to a major provider of financial assistance, in a project which both Snowcast and the pursuer were keen to develop. It is difficult to see that he would not take it. I cannot, therefore, accept that the Snowcast credit limit was not a topic of conversation – it must, indeed, have been the principal topic. That by itself casts further significant doubt over Mr Whyte's evidence.

Events following the meeting

119 With almost immediate effect, roofing supplies were ordered by Snowcast, and invoiced by the pursuer to the defender. The first invoice sent to the defender is dated 30 April 2008 (5/2/1) and is addressed to the defender at Castle Grant. It is the first of (at best estimate) 600 to 800 invoices in total sent to the defender over the course of approximately one year, the last being dated 1 May 2009 (5/2/1748). They were sent to Castle Grant until approximately late March 2009 (5/2/1573, although see 5/2/1580) when they were sent to 65 Bath Street, Glasgow, the defender's registered office.

120 Mr Whyte's evidence was that he became aware of the first batch to arrive at Castle Grant, and handed these to his staff to make sure that there was no repeat. They continued to arrive, however, for approximately one year, when they were diverted to the defender's registered office. Mr Whyte could offer no explanation. Logically, either Mr Whyte's staff are wholly incompetent, or disregarded his instructions, or Mr Whyte's evidence is unreliable. Mr Keatings' evidence was that no invoices were forwarded to him for payment, and payment was made on trust.

Summary of reasons

121 I have preferred the pursuer's account and reject those of the defender. It follows that the pursuer has proved its case. I would summarise the reasons as follows:

122 Firstly, as discussed above, in my view Mr Whyte's evidence about the financing arrangement, namely a loan to Snowcast, is inherently improbable. It is not a solution which would solve the pursuer's problem with extending credit. It would give the pursuer no security for payment, except in nebulous terms. I do not accept that the pursuer would grant very high levels of credit, at £75,000 per month, without security. By contrast, the relationship of client/customer would give the pursuer security, irrespective of who actually paid the bills. There is no suggestion that the defender would make payment direct, but rather it would assume only formal legal liability as the customer. The pursuer's version is inherently more plausible.

123 Second, that point is reinforced by events before and after the meeting. Prior to the meeting, there was a problem with supply levels. Following the meeting, that problem was resolved, and immediate supply began. Within a couple of weeks, many thousands of pounds of credit had been extended (see invoices 5/2/1 et seq). It is highly likely, therefore, that whatever had been agreed at that meeting provided the pursuer with acceptable security. These supplies continue for at least one year. A loan to Snowcast is unlikely to have had that effect. The defender did not attempt to lead any evidence that any loan had even been made by May 2008, or to give any other explanation for this sudden willingness to supply credit. The pursuer's claim is inherently more plausible. I do not accept that any competently managed business in the position of the pursuer would advance £75,000 of credit to a customer in reliance solely on an assurance of payment. I have every impression that Mr Jenkins and Mr Martin were competent managers.

124 Third, as discussed above, Mr Whyte's evidence about not remembering the discussion of Snowcast's credit limit at the meeting of April 2008, is improbable. Snowcast's credit was the main problem between the pursuer and Snowcast. It was the financial problem which held up supplies, which Snowcast regarded as critical.

Snowcast supplies was the only topic which linked the pursuer, the defender and Snowcast. The defender, in the form of Mr Whyte, was there to assist. All parties had a direct financial interest in resolving the issue and allowing a lucrative contract to flourish. It was, in my view, the whole rationale for the meeting. This casts doubt on Mr Whyte's evidence.

125 Fourth, immediately following the meeting, supplies were invoiced to the defender at Craig Whyte's home address, not Snowcast's address or even the defender's registered office. There is, in my view, no plausible explanation for this, other than that Mr Whyte asked for this to be done. If the pursuer were to invoice the defender, the logical explanation would be to send it to the defender, at Bath Street, not to a director's private address. In my view that can only be explained by an express instruction. Mr Whyte's explanation for the invoices being sent to Castle Grant was that it was a mistake, which he had instructed be rectified. Mr Whyte said he *"had no idea"* why 600 to 800 invoices were sent to the defender. I reject that evidence as inherently implausible, and contradicted by all the other evidence.

126 Fifth, Mr Whyte's evidence that he reacted to these invoices is equally implausible. He said he "*responded*" to these and made sure that Mr Keatings saw they went to the right party. Mr Keatings' evidence gave no support to this. Nonetheless, the evidence shows that the invoices continued to be sent there for approximately one year. The only possible explanations are that either Mr Whyte did not give such an instruction, or that his staff did not receive it (but nonetheless kept processing invoices without telling him), or that his staff are incompetent. These last two options appear unlikely. Even if he did give such an instruction, that does not explain why the invoice address was suddenly switched from Castle Grant to Bath Street. Mr Whyte could offer no explanation. If he had truly instructed these invoices to go to the *"right party"*, the right party was not the defender's own registered office. Moreover, these invoices continued to be paid throughout, so his staff never sent them back to the pursuer. In my view, only the pursuer's explanation makes sense. I note, further, that while the pursuer sent duplicate delivery notes to Castle Grant, they did not sent duplicate invoices to

Snowcast. In my view, if Snowcast was truly the customer, it is much more likely that Snowcast, not the defender, would receive the principal invoice. They did not.

127 Sixth, Mr Whyte's explanation for filling in the terms and conditions (5/4/5) was that supplies might be required for Castle Grant. He did not demur from the proposition that the type of concrete red house tile would be wholly unsuitable for a listed building such as Castle Grant, but explained that other types of roofing material might be appropriate. However, his evidence was that there was no supply of any sort by the pursuer to Castle Grant – in reality, the only such supply was made by Snowcast. In my view, there was no reason for Mr Whyte to anticipate supply to Castle Grant, which was never the subject of the April 2008 meeting. It is much more plausible that the meeting was to address the Snowcast issue, and the terms and conditions were the direct means of becoming the customer and resolving the whole problem.

128 Seventh, Mr Whyte's evidence was that he would only put cash into a business in these circumstances, not hand "*a blank cheque*" to a supplier. He described the pursuer's claim, that the defender was to step in as the client, as having "*no commercial logic*". On analysis, however, that is not correct. The defender's relationship with Snowcast was no ordinary relationship. It was not an arms-length transaction between the defender and Snowcast. Firstly, Mr Whyte (eventually, after an initial denial) agreed that he would "*possibly*" have complete access to Snowcast's bank account. Mr Keatings' evidence was that he had such access, and used it to move funds, and I accept that evidence. From this access Mr Whyte could monitor, and indeed control, the cash position. He could, according to Mr Keating, withdraw money from that account at will. The result is that the defender could get repayment as a matter of priority whenever it felt the need. Secondly, invoices of every relevant transaction, and copy orders as well, went to Castle Grant. Accordingly the defender would be fully aware within a few days of any significant variation in order value, and could take steps to protect its position. There was no question of a blank cheque - to the contrary, it is difficult to see that the defender could not, if it chose, regulate the supplies contract very closely and obtain payment instantly if it were abused. To the extent that this was "*a very*

strange arrangement", that moniker would also apply to the intrusive nature of the defender's involvement in Snowcast's affairs, and which Mr Whyte admits.

129 Eighth, Mr Whyte explained that if any arrangement like this was mooted, it would be more appropriate to offer a guarantee (although he would not offer a guarantee in any event). In my view, that explanation is also tends to mislead. As he would undoubtedly realise, a guarantee would not solve the supply problem. It would only mean that the defender would be liable long after Snowcast defaulted. While there might be long-term liability under a guarantee, that would do nothing for the pursuer's short-term cash flow in the event that Snowcast ceased to pay. In an industry where cash flow is critical (see Mr Keating's discussion of gross payment status, for example) this is, in my view, very unlikely to be satisfactory to the pursuer, at least to the extent of allowing £75,000 of credit per month. The pursuer's survival would depend on suing the defender. It is inherently unlikely that (even hypothetically) this arrangement would ever work. I wondered what Mr Whyte's purpose was in mentioning it. Similarly, his evidence was that, if the pursuer's claim is correct, the defender may as well have carried out the work itself. That was not a plausible comment either. Quite apart from the defender not being a roofing contractor, the defender had complete control over accounts, invoices and repayment. This evidence did not assist me in relying on Mr Whyte's evidence.

130 Ninth, Mr Whyte agreed with the proposition that it did not seem very sensible to give credit to Snowcast of £75,000 per month without credit risk insurance. He postulated that the pursuer concocted a scheme to use the defender's credit rating, but without Mr Whyte's authority. He had signed the terms and conditions only for Castle Grant supplies. In my view, Mr Whyte could not believe that scenario, nor could the pursuer credibly have intended it. The whole point of credit risk insurance is that it is arranged, and paid out, on a debtor-by-debtor basis. No insurer could pay out without knowing who the customer was. Here, if the customer was Snowcast, the limit was completely inadequate. For any fraudulent scheme to work, the defender would have to be "misrepresented" as the customer, requiring the defender to collude with this pretence in the event of a claim. I cannot see that the pursuer could ever seriously believe that (if this were truly a

fraudulent scheme) Mr Whyte would suddenly collude in agreeing. Ignoring the inherent risk of criminal liability in fraud, the defender would thereby immediately be exposed to a subrogated claim direct from the insurer. The defender had ample cash assets. The first thing an insurer would do is sue the defender, after having paid out. Mr Jenkins did not strike me as so naïve to believe that the defender would, quite unnecessarily and with no gain to itself, subject itself to credit blacking, litigation and commercial ruin. To the contrary, all the defender would have to do is deny liability. The insurer would then refuse to pay out, and the pursuer would be left completely exposed to a huge debt. There was no reason to anticipate, in April 2008, that (fraudulent) invoicing of the defender, to Castle Grant (as Mr Whyte accepts occurred) would be met by anything other than an angry rebuttal and the end of any financial support. All in all, there would never be any credible chance of claiming on such an insurance policy, and accordingly no incentive for the pursuer setting up this unlikely scenario. In my view, Mr Whyte is not so naïve as to believe this either.

131 Tenth, Mr Whyte's evidence as to claims for non-payment was exposed as, at the very least, inaccurate. In cross-examination, he was asked if Mr Jenkins had ever pressed the defender for payment of the outstanding sum. He denied this had been done. He explained away several email messages which passed between them (5/6/12 of process). The text, from Mr Jenkins, states *"Hi Craig...I seen (sic) to have hot (sic) a brick wall regarding the £5000 per month which we agreed you'd pay..."* Mr Whyte denied ever agreeing to pay. He was asked to comment on various emails (5/6/13). The first states: *"There is still £86,127.36 outstanding. I have received £7,500 to account since both your good self and Tom agreed to settle the Tixway debt...please Craig I am begging you to help me?"* I have referred to this evidence in more detail above, including *"I am obviously very keen to discuss...the outstanding debt between Onestop and Tixway...I can't stress enough how much it would mean to me...if you reinstated the proposal to pay back at £5k/month*". For the reasons set out earlier, I reject Mr Whyte's evidence about this correspondence. It is clearly, in my view, a detailed claim for payment by reference to an earlier agreement, which the defender failed to deny and only latterly began to address by "discussing potential solutions". These emails are

wholly consistent with the pursuer's position and wholly inconsistent with that of the defender.

132 Eleventh, leading on from the above, the pursuer's position is that payments of £5,000 per month were negotiated, and these are referred to in the foregoing emails. Mr Whyte denies this. However, the Snowcast bank statements (6/1/1) shows that these were paid on 13 April 2010 (5/3/3). This is clear evidence that contradicts the defender's position.

133 Twelfth, the only other possibility was that the pursuer might have mistaken the defender's position, and the parties simply misunderstood each other at the meeting of April 2008. I reject this as a possibility. Not only did neither side suggest such a scenario, but it was not a stance taken by Mr Whyte. He did not attempt to give an alternative version of events. He did not, for example, say that the meeting of April 2008 was designed to comfort the pursuer by a display of financial backing. His evidence was that the meeting was solely for the purpose of seeing the pursuer's establishment, and that Snowcast was discussed either barely or not at all. Further, the defender, on the evidence, could not have been unaware of the invoices, the continued supply or the claims of the pursuer for payment from the defender. Moreover, the substitution of a third party as a customer is a sufficiently unusual situation for it to be highly unlikely that the pursuer misunderstood. I therefore mention this possibility for completeness and only to dismiss it as highly unlikely.

134 Thirteenth, by contrast to the foregoing, all the documentary evidence fits with the pursuer's case. I accept that the pursuer operated a cautious business model which involved credit risk insurance for its clients, and that it followed normal practice with Snowcast and, in turn, the defender. The invoices are consistent with this, as are the subsequent emails. I have no doubt that the pursuer's version is the correct one.

135 I would mention one other point, namely the VAT question. The invoices were VAT invoices, and one would expect an attempt to reclaim the VAT. Whoever reclaimed VAT may, in my view, throw some light on who the customer truly was. There was, however, no evidence, and this point cannot be taken further. Mr

Whyte denied reclaiming VAT, but there was no evidence that Snowcast did, either. It remains an unknown factor.

136 For completeness, a passing reference was made in evidence to Mr Whyte having served a period of disqualification as a company director, and he admitted this. It was not suggested that there was any direct link between that event and the defender or Snowcast. In fairness to Mr Whyte, because it has no direct bearing on the current case, I have not taken any account of Mr Whyte's history and I simply disregard this.

Conclusion

137 For the foregoing reasons, I accept the evidence led by the pursuer as credible and reliable, and supported by the available documentation. I reject the evidence of Mr Whyte as wholly unreliable. It is not possible to ascertain whether he is not telling the truth or is simply unable to recollect the true position, and has convinced himself that this arrangement is something that he would not have entered into. Either way, his evidence is contradicted by virtually every other piece of evidence. In my view, the defender offered its own credit rating to allow cover for the supply of large volumes of materials to Snowcast, subject to (i) a high degree of control by the defender over Snowcast and (ii) an understanding between the defender and Snowcast that Snowcast would make payment for these materials. As a matter of legal liability, however, the defender remains the principal obligant. There is no dispute as to the sum outstanding, nor that it was properly incurred, and I accept the total brought out by the pursuer's figures (5/3/3). I will grant decree as craved.

138 I will fix a hearing for parties to discuss expenses and any other matter arising.

Sheriff of Glasgow and Strathkelvin at Glasgow.