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Collateral Warranties and Prescription – When "No Greater Duties" Means No More, No Less

Legal and General Assurance (Pensions Management) Ltd against The Firm of Halliday Fraser Munro and Others [2025] CSIH24

Date: 27 August 2025

Judges: Lord President (Pentland), Lord Malcolm, Lord Doherty

Key Words:

Collateral warranties, Prescription & Limitation (Scotland) Act 1973, s.6(4), s.11(3), Short negative prescription (five years), Principle of equivalence, No greater duties clauses, Professional negligence (architects), Construction defects

Summary

The reclaimers (architects) appealed the refusal to dismiss claims by the respondents (second purchasers of Union Plaza, Aberdeen), who sought damages for defects based on a collateral warranty executed after purchase [1-4, 9-15].

The court addressed two issues [8]:

1. **Causation/Date of Loss**: The reclaimers argued no recoverable loss, as defects pre-dated the warranty. Rejected: the warranty promised prior competent performance, breach of which caused actionable loss, avoiding a "legal black hole" [19, 26, 30, 33-44].

2. **Prescription**: Reclaimers said the "no greater duties" clause incorporated the original employer's time-bar, meaning prescription had expired before the warranty. Rejected: the clause limited scope of duties, not duration. A fresh obligation arose 6 Jan 2014; action served 17 Dec 2018 was in time [6-8, 19, 21, 27-29, 30-32, 45-48, 75-83].

Reliance on s.6(4) (error induced) for soffit insulation defects was deemed circular and irrelevant [85-93]. The reclaiming motion was refused [94-95].

Key Themes:

1. **Contractual Interpretation**: Objective meaning; courts won't rewrite bargains [58-64, 70-72, 75-76].

2. **Nature of Warranties**: Distinct contracts preventing losses from falling into a “black hole” [40-43, 58-59, 73-74, 82].
3. **Causation & Retrospective Effect**: A promise about past skill can ground liability [33-44].
4. **Prescription & Equivalence**: “No greater duties” limits scope, not duration [45-48, 58-69, 75-82].
5. **Statutory Prescriptive Periods**: Application of s.6(4) and s.11(3) [6-8, 21, 27-29, 83-89].
6. **Rejection of Presumptions**: No default rule tying warranty prescription to original contract [69-72].

Background

The factual background is drawn from the respondents’ pleadings:

- **2006**: SMC contracted for Union Plaza [9].
- **2008**: Practical completion; sale to UPLP [10-11].
- **2007 Appointment**: Architects engaged with obligation to give collateral warranty [13].
- **2013**: Respondents bought building; defects certificate issued [12-14].
- **2014**: Warranty granted (6 Jan) [14, 22-25].
- **Defects**: Paintwork (2018) and soffit insulation (2020) [15-17].
- **Procedure**: Summons served Dec 2018; soffit claim added Feb 2021. Defence: no loss and time-bar [16-21].

Legal Issues and Analysis

Argument 1: Recoverable Loss (Post-Purchase Warranty)

- **Reclaimers:** Loss crystallised at purchase, pre-dating warranty [19, 26, 30, 33-36].
- **Court:** Warranty was a promise of skill; breach created actionable loss regardless of acquisition date [37-44].

Argument 2: Prescription and Equivalence of Defences

- **Reclaimers**: “No greater duties” clause imported time-bar [45-48].
- **Court**: Time-bar clauses need clear wording. *British Overseas Bank* turned on a clause absent here [58-59]. Clause 3.2 limited scope only, not duration [70-76]. No “principle of equivalence” [69-72]. Five-year period ran from 6 Jan 2014; action timely [75-83].

Section 6(4) (Soffit Claim)

- **Respondents**: Warranty misled them into not claiming [85].
- **Court**: Circular and illogical; averments excluded [86-89].

Conclusion

- **Causation:** Warranty’s retrospective promise created recoverable loss [40-44].
- **Prescription:** Clause 3.2 didn’t import time-bar; period ran from Jan 2014 [75-83].
- **Outcome:** Reclaiming motion refused; s.6(4) averments irrelevant [89-93].

Key Takeaway:

*The **Key Takeaway** of the judgment is that, in the context of construction contracts governed by Scots law, the standard "no greater duties or obligations" clause in a collateral warranty is construed narrowly as relating only to the **scope and nature of professional duties**, not to the **duration of liabilities or importation of defences**. The Inner House rejected any presumption that such clauses carry across the prescriptive time-bar from the original contract ([69]–[72]). Absent **express and unambiguous wording**, a collateral warranty is treated as a fresh contract: **the five-year prescriptive period runs from the date of execution of the warranty itself** ([75]–[82]), and not from the underlying project's practical completion. Accordingly, the warranty in this case, granted on 6 January 2014, was still actionable when proceedings commenced on 17 December 2018 ([82]–[83]).*

Parting Thoughts

"No greater duties" is not a get-out-of-jail-free card. The reclaimers' Excalibur proved a butter knife; the respondents' "we were duped by our own warranty" argument sank without trace. The message: if you want to time-bar liability, draft for it. Don't expect the court to find hidden grenades. Draft cleanly, promise carefully, and avoid black holes.

In short: "No greater duties" means exactly what it says—no more, no less.

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Authorities

Case Law:

I. Contractual Interpretation, Equivalence, and Duration of Liability

- ***British Overseas Bank v Stewart Milne Group*** **[2019] CSIH 47; 2020 SC 24**: *This case was central to the reclaimers' argument regarding the incorporation of the original time-bar. The court distinguished it, finding that the decision in British Overseas Bank rested on a specific clause (Clause 3.1) which expressly entitled the contractor to rely on **any defence** it would have had against the original employer, unlike the current warranty. The court explicitly rejected the general observations in British Overseas Bank suggesting a default "principle of equivalence" requiring equivalence of defences or a "normal rule" that collateral warranties should be subject to the same time-bar as the original contract, holding those statements to be obiter (incidental) [31, 45-46, 52, 58-69].*
- ***Northern & Shell Plc v John Laing Construction Ltd*** **[2023] EWCA Civ 1035; 90 ConLR 26, para 46**: *Principle that a clause intended to create a time-bar must be **clear and unambiguous**. Also noted that a contract is not necessarily effective on or from the date upon which it was concluded [75-76, 81].*
- ***Swansea Stadium Mgt Co Ltd v Swansea C & CC*** **[2018] EWHC 2192 (TCC); [2019] PNLR 4**: *English first-instance case cited by the reclaimers, where the judge held that a "no greater liability" proviso indicated the parties intended the warrantor's liability to be **coterminous** with the employer's. The present court, however, expressed reservations, stating it was "not convinced" by that reasoning, holding the proviso merely limited the scope of liability [46, 81].*
- ***Safeway Stores v Interserve Project Services*** **[2005] EWHC 3085 (TCC); 105 ConLR 60**: *English first-instance case that turned on specific wording in the collateral warranty: the clause*

*restricted liability to be "no greater or of **longer duration**" (wording absent in the present case). The presence of the words "liability" and "longer duration" was held to be critical [46, 51, 80].*

- ***Atlantic Shipping and Trading Co v Louis Dreyfus & Co.* [1922] 2 AC 250***: Confirms that express conditions abridging a new limitation period (such as one created by a collateral warranty) to correspond with the original period are **valid** [78].*

II. Nature of Collateral Warranties and Causation of Loss

- ***Scottish Widows Services Ltd v Harmon/CRM Facades Ltd (in liquidation)* [2010] CSOH 42; 2010 SLT 1102***: Establishes the purpose of a collateral warranty in the construction industry: to provide a contractual basis for recovery to the person liable for the cost of repair, thereby **preventing loss from falling into a legal "black hole"**. It confirms that such loss is recoverable provided the warranty is appropriately worded [26, 40-43].*
- ***Toppan Holdings Ltd v Simply Construct (UK) LLP* [2022] EWCA Civ 823; [2022] Bus LR 1079***: Defines the nature of a warranty: the normal meaning of the verb to warrant is to provide a **promise about a fact, circumstance or outcome**. Liability rests solely upon the fact that the warrantor's promise is broken, distinguishing it conceptually from liability for breach of direct construction obligations [42, 63, 73, 81].*
- ***Oscar Chess Ltd v Williams* [1956] EWCA Civ 5; [1957] 1 WLR 370***: Confirms that the word "warranty" in its ordinary English meaning denotes a **binding promise** [42].*
- ***Abbey Healthcare (Mill Hill) Ltd v Augusta 2008 LLP* [2024] UKSC 23; [2024] 4 All ER 905***: Guidance on the essential nature of a collateral warranty: it is a **derivative agreement** which contains no promise to carry out construction for the beneficiary, but merely a promise that operations carried out for someone else would be performed [73-74].*
- ***Davies v Bridgend County Borough Council* [2024] UKSC 15; [2025] AC 434***: Cited by the reclaimers to support the argument that loss could not relevantly pre-date the existence of the contractual obligations [34].*
- ***George Fischer Holding Ltd v Multi Design Consultants Ltd* [1998] EWHC QB 341; (1998) 61 ConLR 85***: Principle that **reliance** is not required for a claim based upon contract or promise, distinguishing it from delict [37].*
- ***Reeves v Butcher* [1981] 2 QB 509***: Principle that a cause of action cannot arise until there is a party who can sue and a party who can be sued [78].*
- ***Glasgow Airport v Kirkman & Bradford* [2007] CSIH 47; 2007 SC 742***: Noted that a contractual warranty is usually the product of **negotiations** between parties whose interests will often conflict [71].*

III. Statutory Prescription Saving Provisions (1973 Act, Section 6(4))

- ***Tilbury Douglas Construction v Ove Arup* [2024] CSIH 15; 2024 SC 383***: Necessary for the creditor to show they were misled by the debtor's fraud or induced error to rely on Section 6(4). The court expressed doubt whether Section 6(4) is aimed at everyday conduct such as merely providing services and accepting payment for defective work [87, 93].*
- ***BP Exploration Co Ltd v Chevron* [2001] UKHL 50; 2002 SC (HL) 19***: Confirms that the protection afforded by Section 6(4) extends to the period during which the creditor did nothing to enforce the obligation; the debtor must lead the creditor to believe something **different from the truth** [28, 87].*
- ***Caledonian Railway Co v Chisholm* (1886) 13 R 773***: Historical basis for Section 6(4); established that it would be "entirely unjust" to apply prescription where the debtor, by false*

*pretences, **prevented the creditor from discovering** they were entitled to charge [27, 88].*

- ***Rowan Timber Supplies (Scotland) Ltd v Scottish Water Business Stream Ltd* [2011] CSIH 26**: *Noted that the drafting of Section 6(4) had the observations from Caledonian Railway Co v Chisholm in mind [27, 88].*
- ***Dryburgh v Scotts Media Tax Ltd* [2014] CSIH 45; 2014 SC 651**: *Requirement that for Section 6(4) to apply to a company, the error must be accompanied by a **specific mental state** in one or more individuals capable of being attributed to the company.*

IV. General Contractual Interpretation Principles

- ***Rainy Sky SA v Kookmin Bank* [2011] UKSC 50; 1 WLR 2900**: *Cited as one of the well-known cases setting out the principles of **contractual interpretation** [61].*
- ***Wood v Capita Insurance Services Ltd* [2017] UKSC 24; AC 1173**: *Cited as one of the well-known cases setting out the principles of **contractual interpretation** [61].Top of Form*

Legislation:

Modern Scots Prescription Law

- ***Prescription and Limitation (Scotland) Act 1973 (the 1973 Act):** General statute governing the **short negative prescriptive period of five years**, which extinguishes an obligation to make reparation. The court found that since no contractual limitation provision was successfully imported via the collateral warranty, the normal statutory scheme under this Act applied, leading to the conclusion that the claims based on the collateral warranty (granted 6 January 2014) had not prescribed when the summons was served (17 December 2018) [6–8, 19, 21, 27–29, 45–48, 75–83, 94–95].*
- ***Section 6(4) of the Prescription and Limitation (Scotland) Act 1973:** This saving provision excludes from the computation of the prescriptive period any time during which the creditor was induced to refrain from making a relevant claim due to fraud by the debtor or **error induced by words or conduct of the debtor**. The protection afforded extends to the period during which the creditor did nothing to enforce the obligation. However, the respondents' specific averment that the grant of the collateral warranty itself induced the error regarding the soffit insulation defects was rejected as "circular and illogical" and irrelevant, because the claim was based on the breach of that same warranty [27–28, 85–89, 90–93].*
- ***Section 11(3) of the Prescription and Limitation (Scotland) Act 1973:** This saving provision dictates that the obligation to make reparation does not become enforceable, and thus the prescriptive period does not start, until the creditor is **aware (or could with reasonable diligence have become aware) of the loss or damage**. The respondents relied on this section regarding the soffit insulation claim, averring that awareness of the loss did not occur until August 2020, and the reclaimers did not challenge the relevance of these averments [6–7, 21, 83–84].*

Historical Scots Prescription Law

- ***Triennial Prescription Act (1579, c 83):** Historical statute governing prescription, cited to illustrate the fundamental principle that it would be "entirely unjust" to apply a time-bar where the debtor, through **false pretences**, prevented the creditor from discovering the basis for a claim, providing the background for the enactment of Section 6(4) of the 1973 Act [27-28, 88].*

Prospective Legislative Amendments

- ***Section 4 of the Prescription (Scotland) Act 2018:*** *Legislation that prospectively amended section 6(4) of the 1973 Act; however, the amended version was confirmed to be of no relevance for the present case [28].*

Legal Texts & Commentary:

1. Collateral Warranty Interpretation and Contractual Limitation

- ***Keating, Construction Contracts (12th ed 2024), para 6-042:*** *Collateral warranties have all the manifestations and requirements of ordinary contracts in law and in principle have no special features [37, 71].*
- ***Bailey, Construction Law (4th ed 2024), vol II, para 12.155:*** *The liability of the provider of a collateral warranty may be limited by express terms [70].*
- ***Hudson's Building and Engineering Contracts (14th ed 2022), paragraph [1-250(6)]:*** *A cause of action on a collateral warranty may be subject to a special express time limit. If there is no express limit, a common form warranty (referring to the underlying contract) may create a series of fresh causes of action at the date of the warranty (for subsisting breaches before the warranty existed), requiring careful construction [78].*
- ***Winward Fearon, Collateral Warranties (2nd ed 2002), Para [6.101]:*** *Even if a collateral warranty does not seek to create any greater liability than the original contractual arrangement, its execution may operate to extend the limitation period [78].*
- ***Winward Fearon, Collateral Warranties (2nd ed 2002), Para [6.111]:*** *It is important for a party entering a collateral warranty to consider if the document will extend the limitation period beyond the principal contract, and if so, this extension can be curtailed by an express condition abridging the new limitation period to correspond with the original period [78].*
- ***Winward Fearon, Collateral Warranties (2nd ed 2002), Para [9.23]:*** *Consideration should always be given by the draftsman of a warranty to the position in relation to limitation [78].*
- ***Keating, Construction Contracts (11th ed 2020), para [6.042]:*** *Reliance is often a pre-requisite for claims based upon delict, but it is not required for a claim based upon contract or promise [37].*

2. Legislative Basis for Prescription Saving Provisions

- ***Scottish Law Commission in its Report on Reform of the Law Relating to Prescription and Limitation of Actions (Scot Law Com No 15, 1970):*** *This report had in mind the observations of judges (in Caledonian Railway Co v Chisholm) when framing the provision ultimately enacted as section 6(4) of the 1973 Act [88].*

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