FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2022] CSIH 3
CA42/20

Lord President
Lord Woolman
Lord Pentland

OPINION OF THE COURT

delivered by LORD PENTLAND

in the reclaiming motion

in the cause of

GAVIN LOUDON

Pursuer and Respondent

against

STEWART MILNE GROUP LIMITED

Defenders and Reclaimers

_____

Pursuer and Respondent: Lake QC, Watt; MBM Commercial LLP
Defenders and Reclaimers: Dean of Faculty (Dunlop, QC), G. Reid; Burness Paull LLP

18 February 2022

Introduction

[1] Contracts of employment often contain bonus schemes for employees. The usual purpose of such schemes is to provide an incentive for employees to carry out their duties to a high standard. They are intended to reward performance that is considered to be above and beyond a merely acceptable level. The issue in this case is whether the employee was entitled to be paid bonuses after his employment contract came to an end by reason of

agreed redundancy. The commercial judge held that he was. The employers challenge that ruling. The answer turns on a correct interpretation of the contract of employment.

Background

[2] The respondent, a chartered surveyor by profession, had a long and successful career in the house building industry. A key stage in the process of developing land for housing involves finding sites, usually arable land in the greenbelt, that may be suitable in the fullness of time for new housing. Once potential sites, known as strategic land, have been identified, it can take many years, up to 20 in some cases, for planning permission to be granted for residential development and for the developers to acquire the land. The respondent explained in his unchallenged evidence that he had built up substantial skill and experience over a long career in identifying and introducing strategic land that might be suitable for future development and that the reclaimers, a house building company, considered that these attributes would be useful to them.

[3] In 1996 the respondent sold his company, Ambion Homes Limited, to the reclaimers. He had been employed as managing director of Ambion since 1991 and had a large shareholding in the company.

[4] In November 1999 the respondent entered into a contract of employment with the reclaimers. It is important to note that the respondent was 53 years of age at the time. Normal retirement age for men was then 65. It must have been obvious to all concerned that some of the strategic land projects in which the respondent would become involved would not come to fruition until after he had retired. The contract of employment was entered into against that background; it was an important feature of the factual matrix.

[5] The contract provided that the respondent's employment had commenced on 29 March 1996. His job title was stated to be: managing director Ambion Homes Limited. He acted essentially as the director of the reclaimers' strategic land division. The respondent's role with the reclaimers was to identify suitable strategic land for ultimate acquisition and development as sites for housing. The respondent was also responsible for negotiating option agreements with landowners and obtaining planning permission, and other relevant legal and development permissions, for sites.

[6] On 31 March 2020 the respondent retired from the employment of the reclaimers because he was redundant. He did so with their agreement. He was, therefore, what is sometimes known as a "good leaver".

[7] The respondent's contract of employment with the reclaimers provided for the payment of performance bonuses where certain criteria were met in the case of sites with which he had been involved. The present dispute concerns the meaning and application of these contractual terms.

The bonus provisions

[8] Clause 6 of the respondent's contract of employment provided *inter alia* as follows:

> *"6. You will be eligible for a performance bonus based on the achievement of the criteria set out here or as the Company and the Employee may otherwise agree. The parties recognise that it is not possible to predict all the circumstances in which a bonus will be payable, but a performance bonus will be payable in the following 2 circumstances:*
>
> *(i) Volume Bonus*
>
> *A bonus of £7,500 will be paid for every 100 residential units on new land controlled or purchased by the Company achieving planning permission acceptable to the Company. This new land must be identified and introduced to the company by you or otherwise included by agreement within the bonus structure where an appropriate amount of your time has been devoted to the acquisition of the new land and/or obtaining the planning permission.*

…

The bonus will be payable one month after the achievement of planning permission acceptable to the Company. This may be either outline planning permission or detailed planning permission (entirely dependent on the Company's decision). For the avoidance of doubt, this element of the bonus can only be paid out once in respect of any piece of land.

(ii) Value Bonus

This element of the bonus relates to you receiving a share of any amount under Market Value at which new land is purchased. This new land must be identified and introduced to the company by you or otherwise included by agreement within the bonus structure where an appropriate amount of your time has been devoted to the acquisition of the new land and/or obtaining the planning permission.

Where new land is purchased by the Company at a Company land cost of no more than 95% of Market Value you will receive a bonus of 13.5% of the differential between full Market Value and the total price paid by the Company.

The bonus will be payable one month after the completion of the purchase (i.e. payment of the purchase price) of the new land.

…

In the event of you leaving the employment of the Company with the express agreement of the Company, or you retiring from the Company in line with the Company's normal retirement policy, all bonuses which are earned at that time but which have not been paid will remain due and payable on the timescale as set out in Clause 6 (i) and (ii)."

[9] Finally, the clause set out the following definitions and condition:

"*Definition:*

Market Value is the price which when used in a normal Company land appraisal calculation produces a gross margin, before overheads, but after development interest, of 15% or such other lesser margin as the Company has accepted as being appropriate to acquire the site.

Company land cost is the total cost to the company of acquiring land, including all normal costs of acquisition, such as legal costs, planning and planning appeal costs, environmental audit and ground investigation costs.

From the year 2001 onwards, in any year in which a payment under Clause 14 (ii) has been made to the Employee's personal pension plan, any such bonuses shall only be paid to the extent that the aggregate bonus payments payable in such year exceed £16,600. From the year 2001 onwards, if the aggregate bonus payments fall short of £16,600, any such shortfall will be deducted from aggregate bonus payments which exceed £16,600 which are earned in any future year."

The commercial judge's decision

[10] The respondent sought a number of declarators to the effect that he was entitled to bonuses under his contract of employment. For present purposes the details of the orders do not matter. Having heard evidence at a proof, the commercial judge found that the respondent had identified and introduced a number of specific sites in respect of which he was entitled to a bonus in terms of clause 6(i) in the event that planning permission for residential use of the sites came to be granted. He also held that the respondent had identified and introduced a number of other sites in respect of which he was entitled to a bonus under clause 6(ii) in the event that the reclaimers (or a person or entity they controlled or nominated) came to purchase the sites or part of them. Finally, the commercial judge held that in respect of one particular project, the Robroyston project, the respondent was entitled, as a result of a separate agreement between the parties, to a bonus of 13.5% of the management fee paid to the reclaimers by the land owners.

[11] Having made those findings the commercial judge then had to consider whether the respondent's entitlement to bonuses survived the agreed termination of his contract of employment.

[12] The commercial judge held that the respondent's contract of employment drew a distinction between (a) when a bonus was earned and (b) when it was paid. The timing of a bonus payment was linked to the grant of planning permission or to the purchase of the land; however, the earning of the bonus was not dependent on these events. All the sites which the commercial judge found to have fallen within the bonus scheme came within its first limb, that is the respondent had identified and introduced those sites. The respondent earned bonuses by his work in identifying and introducing the land; the payment of a bonus for that work was conditional on planning permission, land purchase or payment of a

management fee. If one of those conditions was satisfied after termination, it was a bonus which had been earned but not yet paid. The respondent was entitled to payment upon satisfaction of the condition, whether that happened before or after termination. Such an interpretation was consistent with the factual matrix of the construction industry. Strategic land development proceeded on a long timescale. It could take up to ten years or more to reach the stage in a project where planning permission was granted or land was acquired. Given the timescales involved, a bonus scheme which ceased to pay out on termination of employment would provide little incentive in respect of strategic land. There would then be no reason for an employee to produce exceptional performance in the last five to ten or more years before retirement, or if he was younger in the five or ten years before he thought he might leave. It would be an incentive instead to work on short-term projects rather than strategic land projects. The law was slow to allow an employer to frustrate an employee's bonus by terminating his contract (*Rutherford* v *Seymour Pierce* 2010 EWHC 375 (QB); *Noble Enterprises* v *Lieberum* (EAT) 67/98). On the reclaimers' interpretation, in the circumstances of this case, they would be permitted to deprive the respondent of his bonus merely by terminating his employment.

[13] At the proof a separate issue arose in relation to a large scale development project at Robroyston comprising the 325 acre site of a former hospital. It was agreed that the respondent had identified and introduced this site. The commercial judge found on the evidence that the parties had agreed that the respondent was entitled to a bonus of 13.5% of the management fee paid to the reclaimers by the owners of the site, a company known as Elmford Limited. These bonuses had been paid to the respondent in 2005, 2006, 2016, and 2019. The contemporaneous correspondence from the reclaimers had not challenged these payments. The bonuses were paid automatically and without question or comment (with

the exception of one bonus claimed in 2016 which was ultimately resolved out of court on a without prejudice basis). This was inexplicable unless there had been an agreement to pay a bonus on the management fees for the Robroyston project. Accordingly, the commercial judge granted declarator that the respondent was entitled to bonuses at the 13.5% rate on management fees paid to the reclaimers for the Robroyston project.

The issues in the reclaiming motion

Reclaimers' submissions

[14] Properly construed, clause 6 conferred an entitlement to a bonus only where it had been earned before termination of the contract. Reading the clause as a whole and in context, a bonus was earned where (a) the respondent had identified and introduced land to the reclaimers, and (b) acceptable planning permission had been obtained or the reclaimers had acquired the land. Any other reading would result in a bonus becoming payable in circumstances where the respondent had identified and introduced the land but no value in the land had enured to the reclaimers. That would not make commercial sense. It was incongruous to speak of a bonus being "earned" but not being payable. That was also the sense in which the word "earned" was used in the final paragraph of clause 6 in the admittedly different context of the relationship between bonus payments and contributions by the reclaimers to the respondent's personal pension plan.

[15] Identification and introduction of a site was a necessary but not a sufficient precondition for payment of a bonus. The purpose of the termination provision was to preserve the respondent's right to be paid a bonus according to the agreed timescale but only where the bonus had been earned as a result of each of the relevant preconditions having been satisfied before termination.

[16] The commercial judge had erred by focussing too heavily on the first part of the second sentence in clause 6 (i) and (ii) and by giving insufficient attention to the first sentence. The second sentence conferred no entitlement. It was merely a restriction on the first sentence. On the other hand, without the first sentence the second sentence was meaningless. The second sentence was needed because without it a bonus would be payable even where the respondent had not made any personal contribution to the development process.

[17] The respondent's interpretation of the clause elevated a qualification on the entitlement to a bonus to the entitlement itself. It was nonsensical to say that a bonus could be earned if planning permission had not been granted or the land had not been acquired.

[18] If a bonus had not become payable by the time of termination, it could not be said to remain payable. The incentive reflected in the clause was directed towards the stage at which value in the land was released to the reclaimers; that only occurred once acceptable planning permission had been obtained or the reclaimers had acquired the land. In this connection it was notable that the respondent's duties were not restricted to the stage of identification and introduction; they extended to working to obtain planning permission and other necessary consents.

[19] It was true, as the commercial judge observed, that the law was slow to allow an employer to frustrate an employee's bonus by terminating his contract. This was not relevant in the present context. The pertinent principle was that an employer could not rely upon the fact that the employee had been dismissed to avoid liability for a bonus that was otherwise payable (*Clark* v *Nomura International plc* [2000] IRLR 766, Burton J at para [38]). In the present case the bonuses claimed could not be said to be "otherwise payable" because entitlement to them had not accrued by the time that the contract was terminated.

[20] In response to the good leaver argument relied on by the respondent the reclaimers submitted that the termination provision created an enhanced entitlement by providing for payment after termination in circumstances where the obligation to make payment arose after the contract had come to an end. Where one party was in breach of contract, such as where he was a bad leaver, he would not be allowed to enforce the innocent party's obligation to make payment of sums falling due after the date of the breach. That was the effect of the mutuality principle (*Graham & Co* v *United Turkey Red Co* 1922 SC 533, Lord Justice-Clerk (Scott Dickson) at pp 542, 543). The termination provision, therefore, created enhanced rights over and above those available at common law. In any event, the fact that a contractual term replicated the common law could show that it was in line with commercial common sense as opposed to being contrary to it (*Ashtead Plant Hire Co Ltd* v *Granton Central Developments Ltd* 2020 SC 244, Lord Drummond Young at para [21]).

[21] The commercial judge disregarded elements of the factual matrix which supported the interpretation advanced by the reclaimers. He ought to have taken into account that the interpretation advanced by the respondent would impose a liability of uncertain scope upon the reclaimers, which could extend potentially for more than a decade. The respondent's responsibility for advancing planning applications meant that he would be incentivised to progress the applications and thereby earn bonuses before termination of his contract of employment.

[22] As regards the bonus entitlement on Robroyston management fees, the evidence at the proof was that one such fee had been paid to the reclaimers in February 2020, and the other had been paid to them in August 2021. Only the first of these could be said to have been earned before termination of the respondent's contract of employment. He was

entitled to a bonus in respect of the February 2020 fees but not in respect of the August 2021 fees.

Respondent's submissions

[23] Clause 6 had to be interpreted against the factual background explained in the respondent's unchallenged evidence. Development of strategic land could take up to 20 years. The critically important part of the respondent's work occurred at the outset of the process. He had no control over whether planning permission would eventually be granted. The reclaimers' approach would mean that for the last decade of the respondent's employment he would have no incentive to identify and introduce sites.

[24] The purpose of the termination provisions in clause 6 was to encourage the respondent to leave his employment at a time and on terms which suited the reclaimers. In return they had to provide the respondent with an incentive to leave on good terms. The reclaimers were wrong to equiperate a so-called bad leaver with a party who was in breach of contract. A bad leaver could be someone who left in accordance with the contractual notice provisions at a time which did not suit the employer. The respondent's contract of employment entitled him to terminate the contract on 12 months' notice (clause 8).

[25] In incorporating a clause specifically designed for good leavers, the parties must have intended to confer an advantage or benefit on the respondent, extending beyond the position which would otherwise have obtained under the common law. At common law, where rights had accrued under a contract, they were not affected by recission or cancellation of the contract (*Johnson* v *Agnew* [1980] AC 367, Lord Wilberforce at 396; *Hyundai Heavy Industries Co Ltd* v *Papadopoulos* [1980] 1 WLR 1129, Viscount Dilhorne at

1136B). If accrued rights survived termination by way of recission or cancellation, they should survive termination by agreement.

[26] Therefore, at common law, if a bonus had accrued because planning permission had been obtained or the land acquired, but it had not yet been paid, the right to payment would survive termination. The good leaver aspect of clause 6 can only have been intended to ensure that the respondent was placed in a better position that he would have been under the common law. It would not be a commercially sensible construction to assume that the clause simply restated the common law position. On that approach the clause achieved nothing.

[27] The draftsman differentiated between bonuses "earned" and bonuses "payable". The commercial judge was correct to distinguish between them. To earn something meant to obtain it in return for labour or services. It was apparent from the use of the word "earned" that the intention was to protect payment of bonuses which had not become payable by the time of termination, but in respect of which the respondent had fulfilled the role required of him so as to give rise to them if and when planning permission was granted or the land was acquired. The element of the respondent's work which was to be rewarded was that which had led to land being identified and introduced. It was when doing this work that he earned a bonus. It would have been open to the parties to structure the bonus scheme so that it reflected and rewarded his work on all stages of the process, but they had not done so.

[28] On the language of clause 6 the reclaimers' analysis was too narrow. It failed to take account of the entirety of the clause. "Earned" was an ordinary word which connoted being paid in return for doing something. The clause set out what the respondent had to do in

order to earn payment, namely identify and introduce land to the reclaimers. That was the work which the parties had agreed to reward the respondent for.

[29] The reclaimers' emphasis on the word "remains" had two flaws: it considered particular words rather than the overall effect of the agreement; and, it took part of the clause out of context. Clauses 6(i) and 6(ii) envisaged that the bonus would be payable on a date some time after the work giving rise to the entitlement had been undertaken, and the leaver clause stipulated that this should "remain" the position after termination.

[30] The reclaimers' suggestion that a requirement to pay bonuses some time after termination did not accord with business sense was no more than an unsupported assertion. The provisions had been operated by the parties without difficulty between 1999 and 2020. They were not disproportionate and did not operate in an unpredictable way. The reclaimers' approach would result in their obtaining an unjustified windfall from the respondent's work, for which he would not be properly rewarded. The fact that the reclaimers might remain liable to pay bonuses for an extended period was consistent with the nature of their business. The law expects commercial parties to conduct their affairs in a manner which makes their agreement work; the courts would not shy away from enforcing a bargain because of claimed difficulty (*R & J Dempster Ltd* v *Motherwell Bridge & Engineering* 1964 SC 308; *Royal Bank of Scotland* v *Carlyle* 2015 SC (UKSC) 93).

[31] It was no part of the respondent's case that planning permission for the sites had been obtained, nor that they had been purchased by the reclaimers prior to the date of termination of his employment. No payment was sought in the present proceedings. The respondent's case was that his entitlement to bonuses remained and could crystallise when planning permission was granted or when the relevant sites were acquired.

[32] Finally, the management fee bonuses for Robroyston were earned by the respondent when he identified and introduced the site. The commercial judge found that there was agreement these bonuses would be 13.5% of the management fee received by the reclaimers. His approach to this issue was correct.

Analysis and decision

[33] It is unnecessary to embark on another review of the extensive case law on interpretation of contracts. The principles are well established and in recent years have been the subject of much reiteration and judicial analysis. In 2018 the Scottish Law Commission concluded that there was no need for legislation on the interpretation of contracts in view of the fact that judicial decisions had clarified the correct approach to be taken (*Report on Review of Contract Law: Formation, Interpretation, Remedies for Breach, and Penalty Clauses* (Scot Law Com No 252)). The pertinent principles were helpfully drawn together by Lord Drummond Young in delivering the opinion of an Extra Division of the Inner House in *Ashtead Plant Hire Co Ltd* v *Granton Central Developments Ltd* 2020 SC 244, paras [9] to [17]. First, a contact must be construed contextually; words in a contractual provision can only be properly understood when they are read against the background of the contextual setting in which they were used by the parties to the contract. Second, interpretation of a contract is an objective exercise. A clause in a contract must be given the meaning which a reasonable person in the position of the parties at the time they entered into the contract would have given the words used in the clause. A corollary of this is that the subjective understanding of the words by one (or more) of the parties is irrelevant. Third, a court should have regard to the fundamental objectives that reasonable persons in the parties' position would have had in mind at the time of the contract; in short construction is a purposive exercise. Finally,

where words are capable of bearing more than one meaning the court is entitled to adopt the meaning which best aligns with commercial (or business) common sense.

[34] Applying these principles to the present case, it is important to recall that the respondent was 53 years old at the time the parties entered into the contract. He could therefore reasonably have expected to continue working for the reclaimers for around 12 years; that would have taken him up to the then prevailing normal retirement age of 65. In these circumstances it would have been obvious to the parties that many of the strategic land development projects which the respondent was responsible for identifying and introducing would not be likely to come to fruition during the remainder of his working life. Therefore there was a real likelihood that the respondent would not receive any bonus for sites he had succeeded in identifying and introducing unless the reclaimers remained liable after termination of the contract to pay bonuses at the time when the projects crystallised.

[35] From the reclaimers' perspective, it would have made sense for them to have some leverage over when the respondent left their employment. They could achieve this objective by conferring on the respondent the entitlement to receive bonuses where a project materialised after his employment ended, but only where he ceased employment at a time that suited the reclaimers' business needs.

[36] Bearing these factors in mind, it is notable that clause 6 sets out specific and tailored provisions governing what the respondent's entitlement to bonuses would be in circumstances where he left the employment of the reclaimers on good terms. It is reasonable to assume that the parties must have considered at the time when they entered into the contract that it would be appropriate for some concrete benefit to flow to the respondent in the event that he left the employment of the reclaimers in such circumstances. Otherwise, why include these provisions? It seems unlikely that the intention was simply to

restate what the rights of the respondent would be under the common law. As Lord Drummond Young observed in *Ashtead Plant Hire Co Ltd* at para [21], the main substantive terms of a contract will usually be the subject of specific negotiation and legal advice. In the present case the contract was drafted by lawyers instructed by the reclaimers. The bonus scheme set out in substantial detail in clause 6 must be regarded as a substantive clause. There is no presumption or rule of construction that such clauses should be taken merely to replicate the common law.

[37] What then was the benefit to which the respondent would become entitled where, to quote the words of the relevant part of clause 6, he left the reclaimers' employment "with the express agreement of the company or (retired) from the Company in line with the Company's normal retirement policy …"?

[38] To answer this question it is appropriate to begin by asking what the rights of the respondent would have been in the event that he were to leave the reclaimers' employment without their express agreement or otherwise than in accordance with their normal retirement policy. The respondent could, for example, have exercised his right to terminate the contract by giving 12 months notice, as he was entitled to do by virtue of clause 8. He did not require to obtain the reclaimers' agreement to such a course of action. He would then be a so-called bad leaver, but he would not be in breach of contract. Suppose that before the termination date in such circumstances (a) the respondent had identified and introduced a site; (b) planning permission for residential development of the land in terms that were acceptable to the reclaimers had been granted; but (c) the bonus had not yet been paid to the respondent. Would he have been entitled to a volume bonus under clause 6 in the absence of the termination provisions?

[39] The answer is that under the common law he would. This is because where rights have already accrued under a contract, they are not affected by rescission or termination of the contract. In *Johnson* v *Agnew* [1980] AC 367 Lord Wilberforce at 396 approved what Dixon J. had said in the High Court of Australia in *McDonald* v *Dennys Lascelles Ltd* (1933) 48 CLR 457:

> "When a party to a simple contract, upon a breach by the other contracting party of a condition of the contract, elects to treat the contract as no longer binding upon him, the contract is not rescinded as from the beginning. Both parties are discharged from the further performance of the contract, but rights are not divested or discharged which have already been unconditionally acquired. Rights and obligations which arise from the partial execution of the contract and causes of action which have accrued from its breach alike continue unaffected."

[40] In *Hyundai Heavy Industries* v *Papadopoulos* [1980] 1 WLR 1129 Viscount Dilhorne said at 1136B:

> "I conclude that save in the case of sales of land and goods and where there has been a total failure of consideration, it was the law prior to the decision in *Lep Air Services Ltd* v *Rolloswin Investments Ltd* [1973] AC 331 that cancellation or rescission of a contract in consequence of repudiation did not affect accrued rights to the payment of instalments of the contract price unless the contract provided that it was to do so."

His Lordship went on to consider the case of *Lep Air Services* and concluded that it did not alter the law on accrued rights (page 1137E-F).

[41] As the reclaimers observed in their submissions, both these cases concerned parties who were in breach of contract. There may be circumstances in which a party who is breach will not be permitted to enforce the innocent party's obligation to make payment of sums falling due after the breach (*Graham & Co* v *United Turkey Red Co* 1922 SC 533). What the reclaimers' submissions failed to recognise, however, is that a bad leaver is not necessarily someone who is in breach of contract. The accrued rights of a bad leaver, who is not in breach, will survive termination by way of rescission or cancellation of the contract. They would do so even if the termination provisions in clause 6 had not been included in the

contract. The same must be true in the case of a good leaver. So, the purpose of the termination provisions may reasonably be inferred to have been to achieve an advantage for a good leaver extending beyond what would have been his rights under the common law. The aim of those provisions was to put him in a better position than he would have been in as regards entitlement to receive bonuses which had become payable but had not in fact been paid by the date of termination of the contract. On the reclaimers' approach to the construction of clause 6 the respondent, as a good leaver, would derive nothing of value from the termination provisions and the clause would be stripped of any sensible commercial purpose. Good leavers and bad leavers would have the same rights on the reclaimers' approach. By contrast on the respondent's approach the good leaver would be entitled to a meaningful advantage.

[42] It can thus be seen that the respondent's approach to construction of clause 6 makes sound commercial sense whereas the reclaimers does not. On the reclaimers' approach the respondent would not be entitled to a bonus for sites he identified and introduced that came to fruition after the end of his employment even in circumstances where he left their employment by agreement. He would have no incentive to leave on good terms. Nor would he have any incentive to identify and introduce sites during the final decade of his employment.

[43] Having regard to these aspects of the commercial *realpolitik*, it is entirely reasonable to read the word "earned" where it appears in the phrase "all bonuses which are earned at that time but which have not been paid will remain due and payable on the timescale as set out in Clause 6 (i) and (ii)" as meaning what the respondent contends for. That is that the word refers in that context to bonuses for sites where the respondent had performed prior to termination of the contract the sole obligation incumbent on him under clause 6, namely the

identification and introduction of the sites. In such circumstances the reclaimers would remain liable to pay a bonus on the agreed timescale. This construction means that the reclaimers' liability may extend substantially beyond the date of termination of the contract, but there is nothing uncertain about its scope or the circumstances in which it arises. The liability is triggered by either the granting of planning permission on acceptable terms, or the acquisition of the land.

[44] The commercial judge was right to recognise that the approach reflected in clause 6 drew a distinction between when a bonus was earned and when it was paid. The timing of payment was linked to the grant of planning permission or to acquisition of the site, but the earning of a bonus was not. The pursuer earned a bonus by his work in introducing and identifying a site; payment of his bonus was, however, conditional on the grant of planning permission or acquisition of the land.

[45] That leaves only the issue concerning the bonus entitlement on the Robroyston management fees. Here too we consider that the respondent earned a bonus through identifying and introducing the project to the reclaimers. He was accordingly entitled to be paid a bonus when management fees were paid to the reclaimers both in February 2020 and in August 2021.

[46] The reclaiming motion is refused. We have reserved all questions of expenses.