



DECISION NOTICE OF SHERIFF ANTHONY DEUTSCH

in the case of

ALLYSON DAWODU

Appellant

D&I SCOTT PROPERTY MANAGEMENT,
FIRST-TIER TRIBUNAL FOR SCOTLAND HOUSING AND PROPERTY CHAMBER

Respondent

FTT Case Reference FTS/HPC/PF/18/0699

Decision: the upper tribunal refuses permission to appeal the decision of the first-tier Tribunal dated 10 April 2018.

Note

[1] The tribunal refused leave to appeal on 15 May 2018. That decision informed the applicant that she might seek permission to appeal to the upper tribunal on a point of law within 30 days of the date of the decision being sent to her. I am informed that the applicant sent an email to the Tribunal Service on 14 June which I am inclined to treat as a timeous application requesting leave to appeal to the upper tribunal, notwithstanding that such an appeal should have been made on form UTS-1 and should have been accompanied by the documents listed at section 10 of that form. The applicant subsequently made good those defects on 28 August 2018 by submitting the appropriate

application and supporting documentation.

[2] The reason for the 10 April 2018 decision of the tribunal to reject the application was made in terms of rule 8 (1) (e) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017/328 (Scottish SI). Rule 8 is in the following terms:

“8.— Rejection of application

(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if —

- (a) they consider that the application is frivolous or vexatious;
- (b) the dispute to which the application relates has been resolved;
- (c) they have good reason to believe that it would not be appropriate to accept the application;
- (d) they consider that the application is being made for a purpose other than a purpose specified in the application; or
- (e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision.”

[3] The tribunal explains why it considers that the application fell to be rejected under this provision thus:

“Your application refers to the previous decision by the Tribunal (HOHP/PF/17/0064). That decision was dated 6th August 2017 and made determinations in relation to the alleged breaches by the Property Factor of sections 1.D.M, 2.1, 2.3, 2.5, 3.3, 4.2, 4.8 and 4.9 of the Code of Conduct.

Your current application dated 22nd March 2018 refers to alleged breaches of sections 2.1, 2.2, 3.3, 4.8 and 4.9 of the Code of Conduct and refers to a ruling by the Sheriff in 2012. Your application seems to be substantially similar to your earlier application (HOHP/PF/17/0064).

You have not alleged any significant change in any material considerations since application number HOHP/PF/17/0064 was determined. “

[4] In section 7 of her application the applicant seeks to identify the points of law upon which she is appealing in this fashion:

“Points of law...a) “breach of natural justice” b) “failure to have regard to material evidence, taking into account and being influenced by a material evidence” and c) “miscarriage of justice”

By not hearing the whole original created the breach; then using false information to make decisions on; created a miscarriage of justice... which allowed a secondary criminal act to be perpetrated against me.”

[5] None of this statement addresses the explanation which the tribunal has given for its decision. There is no attempt to say why it is that the Tribunal were mistaken in concluding that the 2018 application was not substantially similar to that of 2017 or in concluding that with the passage of time there has not been a material change in circumstances. The terms of the second paragraph confirm the impression that the applicant seeks to revisit 2017 decision. If following upon that decision the applicant concluded that there had been some procedural unfairness then a timeous appeal should have been taken at that stage.

[6] The applicant does not raise any arguable point of law and I have accordingly refused permission to appeal.