



DECISION NOTICE OF SHERIFF N.A ROSS

On an application for permission to appeal (Decision of First Tier Tribunal for Scotland)

In the case of

Mr Christopher Isaacs and Ms Phoebe Combe

Appellant

and

FaceWorks Solutions & Technologies

Respondent

FTT Case Reference FTS/HPC/CV/20/2015

8 March 2020

Decision

Leave to appeal the First-tier Tribunal decision dated 4 December 2020 is refused.

NOTE

[1] The First-tier Tribunal ('FtT') is created by statute and has the function of deciding legal rights by reference to the facts. The decision-making process is limited to the powers and jurisdiction conferred on the FtT, the underlying law which it must apply, and the facts as it has found them.

[2] The FtT has set out the facts in its decision, and these are essentially not disputed.

The FtT then had the task of identifying what the legal consequences of those findings should be. It duly did so, and no error in its decision-making is evident.

In particular:

[3] The function of the FtT is to resolve particular and specific cases by applying the law.

It is not a ground of claim, or of appeal, that issues of public interest or general application are said to arise.

[4] An appeal is stateable only if there has been an error in law. It is necessary to identify any error of law accurately and specifically. That has not been done – general propositions do not found an appeal.

[5] The “jurisdiction” argument appears to relate to the failure to convene other occupants, and is a misnomer. It is not possible to convene third parties to a dispute unless specific claims are raised against them. No such specific claims are raised by the respondent. Convening third parties to discuss hypothetical questions, or with a view to lodging subsequent claims, is not competent. Specifically, the respondent is not entitled to convene the other occupants with a view to obtaining orders against them to contribute to a common maintenance scheme. The case, brought by these tenants, does not directly engage such questions. If the respondent seeks to make a claim against co-occupants, it must bring a separate and identified claim against these other occupants. No such claim is raised in these proceedings. No such order could be made in these proceedings by the FtT.

[6] The grounds of appeal found on a series of propositions in logic. The exercise in logic fails because it does not reflect, and pays no regard to, the exercise being carried out by the FtT, which was not engaged in an unregulated consideration of “moral culpability” or hypothetical results. The FtT is bound to apply the law to the facts. It did so. In particular;

(a) there is no legal dispute (at least of a property nature within the powers of the FtT) between the tenant and the other proprietors; (b) any legal relationship under consideration is with the respondent, so any claim is against the respondent alone; (c) the respondent may have a separate right of relief for any monetary sum which the FtT finds it liable to pay to the tenant, but it has no right to demand it is attached to these proceedings; (d) because the FtT made no award against the respondent, there is no such liability, and there is no basis for such a claim. The FtT is only concerned with the particular dispute before it.

[7] The respondent has no award against it. Legal proceedings cannot be raised or appealed on the basis of perceived and theoretical defects in the law. Only fact-based, legally relevant and specific claims can be considered by an appeal court.

[8] Accordingly, there has been no error in the reasoning of the FtT, the parties have not relevantly identified a stateable basis for an appeal, and in particular the respondent can identify no interest which could be appealed.

[9] This appeal is unarguable.