



DECISION NOTICE OF SHERIFF I FLEMING

ON AN APPLICATION FOR PERMISSION TO APPEAL
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND)

in the case of

MR TAHIR MAHMOOD, 235 Berkeley Street, Flat 2/2, Glasgow, G3 7HH

Appellant

and

GLASGOW WEST ENTERPRISES LIMITED, 5 Royal Crescent, Glasgow, G3 7SL
per T C Young Solicitors,
7 West George Street, Glasgow, G2 1BA

Respondent

FTT Case Reference FTS/HPC/PF/20/0402

19 January 2021

Decision

Permission to appeal is refused.

[1] The homeowner is Mr Tahir Mahmood, residing at Flat 2/2, 235 Berkeley Street, Glasgow, G3 7HH. The homeowner is the appellant. The factor and respondent is Glasgow West End Enterprises Ltd, 5 Royal Crescent, Glasgow, G3 7SL.

[2] By application dated 3 February 2020 the appellant complained to the First tier-Tribunal (hereafter the FtT") that the factor was in breach of section 6 of the Property Factors

(Scotland) Act 2011 Code of Conduct for Property Factors (hereafter referred to as “the code”) in as much as the factor had failed to carry out its property factors’ duties.

[3] The complaint of the appellant centred around a failure on the part of the factor to deal with the repair of what was first thought to be a fuse box but would now appear to have been a telecommunications box and also the fact that the back door to the property was not locked. A hearing took place before the FtT on 18 September 2020 by teleconference. At that hearing the appellant represented himself and the factor was represented by a firm of solicitors. Having heard representation from both the appellant and the factor the FtT made Findings in Fact and found that the factors had breached section 6.1 of the code. Further, the FtT made an award of £450 and ordered that the factors present a suitable written apology to the appellant. Thereafter it issued a proposed property factor enforcement order.

[4] The point of significance in respect of the current application by the appellant is a procedural issue which arose prior to the commencement of the full FtT hearing.

[5] Prior to evidence being led the FtT noted that the factors had lodged an Inventory of Productions and queried with the appellant whether he had received a copy. It would appear that due to an oversight by the FtT administration this had not been sent to the appellant until the day prior to the hearing. The appellant advised that he had not received it. It is clear from the written decision of the FtT that the appellant was advised of the opportunity of moving the FtT to adjourn the hearing to a later date to allow him an opportunity to consider the factor’s Inventory of Productions. The FtT recognised that the absence of an opportunity to view the factor’s productions may have prejudiced the appellant’s position. However, it appears from the written decision provided by the FtT that having been alerted to the position and the resultant possibility of moving the FtT to adjourn the appellant did not seek such an adjournment. Discussion took place between the FtT and

the parties and having referred to the appellant's own lodged productions and considered his position the appellant confirmed that he wished to proceed with the hearing. It is clear that he was advised of the opportunity of moving the FtT to adjourn the hearing to allow him an opportunity to consider the factor's Inventory of Productions but it appears from the written decision provided by the FtT that the appellant did not seek an adjournment. The FtT then proceeded to a conclusion and an award was made in favour of the appellant.

[6] What has now happened is that the appellant has received and considered a copy of the Inventory of Productions. He now wishes to raise certain issues about its content.

Further, following the lodging of the appeal the appellant has corresponded with the Upper Tribunal in terms of an email dated 26 December 2020 timed at 19:18:58 in which he seeks to place further information before the Upper Tribunal. The email which he has sent has attached to it three photographs which were taken by the appellant on Saturday, 26 December 2020.

[7] Section 46(2) of the Tribunals (Scotland) Act 2014 provides that an appeal to the Upper Tribunal may be made on a point of law only. The Inner House of the Court of Session in *Advocate General for Scotland v Murray Group Holdings Ltd* 2016 SC 201 identified four different categories of case as being covered by the concept of an appeal upon a point of law: (i) an error of general law; the content of its rules; (ii) an error in the application of the law to the facts; (iii) making findings without support in the evidence; and (iv) taking a wrong approach to the case by for example asking the wrong question or taking account of manifestly irrelevant considerations, or by arriving at a decision that no reasonable tribunal could properly reach.

[8] The appellant seeks to place himself within the identified categories.

[9] It is important to recognize that the decision of the FtT was one involving elements of evaluation and judgement of the evidence and submissions which are actually before it. It is also important to recognize that the appellant says within his application to appeal, *“I would want to state that I have no grievance with the decisions made by the first tier tribunal. I am content that the first tier tribunal made the correct decisions based on the evidence that was available at the time.”*

[10] The grievance of the appellant is that he did not receive the Inventory of Productions prior to the full evidential hearing and therefore he was unable to raise the contents at the hearing before the FtT on 18 September 2020. Having now read the Inventory of Productions he has noticed that there are errors and he wishes an opportunity to express his views. He indicates that had he received the Inventory of Productions earlier he would have *“discussed”* this document at the hearing on 18 September 2020. It is claimed by the appellant that the factor has perverted the course of justice and reference is made to a *“fake photograph”*.

[11] The appellant thereafter identifies three purported points of law under the general heading *“the law states that any person who provides false information to the authorities/police is perverting the course of justice/obstructing justice”*.

[12] The difficulty for the appellant is that he was advised of the existence of the factor’s Inventory of Productions in advance of the hearing. It is clear that discussion about the inventory and its content took place and it is clear that the appellant was afforded an opportunity to invite the FtT to adjourn the matter in order to allow the appellant the opportunity, of which he has now availed himself, to consider the terms of the productions contained within the inventory.

[13] The appellant elected to proceed with the hearing before the FtT without viewing the Inventory of Productions. He had clearly had regard to his own lodged Inventory of Productions and considered that whatever was in the Inventory of Productions provided by the factors that he wished to pursue the application before the FtT on 18 September 2020. Having done so the appellant received a decision which was favourable to him, although clearly not as favourable as he may have wished. What is not now open to the appellant is to consider the documentation of which he has now had sight and seek to introduce this into evidence. The appellant was given an opportunity to invite the FtT adjourn. The purpose of that adjournment would have been to allow consideration of the documentation. Having elected to proceed without reviewing the documentation it is not open to him now to review the documents and ask for a reconsideration of the case.

[14] The statutory function of this Tribunal is a limited one to correct errors of law. It is not part of its function to provide a party with an opportunity to re-open the proceedings in the FtT in order to have a second opportunity to put his case in the best light.

[15] The appellant has identified as points of law the fact that a photograph contained within the inventory of productions is "*false and illegal*". He claims it is not linked or connected with the case. Further, the appellant relies upon a letter which the factor wrote to an MSP as being false and incorrect. He claims that had he received the Inventory of Productions earlier he would have discussed the false statement with the "*tribunal judge*" at the hearing on 18 September 2020.

[16] An appeal court is not a re-hearing of the case from the beginning. The FtT has the benefit of seeing and hearing witnesses and assessing the whole of the evidence. The evidence that is placed before the FtT is, subject to competence and relevance, a matter for parties. The appellant had decided that he wished to proceed in the absence of an

opportunity to view and consider the factor's Inventory of Productions. Having so decided it is not open to him to review the Inventory of Productions and then consider that he should have approached the case differently.

[17] Simply because the appellant categorizes certain examples as points of law does not being them within the ambit of a point of law as judicially defined. It is the case that the appellant clearly states that he has no grievance with the decisions made by the FtT on the basis of the evidence that was before it at the time. Further, it is clear that the appellant has not identified a point of law upon which he can proceed with an appeal.

[18] I agree with the decision of the FtT that no point of law is identified. Permission to appeal against the decision of the FtT is refused.