



DECISION NOTICE OF SHERIFF F McCARTNEY

ON AN APPLICATION FOR PERMISSION TO APPEAL - RECONSIDERATION
(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

2 September 2021

Decision

Permission to appeal is refused.

Introduction

This is an application for reconsideration of the refusal to grant leave to appeal a decision of the First-Tier Tribunal for Scotland Housing and Property Chamber (referred to as the "FtT").

The FtT determined the case on 12 October 2020, making a property factor enforcement order in the Appellant's favour. That order directed the Respondents to issue a written apology to the Appellant and pay him £450. The Appellant sought leave to appeal that decision, which the FtT refused on 7 December 2020. The Appellant then sought leave from the Upper Tribunal. Sheriff I Fleming considered and refused that application on 19 January 2021. As that application was considered on the papers alone, when the Appellant sought a reconsideration of Sheriff Fleming's decision, that request must be determined at a hearing (Rule 3(7) of The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016).

Unfortunately due to COVID delays and pressure of business, that hearing did not take place until 19 August. The hearing initially took place by webex, but due to IT issues, switched during the hearing to be completed by telephone. I am grateful to the Appellant and Respondent for their patience and co-operation.

Parties were agreed that the written decision of Sheriff I Fleming had concisely set out the background to the dispute in paragraphs [1] to [6] of Sheriff Fleming's written decision.

With the agreement of the parties, I gratefully adopt his summary of the background.

Grounds of appeal

The appeal as presented before Sheriff I Fleming focused on the issue of an Inventory of Productions which the Appellant had not seen prior to the hearing, through no fault of his own. Sheriff I Fleming considered that he could have sought an adjournment but did not do so, and that no error of law arose in the FtT's conduct of the hearing.

In relation to the hearing before me, the Appellant's emphasis shifted somewhat. He accepted the terms of Sheriff I Fleming's decision in respect of an absence of any errors of law, but sought to argue that there was no evidence that would have entitled the FtT to

make some of the findings in fact that it did. He argued this was the case on 4 separate factual matters before the FtT; the question of whether a fuse box was in fact a telecommunications box, whether repairs had been done to it, whether it was a Virgin Media box or not, and certain issues about the location of the box.

Discussion

Leaving aside all question of the Appellant's changed proposed grounds of appeal from his written application and the arguments before Sheriff Fleming to what was argued before me, this application is easily dealt with on its merits. The Appellant very fairly conceded that on each of the 4 factual issues noted above that evidence was led by the Respondent on each of those points. He accepted that not all of them were the subject of cross-examination by him. He accepted that, in some respects, the issues were incidental to the issue before the FtT. He accepted that it was an accurate summary to say that the FtT had evidence before it on each of the 4 points, and although he didn't agree with that evidence, that the FtT were entitled to accept it and reach the conclusions that it did. It became clear during the course of the hearing that the Appellant misunderstood the nature of evidence that could be accepted by the FtT. In particular, the Appellant commenced the hearing before me adamant that documentary evidence was the only sort of evidence that the FtT were entitled to accept. He thought that if the Respondents did not provide e.g. documents to show whether the fuse box was a telecommunications box or not, that the FtT could not reach findings. He accepted there was oral evidence before the FtT on those points. After some discussion about the nature of evidence, and in particular about the ability of a tribunal to accept oral evidence before it so long as credible and reliable, the Appellant considered

withdrawing the application before me. However he chose not to on the basis he would find it helpful to have the issues set out in writing.

The Appellant accepts that Sheriff Fleming was correct on the basis of the way matters were presented to him. On the basis of the arguments put before me, I am satisfied that there is no error in law in the FtT decision, and they were entitled to reach the decisions that they did.

Conclusion

Leave to appeal to the Upper Tribunal can only be granted on a point of law; section 46(2) of the Tribunals (Scotland) Act 2014. I refuse leave to appeal on the basis that there is no point of law raised by the Appellant.