



DECISION OF

Sheriff O'Carroll

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

Coilty Leisure and Recreation Limited

Appellant

- and -

Ms June Cowan

Respondent

FTS Case Reference: FTS/HPC/CV/23/0105 & FTS/HPC/PR/23/0019

25 March 2024

Decision

Leave to appeal is refused in both cases. The appeals are dismissed.

Introduction

1. In these two conjoined cases (one seeking repayment of a deposit and the other seeking a sanction for breach of the deposit regulations) the FTS decided on 7 November 2023 in each



case to make an award of payment: representing the amount of the deposit of £825 in the one and payment of a sanction of £1650 for breach of the regulations in the other.

2. Leave to appeal was sought by the appellant from the FTS. That was refused in both cases by decision of the FTS dated 10 January 2024 on the basis that the applications to appeal raised no arguable error of law.
3. That application was renewed before this Upper Tribunal. At a hearing on 12 March 2024, the Appellant was represented by its solicitor, Mr Gardiner, who advanced the application for leave to appeal which was very fully set out in a four page paper apart. The respondents were not present or represented. The application argued that the FTS erred in law in two respects. First, the tribunal failed to properly assess the evidence in the context of the procedural history and in so failing made a decision which no reasonable tribunal could have made. Second, it erred in conflating the legal identity of the appellant with that of Janet Turnbull, its sole director. Mr Gardiner adopted what was said the application for leave to appeal as regards the first ground. As regards the second ground, he explained that was based on an erroneous description of the identity of the appellant in the instance of each of the decisions, where the Respondent is designed with the inclusion of the name of the director as well as the name of the limited company. His concern was that if the decisions of the FTS were confirmed and if diligence were done, the personal assets of Janet Turnbull might be subject to diligence, in error, rather than those of the company.

The law



4. An appeal to this Upper Tribunal lies only on a point of law: section 46 of the Tribunals (Scotland) Act 2014. Permission to appeal must be granted by either the FTS or this Tribunal before such an appeal may proceed. That permission will only be granted if the Appellant can show there is an arguable error of law. What is meant by error of law has been explained in many decisions of the senior courts. A convenient and authoritative source is the decision of the First Division of the Inner House of the Court of Session in *Advocate General for Scotland v Murray Group Holdings Limited* 2016 SC 2016, at paragraphs [42]-[43]. It is not necessary to rehearse that well-known passage here. It is accurately summarised by the FTS in its decision to refuse permission to appeal. Any error of law identified must represent an arguable ground of appeal.

Reasons

5. I agree with the decision of the FTS to refuse leave to appeal on ground 1 and also with the reasons given by it. The first ground of appeal does not demonstrate an arguable error of law. Rather, it seeks, at great length, to reargue the facts. No error of law on the part of the FTS is demonstrated in my view. The FTS set out in some detail the evidence it heard, the facts it found established why it preferred some evidence over others, and why it concluded in favour of the applicant in each case. It was perfectly entitled to reach the conclusions it reached for the reasons it gave on the basis of the material before it. The argument that the FTS should have attached less or more weight to some adminicles of evidence takes the Appellant nowhere. Assessment of the evidence and the weight to be attached to it is a function of the tribunal. No demonstrable error of law as to how it carried



out that function is identified. That the appellant is disappointed by the outcome and the weight the FTS attached to various items of evidence does not give rise to an arguable ground of appeal. Neither does it entitle the Appellant to an opportunity to reargue the same facts before this Tribunal.

6. As regards the second ground of appeal, that refers to a certain style which is sometimes used by the administration of this tribunal in which sometimes the name of the principal is included in the instance describing the parties. That style does not amount to a decision by the FTS itself. Indeed, the FTS allowed amendment of the instance in its original decision at paragraph [6] so as to add "Ltd" after the name of the company. The FTS well understood the identity of the appellant being separate from the identity of its sole director Janet Turnbull. The FTS did not therefore make an error of law as regards designating the appellant. For the avoidance of doubt, the correct designation of the appellant (and respondent at first instance) is as noted in the instance of this decision.
7. Leave to appeal on all grounds is refused. There is no appeal or review available against this decision: section 55(2) of the Tribunals (Scotland) Act 2014.

Member of the Upper Tribunal for Scotland