



DECISION NOTICE OF SHERIFF I H L MILLER

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

in the case of

DP, 12 The Stables, 38 Ferguslie Main Road, Paisley, PA1 2QT

Appellant

and

LIFE PROPERTY MANAGEMENT (LPM), Regent Court, 70 West Regent Street, Glasgow,
G2 2QZ

Respondent

FTT Case Reference FTS/HPC/PF/16/1009/PF/17/0322

7 October 2019

Decision

[1] The Upper Tribunal, having reconsidered the decision to refuse the appellant permission to appeal, Adheres to that decision and Refuses leave to appeal.

Introduction

[2] By decision dated 16 July 2019 (the UT decision), the Upper Tribunal refused the appellant permission to appeal against the decision of the First Tier Tribunal dated 15 March 2019 (the FTT decision). The appellant sought and was granted the opportunity for the

Upper Tribunal to reconsider the UT decision by way of an oral hearing. That hearing took place on 26 September 2019. Those present at it were the appellant, who represented himself, and the respondents who were represented by Ms Jacqueline Borthwick, their Finance Manager. In attendance was Mr Jason Miller, their Estates Manager. Both the appellant and Ms Borthwick presented submissions.

Grounds of appeal

[3] The appellant challenged the UT decision in respect of each of the five issues identified and analysed in it at paragraph 6 which was for each that he had failed to identify an error in law in the reasoning and conclusions of the FTT decision. As he developed his extensive submissions it became clear, and he ultimately accepted, that his primary challenge was to the UT decision on title contained in issue (i) and that the decision on the other four issues in effect flowed from that one. As a consequence he accepted that if his challenge to issue (i) were upheld then the other issues ought to be upheld as well and if his challenge to issue (i) were rejected then the other issues fell with it. This acceptance was subject to the qualification that, as he conceded in the course of his submissions, his challenges to issues (iii) and (iv) could not succeed. Accordingly the determination of the hearing to reconsider the decision of 16 July 2019 turned on the fate of his challenge to issue (i) which in turn conditioned the fate of issues (ii) and (v).

[4] In his challenge to issue (i) the appellant sought to re-open his criticism of the approach taken by the FTT to the interpretation of the title to his property. As he put it, the FTT decision erred by relying upon "section 11". He submitted in effect that they had reached the wrong conclusion in law. He sought to support that by referring to three sources. The first was what seemed to be unattributed quotations from his title to his

property for they included words and phrases that appear in the FTT decision at paragraph 16 and which are attributed to either Clause Eleventh of his title deed whose reference was REN97577 or to Clause Eleventh of the Deed of Conditions that apply to his property. The second was to various reported judicial decisions which he mentioned by the name or part name of the parties to the action and for at least one presented what appeared to be a quotation from the decision of the court. He made passing references to the case of *Marriot v Greenbelt*, to a decision of Lord Benholme and to the cases of *Lundin Homes Limited v The Keeper of the Registers* and *Miller Homes v The Keeper of the Registers of Scotland*. The third was to certain passages from volumes 12 and 18 of the Stair Encyclopaedia of Scots Law.

[5] The appellant's challenge to issue (ii) was stated to proceed effectively on the same ground as that for issue (i). For issue (v) he submitted that the UT decision proceeded on an incorrect basis of fact when it stated that "the FTT made findings in fact regarding the ownership of the downpipes and gutters" and "went on to make findings in relation to the apportionment of charges" because the FTT decision did not make such findings. When he was referred to paragraph 42 of the FTT decision in respect of the first of these challenges he accepted that the FTT had made a decision to remit that matter to the respondents.

[6] Ms Borthwick said in reply that she had no submissions to make beyond stating that the respondents accepted that the case hinged on the interpretation of the appellant's title to his property, that the FTT decision indicated that the FTT had looked beyond "section 11" and that the UT decision on that as set out in its paragraph 5 was correctly decided.

Discussion

[7] An appeal by a party in a case before the First-tier Tribunal against a decision of the First-tier Tribunal lies to the Upper Tribunal on a point of law only: section 46(2)(b) of the Tribunals (Scotland) Act 2014. A potential appellant, when seeking permission to appeal against a decision of the FTT must be able to identify, state and support a point of law that could form the ground of a stateable appeal.

[8] In this case, the appellant's request for permission to appeal turns on the question of the interpretation of his title. The UT decision on that general question was expressed in paragraph 5 of its decision. It proceeded on the ground that the appellant's challenge to the FTT decision sought to apply his own interpretation of the titles and then use that as a basis for challenging other parts of the decision. He was given the opportunity to say why his interpretation should be preferred or why the FTT decision had erred in law in its interpretation. He failed to persuade the UT that he had stated any basis in law for either matter. As a consequence, for issue (i) the UT decided that he had failed to specify in what way the FTT decision had erred in law in reaching its conclusion on their interpretation of his titles. For issue (ii) he similarly failed to show that the FTT had erred in law because he had not clearly stated his challenge to what would appear to be work done to a gable and a chimney stack. For issue (v) he failed to identify any error in law in the findings in fact that the FTT made regarding the ownership of the downpipes and gutters and in relation to the apportionment of charges.

[9] The UT decision on title proceeds on the premiss that the FTT was entitled to favour, adopt and then apply their interpretation of the appellant's titles. I am of the same opinion. The appellant therefore has to demonstrate that that premiss is wrong or at least significantly flawed in law. His submissions made before me have been unable to persuade

me of that. His use of what I understood to be passages quoted from his titles provided no material from which I could infer or conclude the existence of a point of law either by reference to the UT decision or to the FTT decision and the same applies to his use of case law and his reference to a textbook. It is an insufficient basis of challenge simply to quote a case by reference to its participants, for that is entirely devoid of substance on the legal principle that the appellant wishes to extract from it and use in support of his contention that there is a point of law. Similarly, to go beyond that but only to the extent of apparently quoting without further designation what might be a passage from a case, again without any indication of what legal principle an appellant wants to derive from it, takes an appellant no further. The same observation applies to the very limited and inspecific use made of the Stair Encyclopaedia. The appellant's challenge to the UT decision on title fails for these reasons.

[10] As a consequence the appellant's challenge to the UT conclusion anent issues (i), (ii) and (v) fails. For issue (ii) it would also have failed because he was unable to show that the FTT decision erred in law. For issue (v) it would also have failed on the ground that the decision to which the FTT came was one that they were entitled to make in the exercise of the discretion that they had and the appellant has been unable to point to the incorrect basis of fact on which they proceeded that amounts to an error in law.

Conclusion

[11] For all the foregoing reasons The Upper Tribunal, having reconsidered the UT decision to refuse, Adheres to that decision and Refuses the appellant permission to appeal against the FTT decision.