



[2020] UT 15
UTS/AP/19/0026

DECISION NOTICE OF SHERIFF PINO DI EMIDO

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

ARIEL RAMIREZ-STICH, 27/3 Trinity Court, Edinburgh, EH5 3EE per Community Help
and Advice Initiative, Riverside House, 502 Gorgie Road, Edinburgh, EH11 3AF

Appellant

- and -

(FIRST) MR LESLIE STRACHAN, 4 Mount Alverna, Edinburgh, EH16 6AW
(SECOND) MRS ANN STRACHAN, 4 Mount Alverna, Edinburgh, EH16 6AW

and

(Third) First-tier Tribunal for Scotland Housing and Property Chamber, Glasgow Tribunals
Centre, 20 York Street, Glasgow, G2 8GT;

Respondents

FTT Case Reference FTS/HPC/PR/18/1506

23 July 2019

Decision

The Upper Tribunal for Scotland Grants the appellant permission to appeal against of the decision of the First Tier Tribunal Housing and Property Chamber dated 17 April 2019 on the proposed grounds of appeal numbers 2 and 5 set out in the paper apart attached to her Form UTS-1 dated 5 July 2019.

Reasons for Decision

Introduction

[1] On 19 June 2019 the appellant was granted permission by the First-tier Tribunal (“FtT”) to appeal its decision dated 2 May 2019 to make an award of expenses against her on three separate grounds (numbers 1, 3 and 4). The FtT also refused permission on two other grounds, these being numbers 2 and 5 in the application to the FtT for permission to appeal. This Decision concerns the appellant’ application to this Tribunal for permission to appeal on the grounds which were refused by the FtT. For the reason given below I grant permission to appeal on these grounds as well.

Grounds of appeal on which permission is sought from this Tribunal

[2] The paper apart annexed to the appellant’s form UTS-1 sets out the reasons why permission is sought on grounds 2 and 5.

[3] Ground 2 is in the following terms: -

“The [FtT] was not entitled to exercise its discretion in favour of making an award of expenses; no reasonable Tribunal could have done so where the applicant would have been entitled to maintain her application.”

[4] Ground 5 is in the following terms:-

“The [FtT] erred in taking into account the intention to make a further application against the respondent, especially without taking into account that some of the expense incurred would have been required in any event for that claim at common law (para. 3.14).”

[5] In its decision to refuse permission on these grounds the FtT stated in each case that the “raised no point of law”.

[6] Section 46(4) of the Tribunals (Scotland) Act 2014 (“the 2014 Act”) provides that permission to appeal is to be granted where:-

“... the Upper Tribunal is satisfied that there are arguable grounds for the appeal.”

In approaching the terms of section 46(4), I have had regard to the discussion by the Lord Justice Clerk (Lord Carloway) in *Czerwinski v HM Advocate* 2015 S.L.T. 610 at paragraph [9] together with the authorities cited there (*Hoseini v Secretary of State for the Home Department* 2005 S.L.T. 550 and *Campbell v Dunoon & Cowall Housing Association* 1992 S.L.T. 1136). That discussion related to a different statutory context, but I have found it helpful in construing the terms of section 46(4). The “arguability” test for permission is a relatively low hurdle. Other valuable guidance relevant to the test to be applied in this particular application for permission is to be found in the Opinion of the Court delivered by Lord Drummond Young at paragraph 43 in the case of *Advocate General for Scotland v Murray Group Holdings* 2016 SC 201 where he said: -

“[There is] a fourth category [of appeal on a point of law], comprising cases where the First-tier Tribunal has made a fundamental error in its approach to the case: for example, by asking the wrong question, or by taking account of manifestly irrelevant considerations, or by arriving at a decision that no reasonable tax tribunal could properly reach. In such cases we conceive that the Court of Session and the Upper Tribunal have power to interfere with the decision of the First-tier Tribunal as disclosing an error on a point of law (*Edwards v Bairstow*, [[1956 3 AC 14] per Lord Radcliffe, p 36).”

The quoted passage discusses the terms of the Tribunals, Courts and Enforcement Act 2007 relevant to appeals from the Upper Tribunal to the Court of Session in relation to decisions of the non-devolved UK tribunals that fall within the scope of the 2007 Act. I have treated this passage as providing helpful guidance on the approach to be taken in relation to the terms of section 46(4) of the 2014 Act.

[7] I have considered carefully all of the documentation submitted in support of the application for permission to appeal. Ground 2 attacks the basis on which the FtT has exercised its discretion when it made the award. Ground 5 raises the issue of whether the

FtT took into account an irrelevant consideration. The proposed grounds of appeal do formulate points of law which I consider are arguable in the sense described in the authorities set out above.

Conclusion

[8] Permission to appeal is granted on grounds 2 and 5. As the FtT has already granted permission to appeal on grounds 1, 3 and 4, the clerk of this Tribunal will now take steps to initiate the appeal process so that this appeal can be determined in accordance with the Upper Tribunal Rules of Procedure.