



DECISION OF SHERIFF DEREK J HAMILTON

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

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

16 July 2019

Decision

The Upper Tribunal, in terms of Rule 3(6)(a), of The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016, refuses permission to appeal.

Introduction

The Appellant lodged two applications with the First Tier Tribunal (FTT). Those applications were conjoined. The Appellant sought a number of remedies in respect of

alleged failings, and erroneous charges imposed by the property factor. By decision dated 15 March 2019, the FTT upheld the Appellant's application in part, and on that date issued a Property Factor Enforcement Order, ordering payment of £250 by the factor to the Appellant. The Appellant lodged a letter dated 29 March 2019 seeking a review of the FTT's decision. A review hearing was scheduled. That letter was also taken as an application for leave to appeal the FTT's decision to the Upper Tribunal. The FTT issued a decision dated 24 April 2019, refusing permission to appeal to the Upper Tribunal. The Appellant now seeks permission of the Upper Tribunal to appeal the FTT's decision of 15 March 2019.

The Appellant does not appear to challenge the making of, or the terms of, the Property Factor Enforcement Order. He has not addressed same in his application to this Tribunal.

Grounds of appeal

The Appellant's grounds of appeal are difficult to identify. There appears to be five issues he seeks to bring before this Tribunal in support of his position that the FTT erred in law.

- 1 Conflicting Deeds/Common Property – Chimney/Gable.
- 2 Scheme Cost Liability.
- 3 Scheme Decisions.
- 4 Emergency Situation.
- 5 Downpipes and Gutters.

Discussion

[1] The FTT stated that the role of The FTT was not to reconcile the Factor's accounts as to whether the Appellant had been over or undercharged, but to determine whether the

Factor had complied with the Code of Conduct. The FTT decided that the Appellant's complaints detailed within his application should be dealt with under nine specific headings.

[2] The FTT dealt with the nine heads of claim under separate headings, and gave a separate decision in respect of each head of claim. The Appellant's application for leave to appeal has not followed the FTT's format, and that has made it difficult to identify exactly what decisions he seeks leave to appeal.

[3] The Appellant complained that his title and the Deed of Conditions for the development were inconsistent. As a preliminary matter therefore, the FTT dealt with the issue of interpretation of the two deeds.

[4] The FTT noted some discrepancies between the two deeds. It had no jurisdiction to amend the deeds, and its role was to determine the complaint lodged. The FTT took the view that any changes that had been made to the Deed of Conditions in its transposition to the Appellant's Title Sheet were stylistic and not substantive in their nature. The FTT determined that the common parts therefore should be as set out in the Deed of Conditions.

[5] The Appellant appears to challenge the FTT's findings on the preliminary issue of title interpretation, and seeks to apply his own interpretation of the titles as a basis for challenging other parts of the FTT's decision. The Appellant does not state any basis in law as to why his interpretation is to be preferred or why the FTT has erred in law in its interpretation. The FTT having made a decision on the preliminary title issue, then went on to make a number of further findings in fact based on the evidence before it.

[6] Dealing with the issues identified by the Appellant;

- (i) Conflicting Deeds/Common Property – Chimney/Gable.

This appears to address the preliminary title issue. The Appellant notes that the FTT found the inconsistencies in the deeds to be “*stylistic rather than substantive*”.

He fails to specify in what way the FTT has erred in law in its conclusion.

The Appellant refers to “*Marriot vs Greenbelt*” without further specification or explanation. He also refers to the “*Manifest test*” and the “*Four Corners Rule*” without specifying what they are, their relevance, how they relate to the present proceedings or in what way the FTT has erred in law.

The FTT’s decision on the preliminary title issue forms the basis for many of their subsequent findings in fact. The Appellant appears to challenge those subsequent findings in fact based on The FTT’s findings in relation to the preliminary title issue.

(ii) Scheme Cost Liability.

The Appellant’s challenge is difficult to follow. It appears to relate to work done to a gable and chimney stack. It is not for this Tribunal to work out what decision the Appellant seeks to challenge. It is for the Appellant to clearly state his position. He has not done so under this head, and has failed to show that the FTT has erred in law under this head of challenge.

In any event;

- (a) Section 4(2) of the Tenements (Scotland) Act 2004 (with reference to Section 71 of the Title Conditions (Scotland) Act 2003), provides that The Tenement Management Scheme shall not apply in any period during which the development management scheme applies to the property. The Appellant states that the Tenement Management scheme should apply because of a conflict between the

Deed of Conditions applicable to the property and the Appellant's title. The FTT found no conflict and found that any differences "*were stylistic and not substantive in their nature*".

(b) The Appellant's complaints relate to findings in fact made by the FTT relating to parts of the property.

Under this head, the Appellant again challenges the FTT's decision on the preliminary title issue, and disputes a number of factual findings made by the FTT. The Appellant refers to the Tenements (Scotland) Act 2004, but does not state how it applies to the property concerned. The Appellant has failed to identify any error in law made by the FTT in applying or failing to apply the provisions of the Tenements (Scotland) Act 2004. Further, he states the Factor was in breach of said Act, but does not say in what respect. The FTT upheld in part the Appellant's claim under this head. The Appellant fails to identify in what respects the FTT erred in law in making its findings in this regard.

(iii) Scheme Decision.

(iv) Emergency Situation.

These two heads can be considered together. The FTT found that The Tenement Management Scheme applied to emergency works. Emergency work is certain defined work which requires to be carried out before a scheme decision can be obtained. The FTT found as a matter of fact that the works carried out were emergency works. As such, they were done before a scheme decision could be made. Any submissions regarding a scheme decision are therefore not relevant. The Appellant has failed to identify any error in law made by the FTT.

(v) Downpipes and Gutters.

Under this head, the Appellant again challenges the FTT's decision on the preliminary title issue, and disputes a number of factual findings made by the FTT. The Appellant refers to the Tenements (Scotland) Act 2004, but does not state how it applies to the property concerned on this issue.

On the evidence before it, the FTT made findings in fact regarding the ownership of the downpipes and gutters. It went on to make findings in relation to the apportionment of charges. The Appellant has failed to identify any error in law made by the FTT.

Conclusion

[7] The Appellant has failed to identify any error in law made by the FTT.

Derek J Hamilton Member