



DECISION NOTICE OF SHERIFF NIGEL ROSS

on an application to appeal
in the case of

MR PRADIP SUTARE, 372 Colinton Mains Road, Edinburgh, EH13 9BS

Appellant

- and -

MR RAMESH GOLKONDA, 19 Craigmount Brae, Midlothian, EH12 8XD

Respondent

FTT Case Reference FTS/HPC/PR/19/0072

18 November 2019

Decision

[1] Following consideration of the appellant's further submissions, based on a draft of this decision dated 11 November 2019, all in terms of Rule 10(3), and in respect that the submissions do not address the reasons for that proposed dismissal, The Upper Tribunal dismisses the appeal and remits the case to the First tier Tribunal to proceed as accords. Dismissal is in terms of Rule 10 of The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016, in respect that there is no reasonable prospect of this part of the appellant's case succeeding. No error in law is evident in the decisions of the FtT referred to, and the appeal is neither relevant nor stateable.

Reasons

[2] This is one of four applications in four separate cases between the same parties. The appellant is the claimant in two of the cases, and the respondent in the other two. Each of the present applications founds on identical issues. The grounds for each appeal are “refused substantial issue of disclosures”. Each UTS-1 form contains a very lengthy narrative, and what follows can deal only in outline with the matters raised. The appellant has submitted an extended explanation of his position. To utilise the format adopted in the UTS-1 in each case:-

1. (B) “Background of all cases...”

The appellant submits that *“the sheriff has made directions to set up new panel and hear all these 4 applications together”* The First-tier Tribunal (“FtT”) is said to have breached this. In fact, in the decision dated 27 June 2019, the sheriff directed that the case was to *“proceed as accords before a differently constituted panel”*. That direction does not require all four cases to be heard together - that is a procedural decision to be made by the FtT. It also does not refer to incidental hearings, such as case management hearings or motions for recovery of documents, but to the disposal of the case. It refers to the final hearing, which has not yet taken place. There is no error in law, or error in fact.

2. “(C)” Permission to appeal decision dated 3 October 2019

The appellant appeals on the basis that the FtT has not observed the terms of Rule 38(3) of the 2017 Rules, which require that a decision be made in writing, and which

advises of certain appeal rights. In fact, such a decision letter (dated 3 October 2019) has been issued. This is therefore no longer a ground of appeal.

Further, the appellant complains that the FtT did not order disclosure of certain documents which the appellant had requested. It is important to understand the limited role of the FtT in the recovery of documents.

Firstly, the FtT is not obliged, and has no power, to grant every order which one party requests. There is no general power for one party to demand any document from another party. The FtT cannot be used as a weapon to force such disclosure.

Secondly, the FtT only has power to order disclosure of “such documents or information as it may reasonably require”. (Rule 21(1)). There is therefore a requirement of “reasonableness” which has to be passed. “Reasonableness” requires a balancing of both sides’ interests, not merely that one side thinks it is reasonable.

Thirdly, that is not the only restriction on the FtT. Rule 21(2) states:-

“Paragraph (1) does not authorise the First-tier Tribunal to require any person to answer any question or to disclose anything which the person would be entitled to refuse to answer or disclose on grounds of confidentiality in civil proceedings in a court in Scotland.”

Accordingly neither the FtT nor the appellant can force disclosure where confidential material is involved, such as bank accounts or correspondence with third parties.

There are some occasions where a court can override confidentiality, but that would require that the documents were proved to be of such central importance and relevance, that the rights of confidentiality should be set aside. Proving that is a careful and detailed exercise, on a document by document basis. It is not enough to supply a list of demands, on the basis that they might throw up some relevant or interesting information.

For the appellant to be successful, he would have to justify recovery, for each and every document or bundle of documents, on two bases. First, he would have to say why recovery was “reasonable” as a balance of the parties’ interests. Secondly, he would have to say why each such document, or bundle of documents, was of such central importance and relevance that the other party’s right of confidentiality should be set aside.

Importantly, this cannot simply be as a result of guesswork. It is necessary to say what these documents contain, and why it is necessary in order for the case to be proved. It is not enough to ask for, say, bank statements or contracts by claiming that they might have relevant facts. That is an exercise commonly known as “fishing” for evidence. Recovering documents simply to see if they contain anything useful is not allowed in court, and therefore is not permitted of the FtT under Rule 21.

The FtT relates that they considered the appellant’s requests on that basis.

The letter of 10 October 2019 sets out their rationale. No error of fact or law is evident.

1. “(E)” Adjournment of hearing

The appellant discusses substantive and procedural issues, too numerous to summarise here. None of these points assists. This appeal, and indeed these four appeals, raise issues which are not stateable. There are no grounds to postpone the hearings.

The appellant mentions procedural decisions made in unrelated cases, and which deal with documents. These are not of assistance, because (i) each case is different, and each case requires different orders to make best progress; and (ii) the two

excerpts quoted relate to different things, namely the burden of proof or the preparation for proof, not the compulsion to supply documents. These are not the same as a tribunal demanding one side produce material.

2. “(F) Brief summary of few point of law principles...”

The points raised “briefly” are too lengthy to repeat here, but they have a central theme, namely the refusal or failure of the FtT to require the respondent to submit documentation. From that flows the requests for adjournment, the procedural errors identified and the points about adjusted pleadings. For the reasons set out under “(B)” above, there has been no error of law in refusing recovery of the documents, and therefore there is no basis for adjournment of the hearings.

3. The decision letter of 3 October

Although this is not a separate ground of appeal, the decision features throughout this application. This decision letter is now superseded, because it fixes procedure for 7 and 8 October 2019. The principles applied are unexceptional. As the letter says, the FtT is obliged to balance the interests of both parties, while ensuring that progress of the case is maintained. One party asking for an adjournment is not, by itself, a reason to postpone a hearing. A postponement will only be granted if it is fair to both sides, does not unduly disadvantage either side, and if it is compatible with making reasonable progress overall. There is no evident error in the FtT’s response of 3 October 2019.

4. FtT decision of 20 October 201

Similarly, this decision raises further matters beyond the issue of disclosure. The decision shows the FtT exercising its function in making administrative decisions about the holding of the hearing. These matters are not related to disclosure. In any event, the decisions reveal no error either in fact or in law. This decision cannot found an appeal in the form presently advanced.

It is appropriate that this application is dismissed, not merely refused. There is no arguable case here. It is necessary for this case to make progress.

[3] This decision is issued following the issue of a proposed decision to dismiss, dated 11 November 2019, issued to the appellant, and on which he has made further representations. Despite the large amount of material further submitted, the fundamental points have not been addressed. It is not possible for the FtT to make general and inspecific orders for disclosure, and not permitted for the appellant to apply for disclosure on a speculative and unrestricted basis. The appellant's submissions contain many references to English law, which has different disclosure rules to Scots law. English law disclosure rules do not provide a sound basis for this application.