



DECISION

of Upper Tribunal Judge Pino Di Emidio

in an application for permission to appeal to the Court of Session

in the case of

Mr John Paul Floyd, 5E Raeburn Place, Aberdeen, AB25 1PP

Appellant

and

Mr Geoffrey George Gettka, 27 Watson Street, Aberdeen, AB25 2QB

Respondent

FTS Reference FTS/HPC/PR/19/3024

26 May 2022

The Upper Tribunal for Scotland refuses the respondent permission to appeal to the Court of Session.

Note of reasons for decision

[1] On 4 April 2022 following a review I allowed the appeal and made an order for payment against the respondent who has now sought permission to appeal to the Court of Session. The point at issue is whether a payment received by the respondent from the appellant was a premium paid in connection with the grant of a protected tenancy.

[2] The application is made under section 48 (3)(a) of the Tribunals (Scotland) Act 2014. Section 48(4) provides that permission may only be granted if the Upper Tribunal is satisfied that there are arguable grounds for the appeal. This provision, in turn, is subject to section 50(1)



which provides that in the case of a second appeal sections 50(3) and (4) apply. These provisions are in the following terms: -

“(3) For the purpose of subsection (1), the Upper Tribunal ... may not give its permission to the making of a second appeal unless also satisfied that subsection (4) applies.

(4) This subsection applies where, in relation to the matter in question—

(a) a second appeal would raise an important point of principle or practice, or

(b) there is some other compelling reason for allowing a second appeal to proceed. ”

[3] This is a second appeal. The underlying policy of the legislation is to restrict second appeals to narrow categories of cases.

[4] I have had regard to the following authorities relating to the test applied in second appeals in determining this application: *Uphill v BRB (Residuary) Limited* [2005] 1 WLR 2070; *EP v Secretary of State for the Home Department* 2014 SC 706 (IH); *HH v Secretary of State for the Home Department* 2015 SC 613 (IH). The Scottish decisions relate primarily to the “some other compelling reason” aspect of the second appeals test. They provide guidance on the way applications for permission to bring second appeals should be approached.

[5] The appellant accepts that the respondent has made a timeous application for permission. I proceed on the basis that no issue about extension of time arises. The respondent explained the basis of his application in more detail in an email dated 10 May 2022 when he advised he was relying on the existence of some other compelling reason, i.e. it is brought under section 50(4)(b) of the 1984 Act. He maintains that the payment of Council Tax was not a hidden or extra charge and that the appellant was aware of it from the outset. I have found that as a matter of law the payment was caught by the wide ranging prohibition in section 82(2) of the 1984 Act. That prohibition has been put in place by the legislature. It does not depend on any question of awareness or otherwise. The respondent may consider that prohibition has resulted in unfairness to him in this case but that does not provide a reason for failing to apply the law to the facts of the case. I do not regard this as some other compelling reason for the grant of permission to appeal. Permission is refused in the circumstances.



Notification of further right to make an application for permission to appeal

[6] The respondent has the right to make an application to the Court of Session for permission to appeal within the period of 42 days commencing with the date on which this decision is sent to parties.

*Sheriff Pino Di Emidio
Member of the Upper Tribunal for Scotland*