



DECISION OF

Sheriff McCartney

IN THE APPEAL IN THE CASE OF

Dr Cheng Jin

Appellant

- and -

Speirs Gumley Property Management

Respondent

FTS Case Reference: FTS/HPC/PF/25/1001

5 February 2026

Decision

The appeal is refused.

Introduction

[1] This case concerns a complaint about factors as to their handling of repairs.

[2] St Andrews Court in Glasgow has required stonework repair for some years. The building is factored by the Respondent. Surveys instructed by the Respondent identified that guttering required to be replaced and damaged stonework required repair to prevent water



ingress. Although surveys took place in 2021 the work did not proceed at that time. Further surveys were carried out in 2022, followed by the appointment of a team of architects, quantity surveyors and structural engineers. There was then a tender process and, after some delay, contractors were appointed.

[3] In 2023 the Appellant purchased a property affected by the repairs. The date of entry was after the need for repairs had been identified, but prior to the awarding of the contract for work to commence on site.

[4] The complaint against the Respondent is as follows. The Appellant says that relying on correspondence sent by the Respondent, the Appellant understood that the repairs would not proceed unless the Respondent had received all sums due from all owners. At the same time, the Respondent had arranged that affected owners could apply for a grant with Glasgow City Heritable Trust to cover a certain amount of each owner's individual contribution. The Respondent provided the Trust with details of the repairs required and the proposed works. Each owner had to make the application in their name, and it was a condition that in order to receive a grant, the owner would have had to have paid their share of the repairs to the Respondent.

[5] As is inevitable with such projects, not all owners made the payment for their share of the repairs timeously to the Respondent. This was anticipated by the Respondent. The Respondent held several meetings with owners. At a meeting on 28 September 2023, owners were told that if owners did not pay the necessary funds, the works would not proceed. That was given the potential difficulty for the Respondent if they were to instruct contractors without holding the



funds to pay. Following that meeting, a detailed letter was sent to owners, including the Appellant, on 1 November 2023, giving details of tender results and an update on the grant process. On 1 December 2023, owners, including the Appellant, were told that the grant had been agreed in principle, that letters would be emailed direct from the Glasgow City Heritage Trust, and that there was a 30 day time limit to accept the offer. Owners were told that it was a condition of the grant that the owner had paid their share of the repair works by 28 February 2024. The Appellant contacted the Respondent on 4 and 13 December 2023 disputing liability for costs associated with the stonework project, and setting out objections to the project proceeding. The Respondent replied, setting out the basis for the charges and advising that these costs were made known to the seller of the property at the time of the sale to the Appellant.

[6] On 19 December 2023 the Respondent again wrote to all owners, including the Appellant, with a reminder of the deadline for grant applications (12 January 2024) and that eligibility was based on the applicant for the grant having paid their share of the works by 28 February 2024. The Respondent also enclosed a copy of minutes of the AGM of the owners of St Andrew's Court. The AGM was held on 6 December 2023. The minutes of the AGM include a reference to the need for all owners to pay otherwise the project would not proceed. If not owners paid, the Respondent intended to contact Glasgow City Council in terms of its scheme under section 50 of the Housing (Scotland) Act 2006 (which funds missing payments allowing communal repairs to proceed, with the Council seeking reimbursement with a surcharge from owners). The minutes noted a discussion as to the limit of how many missing payments Glasgow City Council might step in to pay.



[7] Further correspondence was sent on 8 and 24 January 2024, again reminding owners of the deadlines for both the grant application and the payment to be made. On 26 January the Respondent wrote to all owners who had not yet paid indicating that contact had been made with Glasgow City Council regarding the missing share scheme, and the Council had asked for contact details of all owners who had not yet paid. On 1 March 2024, the Respondent confirmed that Glasgow City Council had confirmed the missing shares scheme would cover the missing payments. The Appellant paid their share of the repairs on 20 March 2024.

[8] The Appellant says that, relying on the Respondent's online system which provided information as to the numbers of payments already made, the Appellant decided not to pay sooner as the Appellant took the view it was unlikely the project would proceed. As a result, the Appellant did not apply for a grant. By the time the Respondent confirmed the works would proceed on 1 March 2024, the deadline for applying for the grant had passed. The Appellant blames the loss of opportunity to apply for the grant on the Respondent's communications around the need for owners to pay, and the Appellant's understanding of what that meant as to the likelihood of the project proceeding.

[9] The Respondent rejected the Appellant's complaint, as did the First Tier Tribunal for Scotland (FTS). Damages were sought for an alleged breach of the Code of Conduct for Factors. The FTS granted leave to appeal to the Upper Tribunal for Scotland (UTS).

[10] Both parties agreed to the appeal being determined on the papers and no hearing required to be convened.



Grounds of appeal

[11] The FTS granted leave to appeal on 21 October 2025, noting 5 proposed grounds of appeal drafted by the Appellant:

1. Failure by the FTS to apply recognised principles of law in its interpretation of the correspondence before it (being *contra proferentem* and estoppel);
2. Failure by the FTS to apply procedural fairness because of the Respondent's absence at the Case Management Discussion (CMD);
3. Failure by the FTS to give adequate reasons and misstatement of evidence;
4. Failure by the FTS to consider relevant and material arguments;
5. Apparent bias or pre-judgement on the part of the Legal Member of the FTS.

[12] The FTS did not consider each proposed ground separately. It is assumed leave to appeal has been granted for each ground.

Decision

[13] In general terms, this case is an illustration of the difficulties of (a) understanding the need to show an error of law in an appeal before the UTS and (b) what can happen when the FTS allows a blanket grant of leave to appeal without applying their mind to each ground individually.

[14] It should be noted that the numbering within the Appellant's written submissions do not match the numbering of the FTS's grant of leave to appeal. I have followed the numbering within the FTS decision on leave to appeal.



Ground 1

[15] Ground one relates to the interpretation of the productions lodged by the Respondent by the FTS. It is said the FTS failed to interpret those documents in line with principles of estoppel by representation and *contra proferentem*.

[16] The Appellant argues that the correspondence makes it clear the project would not proceed unless full funding was available. The Appellant's written submissions refer to an "induced reliance" on the Respondent's statements and that "*I reasonably relied on these representations when deciding not to sign prematurely*". It is also argued the communications were ambiguous and should be interpreted in the Appellant's favour.

[17] It is not clear in what respect the FTS is said to have erred. The FTS's view was the correspondence was clear. In the submissions to the UTS, the Appellant has not pointed to any specific ambiguity. Put simply, the Respondent indicated the repairs would not proceed until all owners had paid their share of the repairs. However, that was caveated by the AGM minute recording that the Respondent told all owners that if a small number did not pay, it intended to approach the local authority. Before the FTS, the Appellant was asked about that minute. The Appellant argued the wording of the minute did not give sufficient notice that the project might proceed even if not all owners had paid.

[18] The FTS had the benefit of hearing direct from the Appellant. It did not consider there were any ambiguities in the correspondence. The ground of appeal does not explain in what way the FTS misunderstood the correspondence. There is no error in the FTS' approach. The first ground of appeal is refused.



Ground 2

[19] The second ground of appeal concerns an allegation of procedural unfairness due to the Respondent's absence at the CMD. The FTS determined the case at that CMD. It is argued that by determining the case at a CMD without the Respondent being present, that has resulted in an "imbalance in examination."

[20] Paragraph 17 of First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the rules") allows a decision to be made at a CMD. The rules also permit the FTS to proceed with a hearing in the absence of one party, so long as that party has had notice of the hearing (para 29). The Respondent made it clear to the FTS that they were content to rely upon the correspondence between the partes and the correspondence as to the project more generally.

[21] I do not accept it created a procedural imbalance for the FTS to determine the case in the absence of the Respondent attending. If one party does not attend, the FTS is not bound to adjourn; the absent party perils their position before the FTS. If the FTS had to adjourn each time a party did not attend, it could frustrate the ability of the FTS to make timeous decisions. One party could deliberately not attend to delay justice. In any event in the circumstances of this case, the FTS could deal with matters. The Appellant had the opportunity to put the Appellant's position before the FTS. The FTS decided it had sufficient information to determine the case. It was right to do so. There has been no procedural unfairness. The second ground of appeal is refused.



Ground 3

[22] The third ground of appeal relates to the provision of reasons. The Appellant's complaint is not a general attack on the reasons provided by the FTS. Rather the issue is wording found at paragraph 35, where the FTS refer to the Appellant's position as to why he did not apply for the grant. The FTS considered he did not "*answer that question in any coherent or sensible fashion.*"

[23] The Appellant had the opportunity to make representations before the FTS, including explaining why, in the face of the correspondence produced, the Appellant did not apply for the grant. The FTS focused on this point asking for the Appellant's position a number of times, and noting the Appellant was not able to provide an answer.

[24] There is no error in the FTS' approach on this issue. As noted above, the deadline for the application for the grant (26 January 2024) was before the deadline for payment of each owner's share of the repairs (28 February 2024). Put in that context, there is no error in the FTS's reasons for rejecting the Appellant's submissions as to why the grant was not applied for. The third ground of appeal is refused.

Ground 4

[25] The fourth ground of appeal relates to a perception that owners were not treated equally by the Respondent, and the FTS failed to consider that argument before it.

[26] The ground of appeal reads:

"I presented evidence that: Some other owners who did not pay nevertheless received grant funding. This goes to fairness, reliance and causation of my loss. The Tribunal's decision contains no findings on this argument – meaning it was not considered. Failure to address a material matter is an error in law."



[27] There is no merit in any such argument. As was clear from the productions lodged by the Respondent, the grant was awarded by Glasgow City Heritage Trust. Given the grant application deadline was before the final deadline for payment of each owner's share to the Respondent, it is possible some owners applied for the grant before the deadline for payment to the Respondent. The conditions and administration of the grant are not a matter for which the Respondent is responsible, although it is noted the grant was conditional on that owner having paid their share. The fourth ground of appeal is refused.

Ground 5

[28] This ground of appeal is not set out in the Appellant's Ground of Appeal or the further written submissions lodged by the Appellant on 9 January 2026. However, in the application for leave to appeal before the FTS, the Appellant points to statements made by the legal member of the FTS during the hearing. The Appellant argues those statements created an impression that the legal member had prejudged the case. The statements made by the legal member were to the effect that the interpretation of the productions was clear, and that the number of years the legal member had been a lawyer to allow him to interpret those documents in that way.

[29] It is not helpful (nor relevant) for a legal member to refer to their length of experience. However, at it highest, I do not consider the remarks the Appellant alleges were made are sufficient to form a ground of appeal. The Appellant does not say those remarks were made at the outset of the hearing. It may be there was an element of frustration in the Appellant's lack of



understanding as to the sequence of events (that can be clearly gleaned from the productions), but, if that is what arose, that alone is not sufficient. This ground of appeal is refused.

Conclusion

[30] It should be noted that the FTS granted leave to appeal on five grounds as sought by the Appellant. It would be helpful for the FTS to address each ground of appeal separately. If an individual ground or grounds has no merit, leave to appeal should be refused. It is not in the interests of justice that time and resources, by the Appellant and others, are used in an appeal without merit.

[31] The appeal is dismissed.

*A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*

Sheriff McCartney

Member of the Upper Tribunal for Scotland