



DECISION NOTICE OF SHERIFF PINO DI EMIDIO

ON AN APPLICATION FOR PERMISSION TO APPEAL A DECISION OF THE UPPER
TRIBUNAL TO THE INNER HOUSE OF THE COURT OF SESSION

in the case of

MR COLIN WATSON, 3 Cowal Place, Dunfermline, Fife, KY11 8GP

Appellant

and

(FIRST) MISS RASMA SNEPSE and (SECOND) MR EDJIS JURJANIS, Flat 2F1, 76 Slateford
Road, Edinburgh EH11 1QU

Respondents

FTT Case Reference FTS/HPC/PR/18/0624

25 October 2015

Decision

The Upper Tribunal for Scotland refuses the appellant permission to appeal to the Inner House of the Court of Session.

Introduction

[1] The appellant seeks permission to appeal the decision of the Upper Tribunal for Scotland (“UT”) dated 17 July 2019 on the basis that important points of principle and practice would be raised by a second appeal. In this decision I use the same abbreviations as were employed in the Decision of 23 September 2019.

[2] This permission 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 UT is satisfied that there are arguable grounds for the appeal. Section 48(4) 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 application is made on the basis that section 50(4)(a) applies. Rule 32(2)(c) of the UT Rules requires the any application for permission to appeal to address the matters referred to in section 50(4). 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 second appeals but they do provide some up to date guidance on the way applications for permission to bring second appeals should be approached.

[5] In an email dated 26 September 2019 at 21.43, the appellant has set out the proposed grounds on which he says he should be granted permission to appeal to the Inner House of the Court of Session.

[6] The appeal has been determined on the information put before the UT. Under the 2014 Act rights of appeal from decisions of the FtT to the UT are restricted to arguable points of law. I set out the relevant provisions in my decision to grant permission to appeal dated 23 May 2019. The right of appeal from the UT to the Court of Session is narrower still and as set out above. These rights of appeal are not designed to allow for repeated re-consideration of the same factual issues.

[7] The appellant has chosen to attempt to raise factual points at this stage. They relate to whether he was in breach of his obligations in relation to smoke and heat detectors and whether he was registered as a landlord. These matters are not central to the question of his failure to comply with his obligations as to tenancy deposits. At best they are of very limited relevance to levels of penalty. If he had contrary information to put before the FtT, he should have done that explicitly when the case was before the FtT. He did not do so and it is now too late. The proposed appeal has no prospects of success as it does not meet the relevant statutory criteria.

Conclusion

[8] For the reasons set out above, permission to appeal to the Inner House of the Court of Session is refused.

Notification of further right to make application for permission to appeal

[9] The appellant has the right to make an application to the Court of Session for permission to appeal within the period of 30 days commencing with the date on which this decision is sent to parties.