



DECISION NOTICE OF SHERIFF I H L MILLER

on an application for permission to appeal (decision of First-tier Tribunal for Scotland)

in the case of

MR AZHIR SHARIF, 202 Ayr Road, Glasgow, G77 6DT

Applicant

and

DR MOHAMMED SHOAIB MOUGHAL, 15 Alder Road, Newlands, Glasgow, G42 2UU

Respondent

FTT Case Reference FTS/HPC/EV/19/2306

27 January 2020

Decision

The Upper Tribunal Refuses the applicant's request for an extension of the time limit for requesting permission to appeal against a decision of the First-tier Tribunal (FTT) dated 21 October 2019 and Declines to admit his notice of appeal.

Introduction

[1] The matter for determination is the request of the applicant (formerly he had to be styled as the respondent) for an extension of the time limit for requesting permission to appeal against a decision of the First-tier Tribunal (FTT) dated 21 October 2019 (the FTT

decision) which refused permission to appeal against a decision of the FTT dated 20 September 2019 which granted an order for eviction of the applicant from the property at 202 Ayr Road, Glasgow G77 6DT owned by the respondent (formerly he had to be styled as the applicant).

[2] In conformity with my Order dated 15 January 2020 both the present applicant and the present respondent has lodged his written responses with the Upper Tribunal administration, the applicant by letter dated 21 January 2020 and the respondent by e-mail dated 24 January 2020. The respondent opposes the applicant's request.

[3] I have concluded that I must refuse the applicant's request and decline to admit his note of appeal, and that for the following reasons.

Discussion

[4] The legal test that I have to apply to that request is set out in rule 3(5) of The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016. It provides that:

- “(5) If the appellant lodges the notice of appeal with the Upper Tribunal later than the time required by paragraph (9) –
- (a) the notice of appeal must:
 - (i) include a request for an extension of time;
 - (ii) explain why the notice of appeal was not provided in time; and
 - (iii) state why it is said to be in the interests of justice that the time be extended; and
 - (b) unless the Upper tribunal extends the time for lodging a notice of appeal the Upper tribunal may not admit the notice of appeal.”

[5] Rule 3(5) lays down one general and two particular requirements. The general is that the applicant must provide reasons for his lateness in applying for an extension of the time limit. The particular, which are governed by the requirement to give reasons, are that he

should include (i) an explanation of why the appeal was not made in time and (ii) why it is said to be in the interests of justice to extend the time. The applicant must comply with and satisfy both requirements and the obligation to provide reasons demands that they be of a high degree of specification. If he does not satisfy these requirements then the Upper Tribunal has no alternative but to decline to admit the applicant's notice to appeal.

[6] The material that I have to take into account in reaching my determination is (a) the content of the applicant's Form UTS-1, (b) his letter dated 21 January 2020, and (c) the respondents' e-mail dated 24 January 2020.

Why it was that the appeal was not made in time

[7] His explanation of why the appeal was not made in time is that it was made in time. He bases that, as he says in both part 6 of his Form and in his letter dated 21 January 2020, on a letter to him from the FTT administration dated 16 December 2019 in respect of which his primary position is that he believes that he has 28 days from the date of that letter to request permission to appeal. His alternative position is that if the time for making such a request is 14 days then he seeks an extension of the time limit because he was "prejudiced by the holiday period over December/January".

[8] The applicant is mistaken in characterising the letter of 16 December 2019 as a decision from which he has a right of appeal. In his letter he describes it as "the final decision". It is not. Its purpose was to correct one small mistake in the FTT decision that was issued to him by letter dated 25 October 2019 regarding his right to appeal against that decision and it did that by removing a short passage in the decision. That removal made no change to the reasoning or the ground of the decision. The letter of 16 December 2019 is not

a document on which he has a right of appeal against the FTT decision or one on which he can base a request for permission to appeal.

[9] In his letter dated 21 January 2020 the applicant presents an *esto* position that he was not given an opportunity to make verbal representations on 20 September 2019 by way of what he describes as “his appointed representative”. This secondary position repeats what he has said previously. It does not have anything to say about why the appeal was not made in time.

[10] What the applicant has provided is far too inspecific. It does not amount to adequate, cogent or reasonable reasons to support his request for permission to appeal. Accordingly on this ground alone his request must be refused.

Why it is said to be in the interests of justice to extend the time.

[11] Standing my decision on the first particular requirement I do not need to deal with the second but for the avoidance of doubt I will indicate what I would have decided if I had had to decide it. I would have concluded the same for this second requirement as for the first and refused the applicant’s request under this second requirement.

[12] In his Form the applicant states as a reason in support of an appeal against the FTT decision that he was denied an opportunity to make oral representations and instead “merely written representation on 30 August 2019” which he says contained a prima facie defence. What he then states relates to the alleged financial circumstances of the respondent. He makes three points: that the respondent is a man of considerable wealth; that the applicant believes that the respondent’s alleged debts to Her Majesty’s Revenue and Customs are grossly exaggerated; and that he does not need to sell the property to meet any such alleged debts.

[13] Both the applicant's opportunity to make oral representations and the financial standing of the respondent have been raised already in these proceedings.

[14] The decision which granted the eviction order dated 20 September 2019 refers specifically to the absence of appearance by or for him and that he made no nomination for anyone to appear on his behalf. The FTT decision considered this matter in considerable detail on the facts then available to it and concluded that it was not apt in the particular circumstances to serve as a ground of recall. I agree with that decision and the reasons given for it.

[15] The decision of 20 September 2019 dealt with the financial standing of the respondent and its consequences for the sale of the property. It did that under reference to two documents, the affidavit of the respondent and a letter from Slater Hogg and Howieson. The FTT was satisfied that they provided material that was more than sufficient to satisfy the ground of recovery of possession. The subsequent FTT decision made use of the same documents and reached the same decision. That was a decision that it was entitled to reach in the circumstances. The applicant has not presented any point of law to support the proposition that the FTT decision erred in law in any respect in making that decision. In addition the FTT observed that the fact that the respondent "may or may not be a "wealthy man" is irrelevant". That is a correct legal conclusion to make on that point.

[16] The applicant in his letter of 21 January 2020 adds to these existing reasons one further reason why he asserts that it is in the interests of justice, namely, that he has resided in the property since 1999 with his wife and three children. This is not a reason that appears to have been raised before. At this stage in proceedings it is an irrelevant point and is not one that could support either his application or a ground of appeal.

[17] In addition he asserts that he had a verbal agreement with the respondent to purchase the property. This is an irrelevant point. It does not support either his application or a ground of appeal.

[18] For all the foregoing reasons I would have concluded that the applicant had failed to provide detailed reasons why it is said to be in the interests of justice to extend the time limit and on this second ground alone would have refused his request for an extension of the time limit.

Conclusion

[19] My conclusion is that I must refuse the applicant's request for an extension of the time limit for requesting permission to appeal against a decision of the First-tier Tribunal (FTT) dated 21 October 2019 and accordingly decline to admit his notice of appeal.