



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 7 of the Debtors (Scotland) Act 1987.

Chamber Ref: FTS/HPC/PY/23/4145

Parties:

Mr Colin McHardy, 56 Springfield Ave, Aberdeen, AB15 8JB (“the Applicant”)

Mr James Samson, 15 Strand, Innerleithen, EH44 6HT (“the Respondent”)

Tribunal Member: Lesley A Ward

Decision

1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the time to pay application dated 20 November 2023 be refused.

2. Background

On the 3 November 2023 the Tribunal granted an order for £1250 under reference number £1250 and £505 under reference number CV/23/2792. Both orders were granted in absence of the Applicant in this application, Mr Colin McHardy. The Applicant made an application for a time to pay order on 20 November 2023. The application was opposed by the Respondent.

3. The Tribunal sent the Applicant a request for further information on 27 November 2023 as follows:

Before a decision can be made, we need you to provide us with the following:

- (1) Please advise which of the three conditions under which an application for a time to pay order can be made is met in your case by filling in the details required under part 2 b of the application form and submit the corresponding documents to show that either a charge has been served, an arrestment has been executed or an action of adjudication for the debt has commenced. Without this the application is incomplete and cannot be processed.

(2) Please provide evidence when and how you have served a copy of the application with the reply form (Part B) on the creditor in accordance with the requirements stated in rule 41 H of the Tribunal's rules of procedure. Until the above has been provided the application cannot be processed and accordingly no order to sist diligence has been made. Please reply to this office with the necessary information by 11 December 2023. If we do not hear from you within this time, the President may decide to reject the application.

4. The Applicant did not respond. A further request was sent by the Tribunal on 21 December 2023 as follows:

A Legal Member of the Tribunal with delegated powers of the President has considered your application.

An application for a time to pay order can only be made once enforcement action has been taken by the creditor. If the creditor has not yet served a charge for payment or taken another form of diligence the application is not competent. Please confirm that you wish to withdraw the application and re-submit it at the relevant time.

Please note that the Tribunal does not deal with arrangements for payment or enforcement of orders. If you wish to make an offer to pay before diligence has commenced you should contact the creditor or take advice on the matter and instruct someone to do so on your behalf. The Tribunal cannot provide you with legal advice.

Please reply to this office with the necessary information by 4 January 2024. If we do not hear from you within this time, the President may decide to reject the application.

5. No reply has been received.

Reasons

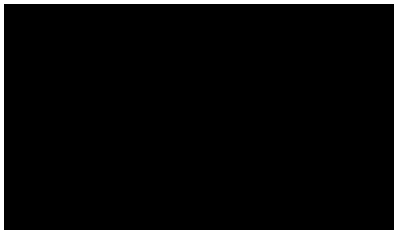
6. I am refusing this application for time to pay as it is premature. There is no information to suggest that diligence has commenced. The Applicant has also failed to respond to two requests by the Tribunal for further information and has failed to cooperate with the Tribunal in the execution of its duties. It is open to the Applicant to make a new application when diligence has been commenced.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



10 January 2024

Legal Member

Date