

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)
(“the Tribunal”)

Application for Leave to Appeal: Statement of Decision

Rules 37 and 38 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Procedure Rules”);
Property Factors (Scotland) Act 2011 (“the 2011 Act”)
Tribunals (Scotland) Act 2014, section 46 (“the 2014 Act”)

Chamber Ref: FTS/HPC/PF/19/4014

Property at 15 Rosebank Tower, Cambuslang, South Lanarkshire, G72 7HE
(“The Property”)

The Parties:-

Mr Gerald Boyd, 19 Tanzielknowe Road, Cambuslang, Lanarkshire, G72 8RD
(“the Homeowner”)

and

South Lanarkshire Council, Property Services, Pollock Avenue, Hamilton, Lanarkshire, ML3 9SZ (“the Factor”)

The Tribunal comprised:-

Maurice O’Carroll - Legal Member and in-house Convenor
Elizabeth Dickson – Ordinary Member

Decision

The Tribunal grants the application for Permission to Appeal made by the Factor.

Background

1. By decision dated 5 April 2020, the First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) found that the Factor had breached its duties as a factor in terms of section 17(5) of the 2011 Act. It held that the Factor ought to have provided quarterly statements to the Homeowner which divided the

property management fee element of common charges by seventy-two as required by the title deeds to the Property.

2. The original Tribunal which made the decision under consideration comprised Mr David Bartos, Advocate, Legal Member, and Mrs Elizabeth Dickson, Ordinary Member. Since the Tribunal decision, Mr Bartos has resigned from the Tribunal in order to become a full-time member of the Scottish Law Commission. Maurice O'Carroll, Advocate and in-house Convenor was appointed to replace Mr Bartos and to consider the application for permission to appeal along with the Ordinary Member.
3. By email dated 12 May 2020, the Factor submitted an application for permission (otherwise referred to as "leave") to appeal ("LTA") against the original decision dated 5 April 2020. The final decision of the Tribunal was intimated to the Factor on 14 April 2020. Therefore, the present LTA application is timeous.

Grounds for appeal

4. The Factor submitted a detailed legal submission comprising 15 pages of text with extensive reference to authorities in support of its LTA application. Only the briefest of summaries of those submissions is possible, which summary is not intended to be comprehensive.
5. The grounds of appeal fall under the following general headings:
 - (i) an incorrect interpretation by the Tribunal of the relevant title conditions;
 - (ii) the unfair and unreasonable result arising from the above;
 - (iii) conflict between the Tribunal's interpretation of the title conditions and the Factor's obligations under the Housing (Scotland) Act 1987;
 - (iv) the Homeowner's title and interest to sue; and
 - (v) overriding practical considerations in the public interest as to why the appeal should be allowed.

The Tribunal decision on the application for LTA

6. Rule 37 of the Procedure rules governs applications for LTA to the Upper Tribunal. The application must state the decision to which it relates, the result which the person making the application is seeking and the alleged points of law.
7. The decision has been correctly identified as has the result sought, namely the quashing of the Tribunal decision of 5 April 2020 and the consequent PFEO issued.
8. The Tribunal is also of the opinion that each of the general heads of appeal raises a point of law. Moreover, without making any comment on the substantive merits, the Tribunal considers that each of the points of law raised is arguable in terms of section 46(4) of the 2014 Act.
9. The Tribunal therefore grants the application for LTA the decision of 5 April 2020 under all of the heads raised in terms of rule 38(1) of the Procedure rules.

10. This decision will be promulgated to the parties immediately as required by rule 38(2).

Signed

Date: 13 May 2020

**Maurice O'Carroll
Legal Member**