



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 5(2) of the Debtors (Scotland) Act 1987 (“the Act”)

Chamber Ref: FTS/HPC/PY/24/0405

Parties:

Mrs Annelyse Finnie, Mr Ewan Finnie, 27 Pusey Place, Peterhead, AB42 2ZA; 27 Pusey Place, Peterhead, AB42 2ZA (“the Applicants”)

Mrs Linda Peddie, Mr Michael Peddie, 2 Inverugie Road, Peterhead, AB42 1QW (“the Respondents”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs F Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application for a Time to Pay Order. The interim order made under Section 6(3) of the Act is recalled.

Background

1. The Applicants made an application for a Time to Pay Order (“TTPO”) by application received on 24th January 2024 offering instalments in the sum of £200 per month in respect of an order for payment in the sum of £4,250 granted by a Tribunal on 14th December 2023. The Applicants lodged a copy of a Charge for Payment dated 22nd January 2024.
2. On 8th February 2024, the Tribunal made an interim order to sist diligence in terms of section 6(3) of the Act.
3. The Applicants lodged written representations on 15th February 2024 in respect of a wages arrestment carried out on 7th February 2024.
4. The Respondents opposed the Applicants’ offer, lodging written representations in this regard on 25th March 2024.

The Hearing

5. A hearing took place by telephone conference on 8th May 2024. The Applicant, Mrs Finnie, was in attendance. The Respondents were in attendance.
6. The Applicants' position was as set out in the TTPO application. Mrs Finnie said she had not lodged any supporting documentation as she had assumed the Tribunal would ask for the documentation if it was required. Mrs Finnie said both Applicants are in employment. Mr Finnie's work is off-shore and the availability of work has been poor this year. The figures inserted into the application form are the minimum amount of income. There may be additional work for Mr Finnie but it is *ad hoc* and impossible to rely upon. The rig on which he works has been decommissioned. The Applicants would make additional payments if they earn more in the future. Mrs Finnie said the Applicants are trying to save and get funds together. Responding to questions as to the sum deducted by wage arrestment carried out in February 2024, which sum was larger than would be expected from the sums inserted in the application form by the Applicants, Mrs Finnie said the sums in the wages arrestment were based on Mr Finnie's last wage payment which included an allowance for off-shore work, and not the current basic salary which did not include any off-shore allowance.
7. Referring to mail which had been delivered to the property which the Applicants had leased from the Respondents, which had been opened by the Respondents and lodged with the Tribunal, showing that the Applicants had pensions and investments, Mrs Finnie said the Applicants cannot access their pensions at this time, and the investment is a Child Trust Fund in their son's name, which they cannot access.
8. Responding to questions from the Tribunal as to whether the Applicants own another property as well as the property in which they reside, as raised in the Respondents' representations, Mrs Finnie said the Applicants own a one-bedroom flat purchased to rent out. It is currently not rented out and the Applicants are covering the costs. It requires refurbishment. The Applicants hope to fund the refurbishment and have not included any sums for this work in the application form. They hope to have a tenant by the end of the year. Both properties owned by the Applicants are mortgaged, and the monthly sum included in the form covers both properties.
9. Responding to questions from the Tribunal regarding monthly expenditure of £500 for food, Mrs Finnie said the Applicants have three children. In respect of the monthly sum of £400 for utilities, this includes electricity and gas for the property in which they live (around £350 per month), and some electricity for the unoccupied flat (around £50 per month). The Applicants spend £100 monthly on phone contracts for themselves and two children. The Applicants have a car finance loan and a personal loan. They hope to sell an old car for around £1500 and would make a lump sum payment towards the debt. Selling

the car will help to reduce their travel costs from £100 each month to £80. There is equity on both mortgaged properties.

10. The Respondents said the expenditure figures submitted by the Applicants were vague and were not backed up. The Applicants have a new electric car which was purchased through salary sacrifice. This indicates they are in full time employment. It was the Respondents' position that the Applicants have assets which they could access. They should access the investments, even if they are in a child's name. The Respondents have been waiting for the debt to be paid since 2022.
11. The Respondents are both now retired and this situation is impacting upon their finances. They have no income other than pensions. They had to spend money on the property after the tenancy ended, and they have spent money on solicitors in order to get the Applicants out of the property. They had intended to move into the property and downsize after their retirement but had not done so and had sold the property. Mr Peddie said he had been told by Mrs Finnie in the past that she had paid enough rent for the property and would not make any further payment. The Tribunal that made the order for payment had said the Applicants were not entitled to withhold rent. The Applicants had claimed to have made upgrades to the rented property, but the Respondents' position was that they had decorated the property but not improved it. The Applicants had indicated they would purchase the property, but this did not happen and the relationship between the parties went sour. The Applicants had a high standard of living, going on a cruise in 2023 and other holidays and posting evidence of same on social media. Mr Peddie said the Applicants have disposable income and could pay more. It was the position of the Respondents that the Applicants have drawn, and are drawing, the process out, playing every card available to them. They have made no effort to make payment of the sums due. The Respondents feel victimised because the process has taken so long. It is their position the debt is not being prioritised.
12. Responding to questions from the Tribunal as to whether there was a monthly sum that the Respondents would accept, the Applicants said they would only accept instalments of a four-figure sum. Responding to questions from the Tribunal, the Respondents said they have now sold the let property. They did not progress any application against the Applicants in respect of the condition of the property, as the solicitor's fees to do so would have been more than the cost of the work to the property. They accepted the costs as the sort of loss that had to be borne and came with renting out a property.
13. There was some discussion as to further procedure and whether the hearing should be adjourned to allow the Applicants to lodge documentary evidence in respect of their income, expenditure and assets. The Respondents' position was that the matter should not be adjourned. The Applicant said she would like it to be adjourned to allow her to lodge documentary evidence. She had not lodged documentary evidence due to an error. She would be able to provide evidence from the Applicants' financial advisor and payslips and bank

statements. Asked whether she could increase the monthly offer, Mrs Finnie said it could be increased to £250 but not beyond that. Responding to questions from the Tribunal as to whether the Applicants had considered sale of their flat to finance their debt, Mrs Finnie said this was not an option due to the required work. It would be costly to sell the property and there would be a penalty if they ended the mortgage. Mrs Finnie said the Applicants had not paid for a cruise. It had been a gift.

14. The Tribunal adjourned to discuss whether further procedure was required. The Tribunal decided not to adjourn the hearing for any further documentary evidence to be lodged, given the timescales involved in awaiting a further hearing, and the prejudice this would cause to the Respondents in delaying a conclusion to the matter. The hearing reconvened and the Tribunal explained its decision.
15. In summary, Mrs Finnie said she hoped the application would be granted so monthly payments could be made. Extra payments would be made where possible, if there was increased income, and the sale of the vehicle would mean a lump sum payment.
16. The Respondents submitted that the vehicle was not worth the sum stated by Mrs Finnie. The Applicants had every opportunity to come up with evidence to support their position. The Respondents had decided not to go down the route of making the Applicants bankrupt. The matter had gone on long enough, and they wished to get the matter concluded.

Reasons for Decision

17. The Tribunal considered the matters set out in section 5(2A) of the Act, namely:
 - (a) the nature of and reasons for the debt in relation to which the order is sought;
 - (b) any action taken by the creditor to assist the debtor in paying that debt;
 - (c) the debtor's financial position;
 - (d) the reasonableness of any proposal by the debtor to pay that debt; and
 - (e) the reasonableness of the objection by the creditor to the offer by the debtor to pay that debt.
18. In looking at the nature of and reasons for the debt, the Tribunal took into account the fact that the Applicant, Mrs Finnie, had been made redundant and this may have impacted upon her ability to pay the rent in full, however, there was no evidence as to the earnings of Mr Finnie at that time, and it was the position of Mrs Finnie that her husband's earnings had previously been higher. It was not clear, therefore, that the Applicants could not afford to pay the rent as agreed between the parties in terms of the tenancy agreement. The Tribunal noted that the evidence of the Respondents that Mrs Finnie had previously stated she was not paying any more rent for the let property was not disputed by Mrs Finnie. The Tribunal was not provided with any evidence

of any action taken by the Respondents to assist the Applicants in paying the debt.

19. The Tribunal was not persuaded that the Applicants' financial position in respect of income and expenditure was as set out in the application form. The Tribunal considered that the wages arrestment suggested the earnings of Mr Finnie were higher than noted in the application form. Mrs Finnie stated that the arrestment was based on off-shore figures, but the Tribunal was not persuaded of this, as the application form was signed on 23rd January 2024, and the wages arrestment took place on 7th February 2024. This tended to suggest that Mr Finnie's earnings were higher than disclosed in the application form around the time of signing the form. The Tribunal considered it was incumbent upon the Applicants to lodge documentary evidence to support the application. Mrs Finnie said initially they expected they would be asked for further information if it was required, and then that it had been an error not to provide it; however, the guidance available on the Housing and Property Chamber website refers to supporting documentation, and it is for the Applicants to ensure that their case is made properly. Furthermore, the Applicants were put on notice in March 2024 by the Respondents that they would be founding upon the lack of supporting documentation and challenging the figures provided. The Applicants ought to have responded at that stage by lodging documentary evidence. The Tribunal took an inference from the lack of supporting documentation that the Applicants' financial position was not as stated in the application form.
20. The Tribunal took into account that the Applicants have a second home that could be put on the market to raise funds to meet their debt to the Respondents. The Tribunal considered it was not reasonable to delay sale because of the unspecified costs of sale and any mortgage penalty. These costs should not be prohibitive, given that there was said to be around £20,000 of equity in the second home. By her own admission, Mrs Finnie said they had not considered this, and it was not an option. The Tribunal took the view the Applicants ought to be considering any available option to ensure the debt to the Respondents was paid. Mrs Finnie said the Applicants are trying to save and get funds together. The Tribunal took the view that any money available for saving ought to be paid to the Respondents to settle the debt. The Tribunal was not persuaded that the Applicants were taking the situation seriously, given that Mr Finnie failed to attend, and Mrs Finnie informed the Tribunal she would have to leave for a meeting at 11.30am, despite the hearing being set down for the day.
21. The Tribunal considered the proposal made by the Applicants was not reasonable in the circumstances, particularly given that the Applicants have an asset of a second home.
22. The Tribunal considered the Respondents' objection to the Applicants' proposal to be reasonable. The debt has been outstanding since 2022, and the situation is impacting upon their financial position.

23. In all the circumstances, the Tribunal considered it was not reasonable in all the circumstances to make an order that the debt be paid by instalments or by a lump sum at the end of a specific period.

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.

Helen Forbes

Legal Member/Chair

8th May 2024
Date