



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/21/0306

Re: Property at 3D Graham Street, Johnstone, PA5 8QP (“the Property”)

Parties:

Yutu Ltd, Milton House, 33a Milton Road, Hampton, Middlesex, TW12 2LL (“the Applicant”)

Miss Rebecca Hair, Mr Jamie Wood, c/o Vivienne Hair, 35 Craig Hill Place, Fairlie, KA29 0AY; c/o Caroline Wood, 96 Newmains Road, Renfrew, PA4 0NH (“the Respondent”)

Tribunal Members:

Andrew Upton (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents are liable to make payment to the Applicant in the sum of ONE THOUSAND SIX HUNDRED POUNDS (£1,600.00) STERLING, and directs that the said sum be payable by the Respondents in equal monthly instalments of THIRTY POUNDS (£30.00) STERLING each commencing no later than seven days after intimation of the order for payment by the Applicant.

STATEMENT OF REASONS

- 1. This Application called for its Case Management Discussion by teleconference on 20 April 2021. The Applicant was represented by Miss Deans. The Respondents both participated in the CMD.**
- 2. In this Application, the Applicant seeks a payment order in the sum of £1,630.25 from the Respondents in respect of rent arrears for the period May**

2020 to November 2020. At the outset, the Respondents advised that they had made a payment to reduce the arrears to £1,600. Miss Deans confirmed that this had happened, and that the Applicant was seeking payment of £1,600.

3. In advance of the CMD, the Respondents lodged applications with the Tribunal seeking a Time to Pay Direction in terms of section 1 of the Debtors (Scotland) Act 1987 that they each be ordered to make payment in the sum of £15 per month (“the TTP Applications”). Those TTP Applications have been opposed by the Applicant on the basis that it would take approximately 54 months to repay the sum claimed. Given that it was accepted that the Respondents were liable to make payment to the Applicant in the sum of £1,600, the Tribunal was satisfied that a payment order ought to be granted in that sum. The only question that required to be determined was whether a Time to Pay Direction should be made, and on what terms.
4. In her TTP Application, Miss Hair states that she is self-employed but currently unable to work due to the public health restrictions imposed by Government to help combat the impact of Covid-19. She confirmed that she works as a gymnastics coach. As a consequence, her monthly income was limited to state benefits in the sum of £409.89. In contrast, her current outgoings amount to £1,019.75, which is significantly in excess of her income. That figure does not include payments required to service other debts for which she is currently in a “payment holiday” due to coronavirus. She confirmed that the sum required to satisfy those additional debts, but for the payment holidays, would be £120. However, there is some light at the end of the tunnel because once the current coronavirus restrictions are eased to Tier-3, she will be able to resume work. That may involve working fewer than full-time hours, but she expected her income to increase to somewhere in the region of £1,100 to £1,300 per month. It is currently anticipated that the whole of Scotland will enter Tier-3 on 26 April 2021.
5. In his TTP Application, Mr Wood advised that he is currently unemployed and in receipt of state benefits. He confirmed that he was formerly employed as a manager in a retail setting, but was made redundant. He has been looking for essentially any available work, and is due to commence a trial period in a restaurant setting this week. He is unsure whether this work will be full-time or part-time, because he applied for both positions. It will be at least 20 hours per week at minimum wage, and the trial is for 3 months. There is no security in his position. Against that background, he expects his income to be in the region of £700 per month for three months, and hopefully longer. He is hopeful that the position will be full-time, in which case he would expect his income to be in the region of £1,300 per month. His current outgoings amount to £387.11 per month, which currently leaves a small excess in income and, following employment, will result in a larger surplus.

6. Miss Deans confirmed that the Applicant's principal objection is that the proposed payments would take an excessive time to repay the debt. The Applicant's position is that the debt should be paid off within 18 months.
7. In terms of section 1 of the Debtors (Scotland) Act 1987:-

"1.— Time to pay directions.

(1) Subject to subsections (3) to (5) below and to section 14 of this Act, on an application by the debtor, the court or the First-tier Tribunal, on granting decree for payment of any principal sum of money, shall, if satisfied that it is reasonable in all the circumstances to do so, and having regard in particular to the matters mentioned in subsection (1A) below, direct that any sum decerned for in the decree (including any interest claimed in pursuance of subsections (6) and (7) below) or any expenses in relation to which the decree contains a finding as to liability or both such sum and such expenses shall be paid—

- (a) by such instalments, commencing at such time after the date of intimation by the creditor to the debtor of an extract of the decree containing the direction, payable at such intervals; or
- (b) as a lump sum at the end of such period following intimation as mentioned in paragraph (a) above,

as the court or the First-tier Tribunal may specify in the direction.

(1A) The matters referred to in subsection (1) above are—

- (a) the nature of and reasons for the debt in relation to which decree is granted;
- (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 any refusal by the creditor of, or any objection by the creditor to, any proposal by the debtor to pay that debt.

(2) A direction under subsection (1) above shall be known as a "time to pay direction".

(3) Where a court or the First-tier Tribunal grants a decree which contains a finding as to liability for expenses but does not at the same time make

a time to pay direction, then (whether or not the decree also decerns for payment of the expenses), it shall not at any time thereafter be competent for the court or the First-tier Tribunal to make a time to pay direction in relation to those expenses.

(4) Where a court or the First-tier Tribunal grants a decree which contains a finding as to liability for expenses and makes a time to pay direction in relation to those expenses but—

- (a) does not decern for payment of the expenses; or
- (b) decerns for payment of the expenses as taxed by the auditor of court or auditor of the Court of Session but does not specify the amount of those expenses,

in relation to so much of the time to pay direction as relates to the expenses, the reference in subsection (1) above to the date of intimation of an extract of the decree containing the direction shall be treated as a reference to the date of intimation of an extract of a decree decerning for payment of the expenses, being an extract specifying their amount.

(5) It shall not be competent for the court or the First-tier Tribunal to make a time to pay direction—

- (a) where the sum of money (exclusive of any interest and expenses) decerned for exceeds £25,000 or such amount as may be prescribed in regulations made by the Lord Advocate;
- (b) where the decree contains an award of a capital sum on divorce or on the granting of a declarator of nullity of marriage;
- (c) in connection with a maintenance order;
- (cc) in connection with a liability order within the meaning of the Child Support Act 1991.;
- (d) in an action by or on behalf of the Commissioners for Her Majesty's Revenue and Customs for payment of any sum recoverable under or by virtue of any enactment or under a contract settlement;
- (da) in an action by or on behalf of Revenue Scotland for payment of any sum recoverable under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 16) or any other enactment in respect of a devolved tax, under a contract settlement or under a settlement agreement,

- (f) in an action for payment of—
 - (ii) car tax due under the Car Tax Act 1983.
- (6) Without prejudice to section 2(5) of this Act, interest payable under a decree containing a time to pay direction (other than interest awarded as a specific sum in the decree) shall not be recoverable by the creditor except in accordance with subsection (7) below.
- (7) A creditor who wishes to recover interest to which subsection (6) above applies shall serve a notice on the debtor, not later than the date prescribed by Act of Sederunt or the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 occurring—
 - (a) in the case of a direction under subsection (1)(a) above, before the date when the last instalment of the debt concerned (other than such interest) is payable under the direction;
 - (b) in the case of a direction under subsection (1)(b) above, before the end of the period specified in the direction,
 stating that he is claiming such interest and specifying the amount of the interest claimed.
- (8) Any sum paid by a debtor under a time to pay direction shall not be ascribed to interest claimed in pursuance of subsections (6) and (7) above until the debt concerned (other than such interest) has been discharged.
- (8A) In paragraph (d) of subsection (5) above, “*contract settlement*” means an agreement made in connection with any person's liability to make a payment to the Commissioners for Her Majesty's Revenue and Customs under or by virtue of any enactment.
- (8B) In paragraph (da) of subsection (5)—

“*contract settlement*” means any agreement made in connection with any person's liability to make a payment to Revenue Scotland under or by virtue of the Revenue Scotland and Tax Powers Act 2014 (asp 16) or any other enactment in respect of a devolved tax,

“*devolved tax*” has the meaning given by section 80A(4) of the Scotland Act 2012 (c. 46),

“*settlement agreement*” has the meaning given by section 246(1) of the Revenue Scotland and Tax Powers Act 2014 (asp 16).”

8. The function of the Tribunal is to determine, having regard to the factors set out in section 1(1A), whether it is reasonable in all of the circumstances to direct that the respondents are given time to pay. I agree with the Applicant's submission that the proposal made by the respondents is not reasonable. 54 months is an excessive period of time to expect the applicant to wait for payment of the debt in question.
9. However, in all of the circumstances of this case, I consider that it is reasonable to make a Time to Pay Direction. I am sympathetic to the respondents' situation. They are financial casualties of the pandemic. However, recovery appears to be in sight and their income prospects in the coming months look exponentially better. That being said, they have other debts to service as well. In all of the circumstances, I consider that it would be reasonable to direct that they each pay £30 per calendar month to the applicant. That would result in a total payment of £60 per month being received by the applicant, with the total debt repaid within 27 months. Given the current situation with the pandemic, the particular impact of that on the respondents, and their particular circumstances as discussed at the CMD, I consider that to be a reasonable payment proposal.
10. Accordingly, the Tribunal granted a payment order and directed the respondents to pay £30 each per month commencing not later than seven days after the date of intimation of the order by the applicant.

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.

Andrew Upton

20th April 2021

Legal Member/Chair

Date