

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision made under Section 5(2) of the Debtors (Scotland) Act 1987 by First tier Tribunal for Scotland

Chamber Ref: FTS/HPC/PY/21/1882

Date Payment Order was granted: 24th May 2022

Parties:

Ms Nicola Forster, 13 Tincarra Place, Broughty Ferry (“the Applicant”), and

Dundee Law Centre, 163 Albert Street, Dundee, DD4 6PX (“the Applicant’s Representative”) and

Mr Hin Shun Hung and Mrs Rong Zhang, c/o 37 Union Street, Dundee, DD1 4BS (“the Respondents”) and

Mrs Rui Dong, 33 Dawson Road, Broughty Ferry,, Dundee, DD5 1PU (“the Respondents’ Representative”)

Tribunal Members:

G McWilliams- Legal Member

L Forrest- Ordinary Member

Decision

The First tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”), having considered all of the evidence and heard submissions from the parties’ Representatives:

Grants a Time to Pay Order under Section 5(2) of the Debtors (Scotland) Act 1987, in the following terms:

Order

The First-tier Tribunal for Scotland (Housing and Property Chamber) grants an order against the Applicant for payment of the undernoted sum to the Respondents:

The sum of ONE THOUSAND TWO HUNDRED AND SIXTEEN POUNDS AND THIRTY FOUR PENCE (£1216.34) STERLING

The First-tier Tribunal for Scotland (Housing and Property Chamber) made a Time to Pay Direction under Section 1(1) of the Debtors (Scotland) Act 1987, in the following terms:

The Applicant is required to pay the sum of ONE HUNDRED POUNDS (£100.00) STERLING per calendar month, commencing on or before 1st July 2022, until the full amount has been paid. The first payment must be made no later than 1st July 2022

This Order is warrant for all lawful execution thereon.

While a Time to Pay Direction is in effect, it is not competent to serve a Charge for Payment, or commence or execute any diligence to enforce payment of the debt concerned.

Background and Hearings on 22nd March 2022 and 20th April 2022

1. The background is as stated in the Hearing Notes dated 22nd March 2022 and 20th April 2022. Reference is also made to the Notices of Directions, dated 22nd March 2022 and 20th April 2022, which were issued to the parties' Representatives with copies of the Hearing Note. Both Representatives submitted further written representations and documentation in advance of the Hearings on 20th April 2022 and 24th May 2022.

Hearing on 24th May 2022

2. A further evidential Hearing proceeded by remote telephone conference call at 10am on 24th May 2022. The Applicant's Representative's Ms R Menzies, her colleague Mr S Smith, and the Respondents' Representative, Mrs Dong, attended. The Applicant Ms Forster and the Respondents did not attend. Mr P Chan, a Mandarin interpreter, also attended and assisted Mrs Dong.
3. The Tribunal considered the further written representations and documentation lodged by both Representatives prior to the Hearing. The Tribunal also heard submissions from Ms Menzies and Mrs Dong.

4. Ms Menzies submitted that the Respondents' continuing arrestment of the Applicant's wages, notwithstanding that diligence had been suspended, following the lodging of the Time to Pay Application, on 13th October 2021, was pushing the Applicant further into debt. Ms Menzies stated that following a further deduction from the Applicant's wages, by way of the said Earnings Arrestment, of £467.50 at the end of April 2022, the balance of monies now due to be paid by the Applicant to the Respondents, in terms of the Order for Payment awarded to the Respondents on 16th June 2021, is in the sum of £1,216.34. Ms Menzies stated that she had written to the Sheriff Officers instructed by the Respondents' representatives regarding the suspension of the earnings arrestment at the instance of the Respondents. She said that she had not received a response to her correspondence.
5. Ms Menzies acknowledged that she had not received up to date bank statements or bills from the Applicant. She said that she was satisfied that the Applicant's income was as stated in the Schedule of Income and Outgoings which she had lodged in advance of the Hearing. Ms Menzies referred to the copy wage-slips which she had also recently lodged with the Tribunals office. She understood that the Applicant's outgoings remained as stated in the Schedule, notwithstanding that she had not received up to date bank statements and bills. In this regard Ms Menzies referred to bank statements and documentation which had been lodged previously. Ms Menzies also referred to the letter which she had lodged from the administrators of the Applicant's trust deed Interpath, dated 23rd April 2022, confirming that the Applicant was behind in trust deed repayments.
6. Ms Menzies stated that notwithstanding that wage deductions had continued unlawfully, and placed the Applicant in further debt, the Applicant wished to bring the matter to an end. Ms Menzies submitted that the Applicant sought to pay the balance due, of £1216.34, by monthly instalments of £100.00, in terms of her Time to Pay Application, which amount the Applicant considered reasonable, in all the circumstances.
7. Mrs Dong submitted that the Respondents continue to oppose the Application for Time to Pay. Mrs Dong stated that the Respondents were opposed to the Application for Time to Pay on the basis that the rental arrears due to the Respondents had been outstanding for some three years. She said that the Applicant's up to date income and outgoings had not been documented, in particular as the Applicant had not lodged updated bank statements. Mrs Dong also submitted that she had incurred considerable legal fees and outlays further to the grant of the Order for Payment on 16th June 2021. Mrs Dong agreed that the balance of monies now due to paid, in terms of that Order, is in the sum of £1,216.34.
8. Mrs Dong said that she had received the Notice of Directions dated 20th April 2022 and had sent an e-mail to an address, given to her by her solicitor, which she understood was the address of the Applicant's employer's Wages Department. Mrs Dong could not offer an explanation as to why she had not obtained written confirmation from her solicitor and/or Sheriff Officers that the Earnings Arrestment had been stopped, in line with the Tribunal's Order of 13th

October 2021, and in compliance with the Tribunal's Notice of Directions dated 20th April 2022.

Reasons for the Tribunal's Decision and Grant of the Order

9. The issue for the Tribunal's determination at the Hearing was whether or not the Tribunal was satisfied that it was reasonable in all the circumstances to make a Time to Pay Order, having particular regard to the matters mentioned in Section 5 (2A) of the Debtors (Scotland) Act 1987 ("the 1987 Act").

10. Section 5 (2) of the 1987 Act provides as follows:-

Section 5.— Time to pay orders.

(2) Subject to subsections (4) and (5) below, the sheriff or the First-tier Tribunal, on an application by the debtor, 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 (2A) below, make an order that a debt to which this section applies (including any interest claimed in pursuance of subsections (6) and (7) below) so far as outstanding, shall be paid—

(a) by such instalments, commencing at such time after the date of intimation in accordance

with section 7(4) of this Act to the debtor of the order under this subsection, 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 sheriff may specify in the order.

(2A) The matters referred to in subsection (2) above are—

(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.

11. The Tribunal considered all of the evidence lodged on behalf of the parties and the submissions of the Representatives, and all the circumstances pertaining to this Application. It is the Applicant's statutory right to seek an instalment payment arrangement in respect of the debt due. The Tribunal had to consider whether or not it was reasonable in the circumstances to grant the instalment order sought in this Application, in the sum of £100.00 per month towards the debt owing. The parties' Representatives agreed that the outstanding debt due is now in the sum of £1,216.34. The Order for Payment, dated 16th June 2021, was in the sum of £4,800.00.
12. The Tribunal placed considerable weight on the significant sum of monies repaid by the Applicant to the Respondents since June 2021, of over £3,500.00. Whilst the Applicant had not lodged up to date bank statements evidencing current outgoings, the Tribunal relied on the terms of the letter from Interpath, dated 21st April 2022, in respect of the Applicant's missed Trust Deed repayments. The Tribunal found, on the balance of probabilities, that the Applicant had been consistent in her representations regarding the extent of her financial position, and her ability to pay the outstanding debt at the rate of £100.00 per month.
13. The Tribunal found, on the balance of probabilities, that the Respondents had not assisted the Applicant in respect of payment of the debt and had continued to obtain monies from earnings deductions which were unlawfully proceeded with. The Respondents and their Representative had not complied with the Notice of Directions dated 20th April 2022, regarding suspension of the earnings arrestment. The Tribunal further found that the Respondents and their Representative's position regarding the rate of repayment that would be acceptable to them, of £400.00 per month, had not changed during the course of the Application proceedings, notwithstanding that the sum of monies remaining to be paid is now considerably lower than when the original Order was granted as a result of the deductions from earnings, some of which had been unlawful. The Respondents' Representative stated in her written representations, sent to the Tribunal's office on 22nd April 2022, that she sought that a Time to Pay Order is granted providing for a minimum monthly repayment of £400.00, or that the wages arrestments continue. The Tribunal

found that, in all the circumstances, it was unreasonable that the Respondents had continued to object to the Applicant's time to pay offer.

14. The Tribunal further found, on the balance of probabilities, that the Applicant had displayed good faith in seeking to have the matter concluded, and the Time to Pay Application Order made, notwithstanding that wage deductions had been carried out unlawfully. The Tribunal found that Applicant's proposed repayment of the balance now due, by instalments of £100.00 per month, within a time period of just over twelve months was reasonable in all the circumstances.
15. Accordingly, the Tribunal decided that it was in the interests of justice to grant the Time to Pay Application given all the circumstances of this case, in particular the Applicant's consistent representations regarding her income and outgoings, and ability to repay the debt, and her stoic and good faith approach to resolving the matter notwithstanding continuing unlawful deductions from her wages.
16. The Tribunal considered that it was fair and just to inform the parties of their Decision in respect of the Application orally at the conclusion of the Hearing, in particular as the Representatives had attended three Hearings over the course of several months. The Tribunal re-iterated that they had made a decision on the Application for a Time to Pay Order, in respect of the balance of the debt referred to in the Tribunal's Order for Payment dated 21st June 2021. The Tribunal informed the parties that, having made their Decision in respect of the Application they would not be taking any action in respect of the issue of non-compliance with the Notice of Directions dated 20th April 2022. The Tribunal stated that they had decided that the instalment payments now ordered should commence on or before 1st July 2022, as there should be sufficient time before that date for the Representatives to arrange for the current earnings arrestment to be stopped. If any further deductions occur it will be for the Representatives to take necessary remedial action. The Tribunal also informed the Representatives that if the parties consider that they may wish to proceed with other claims it would be helpful for them to obtain further legal advice in that regard.

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.

G McWilliams

Legal Member

Date 24th May 2022