



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

Chamber Ref: FTS/HPC/PY/19/4029

Parties:

Mr Fouad Anis, Mrs Angel Anis, Casa Amira, Hyndford, Lanark, ML11 9TD (“the Applicant”)

Miss Aimee Douglas, Mr Mark McCrae, 18 Coursington Gardens, Motherwell, ML1 1LT (“the Respondent”)

Tribunal Members:

Lesley Johnston (Legal Member) and Leslie Forrest (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application for a Time to Pay Order should be refused and the Interim Order dated 5 February 2020 should be recalled.

Background

On 22 October 2019 the First-tier Tribunal for Scotland Housing and Property Chamber (‘the Tribunal’) made an order for payment requiring the Respondents (‘the Debtors’) to pay the Applicants (‘the Creditors’) the sum of £1,000.

The Payment Order arose from an application (case reference FTS/HPC/PR/19/2371) made by the Creditor in respect of rule 103 of the Tribunal Rules, namely an order for payment on the basis that the Debtors had failed to comply with their duties under the Tenancy Deposits (Scheme) (Scotland) Regulations 2011 in relation to a tenancy deposit paid by the Creditors.

Procedural History

The Debtors applied to the Tribunal for a Time to Pay Order on 6 December 2019.

The Tribunal requested additional information from the Debtors in relation to the application. Thereafter, the Debtors provided:

1. A copy letter from the Creditors dated 4 December 2019 demanding payment of the Order;
2. A copy of the Order for Payment of 22 October 2019;
3. A copy of the Charge for Payment;
4. A copy email dated 27 January showing the time to pay application was intimated to the creditors

The application was accepted by the Tribunal on 5 February as being competent. On the same date, an interim order to sist diligence/enforcement was granted by the Tribunal.

The Debtors' application requests that the Tribunal grant a Time to Pay Order in respect of the debt of £1,000 in instalment payments of £100 per month.

By email dated 18 February the Creditors lodged notice of their objection to the application. The objection stated that the Debtors had made no effort to make payment of the debt despite the time since the award had been made; that further costs had been incurred by the Creditors including the instruction of Sheriff Officers to serve the Charge for Payment; and the time it would take to pay off the debt.

The issues to be determined at the hearing were therefore:

1. Is the Tribunal satisfied that it is reasonable in all the circumstances to make a time to pay order, having particular regard to the matters in Section 5(2A) of the Debtors (Scotland) Act 1987? ('the 1987 Act');
2. If the Tribunal is satisfied as to (1) above, what would be affordable instalment/lump sum payments?

The Hearing

A hearing on the application took place on 12 August 2020 at 10am by telephone conference.

The Creditors were represented by Mr Clayson, Citizens Advice Bureau, Hamilton.

On behalf of the Debtors, Mr Anis was personally present but not represented. Mrs Anis did not attend the hearing.

The Chairperson explained the purpose of the hearing and procedure to be followed. The Chairperson explained that the application required to be decided in accordance with section 5(2A) of the Debtors (Scotland) Act 1987 ('the 1987 Act'). She invited the parties to provide evidence and make submissions in respect of each of the factors set out in section 5(2A) in turn.

Relevant legislative provisions

The Debtors (Scotland) Act 1987 provides:

5.— *Time to pay orders.*

(1) *Subject to section 14 of this Act, this section applies to a debt due under a decree or other document in respect of which—*

(a) a charge for payment has been served on the debtor;

(b) an arrestment has been executed; or

(c) an action of adjudication for debt has been commenced.

(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.

(3) *An order under subsection (2) above shall be known as a “time to pay order”*

The nature of and reasons for the debt in relation to which the order is sought (section 5(2A(a))

The Chairperson referred to the Statement of Reasons dated 22 October in respect of application FTS/HPC/PR/19/2371. The Chairperson asked if the Statement of Reasons adequately set out the nature of and reasons for the debt.

Parties were in agreement that the nature and reasons for the debt were fully set out in the Statement of Reasons. The debt was an Order for Payment following a finding by the Tribunal that the Debtors had failed to comply with their duties in relation to a

tenancy deposit under the Tenancy Deposit Scheme (Scotland) Regulations 2011. Neither party had any further submissions to make in this regard.

Any action taken by the creditor to assist the debtor in paying the debt (section 5(2A)(b))

Mr Clayson explained that a letter had been issued to the Debtors on 4 December 2019 asking the Debtors to make payment within 7 days which failing the matter would be passed to Sheriff Officers.

Mr Anis advised that when he received the letter he applied to the Tribunal. He had not made any further proposal for settlement on the basis that he was waiting to hear from the Tribunal.

During a later part of the hearing, Mr Anis advised that parties had been in discussions in March in respect of settlement of the debt together with settlement of a separate application involving the same parties (application FTS/HPC/CV/19/3463). A global settlement had been proposed with payment at the rate of £100 per month.

Mr Clayson confirmed that a global settlement of both debts had been discussed at that stage and instalment payments offered at £100 per month. However, the Debtors had not accepted the offer at that stage and the offer was withdrawn. Given the passage of time since those discussions and the hearing today, the Creditors were unwilling to accept payment at the rate of £100 per month.

The Debtor's financial position (section 5(2A)(c))

The Chairperson took Mr Anis through the details provided in the application form.

The Debtors had provided separate applications showing their income and outgoings. For ease of reference, the information provided in the application forms was as follows.

Expenditure	£		Income	£
Mortgage/Rent	528.62		Mr Anis	1647.50
Council Tax	143		Mrs Anis	616.34
Utilities (Gas/Electricity etc)	165			
Food	600			
Phone	47			
Car insurance/tax	72.41			
Travel Costs (e.g. to work)	280			

Pet insurance	36			
Life Insurance	47.94			
Medical insurance	24			
Buildings Insurance	58			
Total expenditure	<u>2001.97</u>		Total income	<u>2263.84</u>
Assets				
House 1	150,000			
House 2	80,000			
Total assets	<u>230,000</u>			

The Chairperson noted that the same expenditure had been outlined for both Mr and Mrs Anis and asked whether that was joint expenditure. Mr Anis confirmed that the expenditure was their joint expenditure (totalling £2,001.97) and their total income was £2,263.84.

Mr Anis advised that he is self-employed, owning and operating a snack bar in Blantyre. His income per month equated to £1,647.50. His wife is employed as a nursery nurse. Her income per month is £616.34.

Mr Anis advised that being self-employed, business can be up and down. He had offered £100 per month because that is a sum of money he knows he can afford to pay. He didn't want to find himself in arrears and trying to pay something he couldn't afford. Given the present economic circumstances, he didn't know what business would be like. He was taking each day as it comes. The Chairperson queried whether Mr Anis' business was in financial trouble. He advised that it was not, however, given the current circumstances he did not know what might happen.

Mr Anis advised that the mortgage of £528.62 was in respect of both their own home (Casa Amira, Hyndford, Lanark, ML11 9tD) and the rental property at 128 Auchinraith Road, Blantyre, Glasgow, G72 0XR. The mortgage for their home is with Halifax. The mortgage for the Blantyre rental property is with Leeds Building Society.

The Council tax of £143 and utilities of £165 were in respect of their own home (Casa Amira) only.

The Tribunal queried the sum of £600 in respect of food and asked if the debtors had dependents. Mr Anis advised that at the time the application was submitted they had two dependent children residing with them. However, one child has now left home, and they have only one child living with them.

Mr Anis confirmed that the sums of £58 in respect of Home insurance; £47 in respect of phone bills; £72.41 in respect of car insurance and tax were all accurate.

In relation to travel costs of £280, Mr Anis advised that he travels around 50 miles per day between Lanark and Blantyre. His wife travels to work around 10 to 15 miles per day.

Mr Anis was asked about the values of his properties. He advised that "house 1" was his own home, Casa Amira. The value stated in the application form was on the basis of other properties which had sold in the nearby area.

Mr Anis advised that "house 2" was the Blantyre property. Since the application had been submitted, the Blantyre property had been valued and placed on the market for sale. The application had stated £80,000 as its value because that was what the Debtors had paid for it. However, it had recently been valued during the marketing process at around £150,000. Mr Anis confirmed that it is marketed for a fixed price of £150,000 by Purple Bricks. The property has been on the market for around 5 to 6 weeks. The Debtors have received two offers which have since fallen through.

The Tribunal asked Mr Anis what steps he had taken to speed up the sale. Mr Anis advised that Purple Bricks were doing their best to get the property sold.

Mr Anis advised that once the house is sold, he will be able to pay the debt due to the Creditors and desired to put the matter behind him.

The Tribunal asked Mr Anis whether he had any other assets, for example savings accounts. In response, he advised that he doesn't have any investments or shares. The Tribunal asked again whether he or Mrs Anis have any savings, ISAs etc. The In response he advised that his wife deals with the finances and he didn't have that information to hand. The Tribunal asked Mr Anis to confirm whether or not he had savings or money in bank accounts. After a period of silence, he advised again that his wife dealt with these matters. The Tribunal asked him to clarify and confirm his position, after which he advised "I do have bank accounts. I don't have any savings."

Mr Clayson asked the Debtors to clarify whether they were in receipt of rental income in respect of the Blantyre property.

Mr Anis advised that the property was rented out between August and November 2019. The rent due in respect of the property was £750 per month. However, they required to pay the letting agent fees from that sum. There was also damage done to the property which had to be rectified before the property could be marketed. Mr Anis confirmed that he had received four months' rent at £750 per month in respect of that rental period. He had received the keys back in December and the property had not been rented out since then.

The Tribunal asked for the sum outstanding on the mortgage relating to the Blantyre house. Mr Anis confirmed that the sum outstanding on the mortgage was around £40,000.

The reasonableness of the proposal by the debtors to pay the debt (section 5(2A)(d))

Mr Anis reiterated that £100 per month was what he could afford to pay in respect of the debt. He didn't want to get any more letters or orders. If the Tribunal were minded to the grant the application and his finances allowed, he would pay more than £100 per month if he could afford it at any given time. He needs a new snack van and intended to apply for a loan in that regard. He might be eligible for a loan due to the current economic situation. If he was able to pay more than £100, he would do so.

The reasonableness of the objection by the Creditors to the offer by the Debtors to pay that debt (section 5(2A)(e))

Mr Clayson asked the Tribunal to refuse the application on the basis that it would take too long to pay the debt off in full. The debt would be paid off around two years from the date the Order was originally granted. On the basis of the statutory provisions, the Creditors would have to wait until there had been three months default (two payments with a third being due) before the Debtors could insist in the full amount being paid.

Mr Clayson advised that even if the Order was refused, that would not stop the parties entering into negotiation for the sum to be paid, for example, following the sale of the property.

Mr Clayson explained that his clients had incurred expense in seeking to enforce payment and had experienced a delay in payment.

Reasons for Decision

The Tribunal carefully considered the submissions made by both parties in relation to the application and the paperwork lodged in respect of the application.

The Debtors had provided, on the face of it, detailed and exacting figures in the application form as to their income and expenditure. On the basis of the information provided in the application, the Debtors had £262.84 surplus income every month.

However, it became apparent following questioning from the Tribunal that the information was outdated, incomplete and did not reflect the true position of the Debtors finances.

The expenditure included sums in respect of the Debtors having two dependent children at home, rather than one. The expenditure was likely therefore to be reduced, particularly in relation to outgoings for food.

The application did not contain any information as to the rental income from the property during the period August to November 2019.

The value of the Blantyre property ("house 2" in the application) is significantly more than had been disclosed in the application. The house was purchased for £80,000 (the sum disclosed in the application) but has been valued at £150,000 and is being marketed in that sum. Two offers to purchase have been received, albeit both have

fallen through. Following the sale of the house, and payment of the sum due in respect of the mortgage (£40,000) the Debtors will receive a significant capital gain.

In relation to the matter of whether the Debtors have any other assets, for example, savings, the Tribunal found that Mr Anis attempted to avoid answering the question directly. He first asserted that he didn't know if he had any savings because his wife deals with all the finances. He then advised that he did not have any investments. He finally advised that he did have bank accounts but did not have any savings. In this regard, together with the fact that the updated information in relation to the Debtors' finances were not volunteered by Mr Anis and came to light only on questioning from the Tribunal, the Tribunal did not find him to be a credible witness.

The Tribunal acknowledges that the Debtors are entitled, by statute, to seek an instalment payment of the debt. However, the Tribunal must consider if it is reasonable in all of the circumstances to do so.

On the basis of the evidence provided by Mr Anis, the Tribunal is not persuaded that the Debtors are unable to pay the debt in full from their own finances. The Debtors have known about the existence of the Order since 22 October 2019. Even on the basis of the financial information provided in the application, on the basis of the surplus income, provision could have been made over the period of four months to have paid the debt off in full.

The Tribunal also considers, on the basis of the evidence before it, that the Debtors financial position is better than that disclosed on the application form taking account of the fact that the rental income was not disclosed in the application; and on the basis that they have one dependent child, rather than two, now living with them; and on the basis that Mr Anis attempted to avoid answering questions as to whether or not he and his wife have any other assets/savings. In addition, the Debtors financial position will overall be significantly improved on the sale of their Blantyre property.

Taking account of all of the circumstances of the case, the Tribunal considers that it is not reasonable to grant the Order. It refuses the application for a Time to Pay Order.

Decision

The Tribunal refused the Order and recalled the Interim Order to sist diligence/enforcement dated 5 February 2020.

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.

L Johnston

12 August 2020

Chair

Date