

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 5 of the Debtors (Scotland) Act 1987 and Rules 5 and 8 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/PY/21/0548

Parties:

1st Lets (Glasgow) Ltd, 2 Calder Street, Glasgow, G42 7RT (“the Applicant”)

Mr Rognvald Livingstone, 29 Brooklea Drive, Giffnock, Glasgow, G46 6AR (“the Respondent”)

Tribunal Member: Martin J. McAllister

1. The Homeowner submitted an application to the Tribunal on 9th March 2021 in terms of Section 5 of the Debtors (Scotland) Act 1987 (“the 1987 Act”) On 22nd March 2021, the Tribunal made an interim order sisting diligence and enforcement of a letting agent enforcement order which had been granted on 19th February 2021. The interim order stated the application to have been properly made, to be competent and to have been made after Service of a Charge on the Applicant by the Respondent.
2. Parties were asked to provide representations on the application and the Respondent did so on 30th March 2021 and the Applicant did so on 14th April 2021.

DECISION

3. The Legal Member considered the application in terms of Rule 5 of the Chamber Procedural Rules and Sections 5 and 14 of the 2017 Act and determined that:

3.1 The order to sist diligence and enforcement of the letting agent enforcement order granted on 22nd March 2021 is recalled.

3.2 The application is rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has “good reason to believe that it would not be appropriate to accept the application.” The basis of the decision is that the Applicant, being a limited company, cannot make an application for a Time to Pay Order in terms of the 1987 Act.

Reasons

4. Rule 5 provides: - “(1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate. (2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgment have been met. (3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the requirement manner for lodgment. “
5. The Tribunal, in error, stated on 22nd March 2021 that the application was competent and that a legal charge had been served.
6. Section 14 (1) of the 1987 Act states:
“It shall be competent to make a time to pay direction or order only in relation to a debtor who is an individual and only if, and to the extent that, the debtor is liable for payment of the debt concerned in either or both of the following capacities-
 - (a) personally;
 - (b) as a tutor of an individual or a a judicial factor loco tutoris, curator bonis or judicial factor loco absentis on an individual’s estate.”

7. The Applicant, in its representations appears to concede that the application which it has made may not be correct but that, because of the current pandemic, the Tribunal should consider the application. The application is incompetent in law cannot be considered by the Tribunal.
8. The Respondent, in his submissions, made reference to Section 14 (1) of the 1987 Act.
9. Both parties made a number of other representations which do not require to be considered given that the Tribunal does not have the competence to grant the order sought.
10. The Tribunal noted that, even had the application been by a debtor who is an individual, a legal charge had not been served by the Respondent and therefore such an application would also have failed.

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.

**Martin J. McAllister
Legal Member
23 April 2021**