



[2022] UKFTT 177 (GRC)
Case Reference: CA/2021/0022

First-tier Tribunal
General Regulatory Chamber
(Charity)

Heard remotely by CVP on 13 May 2022

Decision given on: 17 May 2022

Before

JUDGE DAMIEN MCMAHON

Between

PRESTON CHRISTOPHER LENNOX

Appellant

and

THE CHARITY COMMISSION FOR ENGLAND AND WALES

Respondent

Representation:

The Appellant did not attend nor was he represented
For the Respondent: Mr. F. Rechtman of counsel

Decision:

The appeal is Dismissed by way of being struck out on the application of the Respondent.

REASONS

1. The subject of this appeal was an Order of the Respondent dated 12 July 2021 ('the Order'), pursuant to section 181A of the Charities Act 2011 ('the Act') disqualifying the Appellant from being a trustee of a charity, or employee or manager of a charity for the maximum available term of 15 years from, in effect, the date of determination of this appeal, due to alleged misconduct or mismanagement on his part in the administration of a charity known as Thrift Urban Housing Limited.
2. The Appellant did not appear to prosecute his appeal. Pursuant to Rule 36 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended ('the Rules'), a hearing may proceed in the absence of a party if the Tribunal is satisfied that the party has been notified of the hearing and it is in the interests of justice to proceed with the hearing. The Tribunal was so satisfied.
3. By email dated 9 May 2022, the Appellant stated he would not be available for a video conference without any further explanation. In an email dated 12 May 2022, the Appellant asserted that the hearing of his substantive appeal could not proceed in his absence. This was not the case. In previous correspondence, as appears below, the Appellant wished to have the date of 13 May 2022 for the substantive hearing of his appeal vacated. He also wished to have a face-to-face Case Management hearing on a preliminary issue take place. He asserted on 9 May 2022 that his Article 6 rights (that is, the right to a fair hearing contained in Article 6 of the European Convention on Human Rights, incorporated into UK domestic law by section 6 of the Human Rights Act 1998), were being ignored by reason of his request for an oral hearing taking place by CVP. These assertions are rejected. A Judge, on 27 January 2022, directed that the default position for oral hearings in the Charity Tribunal be by CVP be implemented in this case. The Appellant requested the entirety of the said Direction to be set aside in lengthy correspondence dated 2 February 2022. As appears below, these representations were subsequently addressed by the said Judge.
4. The Respondent, through its representative, made an application to strike out the appeal for reasons that appear hereafter. Since that application was, in effect, an interlocutory application, outside a determination of the substantive appeal, the application, and its determination, was heard by myself as a Judge sitting alone.
5. This appeal had been listed for substantive hearing before a three-member Tribunal on 13 May 2022, comprising myself, as a Judge, and two lay members.
6. By emails of 8 November 2021, 14 November 2021 and 17 January 2022, the Appellant seemed to indicate a wish to appeal the Order but failed to substantiate that apparent intention. Accordingly, the Appellant was directed by the Registrar to the Tribunal on 4 November 2021, to provide the Tribunal and the Respondent with his grounds of appeal and the remedy sought by him. The Appellant failed to do so.

7. A Judge therefore issued Directions on 27 January 2022 that the Respondent's understanding of the Appellant's grounds of appeal, as set out in the Respondent's Response dated 17 December 2021 would stand as the Appellant's grounds of appeal. He was also advised in those Directions that, if his appeal was allowed, the only outcome available to him, should the appeal be allowed, was that contained in the relevant part of Column 3 to Schedule 6 of the Act. Further, the Appellant, in those Directions, was also granted an extension of time to file a Reply, if he wished, to the Response of the Respondent, to 10 February 2022. He did not file a Reply. The said Directions directed various other Case management steps to be taken by the parties. In particular, the Appellant was directed to notify the Respondent by 24 March 2022 of any additional documents he wished to have added to the draft bundle of documents prepared by the Respondent and, if so, to supply copies of those documents to the Respondent. He did not advise that he wished to add any other documents. Each party was directed, by 24 March 2022, to serve on the other any witness statements upon which each intended to rely or, alternatively, confirm that they did not wish to rely on any witness evidence. As was their entitlement, neither party served any witness statements on the other. Both parties were directed to exchange skeleton arguments and lodge them with the Tribunal 10 days before the date of hearing. The Respondent did serve a skeleton argument (albeit slightly outside the directed time limit). The Appellant failed to comply with this Direction. The Appellant failed to agree a chronology; a schedule of agreed facts and a list of issues with the Respondent (albeit some steps were taken by him in that regard but not sufficient to show compliance, nor was there evidence, or any adequate evidence, that the Appellant had used his best endeavours to comply with this Direction). Both parties were given permission to apply, in writing, before the time for compliance had expired, to vary these Directions, or to seek further Directions. No such application was made by the Appellant.
8. However, the Appellant, on 2 February 2022, made a number of submissions, but without offering any, or any convincing reasons, to substantiate those submissions, namely, that there be a three member Tribunal to hear the substantive appeal (a request that was, in fact, implemented put in place); that the said Directions of a Judge dated 27 January 2022 be set aside; that a Directions Hearing be held on 13 May 2022, rather than the substantive hearing of this appeal; that the validity of the Order be determined as a preliminary issue and that the date fixed for the substantive hearing be vacated.
9. The Judge who issued the said Directions on 27 January 2022 directed, on 11 February 2022, in response to the Appellant's submissions, that he be asked to inquire of the Respondent if it agreed that a Case Management hearing would be helpful and, if so, that a joint application to that effect be made: no such application was made. The Appellant was further directed that, in default, he should state what precisely he wished to have varied and what alternative directions he sought: no reply, or adequate reply, to that effect was received from the Appellant.
10. The parties were notified on 3 March 2022 that this appeal was listed for hearing on Friday, 13 May 2022, before a three member Tribunal.

11. On 9 May 2022, I issued further Case Management Directions. These were in response to said submissions made by the Appellant. The said Directions ruled, *inter alia*, that previous Directions, issued by another Judge on 27 January 2022 were not set aside; that the substantive hearing of this appeal would proceed on Friday, 13 May 2022 and that this date for the substantive hearing would not be vacated to be replaced by a Directions Hearing; that the submission that the Tribunal should determine, as a preliminary issue, the validity of the Order would not be treated separate from the substantive hearing of this appeal but *may* be considered as part of the substantive hearing. The said Directions also stated that since the Appellant did not appear to have complied in full with the said Directions of the Tribunal issued on both 4 November 2021 and 27 January 2022, this appeal may be struck out for that reason, subject to any representations the Appellant may wish to make at the hearing of this appeal, on 13 May 2022, as to why that should not be done, having regard also to any submissions that might be made by the Respondent at the hearing on this aspect. The Appellant was reminded that the only outcome available to him, if his appeal was allowed, was, as a matter of law, set out at the relevant part of column 3 in schedule 6 to the Act and that his appeal shall be treated as a request for the Tribunal to exercise those powers if it allowed the appeal.
12. The Tribunal was satisfied, in all the circumstances, as outlined in the preceding paragraphs, that it was in the interests of justice, particularly having regard to the overriding objective set out in Rule 2 of the Rules, to proceed in the absence of the Appellant to hear and determine the application of the Respondent to strike out this appeal. In any event, however, even if no application was made to strike out the appeal, there was every likelihood that the Tribunal, of its own volition, would have decided to strike out this appeal for non-co-operation and non-compliance by the Appellant with Directions issued by the Tribunal, having regard to the written representations made by the Appellant; significantly, the Appellant made no representations in respect of the warning issued to him that this might be done that was contained in the Tribunal Directions issued on 9 May 2022.
13. In its application to strike out this appeal, the Respondent relied upon the provisions contained in Rule 8(2)(a) and 8(3)(c) of the Rules and the statutory overriding objective contained in Rule 2 of the Rules.
14. The Tribunal considered that Rule (3)(a) and (b), as well as Rule 8(3)(c), might equally have fallen for consideration on the facts of this appeal in considering whether the appeal should be struck out. However, the Respondent made no submission in respect of Rule 8(3)(a) and (b) in its strike out application.
15. The Respondent submitted that the Tribunal had no jurisdiction to determine this appeal, in which case the appeal had to be struck out, pursuant to Rule 8(2)(a) of the Rules. It was submitted that the remedy sought by the Appellant was outside the jurisdiction of the Tribunal as the Appellant, in bringing instant appeal, sought to re-open a decision made by a previous Tribunal on 17 April 2015 and to re-open a decision made by the High Court 7 June 2019. It was further submitted that in his

correspondence dated 17 January 2022, the only issue raised by the Appellant was to dispute the said decision of the High Court and, in the said directions dated 27 January 2022, the Tribunal afforded further time to the Appellant to comply with directions previously issued to him on 4 November 2021 to no avail. He also failed to serve any witness statement or confirm, as directed, that he did not intend to rely on witness evidence. The Appellant did seem to suggest, at one stage, that he wished to call witness evidence from an officer, or former officer of the Respondent. This, in accordance with standard directions in the Tribunal, that applied in this case too, was not an option open to the Appellant since the Respondent did not intend to rely of any witness evidence on its side, a fact it communicated to the Tribunal.

16. As part of its Response, the Respondent identified that the Appellant appeared to pit forward four grounds of appeal. However, it was submitted, and the Tribunal agreed, that grounds 1-3, inclusive, were not within the jurisdiction of the Tribunal, while the fourth ground was not, in fact, part of the case being made by the Respondent. The Tribunal had no jurisdiction to determine the instant appeal if, by bringing the appeal, the Appellant was, essentially, seeking to re-litigate matters that had already been the subject of a judicial determination both in the Tribunal and in the High Court where those decisions had not been overturned by appellate judicial bodies.
17. The Respondent further submitted that even if the instant Tribunal did have jurisdiction to determine this appeal, it should be struck out in any event as having no reasonable prospect of success, pursuant to Rule 8(3)(c) of the Rules. It was submitted that the Appellant had not addressed the grounds for the making of the Order put forward by the Respondent; that the Appellant had failed to progress his appeal, (or, it seemed to the Tribunal, progress it in any satisfactory or adequate fashion). In particular, it was submitted that the grounds for the making of the Order by the Respondent was based on the doctrine of *res judicata*, that is, that the bringing of the appeal offended that doctrine, in that the issues raised by the Appellant had already been the subject of judicial determination by a previous Tribunal, that had not been overturned by the Upper Tribunal, and, more particularly, the decision of the High Court, that had not been overturned on appeal, despite the fact that the Appellant had unsuccessfully sought permission to appeal the decision of the High Court on many occasions.
18. The Respondent submitted that the statutory overriding objective to which the Tribunal was subject in determining appeals that come before it meant, *inter alia*, that the burden of proof, on the balance of probabilities, in an appeal such as this, that required to be determined by the Tribunal on a *de novo* basis, rested on the Appellant to disturb the position resulting from the making of the Order by the Respondent: there was no burden on the Respondent to justify the making of the Order or its terms. It was submitted that this concurred with the terms of the directions issued by a Judge of the Tribunal on 22 January 2022, nor with the Directions issued by myself on 9 May 2022. Further, it was submitted that the Appellant had failed to comply with a number of Directions, as identified in preceding paragraphs, issued by the Tribunal. Significantly, as confirmed by the Respondent, the Appellant had

been in possession of the hearing bundle since 7 April 2022 but had not accessed it at any time to the knowledge of the Respondent'. He had been encouraged to seek advice, as is apparent from the hearing bundle, but did not seem to have done so.

19. Finally, the Respondent submitted that while there may be complex legal arguments arising in this appeal, the facts could not be in dispute despite the apparent position of the Appellant to the contrary.
20. The Tribunal accepted the submissions of the Respondent and struck out this appeal for want of jurisdiction; for having no reasonable prospects of success and on the basis of the overriding objective.

Signed: Judge Damien McMahon

Date: 23 May 2022