



**Decision of the Homeowner Housing Committee issued under the
Homeowner Housing Panel (Applications and Decisions) (Scotland)
Regulations 2012 ("the Regulations")**

HOHP reference: HOHP/PF/15/0132

Re: property at 132 Zena Street, Glasgow, G33 1JD ("the Property")

The Parties:-

Mr Graeme Taylor, residing at 217 South Main Street, Philippi, West Virginia, 26416, United States ("the Homeowner")

And

YourPlace Property Management, having a place of business at Granite House, 173 Trongate, Glasgow, G1 5HF ("the Factor")

**Decision by a Committee of the Homeowner Housing Panel
in an Application under section 17 of the Property Factors (Scotland) Act 2011 ("the Act")**

Committee Members:

Andrew Cowan (Chairperson)

Sara Hesp (Surveyor Member)

Decision of the Committee

The Homeowner Housing Committee ("the Committee") determined that the Factor has not failed to carry out the Property Factor's duties and has not failed to comply with the Property Factor Code of Conduct in terms of section 14(5) of the Act. The Committee accordingly makes no further order in relation to this matter.

Findings in Fact

1. The Homeowner is the owner of the Property situated at 132 Zena Street, Glasgow, G33 1JD.

2. The Property is situated in a four in the block property. One of the other properties in the block is owned by Glasgow Housing Association. Glasgow Housing Association is a

Registered Social Landlord and is part of a group of companies known as the Wheatley Group.

3. The Factors of the four in the block property are YourPlace Property Management. YourPlace Property Management are also part of the Wheatley Group. YourPlace Property Management have responsibility as factors for the maintenance of certain common parts of the block in which the Property is situated.
4. YourPlace Property Management and Glasgow Housing Association are separate legal entities.
5. On or around the 28 June 2014, work was carried out within the Property whereby a tree situated in the garden of the Property was felled.
6. Instructions to carry out arborist work to the tree at the Property were not issued by YourPlace Management as factors of the Property.
7. Following the felling of the tree, the Homeowner entered into correspondence with the public liability insurers of the Wheatley Group. An offer of settlement and compensation was made to the Homeowner by the public liability insurers of the Wheatley Group.
8. No work was instructed by or carried out by the Factors at the Property in relation to the felling of the tree at the Property.
9. There has been no failure on behalf of the Factors to comply with the factor's duties or the Code of Conduct as the actions complained of by the Homeowner do not relate to any work which was instructed by or carried out by the Factor of the Property

Background

10. By an application dated 7 September 2015, the Homeowner applied to the Homeowner Housing Panel ("the Panel") to determine whether the Factor had failed to:- (a) carry out the Property Factor's duties; and (b) ensure compliance with the Property Factor Code of Conduct as required by Section 14 (5) of the Act.
11. In his application the Homeowner alleged that the Factor had failed to comply with the following section of the Code of Conduct:-
 - (a) "2.4 – factor's duty to consult Homeowner and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to core services."The Homeowner further alleged that the Factor had failed to carry out the Property Factor's duties as the Factor had failed to show respect for the private Property of the Homeowner.
12. The Homeowner lodged with his application further statements in detail of his complaint. The Homeowner, in summary, complained that "GHA was responsible for the cutting down of a tree in my Property". The Homeowner complained that "They" did so without communication with the Homeowner.
13. The Homeowner further complained that the Factor has failed to resolve his complaint to his satisfaction and that he should be entitled to compensation to the valuation of £10,200. The Homeowner further complains that the actions of "GHA" have caused him considerable anxiety and loss.
14. The Homeowner lodged with his application various correspondences on various dates with, amongst others, the Factor and Messrs Cunningham Lindsay, who act as insurance adjusters and advisors for the Wheatley Group.

15. By letter dated 3 December 2015, the Homeowner made a complaint to the Factor that a tree in the Property belonging to him had been cut down and removed without his knowledge or consent. He complained that YourPlace had "utilised" Glasgow Council employees to carry out the work concerned. The Homeowner further complained that this work was carried out without his consent and concurrence.
16. By letters dated 25 February 2016, a notice of referral was served upon both the Homeowner and the Factor intimating a decision to refer the application to a Homeowner Housing Committee for a determination. Both parties were notified in that letter that a hearing was to be held for the issues raised in the Homeowner's application on 26 May 2016, in Glasgow.
17. Prior to the hearing which had been set for 26 May 2016, the Homeowner contacted the offices of the Panel to advise that he was unable to attend the hearing due to health reasons.
18. The Panel offered the Homeowner an opportunity to participate in a hearing through a telephone conferencing facility.
19. By letter dated 1 July 2016, the Panel wrote to the Homeowner requesting that he confirm his availability for a further hearing and requesting him to confirm whether he would wish such a further hearing to take place via a conference call.
20. On 16 July 2016, the Homeowner replied by email to the office of the Panel. The Homeowner did not answer the specific requests of the Panel to confirm whether or not he wished a hearing and whether he wished to attend a hearing or to dial into a hearing using a conference call facility.
21. By an email dated 28 July 2016 to the Homeowner, the Panel again requested clarity on the Homeowner's position in relation to the hearing.

22. On 18 August 2016, the Homeowner stated to the Panel by email "please go ahead and meet as a Committee to consider what we have presented. We do not know how long it may be until we can meet in person or speak on the phone. So please move this forward. We are hoping for justice in our case, and look forward to hearing from you."
23. The Property Factor lodged written representations with the Panel on 16 May 2016. The Factor indicated at the time they lodged the written representations that they did not wish to attend a hearing in relation to the application. The Factor's position as set out in their written representations was that the work to cut down the tree at the Homeowner's Property had been carried out on the instruction of Glasgow Housing Association. The Factor stated that they had not provided work or services in relation to this matter as no instructions of work of this nature had been issued by the Factor. They confirmed that, following their own enquiries internally, they had identified that the issue was not Property Factor related. They arranged for public liability insurance forms on behalf of the Wheatley Group to be sent to the Homeowner.
24. Messrs Cunningham Lindsay, on behalf of the Wheatley Group, entered into correspondence with the Homeowner concerning his claim for compensation.
25. A copy of the Property Factor's written representations dated 16th May 2016 was made available to the Homeowner by letter and by email both dated 10th October 2016. The Homeowner was required to lodge any further representations by not later than 24th October 2016. The Homeowner has made no such further comment or representation.

Decision

26. The Committee have considered the written evidence made available by both the Homeowner and the Factor. The Committee are satisfied that there is no evidence that the Factor instructed work in relation to the tree which was cut down at the Homeowner's Property. The Committee recognised that it can be confusing for a Homeowner where a Housing Organisation (such as Glasgow Housing Association), and a Property Factor Organisation

(such as YourPlace Property Management) are both part of a wider group (such as the Wheatley Group). Notwithstanding this, the Housing Association and the Property Factor Company are two separate legal entities.

27. No work in relation to the issues complained of by the Homeowner was instructed by or carried out at the request of the Factor.
28. Accordingly, the Committee determined that there can be no failure by the Factor to comply with the Property Factor's duties or the Property Factor Code of Conduct in relation to the matters complained of by the Homeowner as the Factor did not instruct any work in relation to this particular issue.
29. Accordingly, the Committee determined that the Factor has not failed to carry out the Property Factor's duties and has not failed to comply with the Property Factor Code of Conduct in terms of section 14(5) of the Act. The Committee accordingly makes no further order in relation to this matter.

Right of Appeal

30. The parties' attention is drawn to the terms of Section 22 of the Act regarding their right to appeal and the time limit for doing so. Section 22 provides:-

- (a) an appeal on a point of law only may be made by summary application to the Sheriff against a decision of the president of the Homeowner Housing Committee or a Homeowner Housing Committee; and
- (b) an appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made..."

A Cowan

Andrew Cowan, Chairperson

Date

2/11/16