

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)
Statement of Decision in respect of applications under Section 17 of the Property Factors (Scotland) 2011 (“the Act”) and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

Chamber Ref: **FTS/PF/17/0198 and FTS/PF/17/0201**

Property: Subjects at Flat 8/3, Block A, The Bridge Apartments, 310 Argyle Street, Glasgow, G2 8ND

The Parties:-

Mr Sarmad Farooq, residing at Flat 8/3, Block A, The Bridge Apartments, 310 Argyle Street, Glasgow, G2 8ND (“the Homeowner”)

and

MXM Property Solutions Limited, having a place of business at Baltic Chambers, Suite 544-549, 50 Wellington Street, Glasgow, G2 6HJ (“the Property Factor”)

Chamber Ref: **FTS/PF/17/0196**

Property: Subjects at Flat 5/1, Block C, The Bridge Apartments, 310 Argyle Street, Glasgow, G2 8ND

The Parties:-

Mr Karthlik Yelluguri, residing at Flat 5/1, Block C, The Bridge Apartments, 310 Argyle Street, Glasgow, G2 8ND (“the Homeowner”)

and

MXM Property Solutions Limited, having a place of business at Baltic Chambers, Suite 544-549, 50 Wellington Street, Glasgow, G2 6HJ (“the Property Factor”)

Chamber Ref: FTS/PF/17/0213 and FTS/PF/18/002

Property: Subjects at Unit 1 Ground and Unit 2B First Floor, 348-382 Argyle Street, The Bridge Apartments, Glasgow, G2 8LY

The Parties:-

The Clyde Importers Retirement Benefit Scheme, residing at Loch View, Bardowie, Glasgow, G62 6EY (“the Homeowner”)

and

MXM Property Solutions Limited, having a place of business at Baltic Chambers, Suite 544-549, 50 Wellington Street, Glasgow, G2 6HJ (“the Property Factor”)

The Tribunal consisted of:-

Mr James Bauld – Legal Member

Background

1. Five separate applications were lodged with the First-tier for determinations that the Property Factor had failed to comply with various sections of the Property Factors Code of Conduct. The five applications were made by three different owners of three different properties within the same block. The same Property Factor acted in respect of all properties.

2. After the applications were lodged the Tribunal had determined that all of them could be determined together using the provisions of paragraph 12 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”). The Tribunal had also issued a Direction

indicating that a case management discussion would take place in Glasgow on 19 April 2018 in connection with all six applications.

Case Management Discussion

3. At the conclusion of the hearing on 19 April 2018, the various parties asked the tribunal to make an order sisting the applications to allow the parties to enter into negotiations and discussions regarding possible settlement between the parties.
4. The settlement was based on the outcome of litigation which had been raised by the property factor against another owner in the block. The dispute between the parties to these applications related mainly to the possibility that the debt owed by this other owner would require to be shared among the applicants and all other owners in the block
5. The tribunal issued a decision following upon the hearing confirming that matters would be indefinitely postponed at the request of the parties

Further directions and responses

6. On 22nd May 2019 the tribunal issued a formal direction to the parties. That direction required the parties to confirm whether they had now managed to settle matters and whether their negotiations and discussions had been completed. Parties were asked to respond to the tribunal no later than 28 June 2019
7. The tribunal received emails dated 18 June and 20 June from the respective homeowners. Each of the emails was in identical terms and made a request that the application remained sisted for a further period of six months. The email indicated that the ongoing parallel litigation between the property factor and another owner was close to conclusion and that the property factor was likely to be successful in recovering certain outstanding fees from the owner

of an empty commercial unit. The emails from the homeowners indicated that if the property factor was successful in this litigation then it would obviate the need to have any further procedures in the current applications and that the applications could be dismissed

8. The tribunal acknowledged the responses from the homeowners and indicated the matter would be reviewed again in six months' time
9. On 20 January 2020 the tribunal wrote to the parties referring to the direction which had been issued on 22 May 2019 and to the subsequent email responses received in June 2019. The tribunal asked the parties to confirm the current position with regard to the matters set out in the previous responses and to confirm whether the ongoing parallel litigation had been resolved and whether matters were now satisfactorily resolved between the parties to allow the applications to be dismissed. The tribunal asked parties to respond no later than 14th February.
10. By email dated 13th February 2020, the property factor responded indicating that they confirmed that the parallel litigation matter was concluded and that the other owner had made all outstanding payments to clear the common charges account. They indicated that as the account had been settled matters they believed matters were resolved and that they asked that the case could be closed.
11. The tribunal wrote to the homeowners on 21 February 2020 sending them a copy of the email response received from the property factor. No response was received from the homeowners.
12. On 14 July 2020 at the tribunal issued a further direction requiring that the homeowners responded to the letter sent by the tribunal of 20 January 2020. the tribunal required the response by 29 July 2020.

13. On 29 July 2020, the tribunal received an email from Mr Vinod Soundararajan which was copied to the other representatives. The email made reference to the tribunal's direction and to the contents of the email from the property factor after 13 February. However the email from the home owners representative indicated that the factor had failed to provide that email to them. However the tribunal has provided a copy of the email to the homeowners by the letter dated 21 February.

14. In their email of 29th July, the homeowners indicate that if the factor confirmed to them what had been confirmed to the tribunal the homeowners would be of the view that no further hearings in this matter would be necessary.

Discussion and reasons for decision

15. The tribunal has taken the decision that it is unnecessary to request that the property factor either provide a copy of the email to the homeowners or confirms again what was confirmed in their email in February.

16. The terms of that email are clear. The terms of that email have been communicated to the homeowners by the tribunal.

17. It seems apparent to the tribunal that this matter is now resolved. The case management discussion took place more than two years ago. Since then the property factor has confirmed that in their view they have now recovered the various charges which are in dispute and they are clearly not pursuing the homeowners in that regard. The homeowners have confirmed that if these charges have been recovered from the other owner they do not wish any further hearings. The tribunal does not see any reason to disbelieve the position as stated by the property factor, namely that the charges have been recovered from the other owner and that the property factor does not now wish to seek to recover them from the homeowners who have made these applications. The tribunal draws a clear inference from the response from the

property factor that the homeowners will not be charged in respect of the sums which were owed by the other owner.

18. The tribunal sees no point in fixing a further hearing when it appears that the matter has been resolved in the manner which was clearly discussed at the case management discussion in April 2018. The tribunal also note that in the present circumstances it would only be possible to conduct such a hearing by remote telephone case conference as face-to-face hearings are not presently being conducted
19. Accordingly the tribunal will determine that these applications should be dismissed and that no property factor enforcement order should be made.
20. The tribunal would draw to the attention of the parties not only the appeal provisions which are set out at the foot of this decision but the provisions within the tribunal procedures (First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017) which allow for a review of a decision. Should the homeowners believe that the tribunal has failed to take account of any relevant matter they are invited to ask the tribunal to review the decision in terms of rule 39 of the Rules. If such a review is requested the homeowners are asked to set out their reasons for same

Decision.

The tribunal dismisses the applications

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.

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James Bauld, Chairperson

Date