



**Decision of the Homeowner Housing Committee
In Applications under section 17 of the Property Factors (Scotland) Act 2011**

by

Gordon Beattie, 180 Polmuir Road, Aberdeen AB11 7SR ("the Applicant")

**Bruce & Partners/James Gibb Property Management Ltd, 23-25 Chapel Street,
Aberdeen AB0 1SQ ("the Respondent")**

Reference No: HOHP/PF/14/0163

Re: 180 Polmuir Road, Aberdeen AB11 7SR ("the Property")

Committee Members:

John McHugh (Chairman); Colin Hepburn (Surveyor Member).

DECISION

James Gibb Property Management Ltd has not failed to carry out its property factor's duties.

James Gibb Property Management Ltd has not failed to comply with its duties under section 14 of the 2011 Act.

The decision is unanimous.

DIRECTION

The Applicant is directed to inform the office of the HOHP within 28 days of the date of this Decision as to whether he wishes to continue this Application against Bruce & Partners. If no such confirmation is received, the Committee may treat the Application as having been finally determined or withdrawn.

We make the following findings in fact:

- 1 The Applicant is the owner of a flat within a modern development known as Aurora, 180 Polmuir Road, Aberdeen (hereinafter “the Development”).
- 2 Bruce & Partners acted as the factor of the Development for several years until on or around March 2015.
- 3 James Gibb Property Management Ltd assumed the contractual rights of Bruce & Partners to factor the Development in or around March 2016.
- 4 James Gibb Property Management Ltd acted as the factor from on or around March 2016

Hearing

A hearing took place at the Credo Centre, John Street, Aberdeen on 20 June 2016.

The Applicant was present at the hearing and accompanied by his wife.

The Respondent was neither present nor represented at the hearing.

No other witnesses were called.

Introduction

In this decision we refer to the Property Factors (Scotland) Act 2011 as “the 2011 Act”; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as “the Code”; and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 as “the 2012 Regulations”.

We refer to the Applicant’s application to the HOHP as “the Application”.

The Committee had available to it, and gave consideration to, the documents lodged on behalf of the Parties.

The Property was for some years factored by Grant & Wilson Property Management Ltd trading as Bruce & Partners.

The Application was originally made in October 2014 and was directed towards Bruce & Partners, the then factors of the Development.

In around March 2015, the Applicant became aware that there had been a change in the identity of the factor to James Gibb Property Management Ltd.

The Applicant now wished the Application to proceed against James Gibb Property Management Ltd instead of Bruce & Partners.

REASONS FOR DECISION

The Legal Basis of the Complaints

Property Factor's Duties

The Applicant complains of failure to carry out the property factor's duties.

Bruce & Partners' Written Statement of Service is relied upon by the Applicant as the source of the property factor's duties.

The Code

The Applicant also complains of failure to comply with the Code.

The Applicant complains in relation to section 6.1 of the Code which provides:

"6.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required..."

The Matter in Dispute

The matter in dispute is the alleged failure to carry out an effective repair of a leak in the Property.

The Applicant advises that he first reported the existence of the leak to Bruce & Partners in May 2012.

The Property is a flat in a modern development. Water was leaking from above and onto the terrace of the Property. The Applicant had raised the issue with Bruce & Partners many times but was unhappy at how they had dealt with the matter. In particular, the Applicant was concerned that the investigations carried out were slow and ineffective and neither a claim to the NHBC nor to the building insurers had been productive. The problem persisted over a period of years and the Applicant's enjoyment of his property was affected.

A second claim to the NBC was accepted and remedial works have taken place more recently and these appear to have been successful.

The owners of properties in the Development towards the end of 2015 appointed a new factor in place of James Gibb Property Management Ltd.

The Applicant advises that he wishes to direct the Application against James Gibb Property Management Ltd.

He believes that Bruce & Partners are no longer trading. He believes that any finding against Bruce & Partners would be pointless as there would appear to be little prospect of any meaningful response to any order which this Committee might make.

The Applicant's position therefore at the hearing was that he would like to have a finding against James Gibb Property Management Ltd and that if that were not possible, that he would not wish to pursue the matter further.

We agreed at the hearing that we would deal only with the question of whether any liability for the matters complained of could be attached to James Gibb Property Management Ltd. We advised that we would issue a decision on that point alone at this stage and it would then be for the Applicant to confirm whether he wishes to proceed further.

The Applicant's only information on the change from Bruce & Partners to James Gibb Property Management Ltd is the May 2015 newsletter issued to him.

The newsletter bears the logos of both companies.

It states that "*the Grant and Wilson/Bruce and Partners Business was sold in March of this year*". It then goes on to say that "we" (presumably James Gibb Property Management Ltd) "*retain the rights to the Bruce and Partners name and we will continue to use that until the integration process has been completed.*"

The newsletter also advises: "*As part of our integration process, we have now completed the transition of all Bruce and Partners properties to the James Gibb portfolio. As such, James Gibb is now formally registered as the property factor for all B &P developments.*"

The only other information available on the circumstances of the transfer is to be found in a letter by James Gibb Property Management Ltd to the HOHP dated 23 February 2016. That letter was written in response to the Application.

That letter advised that James Gibb Property Management Ltd "*purchased the Bruce and Partners business from Grant and Wilson Property Management Ltd in march 2015.*". It further provides that the author "*feel[s] this claim for compensation is directed entirely at the wrong entity*" and that Grant and Wilson Property Management Ltd is "*still in existence although not actively trading*".

It is evident that the same staff members continued to deal with the Applicant after March 2012 although their company name and email addresses had changed from Bruce & Partners to James Gibb Property Management Ltd.

Understandably, the Applicant has no further information about the terms of the transfer between the two companies.

When the matter of the change of identity of the factor first came to the attention of the Committee, the office of the HOHP were asked to clarify with the Applicant the basis for his belief that James Gibb Property Management Ltd should be responsible for the failings of Bruce & Partners.

In response, by email of 11 March 2016, the Applicant advised: “*My general understanding is that when a company buys another, it purchases their contracts, assets, and in turn any risk contained in those contracts.*”

On discussion at the hearing, that continued to represent the Applicant’s position. The Applicant had an appreciation that it was likely to be the case that there would not be a legal basis for holding James Gibb Property Management Ltd responsible.

The Applicant indicated that he was aware of an earlier decision of a committee of the HOHP where a decision had been made that a new factor would not acquire the liabilities of its predecessor and the Applicant was concerned that that case would set a binding precedent. We confirmed that we would not be bound by any earlier Committee decision in a different case on different facts.

The Applicant felt that there was a gap in the system whereby factors were able to sell on their contracts and avoid their liabilities. He regarded that as a weakness of the system of regulation which applies although we would observe that the current situation is as a result of the operation of principles of law which would apply equally in other industries.

It appears to us that Grant & Wilson Property Management Ltd have assigned their contractual rights to factor the Development to James Gibb Property Management Ltd and that this assignation took place on or around March 2015. This gave James Gibb Property Management Ltd the right to carry out the role of factor and to demand payment from owners such as the Applicant. There is no evidence that there was any agreement that delegation of the full contractual obligations of Bruce & Partners to James Gibb Property Management Ltd took place and the available evidence suggests the opposite.

Accordingly, we find there to have been no breach of either the property factor’s duties or of the Code by James Gibb Property Management Ltd. We find that James Gibb Property Management Ltd have not acquired the liabilities of Bruce & Partners which are the subject of the Application.

Observations

The Applicant expressed some concern that the passage of time from his original application in 2014 until the hearing after the transfer from Bruce & Partners to James Gibb Property Management Ltd had deprived him of a right to claim.

Of course, the Applicant is not entirely deprived because a claim still lies against Bruce & Partners (although we share the Applicant's suspicion that pursuing an application against Bruce & Partners is unlikely to be a fruitful exercise). While we have not been in a position to address the Applicant's complaint that there was delay in the handling of the Application at earlier stages, we are aware that during at least some of the time in question the Application was "on hold" with the agreement of the Applicant, while time consuming efforts were made to remedy the building defect which was causing the leak.

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APPEALS

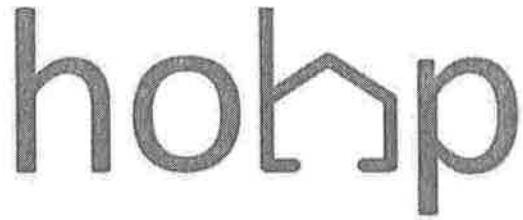
The parties' attention is drawn to the terms of section 22 of the 2011 Act regarding their right to appeal and the time limit for doing so. It provides:

- "...(1) 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 panel or a homeowner housing committee.
- (2) 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..."

JOHN M MCHUGH

CHAIRMAN

DATE: 30 June 2016



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by

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**Bruce & Partners/James Gibb Property Management Ltd, 23-25 Chapel Street,
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Committee Members:

John McHugh (Chairman); Colin Hepburn (Surveyor Member).

DECISION

The Applicant is deemed to have withdrawn his Application.

The decision is unanimous.

REASONS FOR DECISION

On 30 June 2016 the Committee issued its decision. Simultaneously, it issued a Direction in the following terms:

The Applicant is directed to inform the office of the HOHP within 28 days of the date of this Decision as to whether he wishes to continue this Application against Bruce & Partners. If no such confirmation is received, the Committee may treat the Application as having been finally determined or withdrawn."

There has been no contact from the Applicant since the issue of the Committee's decision.

Accordingly, the Committee deems that the Applicant has withdrawn his Application in terms of Regulation 15(3) of the Homeowner Housing Panel (Applications and Decisions)(Scotland) Regulations 2012.

APPEALS

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JOHN M MCHUGH

CHAIRMAN

DATE: 15 August 2016