



Property Factor Enforcement Order made under Section 19 (3) of the Property Factors (Scotland) Act 2011 ("the Act") following upon a Decision of the Homeowner Housing Committee in an application under Section 17(1) of the Act

hohp Ref: HOHP PF/14/0094

The Property: 0/1, 35 Montague Street, Glasgow G4 9HU

The Parties: –

MGM Consultancy Ltd, registered under the Companies Acts and having its Registered Office, formerly at 16, Comely Park, Dunfermline KY12 7HU, and now at 16, Dollarbeg Park, Dollar, Clackmannanshire, FK14 7LT ("the homeowners")

and

Walker Sandford Property Management Ltd, registered under the Companies Acts, having its Registered Office at c/o Clements, Chartered Accountants, 39 St Vincent Street, Glasgow G1 2ER and having a place of business at St George's Buildings, 5 St Vincent Place, Glasgow G1 2DH ("the factors") per Ms Antonia Grieve, HBJ-Gateley Solicitors, Exchange Tower, 19 Canning Street, Edinburgh EH3 8EH.

Committee Members: David Preston (Chairman); and Mike Links (Surveyor Member).

WHEREAS in its decision dated 13 November 2015 the Committee determined that the Factor had failed to comply with the Code of Conduct for Property Factors ("the Code"); and to carry out the property factor's duties and it determined to issue a Property Factor Enforcement Order (PFEO).

The required Notice of Proposal PFEO under Section 19 (2) of the Act was given to the parties on 20 November 2015 to allow them a period of 21 days from that date within which to make representations.

Representations were received from both parties by emails of 3 and 4 December 2015.

In the representations from the homeowner, Ms Markey sought to confirm that the homeowner wanted the factors to seek to recover the respective shares of the common costs from the other owners.

In the representations from Ms Grieve on behalf of the factors she suggested that it had only become apparent retrospectively that taking access to effect the repair through the homeowner's property would be more cost effective than taking access through the communal stair. She further submitted that as the homeowner was a limited company, the degree whereby it could suffer stress or anxiety was therefore limited. It was submitted that the value of the monetary sanction was too high. She asked the Committee to amend the Order to take account of these issues.

The Committee considered the representations from both parties:

In relation to the homeowner's representations, the Committee considered that the factor's ability to recover the shares of common costs from the other owners was limited to circumstances to which their procedures as set out in the titles and in their Written Statement of Services applied. As the homeowners had, albeit inadvertently, instructed the work outwith those procedures, it would be the homeowners who would require to effect any recovery.

In respect of the factors' representations:

1. The Committee noted that the email from the homeowner to the factors dated 4 December 2013 made specific reference to the option of carrying out the work by removing the concrete landing and installing a temporary scaffold platform but that as the homeowners had stripped back the bathroom, access could be gained through the homeowner's property. The Committee found that this email was sufficient notice to the factors at an early stage of the different options. It was also clearly implied in the terms of that email that the option of gaining access through the flat was less expensive than carrying out the repair from above.
2. The Committee therefore did not accept the factor's representation in this regard.
3. The Committee noted the submission on behalf of the factor that the homeowner is a limited company and accepted that accordingly the levels of stress and anxiety which could be suffered would be limited.
4. However the Committee found that the company had suffered loss and inconvenience through the additional time spent by Ms Markey on behalf of the homeowner in dealing with the issues raised in the application and with pursuing the application through to a two day hearing.
5. The Committee was satisfied from the correspondence and emails which had been produced as well as the notes of calls made by Ms Markey and others on behalf of the company that the time spent, which would have diverted her from her usual duties on its behalf would reasonably be estimated in the sum of £1,000.

Accordingly, having carefully considered the representations and submissions, the Committee amended the terms of the PFEO as outlined in the Notice dated 13 November 2015 and required the factors:

Within one month from the date of service of the PFEO to follow hereon to:

1. Issue to all proprietors in the block at 35 Montague Street, a full letter of explanation of the whole circumstances surrounding the common repair to the half landing, to assist the homeowners, if so advised, to seek to recover the respective shares of the cost of the common repair work and associated costs. The letter should explain: how the situation was discovered; that the homeowner was facilitating access to the common area through their property to minimise costs; that the homeowners were anxious to regain the use of their property as quickly as possible; that the failure to provide alternative quotes at the time the quote from Aegis was sent to them was that of the factors and not any attempt by the homeowner to place the contract with a preferred contractor; details of the quotation received from Archd McCorquodale & Son Ltd dated 12 May 2014; and an explanation that the actual cost of the work was lower than the only other quote which the factors could obtain.
2. Issue to the homeowners an apology for the lack of professionalism in dealing with their correspondence throughout and the lack of adequate response to their concerns.
3. Pay to the homeowners from their own funds the sum of £1,000 by way of compensation for the loss and inconvenience caused to them through the need for Ms Markey and others to spend considerable time in corresponding with the factors and pursuing the application throughout the period, thereby diverting Ms Markey from her normal duties for the business and including any additional, albeit unidentified costs of agents employed by them.

Section 19 of the Act provides as follows:

"... (2) In any case where the committee proposes to make a property factor enforcement order, they must before doing so...

- (a) *give notice of the proposal to the property factor, and*
- (b) *allow the parties an opportunity to make representations to them.*

(3) If the committee are satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the committee must make a property factor enforcement order..."

Failure to comply with a Property Factor Enforcement Order may have serious consequences and may constitute an offence

APPEALS:

The parties' attention is drawn to the terms of Section 22 of the Act regarding the 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 the decision of the President of the Homeowner Housing Panel or 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..."

David Preston

.3-Dec-15

X

CHAIRMAN

Signed by: DAVID MICHAEL PRESTON