



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

HOHP reference: HOHP/PF/13/0265

Re: Flat 2/2, 486, Alexandria Heights, Alexandra Parade, Dennistoun, Glasgow, G31 3BQ ('the property')

The Parties:

Dr. Neil Mara per his agents, Smart Commercial Ventures Limited, Cherry Cottage, 35b, Church Lane, Melksham, Wiltshire, SN12 7EF residing at 62, Craig Crescent, Rumford Grange, Falkirk FK2 0EN ('the homeowner')

Grant & Wilson Property Management Limited having a place of business at 65, Greendyke Street, Glasgow G1 5PX ('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:

Karen Moore (Chairperson)

Jean Thomson (Housing member)

Decision of the Committee

Background

1. The factor's date of registration as a property factor is 7 December 2012.
2. By initial application dated 20 August 2013 the homeowner's agents applied to the Homeowner Housing Panel ("the Panel") on behalf of the homeowner for a determination as to whether the factor (i) had failed to comply with sections 2.5 (Communications and Consultations), 4.4, 4.6 and 4.7 (Debt Recovery) and 6.1(Carrying out repairs and maintenance) of the Property Factor Code of Conduct ("the Code") as required by section 14(5) of the 2011 Act and (ii) had failed to comply with the Property Factor's duties in terms of section 17 (1)(a) of the 2011 Act by failing to recover money owed to them by owners to the detriment of those who have paid, failing to carry out repairs within a reasonable and timely fashion and failing to notify the homeowner of the state of the property and correspond in general. The

President considered the application in terms of Section 18(1) of the Act and decided to refer the application to a Homeowner Housing Committee ("committee") and a notice of referral was issued to the parties on 10 January 2014 setting out the detail of the application and seeking written representations thereon..

3. The Parties made written representations to the committee. The homeowner lodged copy correspondence between the factor and himself and his agents and a copy of the factor's written Statement of Service. The factor lodged a copy of the title deed to the property.

Hearing

4. A hearing took place on 09 April 2014 at the Homeowner Housing Panel offices at Europa House, 450 Argyle Street, Glasgow. The factor indicated within their written representations that they did not wish to attend an oral hearing. Nonetheless, the hearing was intimated to them but they did not attend the hearing.. The homeowner appeared on his own behalf and gave oral evidence to the committee. No other witnesses or parties gave evidence. The committee had the benefit of the application which included the copy correspondence which accompanied the application, all as submitted by the homeowner and copied to the factor. The committee had the benefit of the factor's written representations which representations had been copied to the homeowner.

Evidence on behalf of the homeowner at the hearing.

5. The homeowner made an oral statement and answered questions put to him by the committee. The homeowner gave evidence in a straightforward, professional and open manner. He answered questions directly and to the best of his belief and gave the committee no reason to doubt the veracity of his account.

6. The homeowner confirmed his complaint as outlined in the application to the Panel and explained his belief that the factors should have taken a more proactive role in respect of the maintenance of the common property. The homeowner advised the committee that, in his view, the factor should have a process in place whereby the factor should instruct repair and maintenance works, ensure that these are carried out and recover costs from the proprietors by instalments. The homeowner's view is that the title deeds allowed the factor to do so. The homeowner's advised the committee that, in his view, the factor's debt recovery process was lacking as the factors were failing to recover costs from all of the proprietors. The homeowner also confirmed the statement made in his application that he had lost rental income as a direct result of the factor's failure to maintain the property. The homeowner advised the committee that he was unaware of the Owners Association as narrated in the title deed, Land Certificate number GLA179918 and had no knowledge of any meetings or decisions of the Owners Association.

Factual findings of the committee.

7. In terms of the title deed, Land Certificate number GLA179918, the property forms part of a development of 15 residential flatted properties at 486 and 488 Alexandra Parade, Glasgow ("the development"). The owners of the residential flatted properties have a common ownership in the common parts of the property which include the entrance hall and stairways.
8. Burden Detail of the Land Certificate at entry number 3, Deed of Conditions by Dawn Construction Limited registered 9 November 2004, at Clause (Seventh) provides for the appointment of a factor by the initial developer and thereafter the Owners Association, which factor is to be responsible for instructing and administering common repairs and maintenance of the common property. Clause (Eighth) provides that all owners of the flats in the development are members of the Owners Association for the purpose of carrying out the terms of the Deed of Conditions and preserving the amenity of the subjects. The subjects are not explicitly defined but the committee takes the view that "the subjects" mean "the development". Clause (Eighth) provides also that the factor has the power inter alia to order the execution of all works required to common property and to enforce any provisions of the Deed of Conditions so far as it relates common property or the amenity of the subjects. Clause (Eighth) states that the factor may instruct, without prior approval of the Owners Association, any common works where the cost is less than £100.00 per flat. Clause (Eighth) allows both the factor and the Owners Association to recover costs from the owners. Clause (Ninth) states that the owners are jointly responsible for painting the internal common parts once every five years.
9. The factor's written Statement of Service entitled "Welcome Information Pack" explains the role of the factor and the extent of their responsibility by reference to common law principles, the title deeds and their terms and conditions of service. The Statement of Service states that the factors act on behalf of the owners and that the ownership and responsibility for common property rests with the owners.
10. There is no dispute between the factor and the homeowner that works are required to some of the common parts, namely the common entrance hall and the common stairway. There is no dispute that the factors have not been put in funds by the owners to instruct and carry out these works.
11. The homeowner has taken no action to call a meeting of the Owners Association to deal with common property matters.

Decision of the committee

12. With reference to the homeowner's application, the committee found that the factor did not fail to comply with paragraph 2.5 of the Code. The reason for this decision is that no evidence was before the committee to support this failure. The

copy correspondence lodged by the parties show that the factor responded to the homeowner in accordance with the written Statement of Service.

13. With reference to the homeowner's application, the committee found that the factor did not fail to comply with paragraph 4.4, 4.6 and 4.7 of the Code. The reason for this decision is that no evidence was before the committee to support this failure. The evidence before the committee is that the factor followed their Debt Recovery procedure in accordance with paragraph 4 of the written Statement of Service. The copy correspondence lodged by the factor shows that the factor recorded Notices of Potential Liability against defaulting owners.

14. With reference to the homeowner's application, the committee found that the factor did not fail to comply with paragraph 6.1 of the Code. The reason for this decision is that no evidence was before the committee to support this failure. The evidence before the committee is that the factor acted in accordance with paragraph 6 of the written Statement of Service.

15. With reference to the homeowner's application, the committee found that the factor did not fail to comply with the Property Factor's duties in terms of section 17 (1) (a) of the 2011 Act by failing to recover money owed to them by owners to the detriment of those who have paid, failing to carry out repairs within a reasonable and timely fashion and failing to notify the homeowner of the state of the property and correspond in general. The reason for this decision is that no evidence was before the committee to support this failure. The evidence was before the committee is that the factor has pursued debt by recording Notices of Potential Liability against defaulting owners. The evidence was before the committee is that the factor's duties in respect of carrying out repairs in terms of the title deeds are discretionary and not absolute and that the factor has no duty in terms of the title deeds to notify the homeowner of the state of the property and correspond in general.

16. The decision is unanimous

Appeals

17. 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. 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 date on which the decision appealed against is made..."

Karen Moore

Chairperson Signature

Date.....*14 May 2014*