



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

Hohp Ref: HOHP/PF/15/0011

Re:

Properties at 4 Comelypark Street, 22 and 28 Sword Street, Dennistoun, Glasgow G31 1TA (collectively “the Property”)

The Parties:-

Mr Christopher Lord, 34A Cuthelton Street, Glasgow, G31 4RG (“the Homeowner”)

Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD (“the Factors”)

Decision by a Committee of the Homeowner Housing Panel in an application under section 21 of the Property Factors (Scotland) Act 2011

Committee Members:

Maurice O'Carroll (Chairman)
David Godfrey (Surveyor Member)
Irene Kitson (Housing Member)

Decision of the Committee

The Committee decided to vary the Property Factor Enforcement Order (“PFE0”) dated 11 August 2015 and now requires compliance with the Order as varied.

The decision is unanimous.

Background

1. By decision dated 27 July 2015, the Committee determined that the Factors had breached their duties in terms of s 17(1)(b) of the 2011 Act in that they had failed to comply with sections 2.4, 2.5, 4.6, 6.1, 6.4, 6.9 and 7.1 of the Code of Conduct for Property Factors as required by s 14(5) of that Act.
2. As required by the 2011 Act, the Committee issued a PFE0 after providing the parties with an opportunity to provide comment on a draft Order. The Factors duly made representations in relation to the form of the final order which were

taken into account. The final PFEO was subsequently issued on 13 August 2015. The PFEO contained 4 specific requirements to be complied with on the part of the Factors and for evidence of compliance to be supplied to the HOHP within 7 days of having done so.

3. The first two requirements related to a compensation payment and reimbursement of factor management fees which the Homeowner acknowledged as having been complied with. The remaining two requirements related to the recovery of debts from non-paying owners within the Development, now that the Factors had ceased to provide services to the Development as of 1 June 2015. Specifically, requirements 3 and 4 of the PFEO were as follows:
 - Provide a full and complete statement of all debts outstanding in respect of the Development referred to in the said decision, detailing any sums received and the steps it has taken and is taking to recover any other outstanding sums and to make over any such sums received without any deduction to the present factors for the Development, Greenhome Property Management (other than sums properly due by the homeowners to the Factors as at 31 May 2015 in accordance with their Written Statement of Services for the Eastern Court Development); and
 - Provide a written undertaking to take all reasonable steps to recover any outstanding sums due by any defaulting homeowners of the said Development (which arose during the course of the period in which they acted as Factors for the said Development and which are recovered pursuant to any legal proceedings whatsoever taken in their own name) and to make them over to the new factors forthwith upon receipt without any deductions being made (except as aforesaid in relation to requirement 3 above).
4. After sundry correspondence between the parties and HOHP, it became clear that there was a dispute as to whether the remaining requirements of the PFEO had been complied with. Normally, the Committee would proceed to enforcement action. However, in this case there appeared to be a difficulty caused by the involvement of an additional third party, namely Greenhome, the new factors for the Development. An impasse seemed to have developed which the Committee considered would be best resolved by way of a further hearing, rather than initiating proceedings which might lead to a criminal prosecution. Accordingly, and unusually, it decided to arrange a further oral hearing.
5. The further oral hearing was arranged for 14 December 2015 at 2pm within Wellington House, Wellington Street, Glasgow. The afternoon start had been fixed in order to suit the Homeowner. In the event, the Homeowner was unable to appear at the hearing due to a family bereavement. The Committee was unaware of the circumstances surrounding the non-attendance of the Homeowner as the reason for it was only communicated to HOHP the following afternoon on 15 December 2015. Accordingly, the additional hearing proceeded

in the absence of the Homeowner as arranged. Sarah Wilson, Associate Director of the Factors was present at the hearing and represented by Mr Alistair Dean of ADLP Solicitors.

6. In the event, the Homeowner had provided full and detailed written submissions regarding the above in an email dated 29 October 2015 which the Committee addressed in detail at the additional hearing. That communication itself was in response to a letter dated 26 October 2015 from Messrs ADLP which detailed the steps which had been taken to recoup funds from the non-paying residents at the Development. In addition, Messrs ADLP had provided a table showing the current status of debtors in a letter dated 9 November 2015 which was also considered in detail at the hearing, together with oral evidence regarding the most up to date position.
7. The first issue raised by the Committee was in relation to the assertion contained within paragraph 4 of the Homeowner's email dated 29 October 2015 that the Factors still held £15,000 in deposits (by which he meant floats) from the homeowners at the Eastern Court Development (being £300 per property, with 50 properties in total). That was refuted by the Factors who subsequently provided evidence of final statements dated 18 September 2015 which had been issued to the Homeowner six weeks prior to his email, and acknowledged by him. The final statements provided in respect of the Homeowner's three properties demonstrated that the float held by the Factors in relation to each of them had been reimbursed to the Homeowner. The Factors stated that all other homeowners had been similarly reimbursed as at that date, which evidence the Committee accepted.
8. The Factors confirmed that they now held funds on behalf of the residents of the Development totalling £6,812.85, which total included uncollected debts which they were still endeavouring to recover. That left a total sum of £3,799.80 which was capable of being reimbursed immediately. The Factors stated at the hearing that they were content to reimburse that sum, with further sums being remitted to the homeowners of the development as and when they were received and gave an undertaking to the Committee that they would do so.
9. The difficulty with putting the above undertaking into practice appears to arise from the approach taken by the new factors, Greenhome who have apparently refused to provide banking details which would allow payments to be made to them pursuant to the Factor's obligations in terms of the PFEO. Whilst the Committee could fully understand that the new factors would not be willing to take on former debts with the responsibility to recover them (which is correctly the responsibility of the Factors alone), it could not understand why it would not accept remittances of sums held by the Factors on behalf of its new clients.
10. Against that background, the Committee formally states here that the present factors have the authority, in terms of the PFEO and the WSoS applicable at the

time that the Factors managed the Development, to accept remittances from the Factors in respect of funds which are properly due to the Homeowner and the other residents of the Eastern Court Development. It is not within the remit or part of the function of the Committee to force them to do so, however, if they are not willing to co-operate. Accordingly, in the varied PFEO to follow, the Committee will require the Factors to pay the sums above mentioned to the new factors, **failing which** to the individual homeowners within the Development by way of a second final account in order to achieve final resolution of this dispute.

11. The remaining issue for the Committee to consider was whether the Factors had undertaken reasonable steps to recover outstanding sums from the debtor homeowners which arose during the period in which they were factors for the Development. The Committee went through the remaining six point list set out in ADLP's letter of 9 November 2015, which itself showed a reduced number of outstanding debts since the date of the original hearing. Debtors listed at points 2 and 6 had paid in full by the time of the continued hearing. The debt listed a point 1 had been reduced and the debt listed at point 7 was the subject of ongoing proceedings before the HOHP. In relation to the remainder, explanations were provided as to the steps being undertaken to recoup those debts and the reason why the debt at point 5 was unlikely to be recoverable.
12. The Committee was satisfied by those explanations and considered that the Factors had taken reasonable steps to recover debts due from non-paying homeowners. The Committee also clarified that in the event of any Notice of Potential Liability issued at the instance of the Factors expiring before the sums secured by it having been recovered, the Factors are not obliged to renew such Notice further to their obligation to take reasonable steps to recover any outstanding funds. The Committee also acknowledged that it would be disproportionate to require the Factors to raise court proceedings to recover any of the sums due, with the exception of the debt listed at point 5 of the table referred to above. That debt may, however, be irrecoverable in any event so that court proceedings would be futile. That will be a matter for the Factors to determine in due course as indeed is the means it chooses to enforce the other remaining debts.
13. Finally, the PFEO will be varied to clarify that the remaining undertaking given to make over any further recovered payments to the new factors or homeowners of the development requires to be formally provided in writing to the HOHP.

Decision

14. In all of the circumstances narrated above, the Committee decided to vary the PFEO dated 11 August 2015.

It has therefore determined to issue a Varied Property Factor Enforcement Notice which is attached to this decision.

15. **Appeals**

The parties' attention is drawn to the terms of s 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 date on which the decision appealed against is made..."

Signed: M O'Carroll
Chairperson

Date: 23 December 2015



Variation of Property Factor Enforcement Order

Hohp Ref: HOHP/PF/15/0011

Re:

**Properties at 4 Comelypark Street, 22 and 28 Sword Street, Dennistoun,
Glasgow G31 1TA (collectively “the Property”)**

The Parties:-

Mr Christopher Lord, 34A Cuthelton Street, Glasgow, G31 4RG (“the Homeowner”)

**Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD (“the
Factors”)**

**Decision by a Committee of the Homeowner Housing Panel in an
application under section 21 of the Property Factors (Scotland) Act 2011**

Committee Members:

Maurice O'Carroll (Chairman)
David Godfrey (Surveyor Member)
Irene Kitson (Housing Member)

**This Notice should be read in conjunction with Decisions dated 27 July and 23
December 2015 and the Property Factor Enforcement Order dated 11 August 2015
under reference HOHP/PF/15/0011**

1. By decision of 27 July 2015, the Committee determined that the Factors had breached their duties in terms of s 17(1)(b) of the 2011 Act in that they had failed to comply with sections 2.4, 2.5, 4.6, 6.1, 6.4, 6.9 and 7.1 of the Code of Conduct for Property Factors as required by s 14(5) of that Act. It issued a Property Factor Enforcement Order (“PFEO”) on 13 August 2015. The first two requirements of the PFEO have been complied with.
2. On 14 December 2015, the Committee held a hearing to consider a request on the part of the Factors to vary the remaining parts of the PFEO. It decided to do so on that date for the reasons and to the extent stated in its decision dated 23 December 2015.

3. At that hearing, the Factors provided two undertakings to the Committee: First to make over sums to the residents of the Development and to make over sums obtained from debtor residents as and when they are recovered by the Factors. The present PFEO as varied formalises those undertakings.
4. Therefore, the Committee now varies the PFEO issued on 13 August 2015 and makes the following Property Factor Enforcement Order:

Within 28 days of the communication to the Factors of this Property Factor Enforcement Order as varied, the Factors must:

1. Make over and pay the sum of £3,799.80, being the sum held on behalf of the homeowners of the Eastern Court Development under deduction of sums being pursued on their behalf, to the present factors for the Development, Greenhome Property Management, failing which to each resident of the Eastern Court Development who was such a resident as at 30 May 2015 by way of a second final statement of account and individual payment.
 2. Provide an up to date, full and complete statement to the Committee and the Homeowner of all debts outstanding in respect of the Development referred to in the said decision, detailing any sums received and the steps it has taken and is taking to recover any other outstanding sums.
 3. Provide a written undertaking to the Committee and the Homeowner to take all reasonable steps to recover any outstanding sums due by any defaulting homeowners of the said Development (which arose during the course of the period in which they acted as Factors for the said Development and which are recovered pursuant to any legal proceedings whatsoever taken in their own name) and to make them over to the present factors, failing which the residents of the Eastern Court Development forthwith upon receipt without any deductions being made (other than sums properly due by the homeowners to the Factors as at 31 May 2015 in accordance with their Written Statement of Services for the Eastern Court Development).
 4. Provide documentary evidence of compliance to the Homeowner Housing Panel with the above Orders within 7 days of having done so by recorded delivery post.
5. **Appeals**

The parties' attention is drawn to the terms of s 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 date on which the decision appealed against is made...”

A handwritten signature in black ink, appearing to read "M O'Carroll". The signature is written in a cursive style with a large initial "M".

Signed

M O'Carroll
Chairperson

Date 23 December 2015