



Decision of the Homeowner Housing Committee issued under Section 17 of the Property Factors (Scotland) Act 2011 (“the Act”) and the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012

hohp Ref: HOHP PF/14/0104

The Property: Flat 0/1, 130 Inveresk Street, Glasgow, G32 6TA

The Parties: –

Mr ANDREW ROBERT BEAVAN and MS JENNIE VALERIE WEBSTER, both residing at 3, Whitehill Gardens, Dennistoun, Glasgow G31 2PR (“the Homeowners”)

YOUR PLACE PROPERTY MANAGEMENT, Granite House, 177 Trongate, Glasgow G1 5HF (“the Factors”)

Committee Members:

David Preston (Chairman); and Robert Buchan (Surveyor Member) (“the Committee”).

Decision:

The Committee found that the Factors had not failed to comply with Section 2.1 of the Code of Conduct for Property Factors.

Background:

1. By application dated 15 July 2014 the Homeowners applied to the Homeowner Housing Panel ("the Panel") to determine whether the Factor had failed to comply with Section 2.1 of the Code of Conduct for Property Factors.
2. The Homeowners complained that the Factors had provided false or misleading information to them about the position in relation to certain common repairs which were to be carried out to the Property which they were in the process of purchasing. Accordingly they proceeded with the purchase in circumstances which resulted in them incurring a substantial bill for individual works to the Property which had been necessitated by the common repairs.
3. The Factors denied that any false or misleading information had been provided to the Homeowners.

Hearing:

4. A hearing took place at 5, Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU on 18 November 2014.
5. Present at the hearing were: Mr Beavan on behalf of the Homeowners, who represented himself; Ms McDermitt and Mr Adams, solicitor, on behalf of the Factors.
6. The Committee had been provided with copy correspondence between the parties comprising: letter dated 1 May 2014 from the Factors addressed to TLT Scotland providing pre-sale factoring information (Document A); a copy letter dated 16 April 2014 addressed to Mr George Cullen, 0/2 130 Inveresk Street, Glasgow (Document B); copy letter from Mr Beavan to the Factors dated 15 July 2014; copy Statement of Services by the Factors; copy Land Certificate in respect of the Property - Title Number GLA137754; various email exchanges between the Factors and Messrs Bannatyne, Kirkwood & France, solicitors dated between 6 May and 15 July 2014; copy correspondence and emails

between the Homeowners and the Factors dated between 18 and 20 August 2014; written representations from the Homeowners dated 16 September 2014; and written representations from the Factors dated 25 September 2014, together with: Document A; Document B Copy A and B Sections of GLA137754; copy web page details of the Property; and copy email from Claire Reid to the Factors dated 8 May 2014.

7. At the outset the Chairman ascertained that neither party had any preliminary matters for consideration. He outlined the proposed order of proceedings.

8. Mr Beavan on behalf of The Homeowners summarised their position:

- a. He explained that they were in the course of purchasing the Property, which was due to settle on Friday 2 May 2014. They received the copy letter, Document A, from their solicitor, which disclosed that there were certain works; ("WO:1356412/1 Common Rot Work & WO:1364186/1 Individual Rot Work costs unknown due to nature of work") either "instructed" or "reported but not instructed". As a consequence he and Ms Webster telephoned the Factors to find out such further information as was available in respect of these repairs.
- b. Mr Beavan stated that they had been given little further information but had been told that the work would not cost much and that they would not be responsible for common repairs which had already been instructed.
- c. The Home Report which had been provided by the sellers had neither mentioned rot nor any other structural work.
- d. On the strength of this information, the Homeowners proceeded with the purchase and settled the transaction on 2 May 2014.
- e. The Homeowners took entry and began to carry out work to the flat. On 7 May when they were at the flat, a Mr Prendergast called at the flat and told them that the wall between the kitchen and bathroom as well as the floors and ceilings required to be removed as part of the common work. He also

advised that the re-instatement of the floors, walls and ceiling was regarded as individual work and as such would be their responsibility.

- f. Mr Beavan then called the Factors and spoke to a Chris Wilson who explained that there was a common problem with properties of this design (T 26) as the concrete block built wall between the kitchen and the bathroom on each floor caused the floors and joists to sag.
- g. In view of the nature of this information the Homeowners had allowed the contractors to gain access to the Property to carry out the necessary work which had entailed the removal of the walls and ceilings and the replacement of the floor joists. As they had not agreed to meet the cost of the replacement walls, floors and ceiling, this work had not been done and the Property remain uninhabitable at the date of the hearing.
- h. Mr Beavan spoke to a neighbour (Mr Cullen) who advised that he had been given the information which the Homeowners were wanting by the Factor in a letter dated 16 April 2014.
- i. The Homeowners complained that the Factors had failed to provide them with sufficient accurate information about the works to enable them to make a fully informed decision as to proceeding with the purchase and that this failure amounted to them having been misled by the Factors. He argued that the factors were aware of the costs of the work at the time the factor information had been provided. He complained that despite that, the Factors had failed to provide him with the information, either in the letter of 1 May or in the telephone calls.
- j. Mr Beavan contended that by the time they had become aware of the extent and cost of the work they had purchased the flat.
- k. Mr Beavan accepted that the Factors were not pursuing him for the cost of the common works, but, although it had been mentioned in his phone calls that they would not be responsible for a share of the common work, it was

not until 29 May that the Factors had confirmed this and indeed they had sent him a letter dated 12 May asking for that share of the cost.

9. On behalf of the Factors, Ms McDermitt summarised the position:

- a. The first intimation to the Factors that the property was for sale was on the morning of 1 May 2014 when they received a request from TLT for the information as a matter of urgency as the Property sale was due to settle the following day. They normally turn such requests around in 5 days, but were able to process this request before 4.00pm on 1 May. The initial request from TLT had been in respect of the wrong client and the information was re-issued.
- b. While the common works had been instructed at that time, they did not know the final costs in view of the nature of such work and the fact that they had not been given access to assess the specific work required to the Property. It was normal for the costs only to be ascertained on completion. The figures provided in Document B had been very general estimations and bore no relationship to the final cost which, as it happened in this case had been approximately £9,000 as opposed to the estimate of approximately £18,000.
- c. The Factors stated that they would normally expect any request for further information or clarification on the pre-sale information (Document A) to come from the selling solicitors (TLT) from whom the request had come and to whom the information was provided.
- d. Ms McDermitt stated that their customer service department, to whom the Homeowners would have spoken, was a call centre and the staff would not have provided anything other than generic information. In any event, the call centre would not have responded to the Homeowners, since at that time, they were not clients, not having become proprietors. The Factors had no record of the calls.

- e. The Factor contended that the pre-sale information was accurate and was not misleading. Had further information or clarification been sought by the seller's solicitor, it would have been provided. They stated that normal practice was for information to be passed by them to the seller's solicitor for onward transmission to the purchasers through their solicitor.

10. In answer to questions from the Committee, a number of further matters emerged:

- a. The Factors said that the work to the floor joists was common as was the removal of the walls, floors and ceilings, which was necessary to gain access to the joists. However the re-instatement of these items was regarded as individual works.
- b. The Property had been sold by a Trustee for the seller. The status or reason for the appointment of a Trustee was not made clear.
- c. The Homeowners had not discussed the consequences of the pre-sale information with their solicitor and no further information or clarification had been requested of the seller's solicitor.
- d. The first indication to the Factor that the Homeowners had become proprietors of the Property had been by email from the Homeowners' solicitor on 6 May 2014.
- e. The Factors did not seek to argue that they had no duty of care to the Homeowners at the time the information was provided as they had not become proprietors by that time beyond the fact that the information should have been sought through the seller's solicitor.
- f. The Homeowner was unable to understand the distinction between the 'common' and 'individual' works. He argued that if the removal of the walls, floors and ceilings was regarded as 'common' work, why was their re-instatement not also 'common', particularly in view of the fact that he

understood that the re-installation of bathroom and kitchen fittings would have been regarded as common work, although they were not re-installing the original fittings as they were installing new ones.

Findings in Fact:

11. The Factors were registered on 27 November 2012.
12. The Homeowners were in the process of purchasing the Property on 1 May 2014 when they were provided with the pre-sale information from the Factors of that date (Document A). The information included two work reference numbers relating to rot works comprising both common and individual works. No further details were provided beyond the fact that the cost of the individual works was unknown due to the nature of the works. No details of the cost of the common works were provided.
13. The pre-sale information was in a standard format and the detail was such as would normally be provided. The Factors would have provided further details to the seller's solicitor in accordance with normal practice had they been asked. They were not so asked.
14. The Home Report provided to the Homeowners had not made mention of any issues in relation to rot, apart from a small trace beneath the sink, or to the need for common or individual works.
15. The Homeowners called the Factors to try and obtain further information about these works. They were told that they would not be responsible for the cost of works instructed prior to them taking entry. They were not advised to seek further information through their solicitors. They were not told in terms that as prospective purchasers as they were at that time, that the Factors could or would not provide information direct to them. The Homeowners did not discuss the terms or the implications of the pre-sale information with their solicitor.
16. The Homeowners proceeded with their transaction and settled on 2 May 2014. They then commenced work on the flat and on 7 May 2014 received a visit from

a Mr Prendergast who advised them of the nature and extent of the works. He advised that the common works would include the removal of floors, ceilings and a block wall between the kitchen and bathroom to allow access for the replacement of joists. The common work would not include the replacement of the floors, ceilings or walls which would be the responsibility of the Homeowners.

17. The Homeowners again contacted the Factors and spoke to a Mr Wilson who gave them details of the work and the need for it.

18. The Homeowners ascertained that the Factors had contacted other occupiers in the block with details of the works by letter dated 16 April 2014 (Document B).

19. In view of what he was told by Mr Prendergast and Mr Wilson, the Homeowners agreed to the work proceeding as they felt they had no alternative.

20. On 12 May 2014 the Homeowners received a demand for a share of the common works from the Factors. By email dated 29 May 2014 the Factors confirmed that the Homeowners would not be responsible for the common works. This eventually confirmed what the Homeowners had been told when they had phoned the Factors' call centre.

Reasons:

21. The Committee accepted the evidence contained in the copy correspondence produced to it and the evidence of the parties. The Committee was satisfied that both Mr Beavan and Ms McDermitt were credible and reliable witnesses who spoke to the situation frankly and directly from their respective points of view.

22. The Committee was satisfied that the pre-sale information had been in the normal form and that the Factors would have provided further information in response to a request from the seller's solicitor. However it was unfortunate that the call centre had not provided better advice to the Homeowners when they called and directed them to the normal course of action.

23. The Committee had a difficulty in considering the Homeowners' recollection of their telephone conversations with the call centre and in particular not being able to consider the accuracy of any comments made by the telephonists. As such the evidence of the telephone calls was only considered by the Committee in general terms. The main thrust of the conversation as related by the Homeowners was that the Homeowners were advised that they would not be responsible for payment of common works instructed before they purchased the property and in that respect the advice was correct. The Committee considered that it would be unsatisfactory to consider anything further than this generality in the telephone conversations that took place. Your Place Property Management as the trading name of Glasgow Housing Association is a huge organisation and it does seem unwise for a Homeowner to rely on telephone calls to a call centre of such an organisation for such an obviously important matter before they completed the purchase.
24. It was unfortunate that the Homeowners' solicitor did not advise them of the implications of the pre-sale report or of the fact that further information might be obtained by them reverting to the seller's solicitor.
25. A copy of the Home Report was not provided to the Committee but it appeared from the evidence of Mr Beavan that it made no reference to necessary works even although Mr Beavan had been told by Mr Wilson that the problems giving rise to the need for the work to be done were generic and commonplace in tenements of the type of the block in which the Property was situated.
26. Whilst the pre-sale information might have gone into more detail about the work to be carried out, without the necessity for potential purchasers to request further information, particularly when some of the details and costings had been obtained by the factors, the information provided could not be described as false or misleading. The Committee was of the view that the pre-sale information should have alerted the Homeowners' solicitor to the need for obtaining further detailed information in accordance with the normal procedure. The Committee considered carefully whether a failure to produce the further details which were within the Factor's knowledge in the pre-sale report might

amount to misleading information but in view of the normal practice spoken to by the Factor, it was unable to so conclude.

27. The Committee recognised the frustration experienced by the Homeowners in the circumstances but it was unable to conclude that any action by the Factors had been the reason for such frustration. It appeared to the Committee that other agencies may have been of more assistance to the Homeowners in relation to the advice given to them either directly or indirectly.

28. By way of observation the Committee considered that the Factors might usefully examine the call centre procedures to avoid any confusion in the minds of prospective purchasers as to their status.

Appeals:

29. 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

Chairperson

5-12-14.
.....date