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

HOHP Ref: HOHP/PF/15/0055
HOHP/PF/15/0056
HOHP/PF/15/0057

The Parties

James Brydon, residing at 2 Milton, 41b Station Road, Carluke., ML8 5AD ("The applicant")

and

Newton Property Management, 87 Port Dundas Road, Glasgow, G4 0HF ("The respondent")

Unanimous Decision of the Homeowner Housing Committee

After considering the application from the home owner, and having due regard to the oral and documentary evidence presented, the Home Owners Housing Committee has determined that the Respondent has neither failed to carry out the property factor's duties, nor has the Respondent breached the Code of Conduct for Property Factors ("the code of conduct").

COMMITTEE MEMBERS

Paul Doyle (Chairperson)
Helen Barclay (Housing Member)

1. By application dated 23 April 2015 & 10 July 2015 the applicant applied to the Home Owners Housing Panel for a determination as to whether the respondent had failed to comply with the code of conduct imposed by s14 of the 2011 Act.

2. The application by the applicant stated that the applicant considered that the respondent had failed to comply with sections 5.2 and 5.4 of the code of conduct, because the respondent had failed to reimburse the applicant for works which (he says) are common repairs, the cost of which should be shared amongst all proprietors.

3. By letter dated 9 June 2015, the applicant expanded on his complaint and clarified that his complaint is restricted to sections 5.2 and 5.4 of code of conduct.

4. By interlocutor dated 19 October 2015 the President of the Home Owners Housing Panel intimated a decision to refer the application to a Home Owner Housing Committee. The Home Owners Housing Panel served notice of referral on both parties on 27 October 2015.

5. Following service of the notice of referral both parties made further written representations to the committee.

6. A hearing was held at Wellington House, Wellington Street, Glasgow, on 15 January 2016. All parties were timeously notified of the time, date and place of the hearing. The applicant was present (and unrepresented). Two Directors of the respondent company were present, Scott Cochrane and Derek MacDonald.

7. The applicant answered questions from committee members, then both Mr MacDonald and Mr Cochrane (for the respondent) answered committee members' questions, before committee members asked the applicant final questions to clarify the area of dispute. The Committee then reserved their determination.

FINDINGS IN FACT

8. The Committee finds the following facts to be established;

(a) The applicant is the owner of three flats entering from the common passage and stair, 2 Greenlaw Court, Yoker, Glasgow (Flats 1/1, 1/2, &1/3). Those three flats are all on the first-floor landing of a four-storey block of flats. There are three flats on the landing below the properties owned by the applicant, and three flats on the landing immediately above the properties owned by the applicant.

(b) The respondent is the property factor responsible for the care and maintenance of the common parts of the larger building of which the applicant's dwelling houses form part. In or about August 2012, the applicant was contacted by the agents for the proprietor of the ground floor flat immediately below one of his three flats to be told that water damage was caused to the ground floor flat by a leak from a property higher up in the same stair.

(c) On 26 August 2012 the applicant emailed the respondent reporting that the stair had a problem caused by water ingress and explaining that his own handyman would investigate the source of the leak. On 29 August 2012 the respondent emailed the applicant telling the applicant that they could not accept responsibility for costs incurred in relations to investigation work that he instructed.

(d) The handyman employed by the applicant inspected various flats on the stair, and gained access to the roof. His investigations indicated that the water leak was not coming from any of the properties owned by the applicant, but that a roof repair was necessary. The applicant passed those findings to the respondent, who organised the roof repair and divided the cost of that repair amongst the various proprietors of the larger building.

(e) The applicant has employed the same handyman to carry out various repairs throughout his ownership of the three properties. On each of those prior occasions, the applicant met the handyman's invoices and did not seek reimbursement.

(f) The applicant's handyman charged the applicant £175 & VAT (£210.00) for the work to trace the source of the leak in August 2012. On 22 November 2012 the applicant wrote to the respondent enclosing an estimate for repairs within flat 1/ 3, 2 Greenlaw Court, aforesaid, and also his handyman's invoice for £175 plus VAT (for the costs incurred to the applicant's handyman in attempting to trace the source of the leak causing damage to the ground floor flat at 2 Greenlaw Court, aforesaid, between August and October 2012).

(g) The respondent submitted a claim to the insurers for reimbursement of £210, only to be advised by the insurance brokers that the excess on the buildings policy is £250 - so that the insurers would not meet the cost of the invoice presented by the applicant with his letter 22 November 2012. On 15 July 2013 the applicant wrote to the respondent stating inter alia *"there is an excess on any claim so what was the point of claiming as the account was less?"*

(h) It is the respondent's practice to instruct common repairs and then divide the cost of the common repairs between the affected proprietors of the larger building. The respondents remain willing to apportion the costs incurred by the applicant amongst the neighbouring proprietors on the stair at 2 Greenlaw Court. The applicant has faced a number of invoices from the respondent for his share for each of his flatted dwelling-houses of the costs of common repairs on the stair at 2 Greenlaw Court. He has paid each of those invoices.

(i) The applicant claims £410 from the respondent as the cost incurred in investigating a leak between August and October 2012. The actual costs incurred total £210. The remaining £200 is the applicant's estimate of the value of the time that he has committed to instructing the tradesmen and corresponding with the respondent.

(j) Liability for repairs to common parts of the larger building of which the applicant's three flatted properties form parts is governed by a deed of conditions granted by Robertson Frame Ltd. Clause 3 (2) of that deed of conditions provides that the cost of works carried out to common parts *"…. shall be payable by the whole proprietors of flats in the same block in equal proportions".*

(k) The applicant has not approached any of the neighbouring proprietors on the common passage & stair, 2 Greenlaw Court to ask them to contribute to the costs that he incurred between August and October 2012.

REASONS FOR DECISION

9 (a) The hearing in this case took place during the morning of 15 January 2015. The applicant was present and was unrepresented. Derek McDonald and Scott Cochrane, two directors of the respondent's company attended for the respondent. After committee members were introduced to parties, and the hearing procedure was explained, the applicant answered questions from committee members identifying some of the documentary evidence produced and setting out his claim. Both Mr

Cochrane and Mr MacDonald answered questions from committee members, adopting the terms of the lengthy written submission provided and elaborating thereon. The applicant then answered questions in clarification.

(b) The applicant makes it clear in his application that the focus in this case is on sections 5.2 5.4 of the code of conduct. No complaint is made in relation to the property factor's duties. The applicant confirmed at the start of his oral evidence the what he seeks is reimbursement of £410.

(c) Most of the central facts relating of this case are not disputed. It is common ground that between August and October 2012 the applicant responded to a complaint from a neighbouring proprietor about a water leak, and instructed his own independent contractor (who he has regularly used to maintain his properties) to investigate the source of the water leak. He then reported his findings to the respondent. A claim for the charge made by the applicant's contractor was not entertained by the buildings insurers because the total costs incurred were £210 and there is an excess on the policy of £250.

(d) The applicant is aggrieved that he is now out-of-pocket, yet when-ever similar works are commissioned by the respondent he contributes an equal share (in accordance with the respondent's charging policy and in accordance with the deed of conditions). The real question posed by this application is *"why has the applicant not been reimbursed for the costs that he incurred?"*. The remedy sought by the applicant is payment to him by the respondent of £410.

(e) The respondent's position is that the applicant has never produced an invoice. That cannot be the case because the unchallenged documentary evidence indicates that the respondent's insurance brokers were able to tell the respondent that an insurance claim would not be successful because the invoice was for £210, when the excess on policy is £250. The committee finds that the true position is that the applicant has asked for payment of £410 and the difference between the vouched expense of £210 and the claim for £410 has not properly been quantified.

(f) The applicant was asked at the hearing to produce a copy of the invoice for which he seeks reimbursement. He was unable to do so. He was asked to account for the difference in value between the invoice of £210 and the claim of £410, and only then (for the first time) stated that he estimated his own time - dedicated to dealing with his contractor and pursuing a claim against the respondents - to be worth the balance of £200.

(g) Both Mr MacDonald and Mr Cochrane joined in telling committee members that, if they were given an invoice for works which could be viewed as common repairs, they would use their efforts to persuade neighbouring proprietor's to contribute an equal share to that cost in terms of the deed of conditions. They have not yet sought to apportion the £210 costs incurred by the applicant nor to recover 8 x 1/11 shares of that cost (from the remaining eight proprietors on the stair at 2 Greenlaw Court) but now that the extent of the claim is clarified the applicant may be able to expect them to do so.

(h) The applicant claims that the respondent had breached section 5.2 of the code of conduct, which says

> *"You must provide each homeowner with clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy. The terms of the policy may be supplied in the form of a summary of cover, but full details must be available for inspection on request at no charge, unless a paper or electronic copy is requested, in which case you may impose a reasonable charge for providing this."*

(i) The weight of reliable evidence indicates that the respondent has arranged buildings insurance and has provided the applicant and neighbouring proprietors with details of the insurance and details of the costs of that insurance. It is not part of the applicant's complaint that he has not been provided with details of the insurance premium or the manner in which it is calculated, or with details of insurance cover. On the facts as the committee find them to be in this case, section 5.2 of the code of conduct is not engaged. There is no evidence before the committee which would enable them to make a finding that section 5.2 of the code of conduct has been breached by the respondent.

(j) The applicant claims that the respondent has breached section 5.4 of the code of conduct which says

> *"If applicable, you must have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly. If homeowners are responsible for submitting claims on their own behalf (for example, for private or internal works), you must supply all information that they reasonably require in order to be able to do so."*

(k) The weight of reliable evidence indicates that the respondent does have a procedure in place for intimating insurance claims. It was as part of that procedure that the claim for reimbursement of the applicant's handyman's invoice was intimated in November 2012 and rejected on 28 November 2012. The applicant complains (in his oral evidence) that the respondent should not have simply accepted the word of an insurance broker that the claim could not succeed, but should have persevered and pursued the underwriters. The applicants oral evidence on 15 January 2016 is at odds with the contents of his letter of 15 July 2013, in which he questioned the logic of submitting an insurance claim which could not meet with success.

(l) It is not part of the applicant's claim that any other part of the code of conduct has breached by the respondent. The committee can therefore only reach the conclusion that the respondent has not breached the terms of the code of conduct for property factors. A property factor enforcement order is not therefore necessary.

(m) In reality, this is a dispute between the parties because the applicant promptly pays all of the respondent's invoices - including charges for common repairs to the larger building of which his properties form part -- and the applicant has not been reimbursed for the costs that he incurred in carrying out maintenance which blossomed into a common repair. The applicant has a right of relief against his

neighbouring proprietors. The respondent (at the hearing before the committee) indicated a willingness to assist the applicant with that the right of relief. The fact that the applicant has not exercised his right of relief does not automatically mean that the respondent has breached the code of conduct.

DECISION

10 A property factor enforcement order is not necessary.

Appeals

11 The parties' attention is drawn to the terms of section 21 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..."*

Paul Doyle

Signed
Chairperson

Date 18/01/2016