



**DETERMINATION BY THE HOMEOWNER HOUSING COMMITTEE
UNDER
PROPERTY FACTORS (SCOTLAND) ACT 2011
(the "Act")**

hohp Ref: HOHP/PF/13/0254

Re Landscape Contract Area – Holmes Park Development, Joseph Cumming Gardens, Broxburn, West Lothian (the "Landscaped Area")

The Parties:-

Mr David McLeod, 13 Joseph Cumming Gardens, Broxburn, West Lothian EH52 5AN (the "Homeowner")

Charles White Limited, Citypoint, 65 Haymarket Terrace, Edinburgh EH12 5HD (the "Factor")

Decision issued under Section 21 (1) of the Property Factors (Scotland) Act 2011 (the "Act") by a Committee of the Homeowner Housing Panel in an Application by the Homeowner under Section 17 of the Act.

Committee Members

Jamie Millar (Chairman) and Colin Campbell (Housing Member).

This decision should be read in conjunction with the decisions of the Committee dated 31 March 2014 and 22 April 2014

In the decision of 22 April 2014, the Committee decided to make the Property Factor Enforcement Order in the terms proposed in the Committee's decision of 31 March 2014 subject to the deletion of the words "issued by the developer" where they appeared in lines 2 and 3 of the draft Property Factor Enforcement Order. On 22 April 2014 the following Property Factor Enforcement Notice was issued:-

Within six weeks from the date of issue of the Property Factor Enforcement Order the Factor must obtain from Lawsons Premier Groundcare or others a copy of the landscaping contract appointing Lawsons Premier Groundcare as the landscaping contractor for Holmes Park Development, Joseph Cumming Gardens, Broxburn, West Lothian together with any contract amendments and provide a copy of the landscaping contract and any amendments to the Homeowner and to the Homeowner Housing Panel at no cost to the Homeowner or to the Homeowner Housing Panel.

Representations received, findings and reasons

Representations dated 29 April 2014 were received from the Homeowner. The Homeowner contended in his representations that the decision of the Committee was indicative that the Factor and not the developer had been involved in the tendering exercise and invited the Committee to reconsider its decision. The Committee noted that it had no discretion to review its decision and even if it did have such a discretion, the date of the tendering exercise pre-dated the commencement of the Act and accordingly the representations of the Homeowner were noted by the Committee but were not acted on. The Homeowner was advised accordingly. A copy of the representations from the Homeowner and the Committee's response were sent to the Factor.

Representations dated 7 May 2014 were received from the Factor following the issue of the Property Factor Enforcement Order. In their representations, the Factor reiterated that the ground maintenance contract was a rolling contract and not a fixed contract, that the contract could be cancelled on one month's notice from either party and that there was no signed contract which was development specific. The Factor provided a copy of the schedule which the contractor required to follow to ensure payment for the works. The Factor advised that the Factor had asked the contractor for a copy of their letter of appointment as contractor but the contractor did not have a copy after such a long period of time.

The Factor re-submitted with their representations a copy of the letter dated 23 January 2008 from the developer confirming the appointment of the Factor.

The Factor advised the Committee that the grounds maintenance contract had been re-tendered and a majority of proprietors had voted to retain the maintenance contract with Lawson's Premier Groundcare.

Following receipt of these representations, the Committee asked the Factor to provide further information as follows:-

1. Please provide to the Committee and to the Homeowner a copy of your letter to Lawson's Premier Ground Care Limited seeking a copy of the contract appointing Lawson's Premier Ground Care Limited as the landscaping contractor for the Holmes Park Development together with any contract amendments.
2. Please provide to the Committee and to the Homeowner a copy of the reply from Lawson's Ground Care Limited to your letter.
3. The Committee has noted that, in the second paragraph of your letter of 7 May you state that "There is no signed contract in place which is development specific." The Committee refers to that phrase and requests you to provide to the Committee and to the Homeowner a copy of any contract which you have with Lawson's Premier Ground Care Limited which relates, in part, to work undertaken at the Holmes Park Development. You may redact any information within the contract

that has no relevance to the particular development. In particular, the Committee is seeking that you produce to the Committee and to the Homeowner evidence to back up the assertion that there is a rolling contract that can be cancelled with one month's notice from either party.

The Factor responded to these requests by letter dated 23 May 2014. In response to request 1 the Factor stated that as previously advised, there was no copy of a letter to the contractor appointing them to undertake the maintenance of the common areas, the Factor was unaware of any written request to the contractor for a copy of such a letter but the factor had contacted the contractor by telephone to ask if the contractor had such a letter and been advised that the contractor did not have such a letter.

In response to request 2 the Factor stated that the Factor was slightly puzzled by the Committee's question relating to a response from the contractor as there was no record of a letter to the contractor.

In response to request 3 the Factor stated that there was no signed contract with the contractor specific to the Development and the Factor was unaware of any other associated signed contract with the contractor for the development. The Factor stated that although the Factor did not have a formal signed contract in place with the contractor, it was the Factor's custom and practice with all maintenance contracts such as this that the contracts are on a rolling monthly basis and could be terminated by either party with one month's notice. The Factor produced a copy of an e mail from a director of the contractor confirming that this was the contractor's understanding.

Copies of the representations from the Factor and the supplementary response from the Factor were copied to the Homeowner.

On 10 June 2014 HOHP issued the usual compliance letters to the Homeowner and to the Factor inviting each to indicate whether they agreed or disagreed that the actions required by the PFEO had been completed and whether they wanted the Committee to consider a variation or revocation of the PFEO.

The Factor responded by indicating that the Factor agreed that the actions required by the PFEO had been completed but did not to the question whether they wanted the Committee to consider a variation or revocation of the PFEO.

The Homeowner responded by indicating that the Homeowner disagreed that the actions required by the PFEO had been completed and requesting that the Committee to consider a variation of the PFEO

Following receipt of the responses to the PFEO and the responses to the compliance letters, the Committee is not satisfied that the Property Factor Enforcement Order has been complied with. The Committee has noted that the Factor is unable to obtain a copy of the contract with the landscape contractor but the Committee is of the view that Factor ought to be able to

produce a document which provides a clear and unambiguous written statement describing ongoing arrangements, both technical and financial, together with clear a statement on arrangements to vary rates or terminate the contract. If that were produced, and copied to the Homeowner, then it might give the Homeowner reassurance that the Factor has information to manage ongoing arrangements, particularly the financial aspects.

Decision

Further to the representations and information received from the Factor and the representations received from the Homeowner, the Committee has decided to vary the Property Factor Enforcement Order.

The decision is unanimous.

Property Factor Enforcement Order (as varied)

Within six weeks from the date of issue of the Property Factor Enforcement Order as varied, in the absence of any copy of the landscaping contract appointing Lawsons Premier Groundcare as the landscaping contractor for Holmes Park Development, Joseph Cumming Gardens, Broxburn, West Lothian together with any contract amendments, the Factor is required to provide a clear and unambiguous written statement of the terms of the ongoing arrangements with Lawsons Premier Groundcare, both technical and financial whether by custom and practice or not, together with (a) a written statement of the reasons why the Factor believes that any arrangement with Lawsons Premier Groundcare is on a monthly basis and can be terminated by either party on one month's notice and (b) a written statement of the arrangements used for any variation in the terms of the arrangements whether a variation in the scope of the works or a variation of the rates charged. For the avoidance of doubt, the foregoing documentation is to be provided to the Committee with a copy to the Homeowner.

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

Right of Appeal

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. Section 22 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."

Jamie Millar

Chairman

21 July 2014
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Date