



DECISION OF

Tony Kelly

**ON AN APPEAL
IN THE CASE OF**

Mr John Blair, Flat 3/2, 87 Dunlop Street, Glasgow, G1 4ET

Appellant

- and -

James Gibb Property Management Limited t/a James Gibb Residential Factors, Bellahouston
Business Centre, 423 Paisley Road West, Glasgow, G51 1PZ

per BTO Solicitors LLP,

48 St Vincent Street, Glasgow, G2 5HS

Respondent



Glasgow, 1 March 2023

Decision

The Upper Tribunal upholds the appeal and proposes to remake the decision of the First Tier Tribunal. In order to do so it ordains parties within 7 days of the date hereof to make submissions as to the making of a fresh Property Factors' Enforcement Order.

Introduction

[1] By decision dated 21 September 2022 the First Tier Tribunal ("the FtT") determined upon an application submitted by Mr Blair ("the home owner"), that James Gibb Residential Factors ("the property factor"), breached its duties in terms of the Code of Conduct for Property Factors and the Deed of Conditions which governed the management of the property in which he resided. It made a Property Factors' Enforcement Order ("PFEO") which was subsequently the subject of correction.

[2] The home owner submitted that the PFEO originally made by the Tribunal was erroneous.

[3] After the order was corrected the home owner proceeded with an appeal. His application for permission to appeal was granted by the FtT on 2 November 2022. The ground of appeal which was granted permission by the FtT to proceed was in the following terms:

"The Tribunal erred in law in choosing a starting date for enforcement (i.e. November 2020) which is a date in the middle of when the Factor took



control of the building. The enforcement date should have been November 2019 when the Factor took control of the building.”

Hearing

[4] At the hearing of the appeal on 7 February 2023 Mr Blair was personally present and the respondent represented by Mr Kane, solicitor.

Appellant

[5] Mr Blair noted that Life Property Management (“LPM”) had taken over the management of the property in November 2019. The respondent was the successor to LPM. The predecessor of LPM secured insurance cover which ran from November 2019 to November 2020. The FtT made a finding in fact that the building insurance had been arranged by the respondent since November 2020. Whilst this had been correct, the property factor had, from November 2019 to November 2020, issued invoices which covered charges for insurance. It was not logical to circumscribe the effect of the PFEO to when arrangements were made by this property factor, the respondent, to arrange insurance. It collected contributions from the various home owners to cover the cost of the insurance of the building arranged by its predecessor as property factor. Its obligation to apportion these costs arose from its appointment as factors rather than from when it made arrangements for insurance of the building.

Respondent

[6] On behalf of the respondent Mr Kane moved the Upper Tribunal (“UT”) to refuse the appeal and to adhere to the terms of the PFEO already made. Finding in fact 9 was a finding open to the FtT. Mr Kane conceded that no express basis could be found in the FtT’s decision



of 21 September 2022 for the selection of that date other than that was the date from and after the respondent made arrangements for buildings insurance at the property. The extent of the temporal coverage of the PFEO was a discretionary matter (see the Property Factors (Scotland) Act 2011). That was within the bands of reasonableness of the FtT's decision-making and it ought not to be interfered with.

Decision

[7] Finding in fact 9, that the property factor had made arrangements for insurance from November 2020 onwards is relatively uncontroversial. It is not possible to ascertain why the factor's duties in terms of the Deed of Conditions required to be complied with only relative to the certificate of insurance arranged by it personally. Having taken over the factoring of the building in November 2019 it inherited building insurance already in place. However, payment of the premiums under that policy had to be made by the home owners within the property. The property factor collected the premiums.

[8] The FtT appears to have arrived at the date selected by it on the basis that any breach of the duties incumbent upon the factor only became its responsibility from and after its arrangement of the buildings insurance policy in November 2020.

[9] In granting permission to appeal some further assistance is obtained as to the approach of the FtT. It is doubtful whether the FtT should flesh out its reasoning within the body of a decision upon an application for permission to appeal. The FtT says that sections 5.3 to 5.9 of the 2021 Code:

“..are only engaged if the agreement with home owners includes arranging buildings insurance.”



[10] It is not in doubt that the Code of Conduct for Property Factors has application given the Deed of Conditions places an obligation upon the property factor relative to this matter. The Deed of Conditions records the agreement between the home owners and the property factor. This appears to be the basis upon which the FtT selected November 2020 as the commencement date of the PFEO. The FtT has erred in this regard in that it misdirected itself in relation to the application of the Code of Conduct.

[11] I was urged to re-make the decision in light of the delay which has been occasioned thus far. Before so doing I was asked to invite written submissions from parties as to information regarding the making of that Order.

[12] I now do so and make the following order:

The Upper Tribunal ordains parties within 7 days of the date hereof to make submissions as to the making of a fresh PFEO.

Member