

OUR REF: SYH/JH/SYH/ELE/15/1 3206632V1

YOUR REF: GDDC/MLS/AN/CIT012/002

31 July 2015

FAO Graham Craik
Levy & McRae
266 St Vincent Street
Glasgow
G2 5RL

DX GW149 Glasgow

BY POST AND BY EMAIL

Dear Sirs

The Element Newhaven

We act on behalf of the Element Newhaven Owners' Association (the "**Association**") acting through its committee TENOA (the "**Committee**") and refer to your letter to the "Owners of the Element" dated 14 July 2015 .

City Factoring Limited ("**City**") was engaged by the Association to provide factoring services in relation to the Development called the Element Newhaven (the "**Development**"). The terms on which City would provide its factoring services are contained in its tender dated 23 July 2014 and the Service Level Agreement annexed by City to its tender (together the "**Tender**"). The Tender was accepted by the Association and City began work on or around 21 August 2014.

Since August 2014 City has committed a series of material breaches of contract. These breaches include, but are not limited to, the following:

1. City has failed to secure a significant amount of unpaid factoring fees from proprietors of the dwellings on the Development;
2. City has failed to secure a significant amount of unpaid additional maintenance fund payments from proprietors of the dwellings on the Development;
3. City has not completed the required work to address the serious issues with the electrics in the past 12 months;
4. City has not undertaken any fire risk assessment in the past 12 months as advised by the insurance broker;
5. City has allowed a significant debt to Scottish Power and Scottish Gas for electrical supply to accumulate resulting in a threat of disconnection of the supply on several occasions by Scottish Power;
6. City ignored a direct instruction from the Committee in March 2015 to make a payment to Scottish Power;
7. City has failed to provide the Association or the Committee with full details of creditors and the sums owing to the same;

Edinburgh

Excel House, 30 Seemple Street, Edinburgh EH3 8BL
Tel: 0131 229 5046 Fax: 0131 229 0849 DX ED207 EDINBURGH

Glasgow

Capella, 60 York Street, Glasgow G2 8JX
Tel: 0141 303 1100 Fax: 0141 332 8886 DX GW70 GLASGOW

macroberts.com

MacRoberts LLP is a limited liability partnership registered in Scotland (SO301699)

Registered office at Excel House, 30 Seemple Street, Edinburgh EH3 8BL.

Any reference to a partner in relation to MacRoberts LLP means a member of MacRoberts LLP

A list of members is available for inspection at each of our offices

MacRoberts is a registered trademark of MacRoberts LLP

8. City has not produced monthly accounts;
9. City refused to allow the Committee to instruct an audit of the owners' account which is held by City;
10. City has failed to undertake a critical risk analysis of key areas such as lifts, power supply, maintenance of water pumps, car park extractor fans and dry riser maintenance;
11. City has failed to produce quotes, to be seen by the Committee, from contractors for work planned nor has the Committee given authorisation for works to be undertaken or for payment of work completed;
12. City has failed to address serious health and safety issues including a significant number of emergency lights in the staircases of each block remaining non-operational despite numerous requests for them to be fixed;
13. City has failed to advise the Committee that Orona, which was responsible for the maintenance of the lifts, had withdrawn its services on the basis it has not been paid;
14. City has failed to advise the Committee that Chubb, which was responsible for the maintenance of dry risers etc, had withdrawn its services on the basis it has not been paid;
15. City has failed to provide updates on the completion of outstanding works covered under the insurance claim;
16. City has allocated some income received for an outstanding insurance claim to cover factoring costs, resulting in some of the works covered by the insurance claim remaining outstanding;
17. City has generally failed to respond to many of the numerous emails sent by the Committee requesting updates on various outstanding issues.

In light of the material breaches of contract by City it was determined by the Owners (being the proprietor(s) of any flat or dwelling house within the Development) at an Annual General Meeting on 15 July 2015 (the "**AGM**") to terminate City's contract for the provision of factoring services with immediate effect. A letter dated 16 July 2015 was sent from this firm to City confirming the termination of their role as factor.

For the avoidance of doubt the meeting called by the Committee was not a meeting of proprietors in terms of section 15 of the Deed. The meeting was an Annual General Meeting called in terms of clauses 6 and 7 of the Constitution of the Association (the "**Constitution**"), a copy of which is enclosed. Clause 6 of the Constitution provides that an AGM shall be held once every calendar year and that not more than fifteen months shall elapse between the holding of AGMs. Clause 7 sets out that the purpose of an AGM is (amongst other things) to conduct any competent business.

Further, Clause 8 of the Constitution provides that all matters, unless otherwise specifically provided for, shall be decided by a majority of the members of the Association voting.

Accordingly, the AGM was legitimately held and the decision reached at it by the majority of members of the Association to remove City as factor, was enforceable by the Committee.

Accordingly, as stated in our letter of 16 July 2015 to City, no further work should be undertaken by City and all City personnel should be removed from the Development. City should cease to make contact with the Owners of the Development. Further, City should make no further transaction on the

bank accounts which relate to the Development and it should make available all documentation relating to the Development, including but not limited to all invoices, bills, receipts, contracts, insurance paper works and any other paper works which pertains to the factoring of the Development.

In addition, the Association now seeks repayment of all those sums retained by City which belong to the Owners of the Development, within 7 days from the date of this letter (that is by 7 August 2015).

Despite this clear termination of contract, we understand that Alex McDivitt of City has repeatedly attended the Development, obtained entry into the blocks of the Development and occupied the office space at the Ground Floor, Block 9, Western Harbour View (the "Office"). City's authority to access the Development and use the Office was contingent upon it occupying the role of factor of the Development, notably no lease was ever granted to City in relation to the Office. As City is no longer the factor of the Development neither Mr McDivitt nor any of City's personnel is permitted to attend or gain access to the Development, including the blocks on the Development and the Office, without the prior authorisation of the Committee. To do otherwise will amount to trespass.

Should City fail to abide with the above demands, the Association will have no choice but to seek an interdict preventing City contacting the Owners of the Development and holding itself out as the factor of the Development and to commence an action for recovery of all those sums presently retained by City which belong to the Owners of the Development.

We trust that this clarifies the position and that City will now no longer continue to misrepresent itself as factor of the Development.

Yours faithfully



MacRoberts LLP

Enc.