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Our Ref: Legal.Lit/EA/RTM/0115/AG

The Directors of Tatton Court RTM Company Limited
29-31 The Downs
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WA14 2QD

22 April 2016

First Class Post

Dear Sirs,

Re: Right to Manage – Tatton Court, 35 Derby Road, Stockport, SK4 4NL

Thank you for your letter dated 29th March 2016, addressed to Ms. E Fingleton.

The various RTM Claim Notices served on our Landlord client, Proxima GR Properties Limited ("Proxima"), have to date been dealt with by Ms. Fingleton, who is an in-house solicitor working for Estates & Management Limited, and who signed the Counter Notices which have been served to date. Ms. Fingleton is now on maternity leave. We confirm, for the avoidance of doubt, that Proxima has authorised Estates & Management Limited ("E&M") to act on its behalf as its agent, including for the purposes of dealing with the right to manage claim.

You have raised two concerns which we consider should be addressed separately. Firstly, you refer to the issue of appointing a particular managing agent to replace the current agent, FirstPort Retirement ("FirstPort"), which you say led to the RTM claim being pursued. Secondly, you have criticised our client for denying your entitlement to acquire the right to manage the development to date.

Proposed change of agent

The Residents Association ("RA") for Tatton Court originally wrote to us on 22 May 2015 to say that the residents wanted to replace the current managing agent, FirstPort Retirement ("FirstPort"), and appoint Select Retirement Service Limited ("SRS"). This company was established by Susan Earnshaw, a former employee of Peverel Retirement (now called FirstPort Retirement), who we understand was the local Property Manager for Tatton Court during her employment with Peverel Retirement.

It transpired that SRS had been to Tatton Court and purported to conduct a residents' ballot relating to the future management of the development without approaching our client for consent to do so, or even offering the courtesy of prior notification. Our client is, as set out below, perfectly willing to work with residents to find a suitable alternative managing agent where residents are unhappy with the existing service being provided, but cannot always agree with the choice of agent preferred by residents. This is, unfortunately, such a case, and it is disappointing that the RA have not so far been prepared to allow our client to discuss the matter openly and transparently with the residents body, or offer a choice of agents which our client considers would be suitable, based on the standards and requirements set out below.

We can confirm that we had previously been in correspondence, and met with Ms. Earnshaw of SRS in April 2015, to discuss a number of similar direct marketing approaches she had made to



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residents of developments owned by our Landlord clients within the local area she used to be responsible for as a Property Manager with Peverel Retirement. Our clients were concerned at the way in which these approaches were being made, but wanted to meet with Ms. Earnshaw in the hope that SRS might be an agent our clients would be willing to voluntarily appoint to manage properties in the future.

Our clients' usual requirements for approving agents to manage property include membership of, or accreditation by, one of the recognised industry bodies involved in regulation and professional standards, such as ARMA, RICS or ARHM. This accreditation provides comfort that, amongst other things, the agent has robust procedures and practices which have been scrutinised by such an industry body, and that they are required to adhere to certain standards of conduct and practise to retain their status with that body. For obvious reasons our clients also expect their appointed agents to work with us cooperatively to meet residents' needs, as with any normal agent/client relationship.

Further, wherever possible we look to appoint established agents with an existing track record of managing similar properties. Unfortunately SRS did not, and we believe still do not meet any of these requirements, and our client does not consider SRS suitable for appointment as agent of Tatton Court. Whilst we appreciate Ms. Earnshaw has considerable experience as a Property Manager, there are a number of other challenges and responsibilities in operating a managing agent business.

In response to your letter of 22 May 2015, our Retirement Liaison Manager, Louise Smith, issued Customer Satisfaction Surveys on 9 June 2015 to all residents at Tatton Court in order to canvass their views about the management service being provided by FirstPort. The response rate to these surveys was very low, and there were few significant complaints about FirstPort in the responses.

Miss Smith then received a letter dated 26 June 2015 from the RA setting out a number of complaints about FirstPort, and re-stating that the residents wanted a change of managing agent. As a result, Miss Smith arranged to visit Tatton Court on 23 July 2015 hoping to meet with residents to discuss the complaints and proposed appointment of SRS. A letter was sent to all residents on 9 July 2015 regarding the intended meeting.

Unfortunately Miss Smith then received a somewhat hostile letter from Mr Wright, the Chair of the RA dated 10 July 2016, stating that none of the residents wished to meet with her, and that they had already decided to appoint SRS, and would seek right to manage if our client would not agree to the appointment. Miss Smith then corresponded further with the RA Chair, and made clear that she wanted to discuss the complaints and requested appointment of SRS in person with residents. She attended the development on 8 September 2015 to try and do so, but unfortunately the residents were not prepared to speak to her. Had she had a proper opportunity to speak to the residents, including the members of the RA, the concerns about SRS set out above could have been discussed.

We note that your company was already incorporated on 27 August 2015, registered at the offices of SRS. In her letter to residents of 10 September 2015, Miss Smith explained again why she had wanted to meet with residents, and confirmed that our client was happy to work with them to appoint an alternative agent. The response from the Chair of the RA, dated 15 September 2015, simply stated that the residents had decided to pursue RTM in order to compel the appointment of SRS.

For the avoidance of doubt, our client remains prepared to replace FirstPort as agent for Tatton Court, and remains prepared to work with the residents to appoint a replacement agent. Our client would have replaced FirstPort some months ago had discussions with the residents been more constructive. We are not however prepared to agree the appointment of SRS, for the reasons stated above. We are very happy to discuss these reasons in more detail, and suggest a range of

alternative experienced agents which operate within the Stockport area, from which the residents could make the final choice by way of ballot after hearing from each candidate. We consider this is a fair, open and transparent way of ensuring both the residents' rights and interests as well as those of the Landlord are properly protected.

We look forward to hearing from you as to whether the residents are prepared to now engage with us and start this appointment process so that further time and costs involved in the RTM process can be avoided.

The responses to your RTM Claim Notices

Both we and our client are very much aware that, subject to compliance with the legislation, a properly constituted RTM Company can acquire the right to manage a property without needing to show fault with the existing Manager or Landlord. However the transfer of management responsibilities to the RTM Company is a significant matter and our client wishes to ensure that the claim is fully compliant, so that all such responsibilities and liabilities are fully and effectively transferred. It is not simply the right to receive the ground rent that our client considers important, but also ensuring that the property is well managed, maintained and that both the residents' and the Landlord's interests are met.

For these reasons, in reviewing and assessing the merits of any claim to acquire the right to manage a property, we are instructed to ensure that the RTM Company has properly complied with the procedure and requirements set out in the Commonhold and Leasehold Reform Act 2002 and ancillary regulations. This is not a case of being deliberately awkward or a stalling tactic as you suggest. If the RTM Company follows the correct procedure and complies with the legislation, the Landlord cannot prevent the claim from succeeding. It is for this reason that compliance with all those legislative requirements is so important, and even comparatively minor errors result in Courts and Tribunals determining claims as invalid.

In this case, SRS has dealt with the RTM claims on your behalf, and all correspondence has been signed by Jonathan Earnshaw, a Director of SRS. On each occasion a number of failures to comply correctly with the procedure under the 2002 Act have been apparent in the claims, and these have been identified in the Counter Notices served, after carefully examining the evidence of compliance requested from Mr Earnshaw in order to support each claim.

Please do consider what we have said about our willingness to appoint an alternative agent. It is regrettable that on this occasion we have not been given the chance to work with the residents to find an acceptable compromise. Our client is, as we say above, perfectly willing to do so with a view to appointing a new agent suitable for both parties as soon as reasonably practicable.

We look forward to hearing from you.

Yours faithfully,



Estates & Management Ltd.

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