

Columbus Point (Management Company) Limited

Mr Bruno Di Lieto Water Feature Action Group
Mr Anton Levy, Columbus Point Resident's Association
Mr George Gatland, Dominica Court Resident's Association

Persimmon Homes South Coast
100 Wickham Road
Fareham
Hampshire
PO16 7HT

Our ref: LT054/0575/0575/359006.84

17th February 2014

Dear Mr Lieto, Mr Levy and Mr Gatland

Without Prejudice Save as to Costs and Subject to Contract
Columbus Point (Management Company) Ltd

I write in my capacity as a director of CPMCL. Where I comment in this letter in relation to offers that have been made on behalf of Aria Homes Ltd ("Aria") or Persimmon Homes Limited ("Persimmon"), it is important for you to remember that I am not a director of either of those companies. The views I express on behalf of Aria and Persimmon are made following discussions I have had with the appropriate officers of those companies, who have authorised me to make the comments for them.

Thank you for your letter of 13 February 2014. I hope you will forgive the formality, but our solicitors have informed me that it is important that any correspondence between us relating to the proposal should expressly be marked "without prejudice save as to costs and subject to contract", as was set out in paragraph 1 of the proposal dated 10 February 2014. I have taken your letter to be part of a course of correspondence that is privileged in that way.

My thoughts on the questions you raise are as follows:

Background

Paragraph B. The potential dates for satisfaction have been left blank because it is very difficult at present to understand what dates would be workable, taking into account that it is likely that legal proceedings will be issued and on-going before any of the relevant dates arise. When I first put this proposal to your groups in October of last year I specified various dates, on the basis that we had a 3 - 4 month period during which the Deeds necessary to satisfy the condition could be gathered by your groups, to seek to satisfy the condition I had set out. Of course the original proposal was rejected and so we have lost the 3 - 4 month period that I then had in mind. I have also been influenced by the fact that the communications I have had with EBC on this matter have indicated that the expectation from "your side" is that you believe you will only be able to deliver around 150-200 Deeds, which is well below the condition figure. It is for that reason that I think it is more sensible at this stage to concentrate on paragraph 4.1 of the proposal. If we can get past that basic stage, we can then sensibly consider what the further dates for the purpose of the rest of the proposal should be. Please be assured that if we can get past paragraph 4.1 of the proposal, it would certainly not be my intention that the further stage dates would be "open ended"; quite the contrary, I would be looking for a short timetable for the stages thereafter.

Paragraph C. I am not sure what you mean by this question. I agree that the 3 of you are serious in your attempts to try to reach a satisfactory resolution. However, as I have said before, the difficulty I have is that I have no idea of the number of other owners who are engaged, either actively or otherwise, in any of the on-going discussions. I have met a number of other owners around the table at Eastbourne Borough Council but that is of course only a very small fraction of the number of owners who are involved in the dispute. The reason I included paragraph C in the proposal is to

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make the position perfectly clear. I understand from our solicitors that a number of owners have responded to the letters of claim that have been sent to them to indicate that they are awaiting the outcome of "on-going negotiations". We have engaged in negotiations with you for a very long time. In view of the lack of progress, the time has now come to progress matters through the court. The commencement of court proceedings will not necessarily mean the end of any discussions as I will continue to be willing to discuss matters on a without prejudice and subject to contract basis but all owners must understand that the letters they have received mean what they say and cannot be ignored.

The Proposal

- 2.1 The payment of £150,000 would only be made if the condition set out in the proposal is satisfied. However, there would be no condition imposed on the money once paid.
- 2.2 Yes.
- 2.3 I cannot give you a precise list of the works that will be carried out for the rest of the service charge year, because that of course depends on what work is required. In general terms, however, the works will be those that are outlined in the budget for the service charge year 1 May 2013 – 30 April 2014 prepared by Fell Reynolds, and which is the subject of the interim service charge invoice that has been delivered to all owners.
- 2.3 (second paragraph). No. If I may say so, I think the word "handover" confuses matters. The Water Feature has already been handed over to CPMCL.
- 2.4 My points below follow the sequential questions you ask under this number:
- Yes, together with any other owners who are registered as members of the company between now and the time that CPMCL is handed over. A number of owners have entered into New Deeds of Covenant since the letters of claim were sent out and so there are already more than 311 members.
 - The company's Articles can only be amended by special resolution. A number of owners (including I believe at least two of the signatories to your letter) have made allegations against me personally that I have breached my duties as a director of the company. As you know I deny that. My fellow director of CPMCL and I will need to account of our duties as directors of the company when we consider any amendment of the Articles. In general terms my present view is that Article 3 of Articles of Association could be changed in the way you mention if the condition in the proposal is satisfied; if that is the case then the directors of CPMCL should be able to satisfy ourselves that a very high percentage (if not 100%) of the members of the company are in favour of such an amendment.
 - Yes.
 - It does at present and will continue to have even if the proposal proceeds to completion. CPMCL's primary contractual obligations arise under the Deeds of Covenant CPMCL has entered into with yourselves and other owners. Those obligations will be replaced by the contractual obligations contained in the New Deeds of Covenant, if the proposal proceeds. CPMCL presently has liabilities to repay Persimmon for the loans that Persimmon has made to enable CPMCL to carry out its contractual obligations in relation to the Water Feature. The liabilities in respect of the loan would be written off to facilitate the matters set out in paragraphs 2.1 – 2.3 of the proposal.
- 2.5 Again, following the sequential paragraphs in your letter:
- The Water Feature would be transferred with a full title guarantee. I do not know whether there are any encumbrances on the title but the intention would be to transfer the freehold subject to anything that is on the title, in the usual way.

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- Not as far as I am aware.
- Yes, but see next bullet point.
- Yes, if that is what the proposed new directors of CPMCL wish to happen. If the condition is satisfied, it will of course be necessary for new directors of CPMCL to come forward from the owner members. At that stage it will be my and Matt Paine's intention as the directors of CPMCL, to consult with the owner members who are proposed to become the new directors after handover of the company. Aria has confirmed to Matt Paine and me that it is prepared to accept a surrender of the lease if the condition is satisfied. If, following such consultation, the proposed new directors of CPMCL wish to proceed with a surrender then that will be possible.
- Confirmed.
- I attach a copy of the plan to the CPMCL lease, which shows the boundaries of the Water Feature. You will see that the path and the entrance ways are included.

The Condition

3.1

- The intention of the proposal is that your groups will deliver 295 New Deeds of Covenant. It is therefore not the intention that the owners who have already signed a New Deed would be counted towards that 295.
- There are currently 54 owners who have entered into the New Deed of Covenant, although that number is increasing on a daily basis at present.
- As you will be aware from the letters of claim you have all received, the question of whether any particular owner is liable does not depend solely on the question of whether they have entered into any of the various forms of Deed of Covenant. CPMCL does not know precisely how many owners have Deeds of Covenant; there is uncertainty as to whether certain owners have entered into a Deed of Covenant. Where there is doubt, we have asked owners to confirm whether they have signed a Deed yet very few owners have chosen to answer that question. That is a matter that will need to be pursued in the court process.
- CPMCL believes that the prospects of establishing that all relevant owners at Columbus Point are liable to pay service charge are good. However, it is not for me to provide you with any advice or assurance regarding that matter. Many owners have written to us denying any liability to make payment for the service charge; indeed at least one of the signatories to your letter has written to deny such liability. The purpose of the court proceedings that CPMCL (and Aria) envisage commencing pursuant to the letters of claim is to obtain a variety of court declarations, to establish the legal basis for the liability of all relevant owners to make payments, whether the liability arises under Deeds of Covenant signed by the present owner, obligations arising under Deeds of Covenant signed by previous owners, the Articles of Association of CPMCL, or otherwise.
- I do not think I can help you with your question relating to any shortfall in service charge receipts. If the condition in the proposal is satisfied, CPMCL would have no service charge shortfall and would have £150,000 in its bank account. Whether a shortfall arose thereafter would depend on many factors, not least the number of New Deeds that had been entered into, and the legal liability of any owners who had chosen not to enter into a New Deed of Covenant. If your question is whether any shortfall in service charge recovery would be funded by Aria or Persimmon, I have been told by those two companies that the answer is "no".
- I think it is important that the true cost of running the Water Feature is recognised by the owners. At the recent meeting there were suggestions that owners would agree to make

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fixed contributions to the service charge for the Water Feature, yet the fixed amounts suggested would not provide sufficient funds to cover the costs that have been budgeted. The scheme for funding the Water Feature has always been that the relevant owners should pay the actual costs that are required.

- If we get to a position where there are only a small number of the 369 relevant owners who have not entered into a New Deed of Covenant, it may be that I will be able to persuade Persimmon to continue to fund on-going litigation by CPMCL against those owners, to seek to establish their liability to make payments. However, I can say no more about that at this stage as any decision will be wholly dependant on how many New Deeds of Covenant have been entered into at the relevant time.
- The amendment you propose is (I am informed) not acceptable to Aria.
- As a director of CPMCL I cannot understand why the owner members of the company would wish to try to bring any claim against CPMCL of the nature that may be envisaged by the additional sentence that you have added to the form of the New Deed of Covenant. CPMCL's only assets are the service charges that it recovers from the owners; the amendment you are proposing would appear simply to invite a situation where the company is placed into conflict with some of its owner members, where the owner members are the ones funding the company in any case.

The Stages

4.2 I am informed that Aria will be prepared to consider some degree of consultation on the stage dates. However, ultimately the stage dates will be fixed by Aria, as they will form important parts of the offer. It seems very likely that legal proceedings will be underway and substantial legal costs will be incurred in relation to those proceedings. The intention will therefore be to fix the timescale for the stages to be as short as possible so that there is a maximum cost saving in the legal proceedings if the condition can be satisfied.

4.5 Yes, correct.

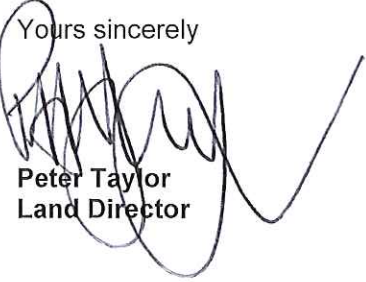
Works

5.

- I do not have a timetable at present and will revert to you when one is available.
- It is not for Aria, Persimmon or Clarke Willmott to express any opinion on any of the matters you set out in your paragraph starting "Finally ...". As you well know, many owners (including at least one of the signatories to your letter) have made allegations concerning most if not all of those matters and so it is surprising to say the least that you have seen fit to raise the question.

With regard to your final paragraph, I have taken heed of your request for a prompt response and I hope you will agree I have achieved that for you.

Yours sincerely



Peter Taylor
Land Director

Enc - Plan

