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(By Special Delivery)

Your Ref: PC 2004/0188/J

(My complaint against Mr Stan Gallagher, Arden Chambers)

31 October 2004

Follow-on: my 02.11.04 to Bar Council to correct an error I made in this document and its 02.11.04 acknowledgement

- Summary of events, on Gallagher's page; my Comments to his 13.11.03 'reply' to Rachman Andrew David Ladsky's 21.10.03 Part 36 offer
 - For my complaints:
 - Doc library # 2.3 , # 2.4 and # 3.2;
 - Legal Services Ombudsman # 4

Dear Ms Seidenstein

My response to Mr Gallagher's reply, dated 11 October 2004, received 15 October 2004

Thank you for sending me a copy of Mr Gallagher's reply. With its 13.10.04 letter

In my reply I refer to previous correspondence sent to your Office. As, in all instances the paragraphs were numbered, I have used the following approach: Note that because of one (of his many lies) Gallagher had led me to send this 24.10.04 letter to my surveyor

- Column A: My numbering for this reply
- Column B: Mr Gallagher's numbering in his reply of 11 October 2004
- Column C: My comments
- Column D: Numbering in my complaint dated 5 April 2004
- Column E: My numbering in my reply to Mr Gallagher's reply, dated 29 August 2004

A	B	C	D	E
1.	3 (1)	Mr Gallagher: "...under the terms of Ms Rawé's lease, an accountant's certificate is not a condition precedent to an obligation to pay an interim charge..." On the draft Consent Order Mr Gallagher issued on 13 November 2003, he wrote: "The absence of due compliance with the service charge certification provisions prescribed by the lease"	2.2 28 29 64 53 55 57	23 25 26 28
2.	3 (1)	Mr Gallagher: "the claim against Ms Rawé was for non-payment of an interim service charge demand". So, because Steel Services chooses to call it an "interim service charge", it follows that it must be?	1.1 1.2	23 24 25 29
3.	3 (1)	Mr Gallagher: "...a sum payable as an interim (i.e. on account, or in advance of the expenditure being incurred)..." My lease, Clause 2 (d) "...after the end of each financial year... the lessor shall cause the amount of the service charge payable by the lessee for such financial year to be determined by an accountant...(e) ... the costs expenses and outgoings...of the lessor shall be deemed to include... also the sum or sums (hereinafter called the 'contingency payment) on account of any other costs expenses and outgoings (not being of an annually recurring nature)	1.1 1.2 1.3 2.1 53 55	2.1 26 27 28 29 30

which the lessor shall have incurred at any time prior to the commencement of the relevant financial year or shall expect to incur at any time after the end of the relevant financial year... as the accountant may in his reasonable discretion consider it reasonable to include (whether by way of amortization of costs expenses and outgoings already incurred or by way of provision for expected future costs expenses and outgoings) in the amount of the service charge for the relevant financial year"

Mr Gallagher knew that the 2001 accounts did not include "provision for expected future costs expenses and outgoings" – and also knew that – **10 months after the year-end** - I had not received the accounts for 2002. Yet in his email of 13 November 2003, he described my request (in my 7 October 2003 fax) as "...similarly adding conditions for the disclosure of accounts and details of trust fund arrangements can only complicate matters further and jeopardise the prospects of compromising the claim on realistic terms..."

4. 3 As I have already done in my 29 August 2004 reply, I draw attention to
(1) Clause (2) (j) of my lease
- "... nothing shall disable the Lessor from maintaining an action against the Lessee in respect of non-payment of any such interim payment as aforesaid notwithstanding that the Accountant's Certificate had not been furnished to the Tenant at the time such action was commenced subject nevertheless to the Lessor establishing in such action that the interim payment demanded and unpaid was of a fair and reasonable amount having regard to the amount of the Service Charge ultimately payable by the Lessee"*
5. 3 Mr Gallagher: "... the fact that a pre-estimate of the total
(1) cost of the works was demanded does not render the demand a final demand, rather an interim on account demand"
- No further comments to add.
6. 3 Mr Gallagher: "...the works had not been completed when the
(1) LVT made its determination."
- Correction: the works had not started. They were started 14 months later (only once Steel Services had achieved closure on the court proceedings against the 11 residents).
- Mr Gallagher: "Consequently, I remain of the view that there was no viable contractual defence to the claim against Ms Rawé"
- See below my reply to Mr Gallagher's points 3 (3) and (4)
7. 3 Mr Gallagher: "I...concluded that the landlord had
(2) substantially complied with the statutory consultation procedure."
- In my reply of 29 August 2004 I copied sections and sub-sections from the L&T 1985 Act and, under each, detailed what actually happened.
8. 3 Mr Gallagher: "I appeared as Counsel for the successful
(2) tenants in Martin v Maryland Estates Limited (2) [1999]..."
- No comments

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9. 3 Mr Gallagher: "...landlord's apparent breaches of the service
(3) charge accounting... are not matters that negate a contractual obligation to pay service charges..."

In his 9 June 2004 reply Mr Gallagher wrote under point 23: "I am currently writing a book for Sweet & Maxwell on litigation in the LVT - Leasehold Valuation Tribunals: Practice & Procedure - and would be pleased to expand on the practical difficulties that the LVTs limited and overlapping jurisdiction formerly lead to and, to a lesser extent, continues to do."

I would like to point out the following:

At the 29 October 2002 pre-trial LVT hearing we (i.e. I and other residents) were asked by the Chair, Mr J.C. Sharma JP FRICS, whether we had already paid the service charge demanded. We all replied that we had not for the reason that we had not been supplied with details of costings at the time of the demand, nor since. At this point, **Mr Sharma specifically told us that if we paid, the Tribunal would not be able to help us.**

We were handed a leaflet 'Applying to a Leasehold Valuation Tribunal – service charges, insurance, management' which, on page 5 states the following:

"... a recent Court of Appeal case ruling (*Daejan Properties Limited v London Leasehold Valuation Tribunal*) determined that LVTs only have the jurisdiction to decide the reasonableness of disputed service charges **that are still unpaid** except under certain circumstances" (NB: bold type face as per the leaflet) (See attached copy of the first 5 pages of the booklet, including front cover) ¹

Mr Andrew David Ladsky, Ms Joan Doreen Hathaway and Mr Barry Martin of MRJ, as well as Messrs Brian Gale and Patrick Moyle of Brian Gale Associates were in attendance at the 29 October 2002 pre-trial LVT meeting.

Precisely one month after we were told this by the Tribunal, Steel Services filed its claim in West London County Court i.e on 29 November 2002. (The first LVT hearing – at which the first day of the substantive hearing was postponed until 13 March 2003 – took place more than two months after Steel Services filed its claim in court i.e. on 5 February 2003).

- 10 3 I communicated this information to West London County Court.
(3)

As previously explained in my 29 August 2004 reply, at the end of March 2003, I received a Notice of a Charging Order from West London County Court (which did not concern me). In my reply addressed to the District Judge, dated 25 March 2003, I wrote the following:

"29 Oct 2002 - During the hearing, Mr J.C. Sharma JP FRICS, Chair, tells us that if we pay the service charge demanded before the hearing, then the Tribunal will not be able to do anything. In other words, Mr Sharma tells us to not pay the service charge until the Tribunal has reached a decision" ²

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¹ First 5 pages of LVT booklet, 'Applying to a Leasehold Valuation Tribunal – service charges, insurance, management'

² My letter to District Judge, West London County Court, dated 25 March 2003

- 11 3 In addition, I also copied the District Judge, West London County Court, on
 (3) my 30 March 2003 letter to the members of the LVT Panel in which I wrote, among others:

In my reply to the District Judge dated 25 March 2003 (see attached) I requested (once again) that the action be stayed explaining, among others, that:

1. *at the LVT pre-trial hearing on 29 October 2002 Mr J.C. Sharma JP FRICS had in effect told the residents to not pay the service charge demanded for the major works until the LVT had reached a decision*
2. *you had not as yet reached a decision as the case was currently part heard and the last day for the hearing was set for 28 April.*

In its reply of 27 March 2003, the County Court tells me that "... your request (for a stay) will be considered at the hearing on 4th April 2003". (See attached)

How can it be that two government departments - who have been made aware of a conflict as a result of actions they are concurrently undertaking - have no line of communication?³

- 12 3 West London County Court has opted to disregard this critical fact. This is in
 (3) spite of my bringing the LVT action to the Court's attention a total of **seven times**.

As can be seen in my letter of 25 March 2003, I list three previous occasions when I communicated this to the Court:

(1) My letter of 10 December 2002 when I wrote: "*I wish to bring to your attention the fact the claimant has brought exactly the same action under the Leasehold Valuation Tribunal (LVT/SC/007/120/02)*"

(2) My letter of 17 December 2002 (included with my defence to the claim): "*Action to be stayed - The purpose of my attached letter of 10 December 2002 was to report that the same action is being pursued by the same party in two jurisdictions: (1) yours; (2) the Leasehold Valuation Tribunal (case LVT/SC/007/120/02). Consequently, I would like to suggest that **this action through your County Court be stayed...***"

(3) My defence to the claim dated 17 December 2002 on which I wrote: "*Claimant already pursuing claim through the London LVT (LVT/SC/007/120/02) and process already fairly advanced... The demand does not comply with the terms of my lease. Part of my lease is different from that provided to the County Court*"

To these must added:

1. My 30 March 2003 letter to the LVT Panel, on which I copied the District Judge

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³ My letter to the LVT Panel, dated 30 March 2003, copied to District Judge, West London County Court

⁴ My letter to District Judge, West London County Court, dated 17 June 2003

2. My 17 June 2003 letter to the District Judge in which, among others, I repeat the occasions when I informed the Court that an action for exactly the same claim was taking place through the LVT, and I asked: "*Why are you therefore asking me to attend a hearing? Why aren't you instead asking me whether the LVT has reached a decision? Why is it that your Court is not waiting for this decision? Until there is a decision from the LVT, what can you enforce?*" ⁴
3. My letter of 22 June 2003, also addressed to the District Judge, in which I wrote:

"The judgement remains open to appeal to the Lands Tribunal - Both myself and the Applicant have until 8 July to consider making an application for leave to appeal to a Lands Tribunal.

Your Court is subjecting me to double jeopardy - I am astonished that your Court has persisted in allowing duplicated action to continue in spite of my telling your Court on numerous occasions since 10 December 2002 that Steel Services was pursuing exactly the same action in the LVT - at the same time as it was pursuing the action in your Court.

The Claimant has mischievously pursued this action in two separate jurisdictions in order to intimidate and bully me into paying. This is an abuse of the legal process. (previously supplied)

And I again repeated this after the LVT determination had been issued, in my letter of 9 August 2003 to District Judge Wright: "*The pursuit of this action simultaneously in two separate jurisdictions (despite knowledge, from the very beginning, by both, the Court and the LVT - and my requests to the Court for the action to be stayed) which has caused me added torment, anguish and distress...*" (previously supplied)

I therefore did this before the 26 August 2003 hearing for which the Application Notice filed by Ms Ayesha Salim, CKFT, had attached to it a "*Major works apportionment 24th June 2002 Revised*" produced by MRJ for which in my case (and that of other residents) the original sum demanded had been reduced by only 24.19%. The application, containing a 'Statement of Truth' signed by Ms Ayesha Salim, stated: "*The Claimant believes that the Second (and Fifth) Defendants have no real prospects of successfully defending the Claim and the Claimant knows of no other compelling reason why the case should be disposed of at Trial*"

As I explained under point 56 of my 29 August 2004 reply, Judge Wright did not challenge Steel Services on the claim it made in its application. This is in spite of my 22 June 2004, 17 July 2004 and 9 August 2004 letters in which I related the main points of the LVT determination – and to the latter, I attached a copy of my 31 July 2004 surveyor's assessment of the LVT determination.

Under point 16 of his 9 June 2004 reply, Mr Gallagher picked on a comment I had written on one of the court's documents: "*the Court continues dancing to the tune of CKFT - no notice has been taken of my letter of 9 August 2003*" - to which I replied that, whilst I did not know Mr Gallagher's motive for highlighting my hand written comment "I

will take this opportunity to state that I more than ever stand by it". What I have detailed above in this document is, in part, the reason for my statement.

- 13 3 Mr Gallagher: "...in any event, contrary to what is said by
 (4) Ms Rawé, the offer was not a pre-action Part 36 Offer - it was made 11 months after the County Court proceedings had commenced"

This is not the case, because:

- (1) Residents were told by the LVT at the 29 October 2002 pre-trial hearing to **not** pay until the Tribunal had issued its determination. The court action should have been stayed until the LVT issued its determination – and it had been implemented.
- (2) Once the Tribunal had issued its determination, Steel Services should have implemented the determination (re-drawing the specifications; tendering and consultation) – and then amended its claim accordingly.
- (3) The fact that Steel Services did not appeal to the Lands Tribunal (which was the proper channel to follow) means that it accepted the LVT determination – following **its** own application to the LVT.
- (4) Yet, it kept challenging the LVT determination as it changed the amount demanded on several occasions – and did so without explanation, as well as non-compliance with the consultation proceedings detailed in the 1985 Act. Among others, it did not address the determination by the LVT that proper specifications were required for the services section in order to arrive at correct costings. (I would stress that, unlike Steel Services, I fully accepted the LVT determination)
- (5) This is evidenced in the first paragraph of its 21 October 2003 document described as a "Without Prejudice Claimant's Part 36 Offer": "Our client maintains that, as a result of the LVT decision dated 17 June 2003, it is entitled to payment from your client of the sum of £10,917.27, as set out in the revised major works apportionment dated 24 June 2003 issued by Messrs Martin Russell Jones"

As I had been told by the LVT, I waited for Steel Services to fully implement the LVT determination – and then send me a revised priced specification and an invoice.

This is all I wanted: to pay my 1.956% share of what residents are truly liable for – and in a manner compliant with the terms of my lease.

I did not want 'an offer'. This is not the basis on which the service charges operate, doing a deal with one resident, another deal with another, and so on.

As I stated in my 9 August 2003 letter to Judge Wright: "There are no side deals to be made with the Claimant: the nature of the works and their associated costs must be totally clear and transparent - to ALL lessees"

In the same letter I also wrote: "Nowhere does the lease state that the share of the service charges payable by individual lessees is dependent on their amount of 'backbone' and courage to challenge a demand for money they do not owe... Their resistance to prolonged harassment and intimidation... Their determination to persist in the face of adversity and their ability to handle the resulting

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torment, anguish and distress"

As I explained in my 7 November 2003 fax, the fact that the LVT had **not** been able to make a determination in relation to some of the works means that the offer contains the **sum of £1,735.74 which is not justified.**

As I also stated in this fax – *"Hence, without proper specification and re-tendering, I do not know what, if any of this amount, I am actually liable for"*.

By then, I should have been issued with the 2002 accounts (which I am still waiting for at the date of writing – and therefore, in continuing breach of my statutory rights).

(As I have explained before, in the end, I gave in, paying more than I actually owe as it became abundantly clear to me that the system is against me instead of being there to help me).

14 3 What is the meaning of the following which Mr Gallagher wrote in the draft
(4) Notice of Acceptance:

"...your client=s claim, as adjusted to take account of the LVT=s determination remains proceedings..."

15 4 I do not understand why Mr Gallagher is raising the issue of an appeal to the
(1) Lands Tribunal. All that I stated is that Steel Services lost the day at the 24 June 2003 court hearing because I highlighted the fact that I had leave of appeal to the Lands Tribunal (as, indeed, it also had).

16 4 Mr Gallagher: *"...I therefore did not enter into a detailed
(1) analysis of the merits of the LVT decision"*

No further comments.

17 4 Mr Gallagher: *"At the time I did not consider that the
(1) course of the proceedings before the LVT was likely to carry much, if any, weight on the question of costs in the County Court proceedings"*

Indications are that (in spite of the conduct of West London County Court) Mr Gallagher's view was not shared by Steel Services as it made sure that it had closure with all the Residents listed on the claim before announcing the start of the works:

- The last Resident was Defendant #5. As can be seen from the 28 July 2004 letter I received from Wandsworth County Court ⁵, a one day hearing for this Resident was scheduled on 17 August 2004 (previously issued directions had stated date for exchange of Witness Statement, etc)
- However, a General Form of Judgment or Order, dated 2 August 2004 ⁶, states that a hearing took place resulting in the Resident having to pay the sum of £4,538.29, plus interest of £548.04, plus the Claimant's costs. (This resident had already paid the sum of £8,662.20 following the 26 August 2003 hearing. The original *"Major works contribution"* claim against this Resident was

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⁵ Letter from Wandsworth County Court, dated 28 July 2004

⁶ General Form of Judgment or Order from Wandsworth County Court, dated 2 August 2004

⁷ Letter from Ms Joan Hathaway to the LVT, dated 15 January 2003

£15,637.02. So much for the LVT determination and Steel Services not being entitled to charge Residents differentially!) (Judge Madge acted on this hearing)

- **On the same day** i.e. 2 August 2004, Mr Barry Martin, Martin Russell Jones, sent a letter addressed to "*All the Lessees*" stating that (1) the contract had been awarded to Mansells; (2) that the works would start on 16 August 2004. (previously supplied)
- The previous communication I received about the works had been on 26 March 2004 in which Ms Hathaway stated: "*Due to excessive delays in collecting the contributions...it has been necessary to commence renegotiations with the original contractor and other contractors*" (previously supplied).
- Mansells was not one of the companies who originally tendered for the contract. Between the 26 March and 2 August letters priced specifications by Mansells have not been issued and there has been no consultation process. In other words: total breach of Residents statutory rights. Also, as evidenced by Mr Barry Martin's letter of 2 August 2004: complete dismissal of the LVT determination and a clear intention to ask Residents for more money at a later stage.

As I wrote under point 132 of my 29 August 2004 reply: "*..I put it to Mr Gallagher that Steel Services desperately wanted to prevent the case from reaching this stage [trial]..*"

The scaffolding started to be put in place w/c 23 August 2004 demonstrating that the need for and, indeed, "*urgency*" of the works had mysteriously disappeared - lasting for a period of more than 3 years:

- 7 June 2001 letter from Ms Hathaway: "*...works are now overdue and it is planned to carry out a programme of refurbishment in accordance with the terms of the leases on the building in the near future... It is planned to commence the external refurbishment in the Autumn...*" (already supplied)
- 15 January 2003 letter from Ms Hathaway to the LVT: "*The work is becoming more urgent as there are continuing problems with the roof, lift and boiler. Due to the delay in implementing them the problem with the roof is now deteriorating and causing substantial damage to the top flats*" ⁷
- Point 5.09 of Mr Brian Gale's 24 February 2003 "*Expert Report / Evidence of Proof*": "*Jefferson House...It is clear, upon its face, that the building is in dire need of significant works to bring it up to a more modern standard and a proper, fit and substantial state of repair*" (already supplied)
- 26 March 2004 letter from Ms Hathaway: "*...the intention being that the proposed works can be started as soon as possible*" (already supplied)

18 4 Re. Mr Gale and LVT's view on the use of the contingency fund: no further
(2) comments
(3)

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19	4 (4)	Re. my criticism of West London County Court: see additional comments earlier on in this document		48, 53, 54, 55, 56, 60, 61,69, 77, 79
20	4 (5)	Re. Timing of Steel Services' application to the LVT: no further comments		5, 21 25, 54
21	4 (6)	Re. post events: there have since been further developments which add support to my complaint against Mr Gallagher: On 23 October 2004 I received an invoice from Martin Russell Jones for £15,447.86 ⁸ which includes a ' <i>Brought forward balance</i> ' of £14,452.17. There is no explanation whatsoever as to what this amount refers to. What is attached is what I received. (It cannot be the regular service charge as, on average they have been c. £600 p.a. The last time I paid them was for June 2003. I have requested that the December 2003 and June 2004 service charge be sent to me, but my requests have not been complied with) I had hoped that by now common sense would prevail over greed and arrogance - which have been the driving force from day 1 - and that I would be left in peace. Not so. Steel Services i.e. Mr Ladsky et. al want to continue the fight. This leaves me no other option but to continue fighting back, in the process, adopting a strategy which fully reflects the very comprehensive knowledge and understanding I have gained of the environment in which I am operating. As I stated in my Witness Statement: " <i>I have consistently agreed that repair and redecoration works are required at Jefferson House...". And as I have also stated on numerous occasions: "I have an impeccable track record. What I owe I pay, what I do not owe, I will not pay"</i>	85	90
22	4 (7)	Re allegations against Mr Ladsky, as well as the response from Kensington & Chelsea Police: Mr Gallagher is underplaying my reply to his point 29 (14): " <i>Though I was virtually certain that NKDR did not have a viable claim against the landlord</i> "		106 – 117
23	4 (8)	Re. costs of proceeding and offer to settle: no further comments. (Cross-referencing to my 5 April 2004 and 29 August 2004 documents already provided extensively above)		
24	5	Re. costs of court proceedings: see reply to next point		
25	6	Mr Gallagher: " <i>Ms Rawé had not made a payment into Court, or any offer to settle</i> ". See my reply to Mr Gallagher's point 3 (3) and 3 (4) above Mr Gallagher: " <i>I accept that it is possible that, given the level of the sums disallowed by the LVT and the criticisms that could be made about the landlord's conduct, a Court may have been persuaded to make no order for costs</i> ". I note a very significant 'climb down' by Mr Gallagher relative to:	33 36 45 52 53	121 123 131 136 60 64 65 92 106

⁸ Invoice from Martin Russell Jones, dated 21 October 2004

- Mr Gallagher's 17h09 email of 12 November 2003: "...I can only repeat my advice, and that of Ms Mclean, that if this offer is not accepted and the matter proceeds to trial it is virtually certain that the Claimant will beat it and Ms Rawe will be ordered to pay the Claimant's costs"

- Mr Gallagher's reply of 9 June 2004:

Point 67: "... probably the most important consideration, was the likely cost consequences of not accepting the offer and fighting the case... The balance of risks on costs was not finely balanced, it was all against NKDR and my advice reflected that"

Point 66: "...in the likely event that the defence fails, render a final bill for the costs of the litigation and remind the client that the disastrous outcome was in accordance with the original advice given"

Point 63 (1): [I] "was virtually certain to lose if the claim went to trial and costs would be awarded against her and certainly would not be awarded in her favour"

Rest of Mr Gallagher's paragraph: no further comments

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26	7	Re. Statement of Truth: no further comments other than to say: evidently not in West London County Court	5, 48 56, 59 80, 121, 136
27	8	Re. LVT determination: no further comments. (Other cross-referencing to my 5 April 2004 and 29 August 2004 documents already provided extensively above) Re. "no payment into Court": see my reply to Mr Gallagher's 3 (3) and 3 (4) above Re. Mr Gallagher's comment: "Hence my analysis that Ms Rawé was very vulnerable on costs": see reply above to Mr Gallagher's point 6	45 60 104
28	9	Re. my comment on "key event": no further comments	46, 52 56, 58 59, 62 64, 84 86
29	10	Re. What Mr Brock said and Mr Gallagher's statement: "I note that Ms Rawé does not supply a statement from Mr Brock as to his recollection of the conference" The evidence is so overwhelming that it did not occur to me to contact Mr Brock. However, I have done it to satisfy Mr Gallagher's point. I attach the 24 October 2004 letter I sent to Mr Brock ⁹ . I spoke to Mr Brock this week. He concurred with me: he could not have said that the total sum could not be bettered because the lack of specification identified by the LVT had not been addressed - and consequently this part of the works had not been re-tendered.	127 137

⁹ My letter to Mr Brock, dated 24 October 2004

