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Ms Noëlle K-Dit-Rawé

(Delivery by bike)

IMPORTANT LETTER

Ref: LM.R360/1

CONFIDENTIAL

21 September 2003

Dear Ms McLean

Thank you for your fax of 19 September 13h00 further to mine of the same date at 9h16 and to our conversation in the morning. Before I reply, let me say that I really appreciate your concerns about keeping my costs down by handling my case yourself. Unfortunately, this is not working out. **I really do need somebody highly experienced to deal with/drive my case as of <u>now</u>.** Who in your firm can do this?

I will now turn to your fax. For convenience, I have numbered each of your paragraphs.

- **Point 2** – My application is not about determining the *"amount of any service charge payable by you"*. It is about stopping the landlord from putting their LVT related costs on the service charge. The LVT does not deal with individuals (as it again reminded CKFT in its reply of 21 July 2003 to CKFT). It deals with 'global sums', for a 'block' of flats.

  "That application is your application alone… and on that basis the determination of the application will apply to you and you alone ". Yes, the application is made only by me, but, 'no' for the reason above, the determination will apply to the whole block, not just me – although clearly, the landlord has indicated at the 28 April LVT hearing that it wished to deviate from this.

  In addition, please consider the following: How could it be that (1) the outcome of the action I pursued on **<u>my own</u>** apply to the whole block (a fact that has been admitted by the landlord: the revised costs for each of the 35 flats they issued for the 26 August hearing) (2) but the application to stop the landlord putting its costs on the service charge does not?

  What led to the *"I don't know, I am not sure, I'll have to check"* reply from Mrs Goulden, Chair of the Panel, is the fact that the other side's Counsel said: *"my client will not charge Ms K-Dit-Rawé, but intends to charge the other residents"*. This took her by surprise. **This is not the basis on which the LVT makes 20C order – and is the reason why she said *"this will require another day of hearing"***. As I said above, the Tribunal rules for the whole block – not individuals.

  A point to note here, for the purpose of arguing the case is that, by saying this, the landlord admitted being in the wrong – and hence expect to not be able to recover their costs - or whatever way you express this in legal terms.

"Your concern as I understand it is that in the event that the Tribunal make an order that the Landlord be prevented from seeking to recover from you your proportion of the costs incurred in the LVT…". Same comment as above.

Yes, I am extremely concerned that other lessees will bring a claim against me once they receive the annual service charge – on the basis that I was *"the only lessee that resisted the LVT proceedings"*.

- **Point 3** – Re. your second sentence. Reply is as per above ie – although clearly, the landlord is seeking to depart from this norm by saying that *"it will not charge me but intends to charge other residents"*. An important point here: **to do this is in breach of the terms of the lease – certainly mine – the landlord cannot charge differentially**: Clause 2 (c) (i): *"The amount of the service charge payable by the lessee… shall be calculated by dividing the aggregate amount… by the aggregate of the rateable value … and then multiplying the resultant amount by the rateable value … of the flat"*.

  "Where I the representative for the landlord armed with that knowledge, I would seek costs against you on an indemnity basis". The LVT is not a Court. As I am only too painfully aware, the LVT cannot award costs and it does not have a mechanism for assessing costs. However, it does have the power to prevent a landlord from putting their costs on the service charge for the whole block.

- **Point 4** – *"In any event, most of the lessees have benefited from the LVT determination as a result of the initial service charge demand being reduced by as much as £4,000"* (NB: so far, up to £15,593/£20,000 in the case of flat 32).

  Potentially yes, but in practice? (Leaving aside the fact that the residents are evidently greed driven, out to get whatever they can), do you actually believe that MRJ is going to contact the residents and refund the money they should not have paid? (I seem to recall that one of your own clients has tried and failed).

  And on what basis will they be able to reclaim their money? MRJ re-issuing the revised specs as and when the LVT's decision has been fully implemented (of course, currently an outstanding issue)? I think you will agree that, in light of past experience of deceit, this has a 'nil' probability. As to the LVT report, as it stands, it is impossible to figure out what the determination is. Only I can do that because of Mr Brock.

  Consider also the following: **Why is it that the works have not yet been started?** Indeed, as it stands, the only amount outstanding relative to the original sum demanded of £736,206.09 is under £12,000 (£8,800 from me, £3,000 something from [redacted]y). Is a shortfall of £12,000 out of nearly three-quarters of a million pound reason enough to prevent starting works that will take probably 4-6 months?

  Surely not! My view as to why the works have not yet been started is because Mr Ladsky/MRJ are worried that they may end-up having to refund a large part of the global sum – as well as being unable to put their LVT related costs on the service charge. (NB: Consider also: where is the money for the major works? Three times I have asked for a copy of the statement of the trustee account(s). Why have not they complied with my requests?)

  So, no, unlike you - as it stands - I most definitely do not believe that residents have so far benefited from my challenging the landlord's action in the LVT – nor are they likely to in future. (Once you have had the chance to familiarise yourself with the documents I have listed for the 'Standard Disclosure of documents' for the Court , including year 2000 letters from Mrs [redacted] who used to run the Jefferson House resident association, I think you will understand why I am saying this).

  I therefore do foresee that, when the annual service charge states, say "£100,000", and will no doubt have a note attached saying something along the line of: *"incurred solely because*

of the action of one lone resident, Ms K-Dit-Rawé, flat 3" **I am going to be faced with 34 letters from solicitors claiming these costs against me** – and Mr Ladsky will lead the pack. (By the way, to this might also be added the so far 6.45% increase on the global sum due to delay in starting the works).

Yes, it is true that I ***'responded'*** to an action instigated by the landlord – and that I am within my rights to do so (as Mrs Goulden stressed at the 13 March hearing). Still, how will I deal with this situation then? What will I give as evidence that my action has been of 'significant' benefit to residents (especially as the situation currently stands)? How many thousands of pounds am I going to have to spend in solicitor fees to argue this? £10,000? £20,000? How many hours of wrangling and arguing will this take?

Hence, I will repeat what I said in my fax of 19 September: (1) my view is that it would be a very bad idea to not proceed with the application; (2) we need to go through with it – and (3) need to be successful!

- **Points 5 & 6** – see later 'Terms of my lease'

- **Point 7** – *"It may well be that the other lessees would have a better prospect of success on any future 20C application on the basis that they did not oppose the LVT proceedings".* In my view, I would say 'quite the contrary'. The Tribunal will say *"you did not challenge the action, and now you want us to consider a 20C order?"* They would not stand a chance!

- **Point 8** – No, for reason already stated above.

- **Point 9** – Please, see below

- **Point 10** – No, for reason already stated above

Terms of my lease

On numerous occasions now I have been saying that the demand for the major works does not comply with the terms of my lease: (1) in my defence of 17 December 2002 to the County Court claim; (2) my 2 April 2002 letter to MRJ; (3) my 17 October 2002 letter to CKFT.

In my letters of 3 and 9 September I have asked you to please get one of your experts to look at my lease.

These are the clauses I want to draw your attention to:

Clause 2

(d) *"As soon as practicable 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 incurred by the lessor during the relevant financial year of the lessor shall be deemed to include not only the costs expenses and outgoings which have been actually disbursed incurred or made by the lessor during the relevant year… but 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) 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"*

(f) *"As soon as the accountant shall have determined the amount of the service charge payable by the lessee for the relevant financial year… the accountant shall prepare a written statement containing a summary of the costs expenses and outgoings incurred by the lessor during the relevant financial year together with any future sums indicated by the accountant pursuant to Clause 2 (2) (e).. and specifying the amount of the service charge payable by the lessee…and in the accountant's certificate, shall certify:*

(i) *"that in his opinion the said summary represents a fair summary of the said costs and outgoings set out in a way which shows how they are or will be reflected in the service charge"*

(ii) *"that in his opinion the said summary is sufficiently supported by accounts receipts and other documents which have been produced to him"*

(iii) *"that the sum specified as aforesaid represents the amount of the service charge payable by the lessee.."*

(h) *"… half-yearly payment… to pay the lessor such sum in advance and on account…"*

(i) *"As soon as is practicable after the end of each financial year… the lessor shall furnish to the lessee…a copy of the accountant's certificate…"*

There has been breach of the terms of the lease.

1 MRJ demanded payment of £14,400.19 in an invoice dated 17 July 2002

1 The 2001 accounts do not include costs the lessor " ***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"* (see attached [1])

3 Even though we are nine months after year-end, I have not yet received the accounts for the year 2002.

4 **IF** in the 2002 accounts, the accountant certified the sum of £736,206.09 as "reasonable", then there is a very serious breach of professional conduct – given the Tribunal's determination in 2003.

Submission to LVT for 20C application

It seems to me very strange that no supporting documents are to be provided – other than a submission. This does not feel right. Surely, a file of back-up documents will be required to argue the case (as e.g. MRJ had prepared for their application). Otherwise, the other side will just dismiss the arguments. **Can you please definitely confirm your statement**. Not only do I want to win my case, **'I've got to win my case!'** – and I think it is a very strong one.

As you know, with my application I included a covering letter, dated 12 August 2003. (I have included another copy in the enclosed pack).

Three things I want to add now:

1 Both, MRJ and the Tribunal forced me to go all the way to a hearing

- Seven times over a 6-month period I asked for a copy of the specification – this included four times through the Tribunal. And it was not just me! Other residents were also writing to the Tribunal – as well as to MRJ - asking for the same thing (Note that by then it was already three months since MRJ had sent the demand for payment)

[1] Copy of 2001 accounts for Jefferson House

- The Tribunal had been provided with a copy of the specification by MRJ **since 7 August 2002** (!!!) [2]
- When all the residents were clamouring for a copy of the specs at the pre-trial hearing on **29 October**. Nothing was said by the Tribunal.
- A log of a telephone conversation which took place between Joan Hathaway and David Stewart at the LVT on **8 October 2002** (!!!) states "*Ms Hathaway confirmed that the leaseholders have already been served with copies of the estimates and specification"* [3]
- Mr Brian Gale's Expert witness report was hand-delivered to me after 18 December i.e. after the deadline set by the LVT. However, in a letter to the LVT dated **1st December 2002,** Ms Hathaway writes: "*I understand that you have already received our experts report direct*" [4]

1 My calculation of the 'revised cost' for each of the 35 flats produced by MRJ – to which I have included the sum of £34,849.00 (based on Mr Tim Brock's assessment) [5]

3 Letter from MRJ of 7 June 2001 in which they say that residents will need to make an "*additional payment"* as there is not enough in the reserve fund (a copy is in the enclosed pack)

Summary by the Tribunal

On 16 September I wrote a letter to Mr Twyman requesting your assistance in getting the Tribunal to produce a summary of its determination. We really need to get this. As I wrote to Mr Twyman, *"I have clouded my request with my point (b) on page 2 of my letter + point 3 relating to the contingency fund – which I have further emphasised by sending her another letter on 9 September. Leaving these aside, my asking the Tribunal to issue a summary of its determination is still a valid request – and cannot be deemed as a request to re-open a decision".*

(As I have now found MRJ's letter of 7 June 2001), what I am really after now is the **detail and amount of the items for which the Tribunal said to have lack/insufficient specification in order to make a determination.** (I again re-emphasise here that these would be **'new costings'** under Section 20B (?) of the LTA 1985)

Copy of additional documents for the Court's Standard Disclosure of documents'

Since sending you the soft copy of my list of documents on 17 September, I have added a few more. Please see attached list where I have indicated these under the column headed 'New doc since 17 Sep'

The enclosed pack includes these documents, as well as those you did not have previously.

Many thanks in anticipation of your assistance

Yours sincerely

Noëlle Rawé

[2] Page from Steel Services/MRJ application to the LVT showing list of documents attached to application
[3] LVT's 8 October 2002 log of conversation between Ms Hathaway and Mr David Stewart, LVT
[4] Letter from Ms Hathaway to the LVT, dated 1 December 2002
[5] My calculations from MRJ's 'revised list of major works apportionment 24 June 2002'