

FAX - C O N F I D E N T I A L

23 September 2003

To	Ms Lisa McLean
Organisation	Piper Smith & Basham
Fax	020 7630 6976
From	Noëlle Rawé (Jefferson House) (REF: LM.R360/1)
Subject	My list of evidence and arguments for 20C Order application + Standard disclosure for County Court
Number of pages	Page 1 of 4

Dear Lisa,

Instructions to Counsel

It is 18h05. A few minutes ago I sent you an email with the attached as an attachment to the email (file name: 'Rationale-23Sep03) in which I have detailed evidence and arguments to assist Mr Staddon in formulating an opinion on the strength of my case.

I also attempted to call you but you had left for the day. On my message I said I would also send you the document by fax. I have just been to the fax machine... and discovered your fax from earlier on buried among others. Thank you, and sorry, I did not know it had arrived.

In the paragraph after point 5 – Perhaps Mr Staddon may need to be reminded of the **7 April 2003 letter sent by Mr Conway**, Oliver Fisher, to MRJ (and the Tribunal) informing them that I would “*be making an application for an order under section 20(c).. In particular, that the legal costs incurred on behalf of your clients should not be added to the service charge*”

Nearly at the end of this paragraph: “... then seek in turn an indemnity from her..”.

There are three issues upon which ...

List of documents – Standard disclosure

1st page: I am not the claimant – I am the ‘defendant’. What do I do about this? Cross ‘claimant’ out, and write ‘defendant’?

As to the question: “*Please state why you are the appropriate person to make the disclosure statement*” – what should I write in this?

I don't know whether you faxed me an updated list of the documents. It is now 20h15. I have just gone back to the fax machine to wade through the very large stack of faxes sent to people in my group today and, this time, I found your fax with the draft letter to the LVT and MRJ + consent order.

Given this difficulty, in future, can you please be kind enough to send me an email/ leave a message on my voicemail to alert me to the fact that you've sent me a fax.

Yours sincerely

Noëlle Rawé

As a result of their actions, 'Steel Services/Mr Ladsky' and MRJ are responsible for:

- (1) my challenging them in the LVT
- (2) delaying the start of the works

Therefore they have no right to:

- (1) put their LVT related costs on the service charge
- (2) charge residents for the additional cost stemming from the delay in undertaking the works

Key events and arguments in support of this position:

1 In her letter dated **18 December 2000** to the members of the committee of the residents association (of which I was a member), Mrs [REDACTED], (person who was running the residents association) wrote that "*Mr Ladsky intended to spend c. £1 million refurbishing the block... he feels that the reserve fund should be emptied and residents then should be forced to pay him the extra costs that he deems would be necessary*".

This was 2 years **before** the condition survey was carried out

2 In an invoice dated **17 July 2002** MRJ **asked me to pay £14,400.19**. They say they attach the costs. All there is from Killby & Gayford, the selected contractor, is a letter saying the total cost is £564,467.00 excluding VAT

3 MRJ sent the priced specs with their **8 Aug 2002** application to the LVT
i.e. for six months prior to the 5thFeb hearing the Tribunal had, in its possession, a copy of the priced specs

4 In a 'Log of telephone conversation', Mr Stewart, LVT, recorded the main points of a conversation he had with Ms Hathaway on **8 October**. It states "*Ms Hathaway confirmed that the leaseholders have already been served with copies of the estimate and specification*"

1 At the pre-trial hearing on **29 October**, all the residents present, including myself, said that we had not been provided with a copy of the priced specifications.

The Tribunal did not say or do anything to ensure residents were provided with a copy of the costed specs that was in their possession

(By then, it was more than three months since MRJ had sent us the invoice for the major works)

2 I requested from MRJ – in writing - a copy of the priced specification **six times between 11 August 2002 and 12 January 2003**. This included the *three occasions when I requested the LVT's assistance* in obtaining the priced specification from MRJ (on 22 October 2002, 25 November 2002 and 12 January 2003) as I copied MRJ on these letters. (I also asked the LVT for its assistance on a fourth occasion: my letter of 18 December 2002).

3 I am far from being the only resident saying that, contrary to MRJ's claim, a priced copy of the specification was never made available at the porter's lodge – nor given to residents. For example:

-Mr [REDACTED] flat [REDACTED], wrote to the LVT on **19 October 2002** (ie. Three months after MRJ sent the invoice): "*I have had several phone conversations with MRJ requesting an executive summary of the planned work such as 'description of work item', 'cost', 'priority'. I never received such summary*"

-Mr [REDACTED], Flat [REDACTED], wrote to MRJ on **24 September 2002**: "*The opportunity is taken to remind you that as of this date neither [REDACTED] nor the writer have received the complete data you undertook to provide at our meeting in your offices on 30 July 2002 and confirmed in our letter of 31 July. This situation has prevailed despite two further letters of remind dated 27 August and 9 September*"

-Ms [REDACTED], flat [REDACTED] and [REDACTED], in her email of **20 October 2002** to Sheila Sanz, LVT wrote: "*I paid a portion, approximately £17,000, not of my own free will, but because I felt intimidated and threatened. It may appear that the persons who paid all or a portion of the assessment are accepting of the assessment and proposal from Steel Services and MRJ as fair. Not so in my case, it is out of fear. Steel Services and MRJ will take legal action if I do not comply. Living outside the UK makes it virtually impossible to allow*"

oneself to become involved in a lawsuit...”

- Mr [REDACTED], flat [REDACTED], in a letter to MRJ dated 3rd August 2002: “Before I can agree to the demand that you have made I need certain further information... (1) A detailed breakdown of the figure of £564,467. against the specification..”

4 In a letter dated 7 October 2002, which I received on 10 October, CKFT wrote that: “in the event that payment is not received by MRJ by 10 am on Monday 14 October, we have instructions immediately to commence proceedings for recovery of the debt”.

To further bully and scare me into paying, they also wrote: “Our client reserves the right to take action to forfeit your lease for breach of covenant and to communicate with your mortgagee (if any), if such action becomes necessary”

I replied asking whether they knew that their client had applied to the LVT to determine the reasonableness of the sum demanded. On 21 October they replied “We are aware that Steel Services Limited has applied to the Leasehold Valuation Tribunal”

5 The LVT had, in its directions, stated that the Applicant had to meet residents’ requests by 17 December 2002 so that residents could have their own advisers review the specifications. A copy of the priced specification was eventually hand-delivered to my flat...36 hours before the 5th February hearing

(NB: This was the basis of Mr Staddon’s argument on 5th Feb for getting the hearing adjourned. A copy of the specs had been attached by MRJ to the specifications. This had not been copied to the residents. When asked by the Chair, Mr David Stewart admitted that “not all the residents had been copied”. I had not received the priced specifications and therefore I requested that the hearing be postponed. Another point: during the 5th Feb hearing, after vehemently asserting that a copy of the priced specification was available at the porter’s lodge – and that the porter confirmed that I had looked at them – Ms Hathaway then contradicted herself by saying: “Oh!, there are so many reports in the porter’s lodge, he would not know which is which!”

6 In a fax to the LVT, dated 1 December 2002, Ms Hathaway of MRJ wrote: “I understand that you have already received our experts report direct”

Why was it delivered to me after 18 December – and hence in breach of the directions set by the Tribunal?

7 Brian Gale’s expert witness reported dated 13 December 2002 states (point 3.05) that he considers that “the cost of works as detailed in the revised and final tender document provided by Killby & Gayford on 8 July 2002 and totalling £564,467.00 represents a reasonable assessment of the cost of carrying out all necessary works”

Yet, in their letter of 26 March 2002 – ie. Written after Mr Gale had completed his ‘Condition survey’ (in Feb 2002), MRJ wrote: “The surveyors have indicated that the cost of works is likely to be in excess of £1million + VAT and fees...”. (This would bring the total to £1.5m). How can he then say in December just over half this amount “represents a reasonable assessment of the cost of carrying out all necessary works”? This led me to feel that the ultimate intention of the 26 March letter was to help MRJ come back to residents at a later stage and ask for more money, i.e. as much as they were already asking in their 17 July 2002 invoice)

8 Steel Services/MRJ were so sure of being able to quickly roll their application through the LVT that, in November 2002 they filed a claim in County Court against 11 residents representing 14 flats.

Clearly I was not the only resident objecting. And clearly, these other residents who equally believed that they had not been provided with the proper information

9 Mr Brian Gale made blatant lies about me in section 2 and section 5 of his 6 February report to the Tribunal. My response was handed to the Tribunal by Mr Staddon at the 28 April hearing.

10 ‘Revised costs’ produced by MRJ for the 26 August County Court hearing of 24.19% reduction amount to a total £178,074.13 (including VAT + mgt fees + VAT on management fees)

11 According to Mr Brock, they have also reduced the amount by a **further £34,849**. Including VAT + 11% management fees + VAT on fees = **£45,451.81**

Hence, this brings the **total reduction - so far admitted by Steel Services/MRJ - to £223,525.94 (out of £736,206.09 originally demanded of the residents).**

12 Based on Mr Brock's assessment the LVT has stated that due to lack of/insufficient specification, it is unable to make a decision/ recommendation on numerous items. In total these amount to **£144,745.87 (or 25.65% of the original sum demanded).**

Nothing has yet been done to get these specifications drawn-up and get new costings

13 **Steel Services/MRJ is refusing to use the contingency fund of £141,977.00** (at the time of the hearing; more has now been paid into the fund through the June service charge) as contribution towards the cost of the works.

Yet, in their letter of **7 June 2001, MRJ wrote:** *"At present, there is approximately £125,000.00 in the Reserve Fund, but in view of the scope of works required to be carried out it is anticipated that the sum will be inadequate to meet the costs. This means that once the Specifications have been prepared and estimates obtained, a Landlord & Tenant Act 1985 Notice will be served on you giving details of the additional payment required from you..."*

The Tribunal has stated (under Point 63) that the contingency fund should be used as contribution towards the major costs: *"The wording of the clause relating to the contingency or reserve fund in the lease is unambiguous. It refers to costs, expenses and outgoings "not being of an annually recurring nature" and, as such surely envisages the type of works proposed at the subject property... the Tribunal considers it inequitable that this fund should not be used in part to fund the works".*

14 As noted in Mr Tim Brock's letter of 31 July 2003, *"...it is clear from the comments made by the Tribunal that the specifications and method of organising these works are below standard".*

The following are examples of comments in the LVT's report of 17 June 2003:

Page 7 of the LVT report, point 46 (in relation to the specifications overall): *"The Tribunal was frustrated by the lack of detail in the specification and in Mr Gale's evidence. Works were not clearly identified, were not measured where they clearly could have been, and there was some elements of duplication. Some items were not specified at all e.g. the types and capacity of the boilers"*

Page 6 of the LVT report, point 38: *"Mr Gale accepted that there was no boiler specification in the tender document"* (NB: an item for which the Claimant expected the residents to pay over £80,000).

Page 11 of the report, 4th paragraph (in relation to the boiler) *"...The Tribunal does not consider that it has sufficient information in order to make a proper judgement and therefore makes no determination in respect of the boilers... in the Tribunal's view, alternatives and costings should have been explored"*

Page 12 of the report, last paragraph (in relation to the lift): *"The recommendation of J Bashford and Associates... to prepare a specification and drawings appeared to have been ignored by Mr Gale in his own specification.... The specification prepared by Mr Gale is therefore insufficiently detailed to allow for a quotation for this work, and he conceded during the Hearing that there may have been an element of duplication. Further, no proper explanation has been given for the increase from £27,300 to £60,000 over a matter of months"*

Page 15 of the LVT report, penultimate sentence: *"...the Respondent and other tenants could not be forced to contribute in the case of improvements and/or works not determined as reasonable by the Tribunal.."*

From my covering letter to my application: ***"The evidence is there. The facts speak for themselves. The Applicant cannot be allowed to put on the service charge for Jefferson House the costs it incurred as a result of the action it pursued through the LVT"***

Finally, please consider: **why have the works not yet been started?** After all, the **shortfall** out of nearly three-quarters of a million pounds is **only c. £12,000** (£8,800 from me + c. £3,000 from another resident)

MEMORY TRANSMISSION REPORT

PAGE : 001
TIME : 23-09-03 20:54
TEL NUMBER: 020 7630 6976
NAME : Noelle Rawe FX866

FILE NUMBER : 155
DATE : 23-09 20:52
TO : 0202076306976
DOCUMENT PAGES : 004
START TIME : 23-09 20:52
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FILE NUMBER : 155

*** SUCCESSFUL TX NOTICE ***

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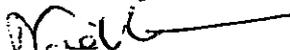
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