

Rawé, Noëlle

From: Richard Twyman [richard.twyman@pipersmith.co.uk]
Sent: 13 November 2003 08:40
To: Rawé, Noëlle
Cc: 'stangallagher@btinternet.com'
Subject: FW: Steel Services Limited v Noelle Rawe

Importance: High

Dear Madam

Please see urgent advice attached.

May we please have your clear and unequivocal answer - will you accept their offer as advised or do you wish to refuse it?

This must be dealt with today.

Yours sincerely

RICHARD C TWYMAN

> -----Original Message-----

> From: Stan Gallagher [SMTP:stangallagher@btinternet.com]
> Sent: 12 November 2003 17:09
> To: Richard Twyman
> Cc: 'Gallagher, Stan'
> Subject: Steel Services Limited v Noelle Rawe
> Importance: High

> Thank you for your instructions to draft a formal response to the Part 36 Offer (as considered below, the offer is not strictly a Part 36 Offer).

> The difficulty arising is that Ms Rawe's instructions, contained in her letter dated 7 November, are materially different from where it was left at the end of our conference on 28 October 2003.

> My firm advice in conference, which accorded with that of Lisa McLean, was that the "Part 36 Offer" should be accepted:

- > 1. The offer speaks to a substantially lower sum than the amount claimed;
- > 2. Ms Rawe's expert (Mr Brock of LSM Partners) confirmed in conference that, having regard to the LVT's determination, his calculations showed that "this sum could not be bettered" by Ms Rawe;
- > 3. It was accepted during our conference that there was no defence to the claim, unless a viaible a defence & counterclaim that I was unaware of were to emerge from the separate legal advice that Ms Rawe proposed to seek on the Human Rights Act, and other matters - so far as I am aware this has not occurred;
- > 4. Most importantly, the offer (which strictly is not a Part 36 offer as it does not rely on the automatic cost consequences provided by Part 36 of the CPR) proposes that there be no order for costs.

> 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 Clamant will beat it and Ms Rawe will be ordered to pay the Claimant's costs. In any event, as Ms Rawe has only paid £2,255, it must be accepted that she is on risk for C's costs at least down to this figure at trial.

> The gloss to my advice that the offer should be accepted was that it may be possible to tweak it so as to provide that the offer was accepted in full and final settlement of her contribution to the costs of the major works programme - the claim concerns on account demands based on

I don't have enough info

I don't Agree with what saying

Evidently my 'advisor' does not consider filing of a false claim against me in court, unlawful threat of forfeiture, a damning report by the LVT, as well as breach of the terms of my lease and of my statutory rights under L&T 1985 Act and of Civil Procedure Rules, etc, etc, qualify as sufficient reasons to challenge the offer Oh but of course: let's not upset the claimant! I should be so grateful for the "life-line" (point 49 of Mr Gallagher's 9 June 2004 reply)

I did not say I was accepting

Not true

I (and other residents) were told by the LVT to NOT pay (Daejan Properties v. LVT case)

How? It's a Part 36, or it's not a Part 36?

Why use of "tweaking" given the 17 June 2003 LVT determination?

> pre-estimates of the cost of the works, rather than on the actual costs of the works.

NO. The LVT made a determination on the costs - amounting to a 70% reduction (inc. contingency fund)

> The agreed strategy was for me to settle:

> 1 a covering letter raising a number of technical and ultimately unmeritorious points, the purpose being to distract attention from the tweaking exercise;

Not true
see L. McLean
attendance note of
28 Oct 03

> 2 a draft consent order that would embody the tweaking exercise - the raison d'etre for the draft consent order being that C's offer is not strictly a Part 36 Offer

> Obviously, the foregoing is inconsistent with Ms Rawe's current instructions - leaving aside the instructions to refute much of the commentary in the Offer - the show stopper is Ms Rawe's instructions (at para 6 of her letter) that the proposal that each party bear their own costs is unacceptable and that any compromise is to be on terms that C pay her costs. Putting this forward would not be an acceptance of C's offer and I am bound to say that it is not a realistic assessment of the strengths of the parties' respective positions. The reality of the matter must be that it is virtually certain that C will not accept any settlement that involves C contributing to Ms Rawe's Costs. Making such a counter offer tomorrow will simply throw away the chance to accept an offer that I remain firmly of the opinion that Ms Rawe should accept.

!!!
Breach of LVT
instructions
(we were told to
not pay)
+ non-implementation
of LVT findings.

> 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.

Denying me my
rights

> I know that time is pressing - I was unable to deal with this any earlier due to court commitments and I understand that both yourself and Ms McLean are out of the office today. I could settle the response and draft consent order tomorrow morning if instructed to do so. However, I need to know what the terms are to be

Absolutely
unbelievable!

> I can only repeat that it would be counter-productive to propose a settlement that involves C paying Ms Rawe's costs and strongly advise Ms Rawe to reconsider her position. Obviously once she has had a chance to do so I would be pleased to settle a response in accordance with those instructions.

> Please call if you have any questions - I am working at home tomorrow until 1 pm (01923 284 089) and will be contactable in Chambers after that.

> Please reply to my Chambers Email Stan.Gallagher@ArdenChambers.com <mailto:Stan.Gallagher@ArdenChambers.com> as it relays to home but the home address does not relay to Chambers

> Yours sincerely

> Stan Gallagher

> Arden Chambers

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What happened
between 28
Oct and 13 Nov?

(Event of 28 Oct 03
both Mr Gallagher
& Ms McLean were
not prepared to
consider my lease)