

[notice of acceptance]

WITHOUT PREJUDICE SAVE AS TO COSTS

Messrs CKRT Solicitors

Dears Sirs,

Steel Service Limited v Noelle Rawe: WL203537

Thank you for your Offer dated 21st October 2003.

We have taken the advice of Counsel, Stan Gallagher (Arden Chambers) and are advised that your client=s claim, as adjusted to take account of the LVT=s determination remains proceedings, vulnerable to a number of technical defences of merit arising out of the terms of the lease. In particular Counsel drew attention to:

1. the absence of due compliance with the service charge certification provisions prescribed by the lease;
2. the fact that the lease provides for an assessment of the individual lessee=s proportionate share of the global service charge liability based on Aa rateable value for the time being@ apportionment mechanism. The system of domestic ratings was abolished with effect from 1 April 1990 by section 117 of the Local Government Finance Act 1988 upon the introduction of the Community Charge (Athe Poll Tax@). Since then ratable value apportionment mechanism has been unworkable and your client has failed to seek an appropriate variation of the terms of the leases. Accordingly, for your client to succeed it would be necessary to convince the court to imply a term into the lease. We are advised by Counsel that this may be problematic: see for example *Thameside Properties Limited v Brixton Estates plc* Ch. 23rd January 1996 (CH 1996 T 3323): page 9 of the transcript.
3. the arbitration clause in the lease. The failure to rely on the same and to commence proceedings in the County Court and the LVT may well sound on the question of costs.

Nevertheless, our client wishes to bring this dispute to an end.

It was also pointed out by Counsel that, strictly, your Offer is not a Part 36 Offer as it departs from the automatic cost consequences imposed by Part 36: see CPR 36.14 and see generally the Whitebook=s commentary. We have therefore treated your offer as a without prejudice save as to costs offer and have by way of acceptance prepared a draft consent order for your approval; it not being strictly correct for us to serve a notice of acceptance under the Part 36 procedure. [You will note that, for the avoidance of doubt, the draft order makes specific reference to the major works the costs of which are the subject of this claim].

We look forward to hearing from you

Yours etc