

I, Noëlle Klosterkotter-Dit-Rawé, in my capacity as lessee of flat 3, Jefferson House, 11 Basil Street, London SW3 1AX, where I reside

1. Introduction

Exhibit
#

2. The Claimant, Steel Services, lodged a claim against me on 29 November 2002. It included a demand of £14,400.09 for major works at Jefferson House, as well as an additional £587.64. As stated in my defence, dated 17 December 2002, there are errors in the details of this part of the claim, which comprises electricity charges, as well as other items. By my calculations, the electricity charges amount to £264.04.
3. Aside from the non-electricity items (which I have since settled), I refused to pay the sum of £14,400.09 for two reasons: (i) because I believed it to be untrue; (ii) despite my numerous requests, I was not provided with supporting evidence for the claim (also stated in my defence). The second point applies in relation to the electricity charges.
4. I have submitted a list of documents under the Court's directive 'Standard Disclosure of Documents' and will refer to some of these in my statement giving detail of the number under the 'Exhibits' column.
5. **Major works – Sum of £14,400.09**
6. I have consistently agreed that repair and redecoration works are required at Jefferson House.
7. Although there are number of major failings in the process used by the Claimant in demanding payment for the major works, such as, for example, (i) insufficient tendering of the contract (point noted by the LVT in its report); (ii) non-compliance with the terms of my lease (as I stated in my defence), my primary objection was the fact that I was sent a demand for payment of £14,400.09 with, as sole supporting evidence, a letter from the chosen contractor, Killby & Gayford, stating only the overall cost for the works. My second objection was the refusal by the managing agents for the block, Martin Russell Jones (MRJ), to use the reserve fund as contribution towards the costs when, in fact, it had previously written to residents stating that it would do so. 82
8. The Claimant has argued that a copy of the priced specification was available at the porter's lodge from the time MRJ sent me their 17 July 2002 demand. I will demonstrate that this is simply not true. 19
9. The Claimant has also argued that, had I attended the residents meeting on 14 November 2002 (for which they gave me a three-day notice), I would have been able to obtain the information I required. Indeed, in Section 2 of his 24 February 2003 report to the LVT, the Claimant's surveyor, Mr Brian Gale, described the outcome of the meeting as: "...4 of the 5 objecting Respondents who attended the Pre-Trial Review on the 29th of October 2002 were now not objecting any further and had agreed to pay, or had paid...". I will reply to this in two parts. 64
10. The first part, as I stated in my reply to Mr Gale (which was submitted to the LVT by my Counsel on 28 April 2003), is that I wish to point out that three weeks later, the Claimant filed a claim in West London Court against 11 residents representing 14 flats. Also, the fact that some of these residents (e.g. defendants number one and four on the Court's claim) had attended both, the 29 October pre-trial review and the November meeting. The reality is, as I heard from some of the residents who attended the meeting, like me, they had not been provided with a properly priced specification. 66
36
11. The second part is for the purpose of highlighting dates: the demand for payment


19 Oct 03


of major works was dated 17 July 2002; the meeting where a copy of the priced specification is alleged, by the Claimant, to have been provided to residents, took place four months later.

- | | |
|---|--|
| 12. <u>Six times</u> over a six-month period spanning 11 August 2002 to 12 January 2003, I requested – in writing – from the Claimant a copy of the priced specification. These include: four letters to the Claimant (11 August 2002; 16 September 2002; 17 October 2002; 12 January 2003), and two letters to the LVT which were copied to the Claimant (22 October 2002; 25 November 2002). I wrote a third letter to the LVT, on 18 December 2002, highlighting the fact that the deadline set by the LVT for the provision of information had passed and that I had not received anything from the Claimant. In fact, a copy of the priced specification was eventually hand-delivered to my flat just 36 hours before the 5 th February hearing. | 23
26
31
54
35
40
52 |
| 13. I knew that I was 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 - as I was copied on letters/emails from residents sent to the LVT. | 20
28
32
33 |
| 14. The Claimant had attached a copy of the priced specification to its application to the LVT, dated 7 August 2002. The LVT sent me a copy of the application. The covering letter, dated 8 October 2002, stated that they "...enclose supporting documentation". These did not include the priced specification. At the 5 th February 2003 hearing, the Clerk to the Tribunal (who should be praised for his honesty), admitted that "not all the residents were copied on the priced specification". Among others, this evidence was taken into consideration by the Tribunal in finally agreeing to my request to have the hearing postponed, which the Chair said she did "in the interest of justice". | 21
30 |
| 15. The consistent unwillingness on the part of the Claimant to provide me with a copy of the priced specification - despite all my attempts - led me to believe that there was something suspect with the specification. This feeling was reinforced by five previous key events/ correspondence, in particular: | |
| 16. Firstly - Two years before the condition survey was carried out, Mrs [REDACTED], the person running the residents association, reported to the association's committee (of which I was a member) that Mr Ladsky intended to spend "...as much as £1 million refurbishing the block ...he feels that the reserve fund should be emptied and residents then should be forced to pay him for the extra costs that he deems would be necessary...". (Mr Ladsky, who resides in flat 35, was a member of the Applicant's party throughout the four-day LVT hearing). | 4 |
| 17. Secondly - Shortly afterwards, Mrs [REDACTED] reported to residents that "the minimum sum of £350,000 for carrying out the redecoration of the block was quoted by Mr Ladsky". | 7 |
| 18. Thirdly – Evidence that, in spite of adding an 11% management fee for managing the major works, MRJ were not controlling the process, as Mr Gale sent his 20 December 2001 submission for undertaking the condition survey of the block to "Steel Services Limited, The Office, Jefferson House". (The letter from MRJ to residents is dated 21 December 2002). | 13 |
| 19. Fourthly – Within days of my writing to MRJ that the proposals put forward by the companies for conducting the condition survey of the block focused on works that would be required as part of building an extra floor - rather than on repair and decoration - I started to suffer harassment and intimidation. This has continued. | 12
59
60
63 |
| 20. Fifthly – A major contradiction in Mr Gale's opinion as, in a letter dated 26 March 2002 i.e. written after Mr Gale had completed his 'Condition survey' (in February 2002), MRJ wrote: "The surveyors have indicated that the cost of works is likely | 15
17
49 |

[Handwritten Signature]
 19 Oct 03

to be in excess of £1million + VAT and fees...” whereas, in his expert witness report, Mr Gale states that he considers “the cost of works...detailed 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”

21. In addition to the above, the bullying and intimidation tactics employed by the Claimant further reinforced my feeling that there was something suspect about the specification. In particular: (i) letter from CKFT dated 7 October 2002 in which they threatened “...to commence proceedings by 14 October for recovery of the debt” if I did not pay what was demanded of me, as well as threatened “to take action to forfeit my lease”; (ii) their claim to County Court in November 2002 – when in fact Steel Services had applied to the LVT and the process was in motion. 29
22. Consideration of all these factors prompted me to employ a surveyor, lawyer and barrister to advise and represent me at the LVT. The outcome of my surveyor’s assessment and of the LVT hearing and subsequent report, dated 17 June 2003, confirmed that I was right to suspect that the sum I was being asked to pay was not due e.g. (i) point 46 of the LVT report: “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”; (ii) Page 12, (in relation to the lift): “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”. 82
23. The LVT has not included a summary of its decision in its report. I have requested that it does so. To date, my request is still outstanding. The following is therefore based on the assessment of the 17 June 2003 LVT report by my surveyor, Mr Tim Brock, LSM Partners. Mr Brock has concluded the following: 97
24. Firstly – That the LVT has disallowed the global sum of £129,958.00 (i.e. 23.02% of the original sum demanded) on the basis that the items were either unreasonable, or improvements. From Page 15 of the LVT report: “...the Respondent and other tenants could not be forced to contribute in the case of improvements and/or works not determined as reasonable..”. My surveyor has concluded that, in its July 2003 ‘revised cost’, the Claimant has now deducted this amount. 97
82
25. Secondly – That the LVT has stated that due to lack of/insufficient specification, it was unable to make a decision/ recommendation on numerous items, which, in total, amount to £144,745.87 (or 25.65% of the original sum demanded). According to Mr Brock, the Claimant has now reduced the amount by £34,849.00. However, as highlighted by Mr Tim Brock: “There is no explanation from Killby and Gayford for this reduction, or what directions they have followed from the Tribunal’s decision. This reduction still does not change the fact that it is possible that further cost reduction would occur if the works were correctly specified”. 97
26. Thirdly – The Tribunal has stated (under Point 63) that the contingency fund (of £141,977.00 at the time of the hearing) 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... surely it 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”. In any case, in their 7 June 2001 letter to residents, MRJ specifically stated that they would use the full amount in the reserve fund, as they wrote that they would contact residents to 82
9

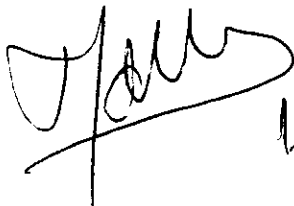

19 Oct 03

“...give details of the additional payment required from you...”.

27. At the case management hearing on 24 June 2003, CKFT handed me, and the Court, a revised amount for the major works, from £14,400.19 to £10,917.27, representing a 24.19% reduction. For the 26 August 2003 hearing, it provided me with a “revised costs” for each of the 35 flats. 86
107
28. Using this information - and applying the 11% management fee, plus VAT - I have calculated that the Claimant has so far reduced the total sum demanded by £178,074.13. To this I have also added a further reduction of £45,451.81 (based on Mr Brock’s assessment of the ‘revised costs’ produced by CKFT in July). Hence, relative to the global sum of £736,206.09 originally demanded from the residents, the total reduction admitted to date by the Claimant is £223,525.94 (or 30.4%). 109
29. Until the Claimant addresses the issues identified by the LVT – and my surveyor – in relation to items totalling £141,977.00, as well as implements its commitment to residents in relation to the reserve fund, I am only prepared to pay £2,255.07 – which is what I have done.
30. My surveyor has identified that, in its ‘revised cost’ produced in July 2003, the Claimant has included a tender price increase of 6.45%. I refuse to pay this increase because the delay has been caused by the Claimant and should therefore be the Claimant’s responsibility: (i) not providing the priced specification until 36 hours before the 5th February hearing; (ii) it is clear, from the comments made by the Tribunal, that the specifications and method of organising these works are below standard; to date, they have not been addressed. 97
- 31. Electricity – Sum of £264.04** 1
72
32. The standing charge for electricity was suddenly increased by 59% from Q4 of 1999 to Q1 of 2000. I asked MRJ for an explanation as London Electricity told me that, rather than going up, the standing charge had in fact gone down. MRJ replied that “*the standing charge varies according to the period that the account covers*”. This is precisely what I would expect, but is *not* the way MRJ has been charging me e.g. it charged me £12.58 a quarter for over two years from July 1997 to October 1999, and £19.56 for the following 15 months. The standing charge has only started to vary this year.
33. This year alone, on five occasions I have asked MRJ to prove their claim by sending me copies of London Electricity invoices. At the end of August they sent me invoices covering three quarters of year 2000. However, the charge only applies to Steel Services’ account with London Electricity, not to the meter for each flat. It would appear that these are under the control of Steel Services. Hence, while the explanation provided by MRJ is contradicted by the pattern of charging over the years, it seems that I have no choice: I have to resign myself to paying – once the Claimant has addressed the errors in its claim.
34. In conclusion, I have ended in my current situation due, partly to prolonged lack of cooperation by the Claimant in providing me with the evidence I requested, and partly because I established that the very substantial sum demanded of me by the Claimant is, for a large part, not due and payable. Several steps must be taken by the Claimant in order to arrive at the amount that I truly owe.

- END of Witness Statement -

I believe that the facts stated in this witness statement are true.



19 October 2003