

Mr Barry Martin
Martin Russell Jones
5 Watford Way
Hendon Central
London NW4 3JN

Ms N K-Dit-Rawé
3 Jefferson House
11, Basil Street
London SW3 1AX

(By Recorded Delivery)

London, 11 August 2004

For subsequent events, see my 3 June 2008 Witness Statement, Major works, CKFT, WLCC 2002-04, Pridie Brewster, My Diary 22 November 2008 Portner and Jaskel, WLCC 2007-08, etc.

Dear Mr Martin

I acknowledge receipt of your letter dated 4 August. I have sent it to my surveyor, Mr Tim Brock, LSM Partners.

In terms of setting an appointment for you to do the "Schedule of Condition" of my flat, Mr Brock and I could do the following:

- Wednesday 18 August – 9h00 – 16h30
- Thursday 19 August – 14h00 – 16h30
- Friday 20 August – 9h00 – 16h30
- Monday 23 August – 9h00 – 16h30

Which of these dates is convenient? At what time?

I assume that it will take at the most one hour (?)

Please, inform Messrs Moyle and Gale that they will need to remove their shoes on entering my flat.

Regarding your last paragraph that: "[I] refused to pay [my] contribution and this resulted in the proceedings before the LVT which of course resulted in the considerable delay in the commencement of the work".

Given your extremely inaccurate – and quite ludicrous - understanding of the situation, I will take the opportunity to remind you of some of the key facts and events:

1. In Section 2.03 of his "Expert Report / Proof of Evidence", dated 24 February 2003, to the LVT, **Mr Brian Gale** states: "At this stage [at the 29 October 2002 pre-trial LVT hearing], of the 35 flats within the block, 11 Lessees had already paid the relevant service charge, a further 10 had partly paid and had promised to pay the balance and were not in disagreement. Of the remaining tenants, only the 5 attending as Respondents had indicated any objection to payment of the service charge, reasonableness of the works or their cost"
2. In Section 2.09 of the same report, he describes the outcome of the 14 November 2002 meeting convened by Ms Hathaway - (with a 3 day notice – and prematurely given the LVT's directions as to the purpose of this 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..."
3. Mr Gale also states in his report that, at the 14 November 2002 meeting, residents had the opportunity to get a copy of the priced specification. By then, **4 months** had elapsed since the original demand for payment had been sent – as it was dated 17 July 2002.
4. While under 5.01, Mr Gale wrote: "I would like to draw to the attention of the Tribunal that I am advised by the managing agents that now some 31 of 35 tenants have paid, either in full or substantial contributions toward the cost of the proposed works"
5. **Barely 2 weeks after the 14 November meeting, on 29 November 2002, Steel Services-your firm filed a claim in West London County Court against 11 residents representing 14 flats.** In other

words, a very significant proportion of the flats not connected with the ownership of the block.

6. The 'Particulars of Claim' state that: "[I] have failed to pay the service charges... that they are now due and owing from [me] to the Claimant"
7. The 'Particulars of Claim' include a **'Statement of Truth' signed by "Joan Doreen Hathaway, Managing Agent"** as "duly authorised by the Claimant to sign this statement" stating: **"The Claimant believes that the facts stated in this Claim Form are true"**
8. **Six times** over a six-month period spanning 11 August 2002 to 12 January 2003, I requested – in writing - a copy of the priced specification. These include: four letters to Ms Hathaway and CKFT (11 August 2002; 16 September 2002; 17 October 2002; 12 January 2003), and two letters to the LVT which were copied to Ms Hathaway/CKFT (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 your office. In fact, a copy of the priced specification was eventually hand-delivered to my flat just **36 hours before the 5th February hearing**. This was therefore **7 months after** I received the original demand for payment
9. Aside from other residents also stating that they had not been supplied with a copy of the priced specifications (letters from residents to your office and to the LVT), the LVT captured the following in its **17 June 2003 report, under Point 14** –

"Ms Hathaway (of Martin Russell Jones), on behalf of the Applicant, resisted the application for an adjournment... She maintained that Ms Dit-Rawé had seen the specification in the porter's room, but was unsure as to whether this had been a priced version"

Point 16 of the LVT report states – *"In the interest of justice, the Tribunal agreed to an adjournment..."*
10. In his 24 February 2003 report, Mr Gale wrote under 5.02 – *"It would therefore appear... that only one lone tenant continues to make any representation or objection of the 35 tenants"*
11. Under point 50 of its report, the LVT recorded the following:

"It is noted that, apparently, the majority of the tenants wish all the works to be carried out. A letter from Mr Ladsky, the lessee of flats 34 and 35 dated 28 April 2003 stated:

"31 or 32 of the 35 tenants have paid their contribution towards the major work. They are, therefore, in agreement with both the scope and cost of the proposed refurbishment. Whilst I accept that the Tribunal is to rule on the reasonableness of the proposed works, it must surely follow that if the overwhelming majority of lessees in the building are ad idem, some considerable weight must be given to their collective view. It seems to me that it would be wholly inequitable for one lone tenant acting entirely unilaterally to be able to frustrate and delay the building works desired by the many".

The last part of **point 50, the LVT** report states: *"On the last day of the hearing a legal representative for another lessee in the subject property attended to say that her client was also unhappy about the service charges demanded of the proposed works"*
12. In its 23 May 2003 application to West London County Court for a Case Management hearing, CKFT highlights ongoing litigation against 4 residents. In fact, it appears that there is another one as well. This is in addition to having only agreed a Consent Order with another resident at the beginning of April. All of these were therefore **after** Mr Gale had written his *"Expert Report/Proof of Evidence"* report in which he claimed that I was *"only one lone tenant [who] continues to make any representation or objection of the 35 tenants"*.
13. When Mr Ladsky said to the LVT Panel on 5 February 2003: *"Will Ms Rawé pay the £250,000 of additional costs that will be incurred as a result of the delay in the start of the works due to the hearing?"*, the Chair, Mrs Goulden,

replied that I was perfectly within my rights to challenge the application made by Steel Services. This was captured in the LVT report under point 64: "Although she is in the minority, the Respondent's legal right to challenge the Applicant's proposal, as she had done, cannot be fettered"

Perhaps, I should also remind you of some of the **key findings by the LVT**:

Point 44 – "The reports prepared on behalf of the Applicant and provided to the Tribunal were, in the words of Mr Jones, **"a wish list"** for refurbishment of the subject property to a high standard. They do not seem to have been prepared on behalf of the Applicant having regard to its rights and responsibilities under the lease...The Tribunal would normally expect alternative proposals to be costed and produced, in order to make a proper and considered judgement of the best way forward to meet the obligations of both the landlord and the tenants"

Point 46 – "In this case **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 element of duplication. Some items were not specified at all, e.g. the types and capacity of the boilers"**

Point 16.07 – "It would appear to the Tribunal from the above, and the evidence given by Mr Jones, that **his instructions were obviously client led rather than an independent opinion...** There was no evidence, save for the complaints from the owner of the top floor flats, flat 34 and 35, that the boilers were failing regularly. Indeed, in evidence, Mr Jones confirmed that they were working, were being maintained and were not defective at present... **The specification is considered inadequate in that it is vague and lacked specific detail e.g. the provision to "remove and replace with new the boiler plant and all associated pipework".** It is noted that initially, **there was no breakdown of the specification until 7 March 2003** when Mr Gale responded to Mr Brock's report of 24 February 2003. Mr Gale accepted during the hearing that there had been no boiler specification in the tender document"

(The sum demanded for the boiler was £89,824.00. Therefore, with the addition of VAT and fees the intention was to charge residents the sum of £117,153)

Point 38 – "**Mr Gale also accepted that there were no boiler specification in the tender document** which merely stated "to remove and replace with new the boiler plant and all associated pipework"

Point 16.07 - "**In the circumstances, the Tribunal does not consider that it has sufficient information to make a proper judgement and therefore makes no determination** in respect of the boilers... This is an area which, in the Tribunal's view, alternatives and costings should have been explored"

Points 19 & 20 – "Mr Jones, C Eng MCI Bsc of Michael Jones & Associates, Engineering consultants... said that his instructions had been to prepare a report on the work which needed to be carried out. He said that a lift survey had been carried by a specialist, John Bashford. He said that **the report on the condition at the time had been 'a wish list'**

Point 16.07 – "**The Tribunal does not consider that Mr Jones' report is sufficient**, having regard to the reason why it was commissioned. In evidence, Mr Gale said "Michael Jones will be asked to provide specifics on design where unclear now and ensure that they are fit for the purpose", which indicates that Mr Gale accepts that there is some lack of clarity on this issue"

Point 16.07 – "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 since it refers in 16.26 to "the contractor is to (with full regard to J Bashford & Associates recommendation in the service engineer's report) allow to carry out a major refurbishment and replacement of the lift shaft and associated equipment, supplies and decorations". 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 £27,3000 to £60,000 over a matter of months..... the Tribunal is unable to make a determination on the specification, since it is considered inadequate.

Point 36 - "The original tender dated 2002 showed a fixed sum of £27,300 in respect of the lift installation. Mr Gale conceded that there may have been an element of duplication in the specifications for the lift"

Point 42 - "Mr Gale was questioned on the provision of £20,000 in the specification in respect of the porter's desk... He also accepted that there could have been a fixed, rather than a provisional sum for this within the specification and said "it was a time factor really". He acknowledged "there is not specification yet"

Point 37 - "In respect of the provision for downlighters Mr Gale said: I agree that there is latitude for contractors to fit 25 or 50 units. We may have to tighten it up"

Point 41 - "Mr Gale accepted that he had been "upping the specification" for the fire doors".

As pointed out by the LVT in its determination - under point 54:

"Assuming that, on a proper construction of the lease, the services in issue are covered by the charging clause, this does not mean that the landlord enjoys carte blanche to incur costs..."

And so, and so on.

And perhaps I should also remind you of the impact of the LVT determination on the original sum demanded:

The total sum demanded was £736,206.08 (£564,467.00 exc. VAT and fees)

- (1) Amount disallowed by the LVT because improvements: £169,497.72 (£129,958.00 exc. VAT and fees) = 23% of the global sum demanded
- (2) Amount for which the LVT could not make a determination due to lack of specification = £188,783.67 (£144,745.00 exc. VAT and fees) = 25.6% of the global sum demanded
- (3) A view supported by the LVT, considering the terms of the lease, as well as RICS best practice, that the reserve fund should be used as contribution: £141,977.00 - or 19.3% of the global sum demanded

Leaving an amount that can be charged of £235,946.56 - or 32% of the original sum demanded. In other words, £500,000.00 of the sum demanded was not considered as reasonable.

I trust that you will not repeat this false accusation.

Yours sincerely, ,


N K-Dit-Rawé

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