

IN THE LEASEHOLD VALUATION TRIBUNAL LVT/SC/007/120/02

BETWEEN

STEEL SERVICES LIMITED

Applicant

And

MS N K-DIT RAWE

Respondent

ADVICE ON SECTION 20(C) APPLICATION

1. My instructing Solicitors act for the Respondent in connection with her application to the LVT under section 20(C) of the Housing Act 1985. I am asked to advise:
 - 1.1 Whether the Respondent's application is solely for her own benefit or for the benefit of the entire block?
 - 1.2 To what extent does the alleged agreement with Martin Russell Jones preclude the continued pursuit by the Respondent of her application?
 - 1.3 On the assumption that the Application is made on behalf of all the Lessees, do the prospects of success warrant proceeding in this way?

The application

2. Section 20(CC) provides,
 - (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court of leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant *or any other person or person specified in the application.* (my italics)

3. By her Application in form LVT/4 and dated 10 August 2003 the Respondent applied for an Order “for the limitation of service charges arising from the Landlord’s costs of proceedings”.
4. Against that part of the form providing for a “Schedule of the names and addresses of every other party to the proceedings, including every person liable for the service charge” the Respondent wrote N/A.
5. In these circumstances, it is my opinion that the Respondent’s application, as it stands, is only for her benefit. If the other lessees wanted to, they must either apply to be joined to the Respondent’s application or make an application of their own.

Is there an agreement with Martin Russell Jones

6. By a letter dated 18 September 2003 those instructing me wrote, on behalf of the Respondent, Martin Russell Jones saying,
“Please confirm whether your client is prepared to waive its costs, as against Miss Rawe, of the LVT proceedings. If that is the case then please confirm that to us in writing, immediately upon receipt we shall withdraw the application in the LVT currently listed to be heard on 8 October.”

By a letter dated 19 September 2003 Martin Russell Jones replied saying,
“On the basis that your client Miss Dit-Rawe withdraws permanently her Section 20C Application and that this is accepted by the Leasehold Valuation Tribunal our clients are prepared not to claim from your client any part of the costs they incurred as a result of the Hearings before the Leasehold Valuation Tribunal.

“Please confirm your client’s acceptance of these terms by return. At the same time please let us have a copy of your letter to the Leasehold Valuation Tribunal confirming the above.”

In the meantime the Respondent had expressed concerns about the prudence of agreeing to what was being proposed, so those instructing me stalled matters.

By a further letter dated 19 September 2003 Martin Russell Jones wrote those instructing me saying,

“Our clients have asked me, notwithstanding your fax of 4.32 today, to say that they consider that there is an agreement with Ms Dit-Rawe and that there is therefore nothing further that needs to be done other than receipt of a confirmatory letter.”

Such a confirmatory letter has not been sent and Martin Russell Jones is threatening specific performance proceedings.

7. On one view, Martin Russell Jones’ first letter of 19 September 2003 could be regarded as a counter-offer and therefore, on usual common law principles, a rejection of the Respondent’s offer to settle. However, statements which are not intended to vary the terms of the offer, or to add new terms, do not vitiate the acceptance, even where they do not precisely match the words of the offer. Further, if the new term merely makes express what would otherwise be implied, it does not destroy the effectiveness of the acceptance, see Chitty on Contracts @ 2-029.
8. On a fine balance it is my opinion that Martin Russell Jones’ letter did amount to an acceptance resulting in a binding contract. Although it was

expressed in terms of a counter-offer, what they were asking for was implicit in the Respondent's original offer, i.e. that she would permanently withdraw her application under section 20(C). Of course, the LVT could not prevent her withdrawing her application.

9. In these circumstances, it is my opinion that the Applicants would be entitled to obtain an injunction preventing the Respondent from pursuing her application before the Tribunal.

What would be the advantages of making an application on behalf of the other lessees?

10. There are really two questions here. Would the other lessees benefit from such an application? Does the Respondent face any risk if she does not pursue an application on their behalves?
11. I am very grateful to those instructing me for including in my instructions a copy of the LT decision in *Langford Court* that clearly sets out the principles on which the LVT should act when deciding whether to make a section 20(C) order. Applying those principles, it seems to me that the lessees would have very good prospects of obtaining such an order. In any event, the costs of making an application would not be so very much and the potential benefit is a very substantial saving in next year's service charge. Further, they could resist paying the costs on section 19 grounds. It is really up to them.
12. As I see it, the Respondent is not at risk of the other lessees making a claim against her in circumstances where no part of the costs is added to her service charge but they end up paying their share of the landlord's LVT costs. I say this for two reasons. First, any theoretical loss could have been

avoided by the Lessees making their own section 20(C) applications, please see above. Second, as I understand it, the other lessees will not be being asked to pay the Respondent's "share" of the landlord's costs, the landlord will be absorbing those himself. Thus, even if it could be said that the Respondent was technically in breach of her covenant with the other lessees to pay the Service Charge, they will have suffered no loss because of her failure to do this because they will not be asked to pay her share.

Conclusion

13. In the circumstances, I advise the Respondent to accept the advice of those instructing me and to withdraw her application on the agreed terms.

2003-09-25

Paul Staddon

IN THE LEASEHOLD VALUATION

TRIBUNAL LVT/SC/007/120/02

BETWEEN

STEEL SERVICES LIMITED

Applicant

And

MS N K-DIT RAWE

Respondent

ADVICE ON SECTION 20(C)

APPLICATION

Piper Smith & Basham

31 Warwick Square

London SW1 2AF

Ref: Lisa McLean

My comments in relation to: Ms McLean's assessment of Mr Paul Staddon's advice – as captured in her letter to me dated 25 September 2003 – (Using the note references I subsequently added to her letter)

A This is **ABSOLUTELY not true** – and **Mr Paul Staddon, Tanfield Chambers and Ms Lisa McLean knew that what they were saying was NOT TRUE**

See:

- My fax reply of 28 Sep 03 and letter of 29 Sep 03 to Ms McLean
- Oliver Fisher 7 Apr 03 letter to the LVT (copied to Ms Hathaway, MRJ) – as well as his covering letter to me of the same date in which he states: **“This confirms that we will be making an Application to the LVT that come what may, we will be suggesting that their legal costs should not be added to the service charge. I will let you know the response I have and Paul Staddon will certainly be making the application at the next hearing”**

And it was understood by ALL at the 28 Apr 03 LVT that my application was for the WHOLE block – leading Mr Warwick, Steel Services Counsel to say: **“My client will not charge Ms K-Dit-Rawé for the costs, but will charge the other residents”**. A reply which took the Chair by surprise and led to a recess (After which she declared that it would require another day of hearing and asked Mr Staddon: *“how does your client feel about that?”*)

- My 12 Aug 03 covering letter to my 20C Application to the LVT
- My 21 Sep 03 reply to Ms McLean's 19 Sep 03 fax
- My 23 Sep 03 'Rationale' for making the application - which Ms McLean confirmed she had sent to Mr Paul Staddon
- Ms **McLean's letter of 23 June 2003** to Oliver Fisher in which she asked: **“Are you able to confirm whether... your client... will be proceeding with her application under section 20C of the L&T Act 1985”**.

Note also that in the following paragraph she wrote: **“We note your client's views previously but we simply wish to know whether or not your client is making the application”**.

The letter she is referring to from me is that of 16 April 2003 – in reply to hers of 9 April 2003 – in which I wrote, among others: **“In light of the above, I am sure you will understand that I am not prepared to incur legal fees to assist other residents”** In other words: “don't bother me anymore”.

Yet, **IN SPITE of this**, she nonetheless sent her 23 June 2003 letter. **If it was true that the application would be solely for my benefit, why the interest in finding out whether I was making an application?** It certainly was not out of concern for my welfare!

- The **Langford Court v Doren Limited Lands Tribunal case + LEASE** (the authority on leasehold matters) confirming as well to me that I, **on my own**, could make a 20C Application that would apply to the whole block

Note also (as I summarised in my 16 March 2004 complaint to the Law Society against Ms Lisa McLean and Mr Richard Twyman, under points 142 to 181) how Ms McLean went into 'overdrive' to prevent me from going through with my application

My view of the method used by my 'so called' 'advisers:

SKULDUGGERY and BULLYING

B This is total nonsense.

My comments in relation to: Ms McLean's assessment of Mr Paul Staddon's advice – as captured in her letter to me dated 25 September 2003 – (Using the note references I subsequently added to her letter)

Other residents would not stand a chance – and **Ms Siobhan McGrath, Head LVT**, saw to it they would not:

- the 17 June 2003 LVT report **does not have a summary of the impact of the determination on the global sum demanded.** (Hence the LVT failed to perform its remit).

Without having access to the additional documents produced during the hearing, it is extremely difficult to figure out the impact of the determination. (As evidenced by what happened to the 5th Defendant who ended-up paying as much, if not more than the original sum demanded. See **West London County Court order** dated **26 Aug 03** and **Wandsworth County Court order** dated **2 Aug 04**) (Both courts = two other 'magnificent' examples of British justice!)

- **Ms Siobhan McGrath** twice refused my request to have a summary added (see her letters to me of **12 Sep 03** and **26 Nov 03**)
- See my 21 Sep 03 reply to Ms McLean's fax of 19 Sep 03

C "... on the basis that you do have legal advisors..." Yes! Acting for the other side!!

Note how Ms McLean rallies to the support of CKFT

D See points 1.2.2.1, 61 and 68 – 70 in **my 20 Dec 04 complaint** to the Law Society **against Mr Lanny Silverstone and Ms Ayesha Salim, CKFT**

As I replied to Mr Gurjinder Sanghera, Consultant Caseworker, Law Society, in **my letter dated 19 Feb 05**:

To threaten forfeiture prior to issues being determined by a court or a tribunal is illegal. It is a fraudulent act as the intention was to frighten me in order to extort monies not due and payable. It is also an abuse of position.

Section 40 of the Administration of Justice Act 1970 renders it illegal to make threats which are calculated to cause alarm, distress or humiliation.

Rule 12.02 of the Solicitors Code of Conduct: "*A solicitor must not act where the instructions would involve the solicitor in a breach of the law ...*"

Your assessment also amounts to an endorsement of CKFT creating a situation of double jeopardy and of consequently acting against the Solicitors Practice Rules and concurrent rules under the Courts and Legal Services Act 1990, Ch. 41, s. 17 to act appropriately "*in the interests of the proper and efficient administration of justice*"

Your assessment is incorrect: "*Rule 17.05 of the Solicitors Code of Conduct - Letters before action - When writing a letter of claim a solicitor must not demand anything other than that recoverable under the due process of law*".

I refer you again to the Administration of Justice Act 1970, Section 40.

And this is the kind of conduct that Ms McLean endorses! Very clearly, she comes from the same mould