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LRA/71/2005

**LANDS TRIBUNAL ACT 1949**

**APPLICATION**  
**under section 175(2) of the Commonhold and Leasehold Reform Act 2002 for**  
**PERMISSION TO APPEAL**  
**against the decision of a Leasehold Valuation Tribunal**

**Applicant: Modderose Ltd**

**Property: 23 Barn Lane, King's Heath, Birmingham B17 9NG**

**Decision of the Leasehold Valuation Tribunal for the Midland Rent Assessment Panel**  
**dated 28 April 2005**

**Permission to appeal is REFUSED for the following reasons:-**

While it is arguable that the LVT erred in its decision under "(a) section 9(4)(a)" in stating that no costs could be awarded in respect of items (i) and (iii) on page 2 of Butcher Burns's letter of 31 March 2005, in view of its findings that no evidence had been submitted as to what investigation of title had taken place and that no time records had been produced, it appears improbable that it would have determined any higher figure than £50 even if it had taken a different view on its powers in relation to (i) and (iii). The prospect of success on this ground is insufficient to justify the grant of permission.

The LVT's decision under "(b) section 9(4)(b)" was that reasonable costs were £350 + VAT rather than the £500 + VAT that had been sought. The decision was reached in the light of the LVT's experience and was in my view one that it was entitled to reach on the material before it.

The decision under "(c) section 9(4)(e)" is in my view unimpeachable. Butcher Burns stated in their letter to the tribunal of 13 April 2005 that Bell Southfields Ltd were instructed to carry out the valuation on 7 February 2005. Given the date of the application, 21 January 2005, the LVT was entitled to infer that the instructions had been given in connection with the reference rather than in pursuance of the notice. There was no duty on the LVT to alert the applicant that *Naiva* was being relied on by the other party. The applicant made a decision not to be present at the hearing, and in so doing it took the risk that evidence would be given and submissions made that it would not have the opportunity to address. There was no unfairness in the way that the LVT reached its decision.

Dated 22 September 2005

*George Bartlett* :

George Bartlett QC, President