

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

PROPERTY (NORTHERN IRELAND) ORDER 1978
IN THE MATTER OF AN APPLICATION FOR COSTS

R/9/2023

BETWEEN

WILLIAM TREVOR THOMPSON AND RITA ANNE THOMPSON – APPLICANTS

AND

JAMES ANTHONY REGAN – 1ST RESPONDENT

NEVIN RINGLAND AND IRENE RINGLAND – 2ND RESPONDENTS

JOHN JAMES McDOWELL – 3RD RESPONDENT

Re: 31 Clontonacally Road, Carryduff

Lands Tribunal for Northern Ireland – Henry Spence MRICS Dip.Rating IRRV (Hons)

Background

1. On 23rd August 2023 William Trevor Thompson and Rita Anne Thompson (“the applicants”) made a reference to the Lands Tribunal under the Property (Northern Ireland) Order 1978 (“the 1978 Order”) seeking:

“... a Declaration by the Tribunal that they are entitled to the benefit of a prescriptive right allowing them to continue to use the benefit of visibility splays/sight lines as set out in the accompanying Statutory Declaration and thereon shaded yellow on the Map attached hereto and further an authority to the Registrar of HM Land Registry to enter the appropriate entries on the relevant Folios both of the Applicants and of the Respondents to give legal effect to same.”

2. Anthony James Regan (“1st respondent”), Nevan Ringland and Irene Ringland (“2nd respondents”) and John James McDowell (“3rd respondent”) opposed the application.

3. On 26th January 2024 the applicants subsequently amended their application:

“The Applicants see a Declaration that an easement of a right to retain and preserve in perpetuity a sightline, or line of sight, or visibility play, has now been created. This is in favour of the Applicants by virtue of their continuous use of the said Easement for a period greater than twenty years. Accordingly the applicants seek a Declaration from the Tribunal be made in their favour and the above authority and direction be provided as at (1) above to the Registrar to HM Land Registry Belfast.”

4. The application continued to be opposed by the 1st and 2nd respondents.
5. At a mention of the reference on 16th January 2024 the applicants indicated that they “would like to completely withdraw the reference”, on the basis they felt that the Lands Tribunal did not have jurisdiction and the matter would be better dealt with at the Chancery Court.
6. On 27th February 2024 the applicants formally withdrew their application to the Lands Tribunal. On 14th March 2024 the 1st respondent gave his conditional consent and on 22nd March 2024 he made an application for costs. At the same time the applicants made an application for their costs.
7. The allocation of costs is the issue, therefore, to be decided by the Tribunal.

Procedural Matters

8. The Tribunal received written submissions from:
 - (i) Mr John McLaughlin of John McLaughlin & Co, solicitors, on behalf of the applicants.
 - (ii) Mr James Regan as 1st respondent.

Statute

9. The powers of the Lands Tribunal to award costs are to be found in Rule 33 of the Lands Tribunal Rules (Northern Ireland) 1976 (“the Rules”) together with section 8(7) of the Lands

Tribunal & Compensation Act (Northern Ireland) 1964 (“the 1964 Act”), section 8(7) provides as follows:

“8(7) Subject to sections 9 and 10 and any other transfer provisions, the Lands Tribunal may order that the costs, or any part of the costs, of any proceedings before it incurred by any party shall be paid by any other party and may tax or settle the amount of any costs to be paid under any such order or direct in what manner they are to be taxed or settled.”

10. Rule 33 of the 1976 Rules provides as follows:

“33(1) Except in so far as [Article 5 of the Land Compensation (Northern Ireland) Order 1982] applies and subject to paragraph (3) the costs of and incidental to any proceedings shall be in the discretion of the Tribunal, or the President in matters within his jurisdiction as President.

(2) If the Tribunal orders that the costs of a party to the proceedings shall be paid by another party thereto, the Tribunal may settle the amount of the costs by fixing a lump sum or may direct that the costs shall be taxed by the registrar on a scale specified by the Tribunal, being a scale of costs for the time being prescribed by rules of court or by county court rules.”

Discussion

11. The submissions from both parties mainly concerned allegations and counter allegations about the substantive issues in the reference and which never came before the Tribunal. The Tribunal, therefore, finds the submissions to be unhelpful with regard to the allocation of costs.

12. The Tribunal refers to the following extracts from its previous decision with regard to the withdrawal of an application:

Sai K Cheung & Christine Cheung v Fernheath Developments Limited BT/55/2007

“6. The starting point is the presumption, which follows from the application to withdraw, that the tenants have lost ...”

Decision

13. Following the withdrawal of the reference by the applicants the Tribunal can find no reason why the 1st respondent should not be awarded his reasonable costs.
14. The Tribunal, therefore, awards the 1st respondent his reasonable costs in the reference, such costs to be taxed by the Tribunal in default of agreement.

12th June 2024

Henry Spence MRICS Dip.Rating IRRV (Hons)

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