LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996

IN THE MATTER OF APPLICATIONS

BT/3/2025 AND BT/28/2025

BETWEEN

SEDAR LIMITED – APPLICANT

AND

REPETEK LIMITED – RESPONDENT

Re: (i) Larkhill Service Station, Coleraine Road, Portstewart
(ii) Service Station, 40 Hillhead Road, Stewartstown

Lands Tribunal – Henry Spence MRICS Dip Rating IRRV (Hons)

Introduction

1. The subject reference relates to the application for the renewal of tenancies on two Service Stations at Coleraine Road, Portstewart and 40 Hill Road, Stewartstown ("the reference properties").

2. Sedar Limited ("the applicant") is the tenant of both properties and on 16th December 2024 the applicant made tenancy applications seeking the grant of new tenancies on each of the reference properties. This was in response to Notices to Determine the tenancies served by Repetek ("the respondent") on 21st July 2024. These Notices to Determine opposed the grant of new tenancies on "own use" grounds, as detailed in Article 12(1)(g) of the Business Tenancies (Northern Ireland) Order 1996 ("the BT Order").

3. The respondent company had been owned by the late John Morgan. The applicant company is owned and controlled by Desmond Morgan, the brother of the late John Morgan.

4. The respondent purchased the reference properties in the mid to late 1990s. Both premises comprise a Spar grocery shop with petrol forecourt.

5. From in and around the late 1990s the reference properties were let to Desmond Morgan. The applicant company was incorporated in 2002 whereupon it became the tenant of the reference properties.

6. The tenancies were formalised on 19th March 2010 and the applicant entered into separate leases for each property. The leases demised the reference properties for a term which commenced on 19th March 2010 and which expired on 18th March 2020. Since the expiry of the contractual terms of the leases the applicant's tenancies have continued under the terms of the BT Order.

7. The Portstewart premises were let in 2010 at a rent of £3,250 per month and the Stewartstown premises at £1,540 per month, also in 2010. Under the terms of the leases the applicant is obliged to maintain the condition of the properties and to redecorate inside and out every 5th year of the lease periods.

8. The other relevant clauses of the leases include a rent review clause at clause 8 and clause 13 states that the tenant is to return the properties to the respondent in the condition as prescribed within the repairing covenants contained in the leases.

Procedural Matters

9. The applicant was represented by Mr Keith Gibson BL, instructed by Simmons Meglaughlin & Orr, solicitors. Mr Douglas Stevenson BL, instructed by Millar McCall

Wylie, represented the respondent. The Tribunal is grateful to counsel for their helpful submissions.

10. The Tribunal also received evidence from:

    (i) Mrs Trudi Morgan, sole director of the respondent company.

    (ii) Mr Cameron Stewart, brother of Mrs Morgan and owner of a Nisa convenience store and petrol station in Cookstown.

    (iii) Mr Holland, Business and Acquisitions Manager of Musgrave.

    (iv) Mr Desmond Morgan, sole director of the applicant company.

Position of the Parties

11. The applicant contends that the current dispute has nothing to do with the respondent's "own use" but is simply being used as a vehicle by Mrs Trudi Morgan to settle perceived issues she has personally with Mr Desi Morgan. There is a certain "settled intention" on behalf of the respondent, but it is not a settled intention to operate the businesses, merely a settled intention to ensure that Mr Desi Morgan, through the applicant company, no longer can profit from the two businesses.

12. The respondent's position was simply that the respondent intends and if successful in the reference, will occupy and use the reference properties for business to be carried on by it.

The Statute

13. Article 12(1)(g) of the BT Order details the grounds on which the respondent seeks to oppose the grant of new tenancies to the applicant:

    "12.-(1) The grounds on which a landlord may make a tenancy application, or may oppose a tenancy application by the tenant, are such of the following grounds as may be stated in the landlord's notice to determine under Article 6, or as the case may be, in the landlord's notice under Article 7(6)(b), that is to say-

(a) …

(b) …

(c) …

(d) …

(e) …

(f) …

(g) subject to Article 13(4) … that on the termination of the current tenancy a person with a controlling interest in the company intends to occupy the holding for a reasonable period-

(i) for the purposes, or partly for the purposes, of a business to be carried on in it by him or by the company; or

(ii) as his residence."

Authorities

14. The Tribunal was referred to the following authorities:

(i) Stranaghan v Simpson BT/33/2011

(ii) Cox v Clancy BT/14/2002

(iii) S Franses Ltd v Cavendish Hotel (London) Ltd [2018] UKSC 62

(iv) Transcold v Cooltech BT/54/2020

(v) NTH Retail Limited v MPS Retail Limited BT/18 & 22/2023

Application of the Law

15. With regard to the application of the law, Mr Douglas Stevenson BL submitted:

(i) The Tribunal has considered the law on whether a party can establish that it intends to use premises for its own use in a number of decisions, most recently in NTH Retail Limited v MPS Retail Limited BT/18 & 22/2023.

(ii) There are two aspects to the question of intention; the first involves a subjective assessment of the state of mind of the landlord. The second involves an objective assessment of the landlord's prospects of implementing the intention. Whilst there are those two aspects, the two do overlap to some extent. If a landlord had no realistic prospect of using premises for its own use, then the Tribunal may be less likely to find that the landlord actually intends to use the premises for its own use.

(iii) On the first aspect of intention Reynolds and Clarke comment "If a judge makes a finding that the landlord does not genuinely intend that which he says he intends, then the judge is finding that he does not believe what the landlord says". So, for the Tribunal to make a finding that the respondent does not subjectively intend to use the premises for its own use, it will have to make a finding it does not believe what the respondent is saying.

(iv) The respondent says that this is not a finding that should be lightly made. It is submitted it would be unusual for a landlord to appear before the Tribunal, professing it intends to use premises for its own use when it actually does not, especially given the penalties in the 1996 Order for landlords who post hearing are found to have misrepresented their position.

(v) On the second aspect, being the point on which debate is usually centred in these cases, the Tribunal does not have to be satisfied that a landlord will definitely be able to implement its professed intention. The test is whether a landlord has "a reasonable prospect" of being able to implement its intention. See Cox v Clancy BT/14/2020 at para 14 quoted in NTH Retail. See also Reynolds and Clarke at para 7-153.

(vi) Thus, the question for the Tribunal in the subject reference is:

a) does the respondent actually intend to occupy the reference properties for its own use.

b) does the respondent have a reasonable prospect of implementing that intention.

16. Mr Gibson BL submitted:

(i) There are two grounds of intention: one subjective and one objective. The whole issue of intention was reviewed recently by the Supreme Court in S Franses Ltd v Cavendish Hotel (London) Ltd [2019] AC 249. The brief facts of that case are that the tenant carried on a business specialising in antique tapestries and textile art on the ground floor and basement of the Cavendish Hotel in London. As the contractual terms of its leases were coming to an end, it served notices on its landlord requesting new leases.

(ii) The landlord opposed the tenant's application for new leases on our ground (g) "own use". The landlord admitted that proposed works would not be carried out if the tenant left voluntarily but nonetheless gave an undertaking to the Court to carry out all the works if vacant possession were ordered. The works would convert the premises into two retail units but had little practical utility because planning permission would be needed to use the new units (which the landlord did not intend to seek) and one of the units did not have direct access from the street. In addition, the landlord planned to lower the basement floor for no practical reason and to demolish an internal wall and replace it with a similar one in the same place.

(iii) The landlord's predominant purpose (as it freely admitted) in devising its scheme of works was to obtain possession under ground (f). The works were expensive (estimated by the landlord at £776,707) and commercially and practically useless, but the premises themselves were highly desirable, and the landlord wanted them back.

(iv) The High Court upheld an earlier County Court decision that, as the landlord genuinely intended to carry out the works (as evidenced by its undertaking to the courts), it could rely on ground (f). That decision did seem surprising when the landlord candidly admitted it would not carry out the works. The case raised an interesting issue, however, regarding intention and the wording of the statute and permission was given for a leap-frog appeal to the Supreme Court. In delivering his decision Lord Sumption highlighted the case, which is most often cited in Northern Ireland, namely Betty's Cafés Ltd [1959] AC 20 which is authority for the proposition that the relevant intention of the landlord was his intention at the date of the hearing.

(v) In Northern Ireland historically the Lands Tribunal has looked at the decision of Stranaghan & Simpson v Townsley BT/33/2011, in which Mr Curry reiterated the criteria which the landlord must satisfy the Tribunal of, before the Tribunal will refuse to grant a new tenancy. There must:

a) be a subjective assessment of the state of mind of the landlord; and

b) an assessment of the realistic prospects of implementing the intention held.

(vi) And the test for whether or not the landlord will be allowed to recover possession in this context was as set out recently by the Lands Tribunal in Transcold v Cooltech BT/54/2020 referring to Cunliffe v Goodman:

> "An intention … connotes a state of affairs which the party 'intending' … does more than merely contemplate. It connotes a state of affairs which, on the contrary, he decides so far as in him lies to bring about and which in point of possibility he has a reasonable prospect of being able to bring about by an act of his own volition. Not merely is the term 'intention' unsatisfied if the person professing has too many hurdles to overcome or too little control of events; it is equally inappropriate if at the material date that person is in effect not deciding to proceeding but feeling his way and reserving his decision until he shall be in possession of the financial data sufficient to enable him to determine whether the project will be commercially worthwhile

… in the present case … neither project moved out of the tentative, the provisional or the exploratory … into the valley of decision."

(vii) In Transcold v Cooltech, rather like this current case, because of family animosity the Tribunal felt that the intention simply wasn't there, despite there being in place plans to develop that pre-dated the application.

17. The law relating to challenges under Article 12(1)(g) of the BT Order, "own use" is well established, and it was not disputed that the Tribunal has to make an assessment of:

(i) Does the respondent actually intend to occupy the reference properties for its own use. As noted by Mr Gibson BL and stated in Betty's Cafés Ltd, it is the respondent's intention at the date of the hearing that has to be assessed.

(ii) Does the respondent have a reasonable prospect of implementing that intention.

The Respondent's Intentions

18. Following the death of her late husband, Mr John Morgan, Mrs Trudi Morgan became the sole beneficiary of his estate. She is also the sole director of the respondent company. It was not disputed that Mrs Morgan has substantial finances at her disposal.

19. Throughout her giving evidence to the Tribunal and under cross-examination she clearly stated on many occasions that it was her firm intention to occupy the reference properties, as sole director of the respondent company.

20. She stated that she had ambitions to run the reference properties for some time, as the fundamental return from running the properties would be much greater than the rent. She gave evidence that the estimated return from the Portstewart premises was

£277K per annum with a rent of £32K and Stewartstown estimated turnover of £210K per annum with a rent of £15,400.

21. She also gave evidence that for some time, commencing in 2019, she had worked in her brothers convenience store/petrol filling station in Cookstown to gain experience in running such a store.

22. The Tribunal was also advised that she had signed up to the Musgrave Institute training scheme but this could not formally start until she knew that she was going to recover possession of the reference properties.

23. On behalf of the applicant Mr Gibson BL disputed the respondent's intentions. He pointed to a letter, dated 3rd May 2024, in which the executors of her late husband's will had offered the applicant new tenancies. Mrs Morgan stated that this was the advice of the executors in order to ascertain what the applicant's intentions were.

24. Mrs Morgan stated that she went along with the executor's advice at that time but this was not her intention at hearing. The respondent is not legally bound by the executors offer to the applicant and the Tribunal accepts that Mrs Morgan clearly stated that this was not the respondent's intention at hearing.

25. Mr Gibson BL also referred to a financial dispute some 26 years previous between Mrs Morgan's brother, Mr Cameron Stewart and Mr Desi Morgan of the applicant company. Mr Gibson BL suggested that Mrs Morgan's motivation for recovering possession of the reference properties was revenge against Mr Desi Morgan.

26. Mrs Morgan denied this in the strongest terms and Mr Desi Morgan confirmed in evidence that he was not aware of any “vendetta” against him, until the current proceedings commenced.

27. The Tribunal finds it hard to believe that Mrs Morgan’s motivation is based on revenge for an incident which occurred some 26 years earlier between her brother and Mr Desi Morgan. Her clear evidence at Tribunal was that her motivations were other than “revenge”.

28. Mr Gibson BL asked the Tribunal to note that the late Mr John Morgan had inserted a wish in his will that his brother would occupy the reference properties for a further five years. It was accepted that this “wish” was not legally binding and Mrs Morgan gave evidence that she did not intend to carry out her late husband’s wish. She advised the Tribunal that she had discussed her future occupation of the reference properties with her late husband and this was their intention. Regardless of her husband’s “wish” the Tribunal accepts that Mrs Morgan was not bound by that “wish” and it was not her intention to carry out that “wish”.

29. Mrs Morgan’s lack of experience in running a convenience store/petrol filling station was also questioned by Mr Gibson BL. She was an English teacher and had not worked full time since the birth of her daughter.

30. Mrs Morgan asked the Tribunal to note that she had gained valuable experience whilst working in her brothers store in Cookstown and she had also signed up to the Musgrave Institute Training Scheme. Mr Stevenson BL submitted that it was not a requirement under the BT Order to have experience. The Tribunal agrees but notes Mrs Morgan’s experience gained in Cookstown.

31. Mrs Morgan was also questioned about the possibility of residential development at the reference properties. She categorically denied this was her intention and the Tribunal is satisfied with her denial.

32. Based on Mrs Morgan's clear evidence at hearing the Tribunal is satisfied that the respondent had a firm intention to occupy the reference properties for itself.

<u>The Respondent's Prospects of Carrying out its Intentions</u>

33. Mr Stevenson BL submitted that on the second aspect of intention and the question of whether the respondent has reasonable prospects of carrying out its intentions, the Tribunal has:

    (i) Board minutes from the respondent company.

    (ii) Letters of offer from Musgrave, who will supply all of the stock requirement to run the reference properties.

    (iii) Offers from Musgrave of grants of £400,000 and £300,000 to go towards fit out costs of each premises.

    (iv) A letter from the respondent's accountant that it has sufficient funds to carry out the works.

    (v) The very substantial means that Mrs Morgan has personally and which can be used, if they were ever needed, to cover any shortfall in the initial costs.

    (vi) The very detailed profit and loss projections from Musgrave, who it is submitted, are clearly experts in this field.

    (vii) The fact that the respondent will generate a far better return from running the reference properties than from the modest rents received, even if the passing rents were increased.

    (viii) Very detailed fit out costings prepared by Musgrave.

(ix) Offer of a new fuel contract with Valero with whom the respondent enjoys a long relationship.

(x) The fact that Mrs Morgan has signed up to the training course to be provided by Musgrave.

(xi) The fact that Mrs Morgan has gained experience through working at her brother's business for a number of years.

(xii) Mr Stewart's willingness to assist, insofar as his experience might be needed.

(xiii) The correspondence that the respondent was ready to go to the National Lottery, the Post Office, the Department of Health and the Local Council amongst others.

(xiv) The fact that Mr Holland from Musgrave was willing to come to court to give evidence as to his dealings with the respondent, his confidence in Mrs Morgan and Musgrave's offers in relation to the reference properties. The respondent is not aware of a supplier doing this in any other case.

34. In conclusion Mr Stevenson BL submitted that these comprehensive proofs go far beyond demonstrating that the respondent's intention will be implemented.

35. Mr Gibson BL questioned Mr Holland's evidence and to the following aspects:

(i) Mr Holland was on commission. There was quite clearly, therefore, an incentive to get a new customer validated.

(ii) When he was contacted by Mrs Morgan he did not do checks at all as to her identity, her background and/or her experience. He simply, having met her, decided that she had the necessary "work ethic" for the Musgrave Group. This could not be considered on any level a proper assessment of the suitability of the respondent for the commercial operation of the reference properties. The operation appears driven by Mr Holland wanting to secure another customer.

36. Mr Stevenson BL asked the Tribunal to note:

(i) Mr Holland was the New Business and Acquisitions Manager at Musgrave. He had been employed by Musgrave for 21 years and had been in the role of New Business Manager for 10 years. He explained that Musgrave operated three brands in Northern Ireland: Supervalu, Centra and Mace. Musgrave had agreements with over 230 shops in Northern Ireland and Mr Holland had been responsible for opening some 82 of those stores.

(ii) He also gave evidence that Musgrave had been aware of the reference properties for some time. He had met with Mrs Morgan following her contact and discussed her plans to occupy the properties herself. He formed the view that she would be well capable of running the stores. He said that in other cases people had approached him about entering into an agreement with Musgrave but he had formed the view that those persons were not suitable. Musgrave would not enter into an agreement with just anyone.

37. Based on Mr Holland's evidence the Tribunal is satisfied that Musgrave's motive for doing business with the respondent was much more than commission based. Mr Holland gave evidence that of the 82 stores that he had been involved in opening only 4 had failed. Musgrave had obviously a vested interest in the success of the stores in which they were involved.

38. Mr Gibson BL also asked the Tribunal to note that the offer from Musgrave was subject to contract, meaning that, at present, the respondent has no firm arrangements for the supply of groceries in order to further the intention of the business. The contract is very much subject to various legal checks which need to be carried out and there is no confirmation that the terms which will be eventually offered in a contract will be acceptable to the respondent. This matter remains very much at large.

39. Mr Morgan confirmed that in due course formal approval would have to be sought from Musgrave's board. He explained that this was a standard part of the process when entering into a new agreement, and there was "no reason" the board would not grant approval in due course. He explained that approval could not be sought and agreements entered into until they knew that the respondent would recover possession of the properties and would be in a position to operate the stores itself.

40. The Tribunal is satisfied that the respondent had taken the agreements with Musgrave as far as possible without it gaining possession. The Tribunal also accepts Mr Holland's submission that there was "no reason" that board approval would not be granted in due course.

41. Mr Gibson BL also disputed the projected figures which had been generated by GAMMA using data from other stores in Northern Ireland. This was a desktop exercise generated by a computer programme which was outsourced by Musgrave. Mrs Morgan admitted that she had no knowledge of the trading figures or turnover in respect of the reference properties.

42. Mr Holland advised the Tribunal that the projections in the GAMMA report were particular to the reference properties. The Tribunal acknowledges that these were computer generated projections but is satisfied that, with 230 stores in Northern Ireland and with Musgrave's knowledge of the market, they could predict turnover figures fairly accurately.

43. Mr Gibson BL referred to Mr Desi Morgan's evidence in which he confirmed that he had a good relationship with his brother, they worked together on various aspects of business and that he did not know of his brother's wish in his will that he should have the minimum of a five year term. He also advised the Tribunal that his brother had not made him aware of any intention to run the reference properties himself.

The Tribunal

44. Having considered all of the submitted evidence the Tribunal is satisfied that:

    (i) At the date of the hearing, regardless of her late husband's wish in his will and the executors offer of a new tenancy to the applicant in 2024, the respondent demonstrated on many occasions during Mrs Morgan's evidence that it had a clear and firm intention to occupy the reference properties for businesses to be carried on by it.

    (ii) Mrs Morgan had also demonstrated that the respondent had a more than reasonable prospect of implementing those intentions:

        a) Finance was clearly available.

        b) Agreements had been set in motion with Musgrave, Valero fuel suppliers, the Post Office and the National Lottery.

        c) She had embarked on a Musgrave training course, has previous experience of working in a convenience store/petrol station and had available the assistance of her brother who was an experienced operator.

45. The Tribunal therefore dismisses the applicant's tenancy application.

The Undertaking

46. If the Tribunal dismisses the applicant's tenancy applications Mr Gibson BL submitted that it should be on the strict condition that the respondent provide an undertaking that it will continue to trade the premises for a period of 10 years. This undertaking should be enforceable by the tenant as an enforceable contractual term vis-à-vis the applicant and the respondent.

47. The Tribunal is, however, bound by statute and there is no statutory authority in the BT Order whereby the Tribunal could impose such an undertaking, as requested by the applicant. The respondent has been made aware of the penalties contained in the BT Order if its intentions are not carried out.

20th October 2025 **Henry Spence MRICS Dip.Rating IRRV (Hons)**
Lands Tribunal for Northern Ireland