

LANDS TRIBUNAL FOR NORTHERN IRELAND
LAND CLAUSES CONSOLIDATION ACT 1845
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972

IN THE MATTER OF A REFERENCE

R/11/2017

BETWEEN

NORTHERN IRELAND HOUSING EXECUTIVE – APPLICANT

AND

CLIPPER HOLDING II S.A.R.L. - RESPONDENT

Re: 3 Stratheden Street, Belfast

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

Background

1. The property at 3 Stratheden Street, Belfast (“the reference property”) was acquired by the Northern Ireland Housing Executive (“the applicant”) by way of Vesting Order made on 11th November 2013 and which came into operation on 13th January 2014 (“the valuation date”). At that time the property was owned by Hadrian’s Developments Limited and the Tribunal has been advised that this company is now in receivership.
2. At the valuation date the reference property was comprised in Land Registry folio number AN145725L County Antrim and was held under Indenture of Lease made on 15th January 1981 between Hunter of the one part and Fitzsimmons of the other part for the term of 9,900 years.
3. The reference property was subject to a Legal Mortgage/Charge in favour of AIB Group PLC registered as a burden on the folio on 4th January 2007. AIB Group PLC subsequently assigned their interest in the reference property to the respondent by way of a sale and purchase agreement dated 29th January 2016.

4. The compensation figure of £67,000 had been agreed with the respondent and was not in dispute. The Tribunal was advised by the applicant that the outstanding balance on the mortgage account exceeded this figure.

Procedural Matters

5. At hearing the applicant was represented by Mr Marc Kelly of Hool Law, solicitors. Mr David Black of Arthur Cox, solicitors represented the respondents.

Position of Parties

6. In his submission Mr Kelly respectfully invited the Tribunal to accept that by virtue of Section 110 of Land Clauses Consolidation Act 1845, it was entitled to exercise its statutory discretion to award the compensation monies to the respondent as mortgagee. Accordingly he submitted that the Tribunal should order that the agreed compensation monies of £67,000 should be paid directly to the respondent in full and final discharge of the obligations of the applicant.

The Law

7. The existence of a charge in favour of the first respondent, with the sums secured by the charge exceeding the market value of the reference property, engages Section 110 of the Land Clauses Consolidation Act 1845 which provides:

“Sum to be paid when mortgage exceeds the value of the lands

110. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement, between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part; and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee, in satisfaction of his mortgage debt, so

far as the same will extend; and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.”

8. Paragraph 14 of Schedule 6 of the Local Government Act (Northern Ireland) 1972 provides:

“14(1) The council, on paying to any person any compensation (whether the amount has been settled by agreement or determined by the Lands Tribunal), shall obtain from that person a receipt in the prescribed form, which shall be prepared by, and executed at the cost of, the council, and the receipt shall operate to release the compensation fund from all claims by the person giving it and all parties claiming through or under him.”

9. Paragraph 17 of Schedule 6 of the same Act where relevant provides:

“17(1) Where the amount of compensation has been determined but for some reason it is not possible for the council to obtain a good discharge therefor,-

(a) ...

(b) if the total amount of the compensation exceeds £1,000, the amount payable by the council shall be paid, applied and dealt with in accordance with the provisions of the Lands Clauses Consolidation Act 1845 with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, and those provisions shall have effect accordingly.

(2) Money paid into the county court or, as the case may be, the High Court under sub-paragraph (1) shall, subject to county court rules or rules of court, be dealt with according to the orders of the court.

(3) The payment of the compensation in the manner provided by sub-paragraph (1) shall operate to discharge the compensation fund from all claims and interests in respect of which the compensation is payable.”

Conclusion

10. The Tribunal is satisfied that in this reference Section 110 of the Land Clauses Consolidation Act 1845 gives the Tribunal the statutory authority to award the compensation monies to the

respondent. The Tribunal therefore directs that the agreed compensation monies of £67,000 be paid to the respondent.

ORDERS ACCORDINGLY

18th July 2017

**Mr Henry M Spence MRICS Dip.Rating IRRV (Hons)
Lands Tribunal for Northern Ireland**

Appearances:

Applicant: Mr Marc Kelly of Hool Law, solicitors.

Respondent: Mr David Black of Arthur Cox, solicitors.