

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982
ELECTRICITY (NORTHERN IRELAND) ORDER 1992
IN THE MATTER OF AN APPLICATION FOR COSTS
R/52/2011
BETWEEN
MR ROY AND MRS IVY MCKIBBEN – CLAIMANTS
AND
NORTHERN IRELAND ELECTRICITY LIMITED – RESPONDENT

PART 2

RE: Property at 45 Glenholm Park, Belfast

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

Background

1. Mr & Mrs McKibben purchased 45 Glenholm Park (“the reference property”) in 1965 and following acquisition they entered in to several voluntary wayleave agreements with Northern Ireland Electricity (“the respondent”) to allow the respondents’ lines and pylon (“the equipment”) to remain on the property. The most recent voluntary wayleave, which was made on the 4th May 1993, was terminated by a notice dated the 29th January 2009 and the claimants subsequently requested the respondent to remove its equipment from the reference property. On the 4th March 2009 the respondent made an application to the Department of Enterprise, Trade and Investment (“DETI”) seeking the retention of its equipment on the reference property, by way of a Necessary Wayleave (“NWL”), in accordance with the provisions of schedule 4, paragraph 10 of the Electricity (Northern Ireland) Order 1992 (“the 1992 Order”).
2. The NWL was subsequently granted on the 19th May 2011 and the claimants referred to the Tribunal for a claim of £31,000 compensation from the respondent which was grounded upon paragraph 11 (1) of schedule 4 of the 1992 Order which granted the claimants a statutory right to “.... recover from the licence holder, compensation in respect of the grant.”
3. By a decision dated the 10th October 2014 the Tribunal awarded the claimants £15,500 compensation in respect of the grant of the NWL.

Procedural Matters

4. The Tribunal received a written submission from Mr Niall Hunt QC and an oral submission from Mr John F Gibbons on behalf of the claimants. Mr Stephen Shaw QC provided written and oral submissions on behalf of the respondent.

Position of the Parties

5. Mr Hunt QC submitted that the claimants had been successful in their application to the Tribunal in that they had won on both the legal and also the quantum aspects of their case and as such they were entitled to all of their costs.
6. Mr Shaw QC accepted that, as compensation of £15,500 had been awarded to the claimants, they would normally be entitled to their costs. Mr Shaw QC, however, suggested that there were exceptional circumstances in this reference in that Mrs McKibben had conceded in her evidence that neither she or her husband had (or would) incur any costs as a result of the claim in light of the agreement she had made with the claims company, Property Compensation Consultants Limited ("PCC Ltd"). Consequently, he considered the sum to be paid by the respondents to the claimants in these circumstances to be NIL.

Statute

7. Rule 33(1) of the Lands Tribunal Rules (Northern Ireland) 1976 provides:-

"33(1) Except in so far as Article 5 of the Land Compensation (Northern Ireland) Order 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."

Authorities

8. The Tribunal was referred to the following authorities:
 - Emslie and Simpson Limited v Sherdeen District Council (No2) [1995] RVR 159
 - Purfleet Farms Ltd v Secretary of State for Transport, Local Government and the Regions [2002] EWCA 1430.
 - Blakes Estate Limited v Government of Montserrat [2005] UKPC 46

Discussion

9. Having considered the written and oral submissions it was clear to the Tribunal that the main issue in this reference was whether the claimants had been indemnified of their costs by the claims company, PCC Ltd and if so where they not entitled to recover their costs even though they had "won"?
10. The Tribunal noted that Mrs McKibben had confirmed in her oral evidence to the Tribunal: "PCC would look after all the money etc there is no risk". At hearing and post hearing the Tribunal sought clarification on this issue. Mr Gibbons, on behalf of the claimants, categorically confirmed to the Tribunal that there was no agreement/contract that PCC Ltd would pay the claimants legal fees. He also confirmed that his firm had no arrangement with PCC Ltd for fees, his clients were the claimants, not PCC Ltd. Based on Mr Gibbons' clear confirmation the Tribunal is satisfied that there was no binding agreement that PCC Ltd would pay the claimants legal costs. Mr Gibbons did however confirm that Mr Frank Cassidy, the claimant's expert, had entered in to his own arrangement with PCC Ltd and to

the best of his knowledge Mr Cassidy had been paid by them. Mr Frank Cassidy had confirmed as much in his evidence to the Tribunal.

Conclusion

- 11.** The claimants had “won” an award of compensation which was in excess of that being offered by the respondent. The Tribunal therefore directs the respondent to pay the claimants reasonable legal costs in the reference, such costs to be taxed if not agreed.
- 12.** Mr Cassidy, the claimant’s agent, had confirmed in his evidence to the Tribunal that he was acting on the instructions of PCC Ltd. On that basis the Tribunal makes no award of the expert’s costs, as the claimants were not responsible for these costs.

ORDERS ACCORDINGLY

28th January 2015

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

Appearances

Claimants: Mr John F Gibbons of John F Gibbons, Solicitors

Respondents: Mr Stephen Shaw QC instructed by NIE Solicitors