

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996**

**IN THE MATTER OF AN APPLICATION**

**BT/38/2012**

**BETWEEN**

**AFRIM KARRABECAJ – APPLICANT**

**AND**

**KILMONA PROPERTY LIMITED – RESPONDENT**

**Re: Unit 3 Enterprise House, Boucher Crescent, Belfast**

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

**Background**

1. Mr Afrim Karrabecaj (“the applicant”) is the operator of a car wash at Unit 3 Enterprise House, Boucher Crescent, Belfast (“the reference property”) and he holds the premises under a “licence agreement” dated 5<sup>th</sup> November 2007 between himself and Kilmona Property Limited (formerly PBN Property Limited) (“the respondent”). In advance of the original licence agreement on the reference property expiring on 31<sup>st</sup> October 2012, the applicant’s solicitor issued a request for a new tenancy on 1<sup>st</sup> June 2012 which was referred to the Lands Tribunal.
2. Prior to the issue of a new tenancy being resolved at Tribunal the applicant was subsequently adjudicated bankrupt on 23<sup>rd</sup> February 2017 and a Trustee of his bankrupt estate was appointed on 9<sup>th</sup> March 2017.
3. Initially the issue to be decided by the Tribunal was what effect did the applicant’s bankruptcy and subsequent appointment of a trustee of his bankrupt estate, have on

the applicant's standing to continue with his Business Tenancy application to the Lands Tribunal.

### **Procedural Matters**

4. The applicant was represented by Mr Nick Compton BL, instructed by McQuoids, Solicitors. Ms Sarah Agnew BL, instructed by Tughans, Solicitors, appeared on behalf of the respondent.

### **Statute**

5. The relevant statute is contained in Article 10 of the Business Tenancies (Northern Ireland) Order 1996 ("the Order") which provides:

"10.-(1) In this Order "tenancy application" means either –

- (a) an application by the landlord for an order that the tenant is not entitled to a new tenancy; or
  - (b) an application by the tenant for an order for the grant of a new tenancy.
- (2) Where a landlord has served a notice to determine, a tenancy application may be made to the Lands Tribunal at any time between the date of service of the notice and the date of termination.
  - (3) Where a tenant has served a notice containing a request for a new tenancy, a tenancy application may be made to the Lands Tribunal at any time between the date of service of a notice served by the landlord under Article 7(6)(b) and the date specified in the tenant's request for the beginning of the new tenancy."

## **Authorities**

6. The Tribunal was referred to the following authorities:

- (i) Beckham v Drake [1849] 2 HL Cas 579
- (ii) Ramsey v Hartley and Ors [1977] 2 All ER 763
- (iii) Heath v Tang [1993] 1 WLR 1421
- (iv) Saini v Petroform Ltd [1997] Lexis Citation 2931
- (v) Williams v Glover [2013] WLR 166

7. The Tribunal was also referred to the following texts:

- (i) Insolvency (Northern Ireland) Order 1989
- (ii) Individual Insolvency: The Law and Practice in Northern Ireland (SLS, 2009)

## **Areas of Agreement**

8. The parties were agreed that:

- (i) The applicant was entitled to the protection of the Order pursuant to the “licence agreement” dated 5<sup>th</sup> November 2007.
- (ii) The applicant had been adjudicated bankrupt on 23<sup>rd</sup> February 2017 and a Trustee of his bankrupt estate had been appointed on 9<sup>th</sup> March 2017.
- (iii) The applicant’s estate had vested in the Trustee upon their appointment. This included the contractual and property rights under the Business Tenancy reference to the Tribunal.
- (iv) Article 10 of the Order stipulated that the “tenancy application” must be made by the “tenant”.

- (v) Upon her appointment on 9<sup>th</sup> March 2017, Orla Wallace, in her capacity as Trustee of the applicant's bankrupt estate, became the "tenant" for the purposes of the Business Tenancy reference to the Tribunal.

### **Position of the Parties**

9. Mr Compton BL's position was that:

- (i) a valid and lawful means existed whereby the applicant's interest in the Business Tenancy could be re-assigned to him;
- (ii) effectively such a re-assignment was not merely hypothetical or fundamentally impossible; and
- (iii) the interests of justice required that the applicant be given an opportunity to perfect his position.

He submitted that the main issue between the parties was now what, if any, mechanism allowed the rights and obligations under the Business Tenancy to be re-vested in the applicant? Accordingly Mr Compton BL sought a "modest" adjournment to permit the applicant to rectify his position.

10. The parties were agreed that the right to bring the reference to the Tribunal had now vested in the Trustee in Bankruptcy. Ms Agnew BL submitted that the applicant had no evidence before the Tribunal that the Trustee, could, or was minded to transfer her interest in (a) the reference to the Tribunal and/or (b) the lease, to the applicant. She considered that there were a significant number of issues and variables to account for in any purported transfer:

- (i) whether or not the lease could be assigned without the consent of the landlord or the superior landlord;

- (ii) what effect any purported assignment would have on the Trustees' liabilities under the lease;
- (iii) if the assignment would have to be effected for consideration, and if so, what level of consideration; and
- (iv) if the assignment would require the formal consent of a committee under the insolvency rules.

11. There was, therefore, much dispute between the parties as to whether the "licence agreement" could or would be re-assigned to the applicant. The Tribunal considers, therefore, that the main issue now to be decided was: should the applicant be given a "modest" amount of time to make efforts to rectify the position, as submitted by Mr Compton BL?

### **Should the Applicant be given more time**

#### *The Applicant's Submissions*

12. Mr Compton BL submitted:

- (i) The applicant had continued to perform his obligations contained in the "licence agreement" notwithstanding that, as a matter of law, no such obligation was placed on him.
- (ii) His Trustee, had positively represented to him that he was entitled to continue to trade at the reference property.
- (iii) The respondent permitted its bank to continue to take rent payments from the applicant's bank account and omitted to take steps to take possession of the reference property.
- (iv) After the Q3 payment was made, the respondent cancelled its direct debit. When the applicant realised that funds had not been taken out of his bank

account he paid them over voluntarily. He agrees that he was told these payments were not being accepted as rent payment. They were, however, retained by the respondent and held in a holding account.

- (v) The applicant received correspondence from the respondent in October 2017 instructing him to make payments to a specified bank account. Although the respondent states that this was a stock letter sent to a large number of recipients, it did not change the fact that the applicant received it and undertook it to mean that he had some right to continue trading.
- (vi) The fact that monies were retained by the respondent caused the applicant to understand that, in one way or another, he was permitted to continue to trade.
- (vii) In circumstances where he could do so it would be unfair to deny him the procedural ability to perfect his position.
- (viii) The respondent was aware that there were sufficient cleared funds to pay the market rent until 1<sup>st</sup> February 2018. Any delay until that date would not occasion prejudice to the respondent.
- (ix) Failing to permit the applicant to perfect his position would fatally prejudice his claim. In circumstances where it was possible to perfect his position, the interests of justice required that he be afforded an opportunity to do so.

### *The Respondent's Submissions*

13. Ms Agnew BL submitted:

- (i) The applicant took no steps, from the date of his bankruptcy to the date of hearing, to rectify his position. Despite being legally represented and under the supervision of the Trustee in Bankruptcy, he appeared before the Tribunal without standing.

- (ii) The applicant stated that the Trustee and the respondent induced him to believe that the tenancy was continuing and valid. The respondent denies any inducement on its behalf and considers that this assertion had no relevance to the issue of standing.
- (iii) Mr Compton BL suggested that the assignment of a lease held during bankruptcy was perfectly normal but he failed to provide any example. Indeed the Trustee was purported to have questioned how this could be done.
- (iv) Correspondence issued by the respondent to the applicant and the Trustee confirmed without doubt that the respondent did not accept the applicant's occupation of the reference property and that it had not accepted any monies from the applicant.
- (v) The respondent did not accept the relevance of the applicant's submissions and contended, as accepted by the applicant, that he did not have standing.
- (vi) The only result of the current proceedings was to cause unfair prejudice to the respondent and frustrate attempts to secure possession of the reference property.
- (vii) The respondent suggests that the only matter for the Tribunal to determine was who currently has standing to pursue the Business Tenancy application? The only answer for the Tribunal was that the Trustee in Bankruptcy was the person with standing and the relevant time was the date of hearing.

## **Conclusion**

14. The Tribunal notes:

- (i) The applicant had been in occupation of the reference property for business purposes since November 2007.

- (ii) At the time of the Business Tenancy reference to the Tribunal in 2012, it was agreed that the applicant had standing to bring the reference.
- (iii) The applicant was currently occupying and using the reference property for business purposes.
- (iv) Monies paid in to a holding account by the applicant would in normal circumstances represent rent up until 1<sup>st</sup> February 2018.

15. In the interests of justice and fairness the Tribunal directs that the applicant should have a “modest” amount of time, six weeks from the date of issue of this decision, to take steps to have the “licence agreement” re-assigned to him. If, as submitted by the respondent, he fails to do so, the Tribunal will strike out his Business Tenancy application on the basis that he has no standing to bring the application.

**ORDERS ACCORDINGLY**

**17<sup>th</sup> January 2018**

**Henry M Spence MRICS Dip.Rating IRRV (Hons)**

**Lands Tribunal for Northern Ireland**

**Appearances:**

**Applicant: Mr Nick Compton BL, instructed by McQuoids, Solicitors.**

**Respondent: Ms Sarah Agnew BL, instructed by Tughans, Solicitors.**