

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

IN THE MATTER OF AN APPLICATION

BT/108/2008

BETWEEN

MICHAEL BATES AND PETER SPEIRS T/A B & S SUPPLIES – APPLICANTS

AND

WORKSPACE ENTERPRISES LIMITED – RESPONDENT

Re: 78 Rainey Street, Magherafelt

Lands Tribunal - Mr M R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI

Background

- 1) Since 2003, Mr Bates & Mr Speirs have traded as B & S Supplies ('B & S') supplying tools and hardware to the building and DIY trades. They leased premises at 78 Rainey Street from Peter Hegarty and in 2006 they leased additional premises from him. B & S said they spent about £12,000 and put a lot of effort into alterations and improvements to the new premises. As some compensation they had a rent free period from June to September 2006. In November 2006 Mr Hegarty put his interest on the market. B & S could not finance a purchase and the premises, subject to their lease, almost immediately were agreed for sale to a neighbour - Workspace Enterprises Limited ('Workspace').
- 2) Workspace is a community based organisation set up some 20 years ago. It aims to assist fledgling businesses by providing affordable business premises so as to create jobs in the local economy and encourage investment in the local area.
- 3) The purchase clearly indicated that Workspace was assembling a site in Rainey Street and both it and B & S knew that redevelopment was in the air.
- 4) As soon as Workspace had completed its acquisition, it took legal advice with regard to the tenancy of B & S and offered them a new lease for one year only. B & S also took legal advice. There were meetings and telephone conversations between B & S and Workspace. B & S became aware that nearby premises at 84-86 Rainey Street were about to become vacant and to let. They approached the owner and took the opportunity to move there, vacating 78 Rainey Street in August 2007.

- 5) Afterwards, in late 2007, Workspace commenced proceedings against B & S for recovery of rent for the period of occupancy during its ownership. In December 2007, 78 Rainey Street was let to Age Concern for a term of 1 year with an option for a further year.

Position of the Parties

- 6) B & S claim that, in or around June 2007, Workspace represented that it intended to demolish the building about June 2008.
- 7) They claim they are entitled to compensation because they quit their holding as a result of the misrepresentation or concealment of a material fact by the landlord.
- 8) The parties have agreed that the assessment of any compensation be left for another day.

Procedure

- 9) Mr Michael McGarvey BL instructed by Bernadette Mulholland appeared for the applicants - B & S. Mr John Collins BL instructed by Doris and MacMahon for the respondent - Workspace.
- 10) The Tribunal received written and oral evidence at hearings from:
 - Peter Speirs, partner in B & S;
 - Michael Bates, partner in B & S;
 - Eunin McGoldrick, a customer who also did plumbing work for B & S;
 - Dolores Murtagh, Property manager for Workspace;
 - Brian Murray, Managing Director of Workspace; and
 - Michael McAllister, Chairman of Workspace.It also received written submissions from counsel.

Discussion

- 11) Article 6 of the Business Tenancies (Northern Ireland) Order 1996 ('the 1996 Order') allows a landlord to terminate a tenancy by a Notice to Determine. Such notice must be served not more than 12 nor less than 6 months before the date of termination specified therein.
- 12) Article 7 of the 1996 Order allows a tenant to make a request for a new tenancy to commence in not more than 12 nor less than 6 months' time.
- 13) Article 12 of the 1996 Order sets out grounds on which a landlord may oppose the grant of a new tenancy. These include circumstances where, on the termination of the current tenancy, the landlord intends to demolish a building which forms a substantial part of the holding and to

undertake a substantial development of the holding. Article 13 requires the landlord to have planning permission in place before relying on that ground.

- 14) Article 27(2) of the 1996 Order includes a provision for compensation for misrepresentation. This includes circumstances where the tenant has quit the holding without making a tenancy application, and the Lands Tribunal is satisfied that he did so by reason of misrepresentation. If so, the Lands Tribunal may order the landlord to pay to the tenant compensation for damage or loss sustained by him.
- 15) The Tribunal, after some hesitation, had accepted Mr Michael McGarvey's contention that it is implicit in Article 27(2) that an entitlement to such compensation may arise from the conduct of the landlord even when the tenant does not apply for a new tenancy and simply acts on the landlord's representations. Subsequently that view was supported by the judgment of Carnwath LJ in Inclusive Technology v Williamson (2009) EWCA Civ 718.
- 16) The Tribunal first considers the evidence relating to the intentions of Workspace and then that relating to the representations made to B & S. In regard to the former the Tribunal has taken into account evidence from both before and after the time of quitting. In regard to the question of any representation that may have led to B & S quitting the holding when they did, the Tribunal has focussed on evidence relating to the period before they did so.

Workspace and its demolition intentions

- 17) The Tribunal received relevant minutes of the meetings of the board of directors of Workspace (Draperstown) Limited.

- 18) Prior to August 2007:

On Wednesday 14th December 2006:

“78 Rainey Street, Magherafelt – Workspace has agreed to purchase this 4,000 sq ft property beside the Network Personnel building in Magherafelt. The sale should be completed in January/February 2007 and it was agreed that we should begin considering various options for the building. Agreed that a number of local architects should be asked to submit ideas and options. Action: B Murray.”

On Tuesday 27th February 2007:

“78 Rainey Street, Magherafelt – it is hoped that the sale should be complete by the end of March. Once the site map has been received options can then be explored with architects.”

On Tuesday 24th April 2007:

“78 Rainey Street, Magherafelt – sale not yet completed but is progressing and should be completed within the next month.”

19) After B & S vacated the premises in August 2007:

On Tuesday 4th September 2007:

“78 Rainey Street, Magherafelt – proposals were received from five architects regarding the redevelopment of the Rainey Street site. It was agreed that a sub-committee should be formed to consider these proposals in more detail and agree the way forward... A meeting of the sub-committee will take place on Wednesday 12th September.”

On Tuesday 6th November 2007:

“78 Rainey Street, Magherafelt – since the previous Board meeting B Murray has had a number of meetings with Barnardo’s to explore the possibility of Workspace purchasing their adjoining site. It was noted that Workspace were approached about purchasing 76 Rainey Street. An offer was placed by Workspace but this has subsequently been rejected.”

20) At a Workspace staff induction on 5th December 2007, a pack provided included a section entitled “Future Plans”. This included a sketch of an elevation of a scheme for redevelopment incorporating 78 Rainey Street.

21) Apart from that sketch, no architects’ plans were provided to the Tribunal.

22) The evidence from both Mr Murray and Mr McAllister was clear that, prior to B & S quitting the premises, no decision had been taken in terms of the nature and extent of any scheme. They had previous experience of a scheme that they had carried out in Draperstown. That had taken 5 or 6 years to complete. The scheme had involved the relocation of at least six business tenants. They had received legal advice in relation to that project. They knew that any proposed development at Rainey Street would be subject to obtaining finance and grant aid and that could not be achieved in a period of 12 months.

23) In the view of the Tribunal it is quite clear that, before and after B & S quit the premises, Workspace had an aim of redevelopment of 78 Rainey Street together with other premises. But it is equally clear that, in June 2007 and at the time B & S quit the premises in August 2007, Workspace had no settled intention to demolish the building at the end of June 2008 or at any other particular time.

- 24) At the hearing it was suggested by Mr McGarvey that retail occupiers were not welcomed by Workspace. It was suggested that there might be a difficulty about grant support for such users. Mr McAllister was quite clear that there were ample opportunities for funding. Also, the premises were subsequently re-let to another retail occupier – Age Concern. The Tribunal does not accept that the policy of Workspace was driven by any objection to retail user.
- 25) Ms Murtagh took minutes at Workspace's board meetings so she as well as Mr Murray and Mr McAllister were aware of Board policy.

The Representation of the Intentions of Workspace to B & S

- 26) Mr Murray gave evidence that, in January 2007, in response to an enquiry from Mr Speirs, he told him that demolition was an option but Workspace had no specific plans and nothing would happen for at least one year from its acquisition and it could be much longer, if at all.
- 27) In mid-April, before the sale to Workspace was completed, B & S had ceased paying rent to their then landlord, Mr Heggarty, and he called to collect it. Mr Speirs queried whether Mr Heggarty was entitled to the rent so he telephoned Mr Murray who spoke to Mr Speirs and confirmed Mr Heggarty's continuing ownership. The Tribunal accepts that, as part of the discussion at the time, Mr Murray repeated that demolition remained an option.
- 28) On 11th June 2007 Ms Murtagh called with B & S and informed them that Workspace now owned the premises. Recollections differ about exactly what was said at the meeting. The Tribunal accepts that, among other things, demolition was discussed. It is agreed that B & S were offered a new lease for a term of one year only. Ms Murtagh said that she told them that, as Workspace had just bought the building, it had not begun the process of looking at the options for its entire holding at Rainey Street and she did not know what the outcome would be or how long it would take. She said she told them that Workspace was willing to renew their lease for one year initially and would then review the position. Mr Speirs and Mr Bates both said that Ms Murtagh told them they would have to be out by the end of the lease. Mr McGoldrick was fixing a leaking basin in the toilet nearby and said he recalled overhearing Ms Murtagh say that they could only have another 12 months in the place, the place was going to be knocked down and that Workspace did not know what it was going to put in its place.
- 29) The Tribunal prefers Ms Murtagh's version of the meeting on 11th June 2007. It is consistent with her notes made at the time - partly before, at, and after the meeting, and consistent with Board policy. Mr Speirs, Mr Bates and Mr McGoldrick may have thought that B & S were being told to give up possession in a year but the Tribunal does not accept that their conclusion follows from what was said. There is a difference between a lease for a year and a requirement to give up possession in a year.

- 30) On 20th June Ms Murtagh met again with Mr Speirs and Mr Bates. A number of issues were discussed. Ms Murtagh recalls that she said that it could be years before any redevelopment took place. The Tribunal accepts that, when she was asked why the lease was for one year only, she responded that Workspace was looking at options and would keep B & S informed of any decisions. That is supported by her note at the time.
- 31) Mr Speirs and Mr Bates subsequently sought legal advice on the net point of whether Workspace could obtain possession on grounds of demolition and redevelopment. They were advised that it could.
- 32) Later, in October 2007, Mr Speirs phoned Mr McAllister in regard to outstanding rent and there was a discussion about the way B & S had been treated by Workspace. But whatever was said, that was long after B & S had left the building and so conversations at that time cannot have affected their decision to quit.

Conclusions

- 33) The Tribunal can understand that B & S were unhappy about the way events turned out and their desire to provide for the continuance of their business. Clearly Workspace was assembling a site and both it and B & S knew that redevelopment was in the air. But it is equally clear that, in the summer of 2007, Workspace had no settled intention to demolish the building at the end of June 2008 or at any other particular time.
- 34) Such uncertain intentions create a dilemma for business tenants. But that uncertainty does not give rise to a right to compensation unless there is a misrepresentation by the landlord of his intentions.
- 35) Sometimes some resolution may be achieved through a Notice to Determine or a Tenant's Request for a new tenancy and a consequential Tenancy Application to this Tribunal.
- 36) Having carefully considered all the evidence, the Tribunal does not accept that, prior to B & S vacating the premises in August 2007, Workspace represented that it intended to demolish the building about June 2008.
- 37) The Tribunal concludes that B & S are not entitled to compensation on grounds that they quit their holding as a result of the misrepresentation or concealment of a material fact by Workspace.

ORDERS ACCORDINGLY

8th March 2010

**Michael R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances

Applicants: Mr Michael McGarvey BL instructed by Bernadette Mulholland, solicitor.

Respondent: Mr John Collins BL instructed by Doris and MacMahon, solicitors.