

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/21/2016

BETWEEN

ANDRAS HOUSE LIMITED – APPLICANT

AND

CAR PARK SERVICES LIMITED – RESPONDENT

**Lands at 7-13 Hope Street, 1-17 St Andrews Square East and
17-33 Lincoln Street, Belfast**

PART 3 - COSTS

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

Background

1. On 2nd October 2015 Andras House Limited (“the applicant”) served upon Car Park Services Limited (“the respondent”) a notice to determine the tenancy on the lands at 7-13 Hope Street, 1-17 St Andrews Square East and 17-33 Lincoln Street, Belfast (“the reference property”). This notice was accompanied by a letter from the applicant’s solicitors.

2. In February 2016 the respondent challenged the validity of the applicant’s notice. By a decision made 12th April 2016 the Tribunal concluded “... the contents of the letter accompanying the notice can be taken into account and directs that the applicant’s notice to determine is valid.”.

3. In accordance with the usual practice of the Tribunal the Part 1 decision did not include any determination on the allocation of costs and the applicant is now seeking its costs in the reference.

Procedural Matters

4. The issue of costs was dealt with by way of written submissions. Mr Francis O'Reilly BL wrote on behalf of the applicant and Mr Stephen Shaw QC provided a submission on behalf of the respondent.

Statute

5. Rule 33 of the Lands Tribunal Rules (Northern Ireland) 1976 provides:

“33.—(1) Except in so far as section 5(1), (2) or (3) of the Acquisition of Land (Assessment of Compensation) Act 1919[5] 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 as President.

(2) If the Tribunal orders that the costs of a party to the proceedings shall be paid by another party thereto, the Tribunal may settle the amount of the costs by fixing a lump sum or may direct that the costs shall be taxed by the registrar on a scale specified by the Tribunal, being a scale of costs for the time being prescribed by rules of court or by county court rules.”

Authorities

6. The Tribunal was referred to the following authorities:
 - i. Oxfam v Earl BT/3/1995
 - ii. Stranaghan & Anr v Townsley BT/33/2011
 - iii. Kennedy v DAM Developments Ltd BT/30/2013
 - iv. Mayers v Commissioner of Valuation VR/3/2014

Position of the Parties

7. Mr O'Reilly BL referred to Oxfam v Earl which he considered to be the most quoted and relied upon decision in costs issues before the Tribunal. He directed the Tribunal to the following extracts from that decision:

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"The Tribunal must exercise that discretion judicially and the starting point on the question of costs is the general presumption that, unless there were special circumstances, costs follow the event, i.e. that in the ordinary way the successful party should receive its costs.

Special awards

The next question for a Tribunal is whether there were special circumstances which would warrant a departure from that general rule. But these must be circumstances connected with the proceedings, for example, to reflect an unsuccessful outcome on a major issue."

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"... Unless there are good reasons for a special award, such as extravagant or unsatisfactory conduct of the proceedings (including the role of expert witnesses) or failure on an important issue, costs will follow the event so 'the loser pays all'."

8. Mr O'Reilly BL considered that the applicant had established the validity of its notice when read with the letter, which was served together upon the respondent. This was the only issue between the parties and he submitted that the applicant was therefore entitled to its costs.
9. Contrary to the suggestion in paragraph 9 of the applicant's submission, Mr Shaw QC did not consider the respondent's challenge to the applicant's October 2015 notice to be "unmeritorious" in that:
- i. The issue of the "validity" of the purported "notice" was still at large given the case stated application pending before the Court of Appeal.

- ii. The challenge by the respondent to the “notice” was appropriate and proportionate given the long established authorities and the need for a determination on the evidence. Indeed, as the closing paragraph of the applicant’s submission concluded, it was only by persuading the Tribunal to read the notice with a letter that the applicant “established” its stance.
10. Mr Shaw QC submitted that the correct determination on costs was to be made on the facts and circumstances of each case at the appropriate juncture. Consequently, he considered that it was not only premature to address costs as proposed but it was inappropriate to award costs against the respondent driven to the judgement seat of the Lands Tribunal to clarify and enforce its statutory rights.

Discussion

11. Following the Part 1 decision of the Tribunal the applicant has made an application for its costs in the reference. The Tribunal considers that the applicant is entitled to an adjudication on the issue of costs at this point in time, rather than wait for the outcome of the case stated to the Court of Appeal, as submitted by the respondent.
12. The starting point for the Tribunal is the general presumption that, unless there were special circumstances costs follow the event i.e. the successful party should receive its costs (Oxfam v Earl). The “event” is usually regarded as a success on the main or central issues. The Tribunal agrees with Mr O’Reilly BL, the major issue between the parties was the validity of the applicant’s notice to determine and in its decision of 12th April 2016 the Tribunal directed that the applicant’s notice was valid. The applicant was therefore the successful party and it should be awarded its costs.
13. The next question for the Tribunal was whether there were special circumstances which would warrant a departure from the general rule, costs follow the event. The applicant had been successful on the major issue between the parties and the Tribunal does not consider that there were any special circumstances in the subject reference to depart from the general rule.

Conclusion

14. The Tribunal awards the applicant its costs in the Part 1 reference, such costs to be taxed in default of agreement.

ORDERS ACCORDINGLY

28th September 2016

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