

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**

**LANDS TRIBUNAL RULES (NORTHERN IRELAND) 1976**  
**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**

**PART 2**

**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”). He held the premises under a “licence agreement” dated 5<sup>th</sup> November 2007 between himself and Kilmona Property Limited (“the respondent”).
  
2. The applicant’s solicitor had originally issued a request for a new tenancy which was to commence on 1<sup>st</sup> November 2012 for a term of 5 years, expiring on 1<sup>st</sup> November 2017. The respondent had opposed the tenant’s request under Article 12(1)(c) of the Business Tenancies (Northern Ireland) Order 1996 (“the Order”).

3. Prior to the reference being decided by the Tribunal the applicant was 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. Due to the applicant's bankruptcy the respondent contested the applicant's standing or lack thereof to continue with the tenancy application. By a decision dated 17<sup>th</sup> January 2017 the Tribunal granted the applicant a six week adjournment until 28<sup>th</sup> February 2018 to allow the applicant to take steps to have the tenancy re-assigned to him.

### **Position of the Parties**

4. The applicant's position was that, by way of Indenture dated 1<sup>st</sup> February 2018, the Trustee in Bankruptcy had re-assigned title to the reference property to the applicant, thus allowing him to pursue his tenancy application before the Tribunal.
5. The respondent considered that the purported assignment by the Trustee had not regularised matters sufficiently to provide the applicant with standing to pursue his tenancy application.

### **Procedural Matters**

6. 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**

7. Rule 39 of the Lands Tribunal Rules (Northern Ireland) 1976 ("the Rules") provides:

"Delay in proceedings

39.-(1) Where upon the application of a party it appears to the registrar that there has been undue delay in bringing proceedings to a hearing before the

Tribunal or default in complying with any provisions of these rules the registrar may request any party to the proceedings to submit proposals for the completion of any procedural steps in the matter.

(2) The registrar may list any proceedings to be mentioned before the President or the Tribunal to enable one or other or more than one of the parties to apply for such order as may appear to be necessary to fix the place, date and time for hearing of the matter in dispute, or to have the proceedings stayed or struck out.

(3) In any proceedings to which paragraphs (1) or (2) apply the President or the Tribunal may make an order putting one or other or more than one of the parties on terms for the further conduct of the proceedings (including terms as to costs) or may order the proceedings to be stayed or struck out upon such terms as may seem fit.”

### **Discussion**

8. On behalf of the respondent Ms Agnew BL had identified four legal issues for consideration by the Tribunal:
- (i) What impact did the failure of the Trustee to disclaim the tenancy agreement have on the current proceedings?
  - (ii) Did the applicant have standing, as the Trustee did not assign her interest in the proceedings to him?
  - (iii) Was the purported assignment valid?
  - (iv) Had the tenancy de facto expired or had the current proceedings expired?

### **(i) Failure of the Trustee to Disclaim**

9. Ms Agnew BL:

- a) The applicant sent an email to the Trustee in Bankruptcy's solicitor on 19<sup>th</sup> October 2017 requesting the Trustee to disclaim the tenancy agreement.
- b) On 25<sup>th</sup> October 2017, the Trustee's solicitor responded:

“My client informs me that they will neither be confirming that Mr Karrabecaj has no interest in the lease nor will they be disclaiming all sums due under the tenancy agreement until the date of the disclaimer.”
- c) The Trustee was asked to disclaim the lease but failed to do so. The respondent therefore considered that pursuant to Article 289(2) of the Insolvency (Northern Ireland) Order 1989, the Trustee was now personally liable for all liabilities arising under the original tenancy agreement.
- d) The Trustee had not made any rental payments despite failing to disclaim the property, and failed to respond to the applicant's solicitors requests for clarification in respect of large cash sums paid by the applicant directly to the respondent.
- e) The respondent contends that the Trustee cannot simply assign over her interest in this manner and there now existed a complicated circumstance wherein the Trustee considered that she had assigned the lease back to the applicant, whilst remaining personally liable for all liabilities arising thereunder.
- f) This created a clear difficulty in the meaning of “tenant” or “tenancy” under the Order. The respondent contends that the Trustee, following both the failure to disclaim and subsequent failure to pay rent, had in fact transferred the interest in a tenancy at sufferance. If the Tribunal did not accept that the Trustee was in occupation without authorisation, the tenancy as held by the Trustee, was nevertheless a tenancy at will, neither of which fell within the confines of the Order.

10. Mr Compton BL:

- a) It was very difficult to identify any logical relationship between how the Trustee had conducted herself in administering the applicant's bankrupt estate and the assignment of legal rights affected by the transfer.
- b) All the transfer did was to assign a set of legal rights and obligations from one party to another. How either of these parties conducted themselves in respect of a third party could not vitiate the transfer of these rights and obligations. The respondent had accepted at the Part 1 hearing that the Trustee had title to pursue the current application. They could not resile from that position now that these same rights had been transferred back to the applicant.
- c) Any complaint the respondent may have had regarding the Trustee should be made in the proper forum. The applicant respectfully suggests that the Lands Tribunal did not have jurisdiction to control Trustees in Bankruptcy. It was at all material times open to the respondent to make an application for directions pursuant to Article 276 of the Insolvency (Northern Ireland) Order 1989. They chose not to do so and could not now put the consequences of their own failures at the applicant's door.

11. The Tribunal:

- a) The Tribunal agrees with Mr Compton BL, this Tribunal does not have statutory jurisdiction to adjudicate on the actions of a Trustee in Bankruptcy.
- b) The question for the Tribunal was, did the Trustees failure to disclaim the tenancy agreement have any impact on the proceedings under the Order? The indenture of 1<sup>st</sup> February 2018 transferred a set of legal rights from one party to another and the Tribunal considers that the Trustees failure to disclaim the tenancy agreement did not have any effect on that transfer.

The rights the applicant had prior to his bankruptcy had now been transferred back to him.

**(ii) Does the applicant have standing?**

12. Ms Agnew BL:

- a) It was common case at the hearing on 15<sup>th</sup> December 2017 that the applicant's entire estate had vested in the Trustee in Bankruptcy.
- b) There was some discussion at hearing in relation to the assignment of a "choses in action", which it was accepted could include an interest in court proceedings.
- c) Given the difficulties created by the Trustee's failure to disclaim the lease, or discharge the liabilities arising thereunder, as well as the likely expiration of the original application for a new tenancy, the respondent's case was that the purported assignment document did not go far enough to provide the applicant with standing.
- d) The respondent's case was and remained, that the only manner in which the applicant could have continued this application was by way of the Trustee, in her role as tenant, progressing the application.

13. Mr Compton BL:

- a) Article 10(2) of the Order defines a "tenancy application" as an application "by the tenant for an order for the grant of a new tenancy". A "tenant" for the purposes of the Order was a party who was entitled to occupy premises by virtue of a tenancy to which the Order applied i.e. those tenancies in Article 3 of the Order. Accordingly the proper plaintiff was the tenant of a tenancy to which the Order applied.

- b) This much was accepted by the respondent in its legal submissions dated 19<sup>th</sup> November 2017 at paragraph 15(f) wherein it submitted: “given that the applicant’s property has vested in the Trustee in Bankruptcy, it is only the Trustee in Bankruptcy who has standing to apply for a new tenancy”.
- c) Before his bankruptcy, there was no doubt that the applicant was the proper plaintiff. Upon her appointment, the respondent had accepted that the Trustee became the property plaintiff. All the transfer had done was to re-assign to the applicant the rights he had before the bankruptcy took place. So far as the tenancy was concerned, the applicant was now in the exact position he was in before the date of his bankruptcy.
- d) There was no separate requirement for any interest in the proceedings to be transferred; the Order was clear that, in a tenancy application, the applicant sues qua tenant. As he had those rights re-assigned to him, the applicant was now the “tenant” for the purposes of the Order and therefore the proper applicant in this application.

14. The Tribunal:

- a) Paragraphs 2 and 3 of the Indenture of the 1<sup>st</sup> February 2018 states:
  - “2. The tenant having become bankrupt on 23 February 2017 and The Trustee having been appointed Trustee in Bankruptcy on 9 March 2017 the premises vested in the Trustee
  - 3. The trustee wishes to assign the premises comprised in the Licence Agreement to the Tenant”.
- b) The Tribunal agrees with Mr Compton BL, the applicant was now in the same position he was before the date of his bankruptcy and as such he was now the “tenant” for the purposes of the Order, as he was entitled to occupy premises by virtue of a tenancy to which the Order applied, as defined in Article 10(2) of the Order.

- c) The Tribunal therefore finds that the applicant has standing to bring a tenancy application to the Tribunal in respect of the reference property.

**(iii) Is the purported assignment valid?**

15. Ms Agnew BL:

- a) The respondent contends that the purported assignment was wholly lacking and uncertain. In particular, the assignment related only to the “unexpired residue of the term of years created by the Licence Agreement”.
- b) The applicant had been transferred the interest in a tenancy, in respect of either an expired or wholly uncertain term. The assignment of the tenancy was therefore invalid and no reference was made to the “chose in action”.
- c) The complications arising in this case, due to the improper actions of the Trustee in Bankruptcy, either invalidated the assignment or rendered it meaningless. In either case, the applicant did not have standing to appear before the Tribunal.

16. Mr Compton BL:

- a) There was no requirement or authority for the “chose in action” to be separately assigned.
- b) Following the Indenture of 1<sup>st</sup> February 2018 the applicant was the tenant in occupation of the reference property and as such he was the only person who could make a tenancy application under the Order. The Trustee was not in occupation so they could not invoke the Order.



17. The Tribunal:

- a) The Tribunal agrees with Mr Compton BL. The rights under the previous tenancy agreement had been re-assigned to the applicant by the Indenture dated 1<sup>st</sup> February 2018. He was therefore in the same position as before his bankruptcy.
- b) Part of the respondent's case in the Part 1 hearing was that only the Trustee had title to apply for a new tenancy. She transferred this interest to the applicant by the Indenture dated 1<sup>st</sup> February 2018 and so the applicant had the same rights now as the Trustee had. Prior to the bankruptcy the respondent had accepted the applicant's right to make a tenancy application.
- c) The Tribunal also agrees with Mr Compton BL, there was no requirement or authority for the "choses in action" to be separately assigned. The Tribunal therefore finds the assignment to be valid.

**(iv) Have the current proceedings expired**

18. Ms Agnew BL:

- a) The respondent previously made the case, that on foot of the previous application for a new tenancy to commence on 1<sup>st</sup> November 2012, the applicant de facto had the benefit of a 5 year tenancy on similar terms.
- b) That tenancy would have continued until 1<sup>st</sup> November 2017, save for the applicant's subsequent bankruptcy.
- c) To allow the application for a new tenancy to continue in this manner, would create clear prejudice to the respondent, who would be prevented from opposing the tenancy on the grounds that now apply, rather than reflecting the 2012 position. Such an interpretation would run contrary to the intention of legislators when drafting the Order. The purpose of the Order was to provide security of tenure for tenants occupying premises for business

purposes; it was not designed to create a situation wherein a landlord could not legitimately gain possession of their property.

- d) The respondent therefore maintains that the original 2012 application had expired and ought therefore to be struck out.

19. Mr Compton BL:

- a) The duration and terms of any new tenancy that may be granted was a matter for the Tribunal. While the applicant could suggest terms he could not substitute his own views for the judgement of the Tribunal. In any event, since no new business tenancy has been granted, it was not open to him to make a further application to renew the business tenancy he hoped to be granted by these proceedings.

20. The Tribunal:

- a) The applicant's original request for a new five year tenancy to commence on 1<sup>st</sup> November 2012 had expired on 1<sup>st</sup> November 2017. Likewise the respondent considered that some six years on from the original application to the Tribunal in 2012 it should not be tied to its original ground of opposition to a new tenancy under Article 12(1)(c).
- b) Without apportioning fault the Tribunal finds that, in the circumstances of the subject reference, there had been undue delay in the current proceedings.

**Conclusion**

- 21. Invoking its statutory authority granted under Article 39 of the Rules and in the interest of fairness, the Tribunal directs that the current proceedings be struck out. The Tribunal also directs that the applicant has standing to make a new tenancy

application if he so wishes and the respondent may oppose a new application on any ground if it so wishes.

**ORDERS ACCORDINGLY**

**5<sup>th</sup> June 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.**