

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

**IN THE MATTER OF AN APPLICATION**

**BT/63/1989**

**BETWEEN**

**TERENCE McGOVERN - APPLICANT**

**AND**

**FREDERICK ROY CATHCART - RESPONDENT**

**Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS**

**Enniskillen - 13<sup>th</sup> September 1989**

This was an application dated 26<sup>th</sup> June 1989 by Mr McGovern under Section 8(1) of the Business Tenancies Act (Northern Ireland) 1964 ("the 1964 Act") for a new tenancy of business premises at Tempo Road, Enniskillen, County Fermanagh and known as "Seaman's Joinery Workshop".

The Applicant made a "Tenant's Request for a New Tenancy" dated 29<sup>th</sup> February 1989 under Section 5 of the 1964 Act. The new tenancy to be for three years and commencing on 4<sup>th</sup> September 1989. The Respondent by notice dated 13<sup>th</sup> March 1989, objected to the grant of a new tenancy on the grounds that he intends:-

"(a) that on the termination of the current tenancy the said F ROY CATHCART intends

(i) to demolish or rebuild the premises comprised in the holding or

(ii) to carry out substantial works of construction on the holding or part thereof,

and that the said F ROY CATHCART could not reasonably do so without obtaining possession of the holding or

(b) that on the termination of the current tenancy the said F ROY CATHCART intends that the holding will be occupied for a reasonable period for the purposes, or partly for the purposes of a business to be carried on by him."

At the hearing, Mr Donal Fee, Solicitor (of Messrs Murnaghan & Fee) for the Respondent, abandoned part (b) of the above objection as unsustainable under Section 10(3) of the 1964 Act for the Respondent entered into a contract to purchase the premises sometime in January 1987 and completed in June 1987 - ie within five years of the termination of the current tenancy.

Mr Fee called Mr Frederick Roy Cathcart, Mr Brian Cooke (brother-in-law of Mr Cathcart acting as architect for him) and Mr Earl Mowat, assistant manager of the Enniskillen Branch of the Ulster Bank, to give evidence.

Mr Gerald Grainger of Counsel (for the Applicant) called no evidence.

Mr Cathcart's evidence occasionally confused his personal identity with that as managing director of his company, F R CATHCART LTD which occupied nearby premises.

The Tribunal found the following facts proved or unchallenged:-

1. The Respondent owns the holding in fee. When he acquired the premises in June 1987 the Applicant occupied the premises manufacturing precision joinery. The Applicant was at that time (and still is) a customer of the Company.
2. There was no written agreement for a lease and following discussions there was a verbal agreement that the Applicant would stay in occupation until December 1987.
3. In December 1987 there was a fresh agreement that the Applicant would remain in occupation for a further 6 months paying a rent of £1500 at a rate of £750 for each of the two quarters.
4. The Respondent's Solicitor was instructed to prepare a written agreement encompassing these terms. That was done and sent to the Applicant's solicitors on 28<sup>th</sup> April 1988 but although some reminders were sent the lease was never signed by the Applicant.
5. The Respondent wishes to develop the holding for use by his company as a showroom, a door store and a brick library (displaying various types of brick). Prior to his purchase he consulted with Mr Cooke about December 1986. In Spring 1987 together with Mr Cooke the premises were viewed with a view to refurbishing.
6. Another substantial project being carried on by the Respondent took priority over the refurbishing of the holding and although some loose discussions between the

Respondent and Mr Cooke took place, it was in July 1989 following an internal inspection that the Respondent instructed Mr Cooke to prepare plans. Following approval by the Respondent those plans formed an application for planning permission dated 24<sup>th</sup> August 1989 - the receipt by Department of the Environment for Northern Ireland dated 5<sup>th</sup> September 1989 showed that the Department received the application on 1<sup>st</sup> September 1989.

7. That planning application for full permission was stated to be by F R Cathcart Ltd and was for "change of use and refurbishment of ex Railway Station Building/Joinery Works".

No decision has yet been made, but Mr Cooke, who had had discussions with the planning officer, was of the firm opinion that permission would be forthcoming.

8. The alterations to the holding are:-

- (a) Removing existing roof and re-roofing with timber trusses and asbestos slates.
- (b) Present floor is at low level and somewhat uneven. A new floor with damp proof course to be provided.
- (c) A new display window at gable end to be provided; also a proper customer entrance.
- (d) Three sets of double-entrance doors to be provided at rear elevation. Present entrances to be restored.
- (e) Internally to be divided into three units of similar size with block partitions and interconnecting doors. Staff toilets to be provided.
- (f) Site works will include surfacing of service yard; paving of customer area in front of new display window; line of fencing to be modified to allow better access into site; dilapidated building at rear to be demolished and old portacabin to be removed.

9. Detailed working drawings have not yet been prepared for submission for approval by Building Control. Structural engineers have been consulted and also specialists in damp proof courses. Both reports are awaited.

The Fire Authority have also been informed and its report is also awaited.

Any recommendations contained in any of those reports will be included in the final drawings.

10. Both the Respondent's account and the company's account are held by the Enniskillen Branch of the Ulster Bank. No evidence was given of either balance in the account but subject to the usual financial checks it was most likely that overdraft facilities would be granted by the regional headquarters of that Bank up to £65,000 providing the premises were put up as security.
11. There had been no detailed costings and the best broad estimate of cost was £60,000 to £65,000.
12. No builder had yet been approached. The Respondent's normal practice was to use direct labour.
13. The time scale was estimated as follows:-
  - (a) Planning decision by the end of October.
  - (b) Reports from Northern Ireland Fire Authority, the structural engineers and the specialists in damp proof courses by the end of September.
  - (c) Details would then be discussed between Respondent and Mr Cooke and final working drawings would be completed by mid-October.
  - (d) Building Control permission by end of 1989.
  - (e) Work to commence late 1989/early 1990.
14. The Applicant had purchased other premises and was awaiting the result of an application for an Urban Development Grant.

Mr Donal Fee, Solicitor, for the Respondent submitted:-

1. The Respondent owns the property in fee.
2. There was a business relationship and a friendly relationship between the Applicant and the Respondent. The Applicant knew all along what the Respondent wanted to

do with the property and was interested in purchasing property elsewhere and erecting a Marley building. This application for a new tenancy must be seen in the light of the relationship between the parties and the expression by the Applicant not to keep the Respondent out of his premises but to move to premises of his own.

3. The Respondent relies on Section 10(1)(f)(ii) and the proposed works are substantial and cannot be carried out without possession in law.
4. The estimated cost of the project at £60,000/£65,000 is based on expert experience.
5. The assistant bank manager's evidence indicated that the Bank was willing to lend money subject only to the normal commercial checks.
6. The evidence shows that the planning application is likely to be approved.
7. Submits that although the Respondent naturally spoke about his company's position as well as his own it was the Respondent, as an individual, who had shown that he will carry out and finance the project.

Mr Gerald Grainger of Counsel, for the Applicant, submitted:-

1. The evidence showed that the Respondent was aware that the Applicant was the tenant in occupation when he was purchasing the property. There had been a loose verbal arrangement that the Applicant could stay in possession until he obtained suitable alternative premises (per the Respondent's evidence).
2. At the time of purchase only general renovation was contemplated (per the Respondent's evidence and confirmed by Mr Cooke).

A priority project much larger than this holding came on the horizon and the Respondent and Mr Cooke were fully occupied in that project.

3. The detailed plans were first discussed in July 1989 and an application for planning permission was made in or about 1<sup>st</sup> September 1989.

That application gives rise to considerable confusion as to who was going to carry out the development.

4. The Respondent, when pressed as to who would finance the development, referred to the financial standing of his company. Therefore no final decision has been taken as to who is going to carry out the work.

Submits that the Respondent himself does not know which path he will take.

5. The planning application was submitted in the name of the company not the Applicant. Mr Cooke said that was normal practice.
6. Submits that the works delineated by Mr Cooke are not substantial works of construction.
7. The Applicant's evidence shows:-
  - (a) Planning Permission not yet obtained;
  - (b) Building Control permission not yet obtained;
  - (c) there are no detailed proposals as to how the project is to be financed. The assistant manager of the Ulster Bank indicated that both the personal account and the company's account were in credit but did not indicate sufficient in either current account. The decision to grant an overdraft would be taken regionally after current trading accounts had been made available.
8. The proposed timetable indicated a start to building not before January 1990.
9. Submits that the Respondent has not moved into the "valley of decision" (see Asquith LJ in Cunliffe v Goodman [1950] 1 All ER 720).
10. Accepts the lack of planning permission is not fatal to Respondent's case (Gregson v Cyril Lord [1962] 3 All ER 907).
11. Submits that although physical possession may be required to carry out the works possession in law is not necessary.
12. Refers to Joss v Bennett (1956) 167 EG 207 and in Business Tenancies (Williams p627).

In that case the Landlord wanted to demolish and reconstruct and had made application for outline permission. No detailed plans prepared and the financial aspects only considered generally. No intention sufficiently proved.

A three year term was granted.

13. Submits that because the present case shows some confusion in the mind of the Respondent, the intention is not so final as to satisfy the Lands Tribunal in accordance with Asquith LJ exposition of the meaning of "intends" in the Cunliffe Case.

## **DECISION**

The learned authors of Hill and Redman Law of Landlord and Tenant 18<sup>th</sup> Edition Volume 1 at pB324 indicate what a landlord should do viz:-

"To summarise, a landlord who is seeking to establish his case under ground (f) would be wise to ensure (1) that, if a corporation, there is a recent and appropriately worded resolution of the corporation, (2) that any requisite consents and approvals, such as planning permission or listed building consent, have been obtained, (3) that plans and specifications have been prepared, (4) that either a building contract has been entered into for the proposed works or at least that evidence is available that a contract would be entered into a good time, (5) that the necessary finance for the project is or can be made available, (6) that the project will not be held up by some impediment such as a tenant of another part of the building who cannot be removed."

No doubt a landlord who shows that all the above matters have been carried out puts himself in the best position to establish his objection to a new tenancy. In many cases (perhaps in the majority) a landlord has not carried out all those requirements by the date of the hearing in front of the Lands Tribunal eg failure to show that planning permission has been obtained is not fatal since the test is whether there is a reasonable prospect of getting consent - Gregson v Cyril Lord [1962] 3 All ER 907.

However the Tribunal agrees with Mr Grainger's submission that in this case the evidence falls short of satisfying the Tribunal that the Respondent has established his objection under Section 10(1)(f)(ii) of the 1964 Act. A number of matters had not been properly thought through - while individually each matter may not have proved fatal, taken together they fall short of establishing the objection to the satisfaction of the Lands Tribunal viz:-

- (a) it was not made clear who was to carry out the works:- the Respondent or the company;
- (b) no proper costing of the works had been carried out although both the Respondent and Mr Cooke were of the same opinion ie £60,000/£65,000. No doubt that represented experienced persons' broad-brush estimate, but in view of the fact that no recommendations had yet been received from both expert structural engineers and damp proof course specialists that figure could be considerably higher when properly quantified;
- (c) the evidence from the assistant bank manager of the Enniskillen Branch of the Ulster Bank fell somewhat short of showing that the necessary finance for the project is or can be made available. However, that witness was sure that the Respondent was of good financial standing and had he been given more time and more accurate figures of costings the Tribunal expects that his evidence might have been more helpful;
- (d) the timetable submitted for the work was, in the Tribunal's opinion, not well thought out - in the two questions of elucidation put by the Tribunal it was evidence that a considerable slippage could occur.

On the other hand the Tribunal was satisfied that the proposed works involved substantial interference with the structure and that those works could not reasonably be carried out without obtaining possession of the holding.

Summarising, the Tribunal considers that the Respondent has failed to establish his ground of objection under Section 10(1)(f)(ii) to the satisfaction of the Lands Tribunal but (in the words of Section 11(2) of the 1964 Act), the Lands Tribunal "would have been satisfied" as to the ground under Section 10(1)(f)(ii) of the 1964 Act "had the date specified in the tenant's request for a new tenancy as the date from which the new tenancy is to being, (viz 4<sup>th</sup> September 1989) been such later date as the Lands Tribunal may determine, ...."

The Lands Tribunal therefore declares that the Tribunal would have been satisfied that the Respondent would establish his ground of objection under Section 10(1)(f)(ii) by 30<sup>th</sup> June 1990. In accordance with Section 11(2) of the 1964 Act the Lands Tribunal cannot make an order for a new tenancy.

The Tribunal makes no order as to costs.



**ORDERS ACCORDINGLY**

**10<sup>th</sup> October 1989**

**Mr A L Jacobson FRICS  
LANDS TRIBUNAL FOR NORTHERN IRELAND**

**Appearances:-**

**Mr Gerald Grainger of Counsel (instructed by Messrs Murphy & McManus, Solicitors) for the Applicant.**

**Mr Donal Fee LLB, Solicitor of Messrs Murnaghan & Fee for the Respondent.**