

**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/26/2013**  
**BETWEEN**  
**READY USE CONCRETE COMPANY LIMITED – APPLICANT**  
**AND**  
**ALG DEVELOPMENTS LIMITED – RESPONDENT**

**Re: Lands at Inchanny, Strabane**

**PART 2 - COSTS**

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

**Background**

1. ALG Developments Limited (the respondent) is the owner of an 8.82 acre self contained site on the outskirts of Strabane which is used for the production of ready mix concrete and the manufacture of concrete products. Ready Use Concrete Company Limited (the applicant) occupies the premises under a lease commencing 1<sup>st</sup> April 1992 between Backtown Farm Limited and Sean Quinn Concrete Limited and Sean Quinn Group Limited. By a deed of assignment dated 6<sup>th</sup> October 1994 the lease was assigned to the applicant.
2. The contractual term of the lease expired on 31<sup>st</sup> March 2013. On 1<sup>st</sup> October 2012 the respondent had served the applicant with a landlord's Notice to Determine the lease. Subsequently, on 28<sup>th</sup> March 2013, the applicant made a Tenancy Application to the Lands Tribunal.
3. Prior to the Part 1 hearing the parties had agreed the terms of a new lease, apart from the rent. The applicant had sought a rent of £8,000 per annum whilst the respondent contended that the rent should be £40,000 per annum. The Tribunal subsequently fixed the rent at £8,800 per annum.

## **Procedural Matters**

4. The parties had agreed to deal with the issue of costs by way of written submissions. Mr Douglas Stevenson BL provided a submission on behalf of the applicant and Mr Elvin Thompson, Managing Director of ALG Developments Limited, provided a submission on behalf of the respondent.

## **Position of the Parties**

5. The applicant submitted that it had been the successful party in the proceedings and on that basis costs should follow the event, that is, the successful party should receive its costs. The respondent considered that each party should pay their own costs in the reference.

## **Statute**

6. Rule 33 of the Lands Tribunal Rules (Northern Ireland) 1976 gives the Tribunal a discretion in the matter of costs:

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

7. The Tribunal was referred to the following authorities:

- Oxfam v Earl & Others (BT/3/1995)
- Campbell v Finnegan & Finnegan (BT/57/1998)
- Beaverbrooks the Jewellers v Portland (NI) Limited (BT/65/2012)

## **Discussion**

8. The Tribunal must exercise its discretion judicially and the starting point on the question of costs is the general presumption that, unless there are special circumstances costs should follow the event and the successful party should receive its costs.

9. Mr Stevenson BL considered that the applicant had been the successful party in the proceedings. He referred the Tribunal to the applicant's Tenancy Application which advised that the tenant has been willing to accept a rent of £15,000 per annum at that time and this offer had been rejected by the respondent who maintained that the rent payable should be £45,700 per annum. The Tribunal's decision had fixed the rent at £8,800 per annum and Mr Stevenson BL asked the Tribunal to note that this was below the £15,000 per annum which the applicant was originally willing to pay for the premises in order to avoid the need for proceedings. Mr Stevenson BL considered that the costs in the proceedings were incurred as a result of the respondent's failure to accept what was more than a reasonable offer on the part of the applicant and on that basis he submitted that the applicant should be awarded its costs.
10. The Tribunal agrees with Mr Stevenson BL, the applicant had succeeded. The rent of £8,800 per annum fixed by the Tribunal was below the £15,000 per annum originally offered by the applicant in his Tenancy Application to the Tribunal and the proceedings could have been avoided if the respondent would have accepted this offer.
11. The next question for the Tribunal is whether there were special circumstances which would warrant a departure from the general rule that the successful party should receive its costs.
12. Mr Stevenson BL referred to Campbell v Finnegan & Finnegan in which case the Tribunal directed: "In the absence of exceptional circumstances costs follow the event". He submitted that there were no such exceptional circumstances in this reference.
13. Mr Thompson considered that there were special circumstances in the subject reference in that, in his opinion, he had been treated unfairly in the Part I hearing as the Tribunal had rejected his comparative evidence. On that basis he suggested that each side should bear its own costs.
14. The Tribunal does not agree. In the Part 1 decision the Tribunal outlined the reasons why it could not give any weight to the respondent's comparative evidence. Mr Thompson was subsequently advised of his right to refer the Tribunal's decision to the Court of Appeal but despite taking legal advice and advising the Tribunal that he would forward a "case stated", he did not proceed.

## **Conclusion**

15. The Tribunal agrees with Mr Stevenson BL, there were no "exceptional" circumstances in this reference to depart from the general rule that costs follow the event. The Tribunal awards the

applicant its costs, such costs to be taxed in default of agreement. The Tribunal has directed the applicant to provide the respondent with a detailed breakdown of its costs and the Tribunal will accept further submissions on this issue in the absence of agreement.

**ORDERS ACCORDINGLY**

**10<sup>th</sup> March 2015**

**Henry M Spence MRICS Dip.Rating IRRV (Hons)  
LANDS TRIBUNAL FOR NORTHERN IRELAND**