

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982**

**IN THE MATTER OF A REFERENCE**

**R/48/2010**

**BETWEEN**

**MADELINE JOHNSTON - CLAIMANT**

**AND**

**NORTHERN IRELAND HOUSING EXECUTIVE – RESPONDENT**

**PART 1**

**Re: 3 Stanhope Drive, Belfast**

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

**Background**

1. The claimant was the owner of 3 Stanhope Drive, Belfast. The property was purchased by the respondent from the claimant, on compulsory purchase terms, under an advance purchase scheme, in July 2010.
2. An issue arose in regard to part of a disturbance claim. The claimant lodged a Notice of Reference with the Lands Tribunal in December 2010. In May 2011, the Registrar was informed by the surveyor for the claimant that the matter had been settled subject to costs but, in August 2011, the solicitors for the respondent wrote to the Registrar stating that the settlement was silent as to costs.
3. The respondent then applied for a stay of proceedings, to bring the proceedings in the case to an end because it had been settled. The application was listed for hearing but, when the Hearing was about to commence, the Respondent raised a question of jurisdiction.

**Procedural Matters**

4. The Tribunal received a bundle of documents.
5. The Tribunal received written and oral submissions from Keith Gibson BL and Michael Potter BL.

## Positions

6. Mr Potter BL suggested that the Tribunal had no jurisdiction because the matter was settled and the instant proceedings were an abuse of process; the Tribunal had no jurisdiction to inquire into the terms agreed between the parties.
7. Mr Gibson BL said that the claimant was neutral on the application but suggested that the burden of satisfying the Tribunal that it had no jurisdiction was entirely on the Respondent.

## Discussion

8. The Tribunal was referred to:
  - *Valentine: Civil Proceedings – The Supreme Court* ;
  - *Foskett: The Law and Practice of Compromise* 5<sup>th</sup> Ed;
  - Somerset and Another v Ley & Another [1964] 1 WLR 640;
  - Purfleet Farms v Secretary of State for Transport [2002] EWCA Civ 1430; and
  - O’Neill v Northern Ireland Housing Executive [2011] R/49/2009 (Part 2).
9. It was not suggested that the Tribunal lacked a power to stay proceedings.
10. Mr Potter BL referred to the importance of specifically dealing with costs in settlement terms (see *Valentine* at 12.06) and the difficulty faced by a party later seeking to recover costs not included in the terms (see *Foskett* at 5-50 and Somerset v Ley [1964]).
11. Mr Potter BL and Mr Gibson BL made different suggestions about what might be assumed to be in the minds of parties discussing costs in settlement of a compulsory purchase case. On the one hand there is the presumption that costs followed the event (see *Valentine* at 17.04) on the other hand there is the presumption in compulsory purchase, that costs should be met by the acquiring authority (see Purfleet Farms [2002] and O’Neill v NIHE [2011]). The meaning of the correspondence in the bundle is not clear.
12. It would be inappropriate to go into the detail of what may have to be addressed at a later stage but, on a preliminary view, the Tribunal doubts whether the parties were ad idem as to terms of settlement, including in particular costs in the Lands Tribunal. In these circumstances, in order to decide whether or not to stay proceedings the Tribunal must examine the extent of agreement and it inevitably follows that it has a jurisdiction to do so.
13. The Tribunal concludes that it retains jurisdiction in the instant case.

**ORDERS ACCORDINGLY**

**10<sup>th</sup> February 2012**

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

**Appearances**

**Claimant: Keith Gibson BL instructed by J Allen, Chartered Surveyor.**

**Respondent: Michael Potter BL instructed by Geo L Maclaine & Son, Solicitors.**