

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 3

Costs

Re: 3 Stanhope Drive, Belfast

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

Introduction

1. This is an assessment of costs. The substantive issue arose in this way. The Claimant was the owner of a house at 3 Stanhope Drive, Belfast. In July 2010, the property was purchased by the respondent from the claimant, on compulsory purchase terms. It was accepted that she also was entitled to claim for disturbance. One item was controversial. That was a claim for £815 relating to a solid wooden floor. The issue was whether that floor was a part of the house or was something that could have been removed by the owner. If it was the former, its presence was or should have been reflected in the market value of the house; if it was the latter, its loss or adaptation costs to fit a replacement house were potentially part of the disturbance claim.
2. In December 2010 Mr Allen, a Chartered Surveyor acting as agent for the Claimant, referred the dispute to the Lands Tribunal. When the case was mentioned before the Tribunal, in light of the likely focus of the arguments, it declined to permit Mr Allen to appear as an advocate. Using Direct Professional Access, he instructed counsel, Mr Gibson BL. The Respondent instructed solicitors who also briefed counsel, Mr Potter BL.
3. At a subsequent mention, the Tribunal suggested that it would be helpful to receive a report, from a suitably qualified person, on the consequences, for both the house and the floor, of its removal. Mr Allen arranged for the Tribunal to receive a report from a flooring supplier. He

concluded that it was likely that the tongues of the boards would have been so damaged in the process of removal that it would have been impractical to reuse them.

4. The agents for the parties agreed compensation of £500 and, in May 2011, Mr Allen wrote to the Registrar of the Tribunal to say that the matter had been settled subject to costs and applied for withdrawal. The correspondence was forwarded to the solicitors for the Respondent who consented to withdrawal. However, in August 2011, after they had received a note of the Claimant's costs, they wrote to the Registrar stating that there was a settlement, but it was silent as to costs. They applied for a stay of proceedings, to bring them to an end on grounds that the case had been settled.
5. When the application for a stay was about to be heard, the Respondent raised a jurisdiction issue – it was suggested that the Tribunal retained no jurisdiction to deal with that application. Subsequently the Tribunal concluded that it did. (See R/48/2010 Part 1.)
6. After a further hearing the Tribunal refused the Respondent's application for a stay – it concluded that the issue of costs remained unresolved and that issue fell to be determined by the Tribunal as part of the application to withdraw. (See R/48/200 Part 2.)
7. The Respondent then made an application requiring the Tribunal to state a case for the decision of the Court of Appeal. At the suggestion of the Tribunal, the parties agreed that, without prejudice to the case stated, it should quantify the costs that would be recoverable by the Claimant if its Decision was not wrong in law. These included costs relating to the disturbance claim issue, the jurisdiction issue, and the application for a stay.
8. As things stand at this stage (i.e. before the appeal has been heard) the Claimant has succeeded on all three issues and this was a claim in the context of compulsory purchase. The suggestion that the Respondent should pay her reasonable costs was not challenged.

Procedural Matters

9. The Tribunal received:
 - a. copy correspondence between the parties; and
 - b. written and oral submissions from Keith Gibson BL and Michael Potter BL.
10. Later, having come to a preliminary view that one of Mr Allen's roles was as a witness of fact, a point not made in the submissions, the parties were invited to make further submissions if they so wished. Neither did so.

Positions of the Parties

11. The claim for costs was, in summary:

- a. Joe Allen, Chartered Surveyor £5,525 plus VAT; and
- b. Keith Gibson BL £4,900 plus VAT.

12. Mr Potter BL suggested that there should be restraint and regard for the public purse. The focus of his submission was Mr Allen's costs. He suggested that Mr Allen was entitled to a reasonable professional fee for work as a surveyor but should not be entitled to a comparable fee for acting as a 'quasi solicitor'.

Discussion

13. Mr Potter BL noted that there was nothing particularly notable or extraordinary about the costs of Mr Gibson BL. The Tribunal is content to accept those.

14. It is convenient to consider Mr Allen's costs in three phases:

- a. the disturbance claim issue;
- b. the jurisdiction issue (the Part 1 Decision); and
- c. the application for a stay (the Part 2 Decision).

15. Mr Allen played three roles:

- a. as expert in valuations for compulsory purchase;
- b. as witness of fact; and
- c. as instructing surveyor.

16. Mr Allen charged for a total of about 43.5 hours, all at £125 per hour. But he was unable to assist the Tribunal in quantifying the time spent in each role. So the Tribunal must do the best it can with the limited material available.

17. Mr Allen, as an expert in valuations for compulsory purchase, identified the disturbance claim issue and, in conjunction with counsel, helpfully formulated it for the Tribunal. The Tribunal allows 10 hours for that. Mr Potter BL did not strenuously oppose his hourly rate of £125 as an expert. The Tribunal concludes that £1,250 would be appropriate for that role.

18. For expenses in his role as a witness of fact, the Tribunal allows Mr Allen £50.

19. The Tribunal does not wish to discourage Direct Professional Access; in many cases such access may be wholly consistent with the suggestions by Mr Potter BL that there should be restraint and regard for the public purse. But the efficacy of the contribution that an instructing surveyor may make to a case may depend on the nature of the issues. For example, it may reasonably be expected to be greater where the issue is a highly technical point of valuation principle, perhaps less where it is a contractual issue and less again where it is a litigation procedural point. Accordingly, the Tribunal may carefully consider the reasonableness or otherwise of the time actually spent in the context of different types of issue.
20. Mr Potter BL suggested that an hourly rate of £100 that had been adopted in a previous decision for work as an instructing surveyor was now excessive by comparison with the rate his instructing solicitors had used recently in tendering for public authority work; the rates for junior counsel on the government civil panel; and the rate, approved by the Tribunal in a previous case, for a surveyor assisting an expert witness. The Tribunal is not persuaded that it should depart from the hourly rate of £100 but only on the basis that the number of hours allowed should be limited to what would be a reasonable amount of time for a suitably qualified professional to spend in support of counsel on the phases set out above. Accordingly the Tribunal allows:
- a. the disturbance claim issue £500;
 - b. the jurisdiction issue (the Part 1 Decision) £400; and
 - c. the application for a stay (the Part 2 Decision) £600.

Conclusions

21. The Tribunal therefore concludes that the Claimant's reasonable costs were:

a. Joe Allen, Chartered Surveyor		
i. as expert	£1,250	
ii. as witness of fact (expenses)	£50	
iii. as instructing surveyors (DPA)	£1,500	
iv. travelling expenses etc	£90	
	TOTAL	£2,890 plus VAT
b. Keith Gibson BL		£4,900 plus VAT

22. The Tribunal awards a lump sum of £7,790 plus VAT.

ORDERS ACCORDINGLY

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

18th September 2013

Appearances

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

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