

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**PROPERTY (NORTHERN IRELAND) ORDER 1978**

**IN THE MATTER OF A REFERENCE**

**R/8/2008**

**BETWEEN**

**PATRICK J McKILLOP – APPLICANT**

**AND**

**JOSEPH WOODS – RESPONDENT**

**Re: 155 Ormeau Road, Belfast**

**COSTS**

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

**Background**

1. This is an application for costs.
2. In 2004 Philip J Smith & Co was instructed to act for Mr McKillop in the sale of premises at 155 Ormeau Road, Belfast. Sales fell through because of restrictions in the ground lease.
3. No ground rent had been collected for some years but, on making enquiries Mr McKillop advised his solicitors that the ground lessor was Mr Woods. But, by a conveyance of 5<sup>th</sup> August 2005, Mr Woods sold his lessor's interest in these premises, along with other premises, to SHAC Housing Association. The solicitor who acted for Mr Woods was Mr Kelly of Oliver J Kelly & Co. Oliver J Kelly & Co became incorporated in McLaughlin & Co. By May 2006 Mr Kelly and all his staff had left the employment of McLaughlin & Co.
4. In November 2005 Mr Smith had spoken and written to Mr McLaughlin who had sought substantial compensation for release of the restrictions. In March 2007 Mr Smith made a written offer; there was no response.
5. In January 2008 Mr Smith made an application on behalf of his client to the Lands Tribunal for extinguishment or modification of the restrictions in the lease. The application stated that the interest of the lessor was vested in Mr Woods and his solicitor was McLaughlin & Co.

6. On 8<sup>th</sup> April 2008 the Tribunal was informed that agreement had been reached in the matter and the matter was adjourned for 8 weeks to allow completion of the agreement.
7. At the request of Mr Smith the matter was listed for mention again on 20<sup>th</sup> August 2008. Mr McLaughlin suggested the matter was settled. Mr Smith informed the Tribunal that, as satisfactory title had not been produced, any offers had been withdrawn. Mr McLaughlin informed the Tribunal that his client intended to commence proceedings for breach of contract. The Tribunal allowed 28 days for proceedings to be commenced elsewhere. On 11<sup>th</sup> September the Tribunal was informed that a civil bill had been issued.
8. In early 2009 Mr McLaughlin discovered a file relating to the August 2005 sale to SHAC, while searching through the archive files of Mr Kelly.
9. On 3<sup>rd</sup> April 2009 the Tribunal was informed that the civil bill had been withdrawn and costs awarded against Mr Woods. By the conveyance of 5<sup>th</sup> August 2005 between Mr Woods and SHAC, he no longer had any legal capacity in the lease and no standing in the Lands Tribunal.
10. On 8<sup>th</sup> June 2009 Mr Smith informed the Tribunal that SHAC had now released the relevant restrictions.

#### **Procedural Matters**

11. On 1<sup>st</sup> July 2009 Mr McLaughlin suggested the matter should be withdrawn.
12. The Tribunal received written submissions on costs in accordance with directions made by consent.

#### **Positions of the Parties**

13. On behalf of Mr McKillop, Mr Smith claimed his costs of £1,132 plus VAT.
14. On behalf of Mr Woods, Mr McLaughlin claimed his costs and outlay of £1249.50 plus VAT.
15. The amounts related only to proceedings in the Lands tribunal and were not disputed.

#### **Discussion**

16. Mr McLaughlin said the proceedings were only defended due to proceedings being erroneously issued by Mr McKillop.

17. Mr Smith said that Mr McLaughlin had failed to inspect his client's title documents or provide them for inspection and his costs were incurred as a direct result of Mr McLaughlin's representation on behalf of Mr Woods that he still owned the lessor's interest.

**Decision**

18. The Tribunal agrees with Mr Smith and awards costs against Mr Woods in the amount of £1132 plus VAT.
19. If Mr McLaughlin had considered Mr Woods' documents of title at the outset, the Tribunal probably would have awarded Mr Woods the costs of doing so.

**ORDERS ACCORDINGLY**

**Michael R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI**

**16<sup>th</sup> February 2010**

**LANDS TRIBUNAL FOR NORTHERN IRELAND**

**Appearances:**

**Applicant: Philip Smith of Philip J Smith & Co, Solicitors**

**Respondent: Martin McLaughlin of McLaughlin & Co, Solicitors.**