

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964
RATES (NORTHERN IRELAND) ORDER 1977

IN THE MATTER OF AN APPEAL

VT/1/2009

BETWEEN

LIAM AND BERNADETTE FLANNIGAN – APPLICANTS/APPELLANTS

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Re: Brae House, 8 Corernagh Road, Tandragee

COSTS

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

Background

1. In November 2008 this Tribunal granted leave to appeal against a decision (reference NIVT05/07 dated 18th July 2008) of the Northern Ireland Valuation Tribunal. Subsequently the case was remitted to the Valuation Tribunal, with directions. That tribunal gave its decision (reference NIVT9/09) on 8th April 2009. The Flannigans applied to the President of the Valuation Tribunal for leave to appeal and that was refused by a decision dated 12th June 2009.
2. The Flannigans again applied to this Tribunal on 6th July 2009. By agreement with the parties the application for leave was dealt with at an informal hearing, on 14th January 2010, and leave was granted at the conclusion of that Hearing.
3. Shortly afterwards the case was settled on the basis of a reduction of the assessment from £320,000 to £250,000 capital value.
4. The Commissioner agreed to pay the costs of Mr Rose, a Chartered Surveyor who appeared on behalf of the Flannigans but an issue remains as to what costs and expenses, if any, may be recovered by the Flannigans.

Procedure

5. The Tribunal received written submissions from Mr Rose, on behalf of the Flannigans and from Mr Donal Lunny BL on behalf of the Commissioner.
6. The Tribunal then referred the parties to *Butterworths Costs Service* at Div B [289] and Davey v Durrant (1858) 24 Beav 493, 27 LJ CH 503, and received further submissions.

Positions

7. Mr Rose claimed for the time Mr Flannigan spent on the matter plus mileage and parking charges. He claimed a total of £430, being a modest rate for his time, some mileage and some parking expenses.
8. Mr Lunny suggested that the time spent by Mr Flannigan attending on Mr Rose was not recoverable. However, he accepted that arguably Mr Flannigan attended throughout the hearing to be available to give instructions to Mr Rose and, in those circumstances the costs, of him so attending, may be recoverable.

Discussion

9. The Tribunal was referred to the Lands Tribunal & Compensation Act (Northern Ireland) 1964; the Litigants in Person (Costs and Expenses) Act 1974; the Lands Tribunal Rules (Northern Ireland) 1976; and Valentine: *Civil Proceedings – The Supreme Court*.
10. Mr Flannigan is a self-employed builder and Mr Rose said that he had been diverted from that work to assist in regard to local knowledge of properties in the vicinity and their values. He suggested that Mr Flannigan played the role of an expert witness/witness of fact helping him to draft his written submissions for the Tribunal and preparing for the hearing. Mr Flannigan also spoke at the hearing to assist the Tribunal and clarify some issues of fact. Mr Rose at first suggested that the Flannigans could be regarded as litigants in person but later accepted that they could not. He also suggested that Mr Flannigan could be regarded as an expert witness/witness of fact.
11. Mr Lunny suggested:
 - Mr Flannigan was not at any stage an expert witness. This role was filled at all times by Mr Rose and the Commissioner has already agreed to pay fees to Mr Rose on this basis;
 - The time spent by Mr Flannigan attending with Mr Rose at various locations was not recoverable;

- Mr Flannigan answering questions on factual issues at the hearing simply represented a “short circuiting” of the normal procedure of a representative taking instructions from his client and relying those to the Tribunal; and
 - Mr Flannigan was not a witness at the application for leave and it would not be the norm for witnesses ever to be called at such applications.
12. For the avoidance of doubt the Tribunal agrees with Mr Lunny that Mr Flannigan could not be treated as a litigant in person in any sense. The Tribunal also accepts that Mr Flannigan did not adopt the role of an expert witness or a witness of fact.
13. The Tribunal accepts that Mr Flannigan spent a considerable amount of time briefing Mr Rose on the values of the houses in the vicinity and the factors he thought impacted on those values. The Tribunal also accepts that Mr Flannigan attended the Hearing to be available to give instructions to Mr Rose.
14. Mr Lunny referred the Tribunal to Valentine at para 17.107:
“Expenses (travel and loss of earnings) are allowable for any person reasonably required to attend the trial as a witness ... a witness includes the party himself ...a party can not claim the expenses of attending his legal or other expert advisors, but the costs of a party attending throughout the trial to be available to give instruction to counsel may be allowable if it was necessary.”
15. The Tribunal agrees. Accordingly, Mr Flannigan cannot recover costs for briefing Mr Rose in preparation for the hearing but, as the Tribunal concludes that it was necessary for Mr Flannigan to attend the Hearing, in the circumstances, the costs of him so attending are recoverable.
16. The Tribunal awards Mr Flannigan costs of £100 plus £35 for mileage and parking expenses.

ORDERS ACCORDINGLY

29th July 2010

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