LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996

BT/90/2002

BETWEEN

FUJITSU TELECOMMUNICATIONS EUROPE LIMITED – APPLICANT/TENANT

AND

BRUNSWICK (9 LANYON PLACE) LIMITED – RESPONDENT/LANDLORD

Premises: 9 Lanyon Place, Belfast

Lands Tribunal – Michael R Curry FRICS IRRV MCI.Arb Hon.FIAVI

Belfast – 30th January 2003

PART II

1. An application had been made to the Tribunal under Article 26 of the Business Tenancies (Northern Ireland) Order 1996 ("the 1996 Order") which gives the Lands Tribunal a power to deal with disputes arising from the unreasonable withholding of consent to alienation.

2. The Applicant/Tenant claimed that Brunswick had unreasonably withheld its consent to the subletting of one quarter of the third floor to the Global Email Company Limited. The parties had agreed that the question of whether the consent had been unreasonably withheld should be dealt with as a preliminary point.

3. In the Part 1 Decision the Tribunal denied the tenant the relief sought (see para 62.):

   "On the preliminary point, the Tribunal therefore concludes that the condition requiring tenant default insurance in respect of FTEL is unreasonable. However the inconsistent cap on the rate of increase of service charge is a valid reason for refusal of consent and the shortfall on rent is a valid reason for refusal of approval and refusal of consent."

4. The parties were unable to agree the allocation of costs.

5. Keith Robinson BL appeared for the Applicant/Tenant instructed by Tughans. Stephen Shaw QC appeared for the Respondent/Landlord, instructed by C & H Jefferson. Their oral submissions were later supplemented by written submission (7th March 2003 and 13th February 2003 respectively) in response to an invitation to address the Tribunal on Purfleet Farms Ltd v Secretary of State for Transport, Local Government and the Regions [2003] EG 105 C.A. Both parties agreed that, so far as this reference is concerned, Purfleet Farms did not suggest any need for change in the Tribunal's practice in this jurisdiction.

6. Mr Robinson suggested there should be no order as to costs. Mr Shaw suggested the Respondent/Landlord should have its costs.

7. Mr Robinson referred the Tribunal to Oxfam v Earl & Others [BT/3/1995]:

> "The Tribunal must exercise that discretion judicially and the starting point on the question of costs is the general presumption that, unless there were special circumstances, costs follow the event, i.e. that in the ordinary way the successful party should receive its costs. The next question for the Tribunal is whether there were special circumstances which would warrant a departure from that general rule. But these must be circumstances connected with the proceedings, for example, to reflect an unsuccessful outcome on a major issue."

8. The Tribunal accepts that the Respondent/Landlord was the successful party because the Tribunal denied the tenant the relief sought.

9. Mr Robinson suggested that there was a special reason to deny costs to the Respondent/Landlord in that he relied on three reasons (the 'default insurance', 'service charge' and 'rent' reasons) but the Tribunal did not uphold default insurance and the bulk of the time at the hearing was expended on that reason.

10. Mr Shaw suggested that the Respondent/Landlord had two good reasons (service charge and rent) and the Respondent/Landlord incurred costs because the tenant failed to recognise that the Respondent/Landlord had these two good reasons. He suggested the amount of time spent on default insurance was the product of how the tenant decided to focus its case - the tenant had ignored the good reasons upon which

the Respondent/Landlord relied successfully and decided to focus on one less good reason. The way a party choose to present and focus its own case should not be regarded as a reason to deprive the successful opponent of costs.

11. Mr Robinson conceded that on the issues of service charge and rent the Applicant/Tenant was not successful but suggested that in the exercise of the Tribunal's discretion it should have regard to the terms on which refusal of consent was put forward by the respondent/landlord. He suggested that these were not simply three freestanding issues and both the correspondence and the decision of the Tribunal could leave no doubt that default insurance was a major issue (see para's 54 and 60 of the Part 1 Decision).

12. The Tribunal accepts that the correspondence from the Respondent/Landlord intertwined the default insurance issue with the other grounds in such a manner as to trigger the need for the matter to be fully addressed as a very significant, integral and inseparable part of the grounds for refusal. As a consequence the Respondent/Landlord had added to the costs of the proceedings for both parties but was unsuccessful on that matter.

13. The Tribunal accepts that the respondent/landlord has succeeded and in the ordinary way the successful party should receive its costs. However the Tribunal concludes that the Respondent/Landlord's unsuccessful pursuit of this major intertwined issue is a special circumstance that warrants a departure from the general rule.

14. Taking a very broad view, the Tribunal therefore concludes that the Applicant/Tenant should pay its own costs and one half of the Respondent/Landlord's costs.

ORDERS ACCORDINGLY

3rd April 2003

Mr M R Curry FRICS IRRV MCI.Arb Hon.FIAVI
LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:

Applicant: Keith Robinson BL instructed by Tughans.

Respondent: Stephen Shaw QC instructed by C & H Jefferson.