

LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996

IN THE MATTER OF A PRELIMINARY POINT RE THE

VALIDITY OF NOTICES TO DETERMINE

BT/100/2023

BETWEEN

GRADE ONE FURNITURE LIMITED – APPLICANT

AND

JAMES DONNELLY & SONS – RESPONDENT

Re: Units 3 & 4, 23 Ballymacombs Road, Portglenone

Lands Tribunal – Henry Spence MRICS Dip Rating IRRV (Hons)

Background

1. The premises which are the subject of this application are Units 3 & 4, 23 Ballymacombs Road, Portglenone (“the reference properties”). These two units form part of a larger complex of units at 23 Ballymacombs Road and the current occupants have been in possession of the reference properties for some 23 years. They are used for the manufacture and fabrication of furniture.
2. The principal person behind the businesses occupying the reference properties is Mr Stephen McErlean who is the sole director of Kindercraft Products Ltd, which was incorporated on 8th March 1999 and Grade One Furniture Ltd (“the applicant”) which was incorporated on 27th January 2016.
3. James Donnelly & Sons (“the respondent”) are a haulage and potato business and they occupy the eastern end of the complex. They are the landlords of the reference properties.

4. The issue for the Tribunal is the validity or otherwise of Notices to Determine served by the respondent.

Procedural Matters

5. The applicant was represented by Mr Mark McEwen BL, instructed by Rosemary Gawn solicitors. Mr Richard Shields BL, instructed by Doris & MacMahon solicitors, represented the respondent. The Tribunal is grateful to Counsel for their helpful submissions.

Authorities

6. The Tribunal was referred to the following authorities:
 - Yamaha-Kemble Music (UK) Ltd v ARC Properties Ltd [1990] 1 EGLR 261
 - Bridgers v Stanford [1991] 2 EGLR 265 (CA)
 - M & P Enterprises (London) v North Square Hotels [1994] 1 EGLR 128
 - Barclays Bank plc v Bee [2002] 1 WLR 332 (CA)

Text

7. And to the following text:
 - Reynolds & Clark "Renewal of Business Tenancies" 6th Edition at para 3-206 to 3-208

The Applicant's Submissions

8. Mr McEwan BL made the following submissions:

(i) Background

9. The only executed document in existence between the landlord and tenant is a single page dated 31st March 2000 and relating to a single unit. It is noted that whilst Kindercraft Products Ltd was in existence at that date, the agreement is made with Stephen McErlean t/a Kindercraft.
10. Latterly, the rental invoices are directed to Grade 1 Furniture Ltd and do not name Kindercraft Products Ltd. The invoices are in the name of James Donnelly but the covering email is from James Donnelly & Sons Ltd.
11. Prior to service of the Notices to Determine, the respondent, through its agents forwarded two draft leases in identical terms, one for each unit, for consideration. It is pointed out that the landlord is described as James Donnelly & Sons Ltd and the tenant is described as Stephen McErlean t/a Kindercraft/Grade 1.
12. Following receipt of the draft leases, Peter Donnelly sends a number of emails to Mr McErlean of Kindercraft Products Ltd, seeking that the leases be executed, and all of these requests have the logo of James Donnelly & Sons Ltd. They are signed by Peter Donnelly.
13. The number, tone and visits by Mr Peter Donnelly led the applicant's solicitors to write to the respondent to complain about Mr Donnelly's behaviour.
14. In addition to the leases forwarded by their agents, the landlord's solicitors produced a form of lease for the two units in one document, which names Grade One Furniture Ltd as the tenant, giving the company's registration number.

(ii) Notices to Determine

15. The solicitors acting for the landlords served three different Notices to Determine on two separate dates and named different tenants. All of the notices are in the same terms, and follow the rubric of Article 6 of the Business Tenancies (Northern Ireland) Order 1996 (“the Order”), indicating that the landlord would not oppose the grant of a new tenancy.

16. The notices are:
 - (a) Dated 29th March 2023, determining the tenancy on 3rd October 2023 and addressed to Stephen McErlean t/a Kindercraft.
 - (b) Two notices both dated 31st March 2023 determining the tenancy on 6th October 2023, addressed to Kindercraft Products Limited and Grade 1 Furniture Ltd, one notice going to each company.

17. The applicant points out that there is no company bearing the name Kindercraft Products Limited nor a company bearing the name Grade 1 Furniture Ltd, even though the landlord’s solicitors were able to insert the correct name and registration for Grade One Furniture Ltd in their draft lease.

18. The applicant seeks to challenge the validity of notices which have been served on the basis that it is not clear who the landlord is, nor who is regarded as the tenant or tenants of the reference properties or whether the demised premises are being treated as one unit or two separate units. There is also potential for confusion over the date when it is said the tenancy comes to an end and whether either of those dates is a date when the tenancy could be brought to an end to comply with the terms of Article 6 of the Order.

19. The elements giving rise to the lack of clarity are set out above and in the documents contained in the applicant’s submissions:

- Notwithstanding all of those documents, the Notices to Determine are in the names of the individuals who are the directors of the company.
- Moreover, notwithstanding the knowledge which the landlords and their agents have, the first Notice is addressed to Stephen McErlean t/a Kindercraft, even though the invoices are addressed to Grade 1 Furniture Ltd.
- The second tranche of Notices are directed to entities which do not exist, in the sense that neither is the correct corporate name of the company.
- The third element which gives rise to the lack of clarity is the difference in the dates on which the landlord seeks to determine the tenancy, stated as either 3rd or 6th October 2023, the consequence of which is that it impacts on the time period available to the tenant to respond and/or make a tenancy application.
- The fourth element is whether the landlord is treating the tenancy as a single tenancy or two tenancies, given the differences between the two draft agreements sent by the landlord's agents and the notices which appear to treat the tenancy as a single tenancy, with a single passing rental.

(iii) Discussion

20. The issue of "validity" of section 25 Notices (England and Wales) under the regime for business tenancies is discussed at paras 3-206 – 3-208 of Reynolds & Clark "Renewal of Business Tenancies", 6th edition. The authors of this text suggest that the test has evolved to "whether the notice would be clear to a reasonable tenant and whether it is plain enough not to mislead him". Whatever words are used, it appears clear that the test is applied objectively, and not subjectively, and how a reasonable recipient would have understood the notices.
21. The text goes on to give various examples of various defects which can affect the validity of such notices, and from these examples the applicant refers to:

- (a) Barclays Bank plc v Bee [2002] 1 WLR 332 (CA) where the tenant received two notices, one invalid notice, opposing renewal and one valid notice not opposing renewal, in which the Court held that both were invalid.
- (b) M & P Enterprises (London) v North Square Hotels [1994] 1EGLR 128 where the notice wrongly named the landlord, but also served four separate notices relating to four different floors of a hotel, owned by four separate entities. The Court held that the misnaming did not invalidate the notice but the service of four notices meant that it would not be clear to a reasonable recipient whether the premises were being treated as subject to a single tenancy. This is also a factor which arises in the present case given the landlords agents approached the issue as two tenancies, whereas the notices served may, or may not treat the tenancy as a single one.
- (c) Yamaha-Kemble Music (UK) Ltd v ARC Properties Ltd [1990] 1 EGLR 261 whereas the notice served by the landlord was served by a subsidiary rather than its parent company was held to be invalid. In the present case, the landlord has held itself out as dealing as a company then served the notice in the names of individuals.
- (d) Bridgers v Stanford [1991] 2 EGLR 265 (CA) where the notice was addressed not to the tenant but to a company carrying on the tenant's business, where both companies were subsidiaries of a third, and the names of both companies were used interchangeably in correspondence with the landlord, was held to be valid, which may assist the landlord.

22. Although the question is whether the notice is invalid in the sense that it does not mislead, it is submitted that the background information of the dealings between the parties is important to determine whether the notices are valid or invalid. It also states the obvious that the determination of this issue of validity is fact sensitive. The applicant submits that there are a number of defects or potential defects with the three Notices which have been served, as set out above, and amount to difficulties in determining the identity of the landlord and who is regarded as the tenant, or tenants, the date of determination of the tenancy or tenancies and the approach to whether a single tenancy is being proposed, or a tenancy in respect of each unit is proposed. It is submitted on behalf of the applicant that these issues

either singly and/or collectively could mislead the reasonable recipient and thus render the Notices invalid.

The Respondent's Submissions

23. On behalf of the respondent Mr Shields BL made the following submissions:

24. On 31st March 2023, Doris & MacMahon on behalf of the landlord, served Notices to Determine on Kindercraft Products Limited and Grade 1 Furniture Limited.

25. The Notices and the covering letter refer to the landlord as James Donnelly & Sons. The premises are identified as Units 3-4 Ballymacombs Road, Portglenone, Ballymena.

26. This correspondence and Notices were copied to Rosemary Gawn, solicitor.

27. On 4th September 2023, wrongly dated 4th September 2022, Rosemary Gawn, solicitor wrote to Doris & MacMahon enclosing a Tenancy Application.

28. The tenancy application identifies the premises as Units 3 & 4, 23 Ballymacombs Road, Ballymena and identifies the tenant as Grade One Furniture Limited, and states the landlord as James Donnelly & Sons Limited.

29. As per Doris & MacMahon's notices served 31st March 2023, the landlord is James Donnelly & Sons. This reflects the only written lease document for the reference property. It equally reflects the draft lease sent by Doris & MacMahon on 28th February 2022 to Ms Gawn. There is no misdescription in the landlord's notice, and there has been no confusion.

30. The landlord understood both companies to be in occupation and trading at the reference property. Mr McErlean is a director of both companies. Each company has its registered address as 23 Ballymacombs Road, Portglenone, Co Antrim BT44 8NQ. Insurance certificates show cover for both companies.
31. There is no error or misdescription on the part of landlord.
32. The tenant attempts to argue that because its solicitors served a tenant's notice on James Donnelly & Sons Limited, rather than James Donnelly & Sons, that this somehow translates into invalidity with the landlord's Notice. This is unsustainable.
33. The tenant also appears to argue that there is a difference between Kindercraft Products Limited and Kindercraft Products Ltd, and also argues that there is some confusion between Grade 1 Furniture Limited as against Grade One Furniture Limited.
34. The point is surprising given that Kindercraft's own solicitor in correspondence of 9th September 2021 refers to her client as Kindercraft Products Limited and not Kindercraft Products Ltd. There are no other companies at these addresses bearing any similar names and there has been no confusion.
35. The caselaw cited by the applicant does not aid it, in fact in the inverse. For example, in Barclays Bank plc, the landlord served a Section 25 notice (Notice A) stating that he was not willing to grant a new tenancy, but failing to set out the grounds. The letter enclosing the notice stated that duplicate, and by implication, identical notices were being served on the tenant, with the intention that the tenant sign and return one of the copies of the notice to the landlord. The second notice (Notice B), far from being an identical copy of the first, stated that the landlord was willing to grant a new tenancy. The covering letter stated that the landlord intended to redevelop the property. The tenant pointed out the confusion and a third notice was served, Notice C, stating that the landlord would not grant a new tenancy and setting out the grounds.

36. The other cases cited are similarly inapt. It is notable in the present case, that all parties notices refer to the premises “Units 3 and 4, 23 Ballymacombs Road, Portglenone”. On that the parties are ad idem, on the face of the notices.

The Tribunal

37. The Tribunal refers to the House of Lords decision in Mannai Investment Co Limited v Eagle Star Life Assurance Co Ltd [1997] 1 EGLR 57 HL. This was a case about a contractual break notice, not a statutory notice, but it is still one of the leading judgements on how mistakes in notices should be construed. Lord Stein said that the construction of notices must be approached objectively. The issue is how a reasonable recipient would understand a notice.

38. Further guidance was given by Neuberger LJ in Lay v Ackerman [2004] EWCA Civ 184 who said that following Mannai, the correct approach was as follows:

- (i) Is there a mistake in a notice?
- (ii) If so, how would a reasonable person in the position of a recipient understand the notice?
- (iii) As a result, would the notice be understood as conveying the information required by the contractual, statutory or common law provision pursuant to which it is served?

39. The Tribunal felt in the Lay case that even if the landlord had got a date wrong a recipient would have understood that the intention of the notice was to bring the tenancy to an end at the conclusion of the contractual term, therefore, even if there had been a mistake, as claimed by the tenant, the notice was still valid.

40. In the subject reference there were several communications between the parties, but the Tribunal is only concerned with the validity or otherwise of the landlord's Notices to Determine.
41. The landlord served three Notices to Determine and in all of the Notices the clear message that he wished to convey was at the end of the contractual term of the existing tenancy, he wished to grant the tenants new tenancies and was proposing terms for these tenancies which would obviously be subject to negotiation.
42. Notice 1 was dated 24th March 2023. This notice states:
- (i) Name and address of tenant: "Stephen McErlean t/a Kindercraft of Units 3-4, 23 Ballymacombs Road, Portglenone ...". The name of the company, "Kindercraft" is incorrect but Stephen McErlean is a director of Kindercraft Products Ltd and had been trading from the reference property for many years. This mistake would not have misled the applicant. The Tribunal notes that the company describes itself as "Kindercraft" on its own website
 - (ii) Premises situated at and known as: "Units 3-4, 23 Ballymacombs Road, Portglenone, Ballymena BT44 8NQ". This is correct.
 - (iii) Name and address of landlord: "Peter Donnelly and Brendan Donnelly t/a James Donnelly and Sons of 23 Ballymacombs Road, Portglenone, Ballymena BT44 8NQ". Even though the names of the individual directors are included the name of the company is correctly stated and would not have misled the applicant.
 - (iv) The proposed date of commencement and duration of the new tenancy: "6 years from the 3rd day of October 2023". The date and length of lease is being "proposed" by the respondent and would be subject to discussion and negotiation.
43. Notice 2 is dated 31st March 2023. The premises and landlord are as stated in Notice 1 and would not be misleading. The name of the tenant is stated as "Kindercraft Products Ltd and

Grade 1 Furniture Ltd". This should have read Kindercraft Products Ltd and Grade One Furniture Ltd but this simple "mistake" would not have misled the applicant. There are no other companies within the complex with similar names.

44. The proposed date of termination is 6th October 2023.
45. Notice 3 is in similar terms to Notice 2.
46. The Tribunal notes that the proposed date of termination in Notice 1 is 3rd October 2023 and in Notices 2 and 3 the proposed date is 6th October 2023. There is a slight difference in the dates but these are "proposed" dates and as previously stated would be subject to discussion and negotiation in any case. This slight difference in dates would not make the notices invalid, as per the decision in Lay.

Conclusion

47. As previously stated, the clear message that the respondent wished to convey in its three Notices was that it was willing to grant a new tenancy/tenancies for the reference properties and it was proposing terms for those tenancies.
48. The Tribunal finds that, in the circumstances of this reference, the Notices would not have misled a "reasonable recipient" and the Notices would be understood as conveying the information required by the Business Tenancies (Northern Ireland) Order 1996.
49. The Tribunal finds the Notices to be valid and the parties should now commence discussions about the substantive terms of the new tenancy/tenancies.

27th June 2024

Henry Spence MRICS Dip.Rating IRRV (Hons)

Lands Tribunal for Northern Ireland