

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**LANDS TRIBUNAL RULES (NORTHERN IRELAND) 1976**  
**IN THE MATTER OF AN APPLICATION FOR COSTS**  
**R/22/2013**

**BETWEEN**

**BEATRICE YVONNE DEUXBERRY, MARK RUSSELL DEUXBERRY CURRY AND  
LYNNE CAROLINE CURRY – CLAIMANTS**

**AND**

**DEPARTMENT FOR INFRASTRUCTURE – RESPONDENT**

**Re: Land at Victoria Road, Burdennett, Strabane**

**PART 2 – “COSTS ON COSTS”**

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

**BACKGROUND**

1. On 24<sup>th</sup> May 1999 the Department for Infrastructure (“the respondent”) vested lands at Victoria Road, Burdennett, Strabane (“the reference property”) which was jointly owned by Beatrice Yvonne Deuxberry, Mark Russell Deuxberry and Lynne Caroline Curry (“the claimants”).
2. On 14<sup>th</sup> March 2006, following protracted negotiations, the claimants accepted a formal offer of compensation from the respondent. In its formal offer the respondent had agreed to pay “any reasonably incurred ... agents fees”.
3. The parties were unable to reach agreement on the correct amount of fees to be paid and on 18<sup>th</sup> October 2016 the matter came before the Tribunal. The claimants had

sought £4,615 agents fees and the respondent had made a fee offer of £1,750. Having considered written submissions from both parties the Tribunal assessed the correct amount of fees at £2,665.

4. The claimants are now seeking their costs for the “fees” hearing i.e. “costs on costs”.

#### **PROCEDURAL MATTERS**

5. The parties had agreed to deal with the application by way of written submissions. Mr Noel Dunlop, solicitor, wrote on behalf of the claimants. Ms Jackie Babington, solicitor, provided a submission on behalf of the respondent. The Tribunal is grateful to the legal representatives for their submissions.

#### **STATUTE**

6. Rule 33 of the Lands Tribunal Rules (Northern Ireland) 1976 gives the Tribunal the statutory authority to deal with costs:

“33.-(1) Except in so far as section 5(1), (2) or (3) of the Acquisition of Land (Assessment of Compensation) Act 1919 applies and subject to paragraph (3) the costs of and incidental to any proceedings shall be in the discretion of the Tribunal, or the President in matters within his jurisdiction as President.”

#### **THE LAW**

7. The Tribunal was referred to the following authorities:

- Oxfam v Earl & Others (BT/3/1995)
- Christopher Throne v Department for Regional Development (R/70/2006) Part 2. The Tribunal considers the following extracts to be of particular relevance in the subject reference:

“9. The Tribunal has a power to make an award on an application for costs on costs but agrees with Mr Lunney BL that such applications

are and should be exceptional. He stressed the need for proceedings to have finality. ...

10. In this case there was a substantial disparity between the costs claimed in regard to the settled proceedings and the Department's offer on costs and in the award on costs the Tribunal found largely in favour of the claimant. In principle therefore, the claimant is entitled to recover costs on costs."

### **THE CLAIMANTS' SUBMISSIONS**

8. Mr Dunlop submitted on behalf of the claimants:

- the reference before the Lands Tribunal arose out of the failure of the respondent to make a suitable offer to the claimants in respect of the agents fee in relation to the acquisition of their lands.
- the Tribunal's decision in the Part 1 hearing was to increase the amount of costs that the respondent was prepared to agree. As a result of the respondent's action the claimants incurred considerable expense in preparation of their case before the Tribunal. This work would not have been necessary had the respondent made a suitable offer.
- in the circumstances therefore the claimants were entitled to their reasonable costs in applying to the Tribunal to determine the extent of their remuneration together with their legal costs.
- the Tribunal has authority to make an order in respect of the claim herein in accordance with its decision in Christopher Throne.

### **THE RESPONDENT'S SUBMISSIONS**

9. Ms Babington submitted on behalf of the respondent:

- in the Tribunal decision on Christopher Throne v Department for Regional Development (Part 2) at paragraph 9, the Tribunal stated that it had a power to make an award on an application for costs on costs but that such applications are, and should be, exceptional. The risk of costs on costs proceedings ad infinitum was acknowledged and the need for undertakings to be given by parties with regard to making no further application on costs.
- the respondent should be awarded its costs on costs from the claimants on the basis that the sum assessed by the Tribunal as the agent's reasonable fees and awarded by the Tribunal in its decision on this matter was £2,665 which represented a reduction of £2,005 on the sum of £4,615 claimed by the claimants. It was much closer to the figure of £1,750 offered by the respondent. The claimants did not achieve the fee they had claimed and in that sense therefore the respondent claims that it "won" the case.
- and/or in the alternative the respondent refers the Tribunal to the case of Oxfam v Earl & Others where the Tribunal referred, at page 15, final paragraph to "no fault nor principle" litigation. The respondent would contend that the costs assessment in the subject reference was in the nature of "no fault nor principle" litigation in that there was no winner or loser in this case, with the only real issue being the amount of the agents fees. Accordingly as there was no loser there should be no order as to costs.
- there must be some finality to litigation and if costs associated with seeking costs are to be awarded, such finality cannot be achieved.

## CONCLUSION

10. In its decision in Christopher Throne v Department for Regional Development, with regard to the issue of "costs on costs", the Tribunal stressed that "such applications are and should be exceptional". In that case there was a "substantial disparity between the costs claimed in regard to the settled proceedings and the Departments offer on costs and in the award on costs the Tribunal found largely in favour of the

claimant". On that basis the claimant, in that reference, was entitled to his "costs on costs".

11. That is not the case in the subject reference, however, where the Tribunal assessment of the correct amount of agents fees payable was closer to the respondents offer than the amount sought by the claimants.
  
12. In its Part 1 decision the Tribunal also noted: "Having considered the submissions the Tribunal is also of the opinion that negotiations could have been handled in a more efficient and cost effective manner by both parties." The Tribunal therefore considered that both parties had added to the costs of the reference by their failure to negotiate properly and in these circumstances the Tribunal directs that each party should bear their own costs for the "costs on costs" hearing.

**ORDERS ACCORDINGLY**

**22<sup>nd</sup> December 2016**

**Mr Henry Spence MRICS Dip.Rating IRRV (Hons)**

**Lands Tribunal for Northern Ireland**