

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996

IN THE MATTER OF AN APPLICATION

BT/19/2016

BETWEEN

BARCLAYS BANK PLC – APPLICANT/TENANT

AND

MEL HUGHES – RESPONDENT/LANDLORD

Re: 3 High Street, Portadown

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

BACKGROUND

1. Barclays Bank plc (“the applicant”) holds a lease on a property which they occupy at 3 High Street, Portadown (“the reference property”). The contractual term of the lease has now come to an end and despite protracted negotiations they have been unable to agree the terms of a new lease with the landlord, Mr Mel Hughes (“the respondent”), under the terms of the Business Tenancies (Northern Ireland) Order 1996 (“the Order”).

2. Subsequently, on 19th February 2016, the applicant served a Form EA “Tenancy Application” on the Lands Tribunal, requesting a new tenancy on the reference property. After a considerable period of time at Tribunal, where discussions centred around the terms of a new tenancy, the respondent has now contested the validity of the applicant’s Tenancy Application. He submits that it incorrectly stated the name of the landlord, was not served on the landlord and on that basis he considered that there was no valid Tenancy Application before the Tribunal.

3. This is therefore a preliminary hearing to decide upon the validity of the applicant's Tenancy Application.

PROCEDURAL MATTERS

4. Mr Keith Gibson BL, instructed by Arthur Cox, Solicitors appeared on behalf of the applicant. Mr John Coyle BL, instructed by JPH Law, Solicitors represented the respondent. The Tribunal is grateful to the legal representatives for their detailed and helpful submissions.

POSITION OF THE PARTIES

5. Mr Gibson BL submitted on behalf of the applicant:
 - (i) the representations made by the respondent, by both himself and through his solicitors as his agents, were that he was the landlord entitled to negotiate with and deal with the applicant's Tenancy Application.
 - (ii) as landlord, the respondent failed to reply to the applicant's Tenancy Application and he was therefore deemed to have accepted the tenancy.
 - (iii) the respondent, having missed the boat with regard to objecting to the applicant's tenancy request, was now attempting to rely on his subterfuge in an attempt to avoid the natural consequences of his failure to act.
6. Mr Coyle BL submitted:
 - (i) the Notice as served was not served upon the landlord, rather it was served on the respondent in his own personal capacity.
 - (ii) it was significant that a change in payment arrangements were offered upon notice of a change of landlord.
 - (iii) this was, therefore, not a situation of misrepresentation, deception or evasion by the landlord to avoid the effects of the Order.

THE LAW

7. Article 2(2)(b) of the Order defines “the landlord”:

“(b)

‘the landlord’, in relation to a tenancy (‘the relevant tenancy’), means the person (whether or not he is the immediate landlord) who is the owner of that estate in the property comprised in the relevant tenancy which for the time being fulfils the following conditions, that is to say—

- (a) that it is an estate in reversion expectant (whether immediately or not) on the termination of the relevant tenancy; and
- (b) that it is either the fee simple or a tenancy which will not come to an end within 14 months or less—
 - (i) by effluxion of time, or
 - (ii) by virtue of a notice already served being a notice served in relation to that tenancy by the immediate landlord or tenant thereof in accordance with the terms of that tenancy, or
 - (iii) by virtue of a notice to determine, or
 - (iv) by virtue of a notice under Article 7 requesting a new tenancy,

and is not itself in reversion expectant (whether immediately or not) on an estate which fulfils these conditions;”

8. It was not disputed that the tenants request for a new tenancy must be served on the landlord, as stipulated by Article 7(3) of the Order:

“(3) A tenant's request for a new tenancy shall not have effect unless it is made by notice in the prescribed form served on the landlord ...”.

9. Article 10 of the Order provides for reference to the Lands Tribunal:

“Application to the Lands Tribunal

Application to Lands Tribunal for an order for the grant of a new tenancy or for a declaration that the tenant is not entitled to a new tenancy

10.—(1) In this Order ‘tenancy application’ means either—

(a) ...

(b) an application by the tenant for an order for the grant of a new tenancy.”

And

“(4) On a tenancy application by either party, the Lands Tribunal may exercise any power that would have been exercisable by it on a tenancy application by the other ...”.

10. Article 41 provides for the service of the notice on “agents”:

“41. Any notice, request or other instrument required or authorised by this Order to be served on, or by any person shall be in writing and, without prejudice to section 24 of the Interpretation Act (Northern Ireland) 1954, the person by or on whom it is to be served shall include any agent of that person.”

11. Rule 12(6) of the Lands Tribunal Rules (Northern Ireland) Order 1976 requires in relation to interlocutory applications:

“(6) When dealing with any application under this rule, the [Tribunal] shall have regard, inter alia, to the convenience of the parties and the desirability of limiting so far as practicable the costs of the proceedings ...”

AUTHORITIES

12. The Tribunal was referred to the following authorities:

(i) Kammins Ballroom v Zenith Investments (Torquay) Ltd [1971] AC 850

(ii) Street v Mountford [1985] AC 809

(iii) Richardson v Toal [1990] 9/15

(iv) Boots the Chemist Ltd v Belfast Office Properties Ltd (BT/44 & 45/2007)

13. The Tribunal was also referred to the following textbook extracts:

- (i) Woodfall: Landlord & Tenant at Volume 7 paragraph 42.161
- (ii) Reynolds & Clarke 4th edition at paragraph 3.89 and following. Mr Coyle BL particularly referred the Tribunal to paragraph 3.92 where the issue of trustees was considered and the authority of Dun & Bradstreet Software Services (England) Ltd v Provident Mutual Life Assurance [1998] 2 EGLR 175 CA was relied upon in terms of who was the correct landlord where the legal estate was held in trust.

14. The Tribunal also derived assistance from:

- (i) Morrow v Nadeem [1987] 1 All ER 237
- (ii) Harte v Hughes [1990] BT/71/1989
- (iii) Samuel Johnston Ltd & Others v Andras House Ltd & Other [1992] BT/123-125/1991

DISCUSSION

15. Having reviewed the evidence and submissions from the parties the Tribunal considers that the following issues are relevant to the outcome of this reference:

- (i) who was the landlord for the purposes of the Order?
- (ii) were the applicant's notices served on the landlord and did the notices comply with the statutory requirements?
- (iii) did Mr Hughes' letter of 13th November 2015 advise the applicant of a change in ownership of the reference property?

- (iv) in the circumstances of this reference should the Tribunal exercise its discretion under Rule 12(6) of the Lands Tribunal Rules (Northern Ireland) 1976?
- (v) had the respondent waived his right to object to the validity of the notices?

THE LANDLORD

16. In his evidence to the Tribunal the respondent had submitted a Land Registry document entitled "Transfer of whole and/or part" which was on a "Land Registers Form II". This document confirmed:

- the postal address for stamp duty purposes was 3 High Street, Portadown (the reference property).
- the transferor was Mel Hughes.
- the transferees were Mel Martin Hughes and Theresa Hughes as Trustees of the Hughes Family Pension Fund.

The document was signed by Mel Martin Hughes and dated 14th April 2014.

17. The Tribunal is satisfied that this document confirmed that, as and from 14th April 2014, the landlords of the reference property, for the purposes of the Order, were "Mel Martin Hughes and Theresa Hughes as Trustees of the Hughes Family Pension Fund".

THE NOTICES

18. The parties were agreed that any request for a new tenancy must be served on the landlord, as defined in Article 2(2)(b) of the Order. It was not disputed that the applicant's request for a new tenancy of 6th October 2015 was served on Mel Hughes who was one of the Trustees. Mr Coyle BL submitted, however, that the notice was

served on Mr Hughes in a personal capacity, not in his role as a Trustee of the pension fund. It was also not disputed that the notice was not formally served on the other Trustee, Mrs Theresa Hughes.

19. Mr Coyle BL referred the Tribunal to the authority of Dun & Bradstreet Software Services (England) Ltd v Provident Mutual Life Assurance [1998] 2 EGLR 175. In this case it was decided that, where the legal estate was held in a trust, the trustees were the landlord and not the beneficiaries.
20. Mr Coyle BL also referred the Tribunal to Woodfall, Landlord and Tenant, at volume 2 and in particular to paragraph 42.161 in which the authors of Woodfall held that the definition of a landlord was concerned with the ownership of a legal estate which fulfilled the requirements of the statutory definition. According to Woodfall the landlord meant the person with the legal title to the land [Niales v Caesar (1957) 1 WLR 156]. Thus where an interest in land was held in trust it was the trustees rather than the beneficiaries who were the competent landlords under the Order [Morer v Chauhan (1985) 3 AER 493 CA].
21. It was therefore clear from the authorities put forward by Mr Coyle BL, that the applicant's Article 7 Notice of 6th October 2015 was not served on the landlord as defined in Article 2(2)(b) of the Order, as it required to be served upon the Trustees of the Hughes Family Pension Fund. The Notice also incorrectly stated the name of the landlord. The Tribunal does note, however, that the Notice was served on one of the Trustees, Mr Mel Hughes, albeit in a personal capacity. The Tribunal also notes that the other Trustee was the wife of the respondent and both Trustees, together with the Hughes Family Pension Fund, were all located at the same postal address, 40a Warrenpoint Road, Rostrevor. The Notice was therefore served at the correct address.

22. With regard to the applicant's "Application to the Lands Tribunal" under Article 10 of the Order, there was no statutory requirement for the applicant to serve this Notice on the respondent. In Harte v Hughes BT/71/1989 the Tribunal found in relation to a tenant's application to the Tribunal:

"There were two preliminary matters to be disposed of at the outset viz:-

- (a) The tenant did not serve a copy of the application to the Lands Tribunal on the Landlord. After hearing legal argument, the Tribunal ruled that was not fatal to the application for:-

- (i) in the 1964 Act there was no statutory requirement to serve such notice;
- (ii) the landlord was in no way disadvantaged;
- (iii) the Registrar of the Lands Tribunal in accordance with his normal practice on 3rd August 1989 notified the landlord's Solicitor that such an application had been made to the Lands Tribunal;
- (iv) ...
- (v)".

23. The circumstances are similar in this reference:

- (i) there was no statutory requirement in the 1996 Order for the applicant to serve the Article 10 application on the landlord.
- (ii) the respondent was in no way disadvantaged.
- (iii) the respondent was notified of the application in the normal way by the Registrar of the Lands Tribunal.

24. The Tribunal does consider, however, that right from the outset of the proceedings before the Tribunal, the respondent could have notified the Registrar of the deficiencies in the Notices and the service thereof, rather than wait until some eight months later before raising objection. Rule 37 of the Lands Tribunal Rules (Northern Ireland) 1976 provides:

“37. Any party to any proceedings may at any time by notice in writing to the registrar and to all other parties to those proceedings change his address for service under these rules, or may in similar manner give notice of any change of name.”

MR HUGHES' LETTER

25. CBRE were the agents acting on behalf of the applicant and on 13th November 2015 the respondent wrote to the CBRE office in Warsaw, Poland advising:

“Re: 3 High Street, Portadown

I refer to my email of the 6th October 2015, in relation to the above property, which is currently leased to Barclays Bank. Presently, the rent is received in to an Ulster Bank Account, which is in the process of being closed. As such I would be grateful if you would make arrangements to ensure that all future rental payments are made in the following account ...”.

26. The letter also advised that the Name of the new account was “The Hughes Family Pension Fund” and it was signed by Mel Hughes and Theresa Hughes as Trustees of the Hughes Family Pension Fund.
27. Mr Coyle BL considered that this letter had sufficiently notified the agents for the applicant that the ownership of the reference property had changed.

28. Mr Gibson BL submitted that this communication was merely informing the applicant's agents that the bank details of the rent recipients were changing. It was his view that there was nothing in the letter which could be construed as notification of a change of ownership or a change in the identity of the landlord and on the contrary, it was entirely conceivable that the proceeds of the rent could be assigned without the landlord transferring or assigning his interest.
29. The Tribunal agrees with Mr Gibson BL, a reasonable recipient would not construe this communication as being clear notification of a change of ownership of the reference property. It would have been a simple task to insert a line in the letter clearly notifying the recipients of a change of ownership but the respondent failed to do so. The Tribunal also notes that this letter was dated 13th November 2015, some five weeks after the agents for the applicant had forwarded their Article 7 Notice to the respondent.

RULE 12(6) OF THE LANDS TRIBUNAL RULES

30. Rule 12(6) of the Lands Tribunal Rules (Northern Ireland) 1976 requires the Tribunal when dealing with an interlocutory application:

“Interlocutory Application

12(6) When dealing with any application under this rule, the registrar (Tribunal) shall have regard, inter alia, to the convenience of the parties and the desirability of limiting so far as practicable the costs of the proceedings ...”.

31. Mr Gibson BL submitted that if the Tribunal was convinced that the correct title of the landlord should be either “Mel and Theresa Hughes” or in the alternative, “Mel Hughes and Theresa Hughes as Trustees of the Hughes Family Pension Fund”, then the title should be amended accordingly pursuant to the provisions of Rule 12(6).

32. He referred the Tribunal to Boots v Belfast Office Properties Ltd [2008] BT/44 & 45/2007. In Boots the applicant made two tenancy applications. In the first application the tenant had requested a lease of 10 years with a 5 year break option. In a subsequent letter, however, the applicant's solicitors indicated that, in the alternative, the applicant would take a 5 year lease not a ten year lease. The letter, however, did not make its way to the Tribunal/respondent and the respondent had prepared its case without knowledge of the alternative position. The applicant sought leave at an interlocutory hearing to amend the tenancy applications and this application was opposed. The Tribunal decided that compelling the applicant to make a fresh tenancy application would only lead to increased costs and inconvenience through delay. Amendment was therefore acceded to.
33. In the particular circumstances of this reference Mr Gibson BL submitted that the applicant's request to amend the notices should be permitted readily, if required, and without reservation, as the situation had been brought about entirely by the respondent's negligence.
34. Mr Coyle BL submitted that Rule 12(6) was not apposite, as this rule dealt with interlocutory applications only and this reference was not at the interlocutory stage, rather it was a preliminary point at the commencement of the main hearing. His interpretation was that the Rule informed the Tribunal to "have regard" to but was not a discretion or a power to disapply or waive non-compliance with the statute. He considered the Tribunal's decision in Boots v Belfast Office Properties not to be apposite in consequence, as service of the application in the subject reference was prescribed by statute to be on the landlord.
35. The Tribunal derives assistance from Samuel Johnston Ltd v Andras House Ltd and Cleaver Developments Ltd [1992] BT/123-125/1991. In this case His Honour Judge

Peter Gibson QC, then President of the Lands Tribunal, in relation to statutory time limits noted:

“...Secondly has the Lands Tribunal any power to abridge or extend the two months time limit?

The second question can be dealt with shortly. The Lands Tribunal was set up by statute. It thus has no inherent jurisdiction to abridge or extend time limits unless statute provides or imports such a power. There is no such statute. It was also argued, however, that such a power arose under the Tribunal’s Rules. This is simply incorrect. Where relevant the Rules expressly state that they are subject to statute. This argument is thus untenable.”

36. Under Article 7 of the Order there is a statutory requirement for the Tenant’s Request for a New Tenancy to be served on the landlord, as defined in Article 2(2)(b). As per Judge Gibson’s guidance, as set out Samuel Johnston Ltd v Andras House, the Tribunal finds that, in the subject reference, the statutory requirement to serve the Notice on the landlord cannot be set aside by Rule 12(6) of the Lands Tribunal Rules which only requires the Tribunal to “have regard to ... the desirability of limiting the costs”. The Tribunal therefore agrees with Mr Coyle BL, this Rule does not give the Tribunal the authority to waive compliance with the statute.
37. Because of its findings in this regard the Tribunal considers it unnecessary to go in to detailed legal arguments as to whether the preliminary hearing in this reference could be construed an interlocutory hearing.

SUMMARY TO DATE

38. At this juncture the Tribunal finds it useful to summarise the main facts and findings so far:

- (i) the landlord for the purposes of the Order was “Mel Hughes and Theresa Hughes as Trustees of the Hughes Family Pension Fund”
- (ii) the tenant’s request for a new tenancy under Article 7 of the Order was only served on one of the Trustees, Mel Hughes and in a personal capacity. It was not served on the other Trustee, Mrs Theresa Hughes, which was required by law.
- (iii) the Article 7 Notice was delivered to the correct address for Mel Hughes, Theresa Hughes and the Hughes Family Pension Fund.
- (iv) there was no requirement on the applicant to serve the Article 10 application to the Tribunal on the landlord.
- (v) right from the outset of the proceedings before the Tribunal the respondent could have notified the Registrar of a change in ownership of the reference property but he failed to do so until much later in the proceedings.
- (vi) the respondent’s letter of 13th November 2015 could not be construed by a reasonable recipient as advising the applicant of a change of ownership of the reference property.
- (vii) the letter of 13th November was issued some 5 weeks after the applicant had forwarded its tenancy request.
- (viii) the Tribunal’s discretion under Rule 12(6) of the Lands Tribunal Rules cannot be applied in the circumstances of this reference.

WAIVER

39. In order to consider if the respondent had waived his right to object to the notices it was necessary to consider the chronology of the proceedings before the Tribunal:

- 19th February 2016 - Form EA Tenancy Application to the Tribunal under Article 10 of the Order quoting the landlords name as “Mel Hughes”. A copy of this notice was sent by the

Registrar to Holmes & Doran as “agents for the landlord”.

- 4th March 2016 - Lands Tribunal “Notice of Mention” sent to Holmes & Doran citing “Mel Hughes” as the respondent.
- 16th March 2016 - Letter from JPH Law, solicitors advising the Tribunal: “I can confirm I act for the respondent Mel Hughes”.
- 3rd May 2016 - Attendance at Tribunal mention by Mr Sean Hargan, solicitor for the respondent. The issue of a change of ownership or the validity of the applicant’s notices was not raised.
- 11th May 2016 - Letter from the respondent’s solicitor to the Tribunal entitled:

“Re: Barclays Bank v Mel Hughes”
- 11th May 2016 - Email from Ms Sandra Burns of JPH Law to Julie McClelland (agent for the applicant) stating:

“Our client – Mel Hughes”

And

“I can confirm that the respondent is prepared to permit an extension of the existing lease on the same terms for a period of up to 9 months from the 1st May 2016.”
- 8th July 2016 - Tribunal mention. Mr Sean Hargan was recorded in the Registrar’s notes of the mention as stating: “My client is a pension fund, applications might need to be rectified.” He did not, however, raise any objections to the validity of the notices, rather he was suggesting

that a simple rectification was required to validate the notices.

- 8th July 2016 - Lands Tribunal issued directions for a hearing to take place on 1st November 2016 to consider the substantial terms for a new lease of the reference property. No objection from the respondent.
- 25th August 2016 - Respondent's "Report on Facts" received at Tribunal.
- 6th October 2016 - Letter from JPH Law to the Tribunal advising:

"Barclays Bank v Mel Hughes

My clients have confirmed to me that they have advised in writing CBRE of the change of ownership of 3 High Street, Portadown. The proceedings have been taken against the wrong party and accordingly the present application appears to be inappropriate. In the circumstances my clients are still prepared to consider a negotiated settlement."

Despite notification that the proceedings had been taken against the wrong party the respondent was still prepared to negotiate terms for a new tenancy.
- 20th October 2016 - Lands Tribunal mention. At this mention the respondent's legal representatives finally raised objection to the validity of the applicant's notices. The Tribunal issued directions for a hearing on 1st November 2016 to consider a preliminary point re the validity of the notices.

40. It was therefore clear from this chronology that, for a period from February 2016 to October 2016, the respondent, Mel Hughes, had fully participated in the proceedings before the Tribunal leading the Tribunal, the applicant, the respondent's agents and the respondent's legal representatives to believe that he was the landlord of the reference property or at least had the power to act on behalf of the landlord. During that period he also indicated that he was willing to grant a new tenancy of the reference property and at no time up to 20th October 2016 did he raise any formal objection to the validity of the notices. At a mention on 8th July 2016 the respondent's legal representatives did suggest that a simple rectification of the notices might be required but he did not raise any objection to their validity and the respondent continued to negotiate the terms of a new lease.

41. In the case of Morrow v Nadeem [1987] 1 All ER 237 Nicholls LJ stated:

“We were referred on this to another passage in the judgement of Jenkins LJ in Tenant v London CC. The issue in that case was, as I have already indicated, whether a S25 notice signed by a person on behalf of the council had been duly signed by the landlord. Here the court held that the notice was valid as having been duly signed, but Jenkins LJ added this on the question whether in any event the tenant had waived the objection to the signature of the notice (121 JD 428 at 441):

‘I do regard it as most desirable in cases under the Landlord and Tenant Act 1954, where time may be an important consideration, that parties who wish to take objection to the form or the validity of the proceedings should act promptly and not reserve objections of this sort until the proceedings have been on foot for perhaps a matter of months. Accordingly, had it been necessary for one to arrive at a conclusion on this part of the case, I would have been prepared to hold that any otherwise well-founded objection there might be to the notice was, on the facts to which I have briefly referred

waived, so that the objection is no longer available to the tenant as a bar to the proceedings.'

I respectfully agree that parties who wish to take objections of the nature of those taken in that case and in this case should act promptly. On the particular facts, however, that was a case where from the outset, from service of the notice, the landlord knew of the matter which he subsequently complained; and he knew for some considerable time of the facts which were subsequently relied on by him as founding the objection."

42. There is no doubt, in the circumstances of this particular reference, the respondent clearly knew "from the outset, from service of the notice - of the matter which he subsequently complained".
43. The Tribunal also finds it inconceivable that the respondent, Mel Hughes, did not make the other Trustee, his wife, Mrs Theresa Hughes, aware of the applicant's tenancy request and the subsequent application to the Tribunal. That surely must have formed the basis for him continuing to act as landlord or on behalf of the landlord i.e. the Trustees.
44. Mr Gibson BL considered it to be utterly baffling, incongruous and contrary to the spirit of the legislation, if a landlord could, without notice to the tenant, assign or transfer his interest to a third party, keep this quiet and then, at a time suitable to himself, when he had failed to negotiate new terms for a lease, reveal that in actuality his interest had been transferred to a third party and he/she wasn't the landlord. He submitted that this was contrary to the spirit of the legislation whose main aim was to protect business tenants.

CONCLUSION

45. The Tribunal agrees with Mr Gibson BL and finds that, on the factual circumstances in this reference, the respondent had waived his right to object to the applicant's notices, and the objection was no longer available to him as a bar to the proceedings.

46. Although not formally raised at hearing, the Tribunal understands that the respondent wished to acquire the reference property to extend his existing bookmaking premises on High Street, Portadown. On that basis he may have wished to invoke Article 12(1)(g) of the Order i.e. that he required the property for his own use on the termination of the current tenancy. That option may no longer be available to him as Article 13(4) stipulates:

“(4) The landlord shall not be entitled to rely on the ground specific in 12(1)(g) or (h) if the estate of the landlord ... was purchased or created after the beginning of the period of 5 years which ends with the termination of the current tenancy ...”.

47. The Tribunal accepts that the notice was never formally served on the second Trustee, Mrs Theresa Hughes, although as previously stated the Tribunal finds it inconceivable that she was not made aware by the respondent of the notices and the proceedings before the Tribunal. She does, in any case, come to the Tribunal to face the same case, that is the question of the terms of a new tenancy, as if the notices had been formally delivered to her.

48. In conclusion the Tribunal finds that the respondent had waived his right to object to a new tenancy. The Tribunal also directs that the Registrar now formally joins Mrs Theresa Hughes, as Trustee of the Hughes Family Pension Fund, to the proceedings before the Tribunal, in accordance with Rule E5 of the Lands Tribunal Rules:

“General power to notify interested persons

E5.-(1) The registrar may direct any party to the proceedings to serve notice of any application, or to serve any document upon any person whom the registrar considers may be affected by the proceedings and may join any such person as a party to the proceedings and give him notice in writing that he has been so joined notwithstanding that he has not applied to be so joined.”

ORDERS ACCORDINGLY

14th December 2016

Mr Henry Spence MRICS Dip.Rating IRRV (Hons)

Lands Tribunal for Northern Ireland

Appearances:

Applicant – Mr Keith Gibson BL instructed by Arthur Cox, solicitors.

Respondent – Mr John Coyle BL instructed by JPH Law, solicitors.