

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 FOR COSTS

BT/26/2013

BETWEEN

READY USE CONCRETE COMPANY LIMITED – APPLICANT

AND

ALG DEVELOPMENTS LIMITED – RESPONDENT

Re: Lands at Inchanny, Strabane

PART 3

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

Background

1. By a decision made on 3rd April 2014 the Tribunal assessed the rental to be paid for the reference lands at Inchanny, Strabane at £8,800 per annum, effective from 1st April 2013. By a further decision of the Tribunal made on 10th March 2015 Ready Use Concrete Company Limited (“the applicant”) was subsequently awarded its costs in the reference.
2. This current reference to the Tribunal concerns the correct amount of costs to be paid. The applicant has submitted an invoice for total costs of £23,395.98.
3. Despite advising the Tribunal by letter of 27th August 2014: “Having taken legal advice I have decided that I will not appeal the above decision of the Lands Tribunal on 10th June 2014 as an appeal can only be made on point of law ...”, ALG Developments Limited (“the respondent”) has now made an application for a late appeal to the Court of Appeal. The respondent’s

position is, therefore, that the issue of costs should be stayed until the outcome of the appeal is known.

4. The subject reference has been before the Tribunal since 2013 and the Tribunal sees no merit in further delaying the issue of costs pending the outcome of an appeal, if any.

Procedural Matters

5. The matter was dealt with by way of written submissions. Ms Emma Cooper of Carson McDowell, Solicitors provided a submission on behalf of the applicant. Mr R E Thompson provided a submission on behalf of the respondent.

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[5] 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.

(2) If the Tribunal orders that the costs of a party to the proceedings shall be paid by another party thereto, the Tribunal may settle the amount of the costs by fixing a lump sum or may direct that the costs shall be taxed by the registrar on a scale specified by the Tribunal, being a scale of costs for the time being prescribed by rules of court or by county court rules.”

7. Ms Cooper had submitted an invoice on behalf of the applicant:

	Outlay	Professional	VAT
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		Charges	Rate %	Amount
Fee – Emma Cooper 16.1 hours at £190 per hour		3,059.00	20	611.80
Fee - Sarah Ewing 7.6 hours at £175 per hour		1,330.00		266.00
Fee – Jacinta Conway 3.9 hours at £100 per hour		390.00		78.00
Fee – Additional – Emma Cooper		2,535.00		507.00
<u>Outlay</u>				
NI Court Service	3.00			3.52
Landlords Search Fees	16.00			5.68
Conference Call – 14 Feb 2014	17.60			
Conference Call – 2 April 2014	28.38			
Lands Tribunal Order Fee	25.00			
O'Connor Kennedy Turtle Experts Fee	4,800.00			960.00
Counsel Fee – Douglas Stevenson	2,000.00			400.00
Counsel Fee – Douglas Stevenson	500.00			100.00
Michael Burke – 48 hours at £100 per hour	4,800.00			960.00
Total Outlay	12,189.98			
Professional Fee	7,314.00			
VAT	3,892.00			
Total sum due to Carson McDowell LLP	23,395.98			

8. Ms Cooper had also provided the Tribunal with a detailed and itemised schedule of all the solicitors costs.

Discussion

9. The subject reference concerned the assessment of the annual rental value of a site use for the making of ready mix concrete and the manufacture of concrete products. Following consideration of the available evidence the Tribunal assessed the annual rent at £8,800. Costs must be reasonable and proportionate in relation to the award. The Tribunal therefore finds that the following items in the applicant's cost invoice require further consideration:
- i. Under "Outlay" an amount of £4,800 had been allocated for "O'Connor Kennedy Turtle – Experts Fees" and the same amount had been allocated for "Michael Burke – 48 hours at £100 per hour". Mr Michael Burke of O'Connor Kennedy Turtle Surveyors was the expert who represented the applicant at hearing and the Tribunal considers the additional allocation of £4,800 for "O'Connor Kennedy Turtle – Experts Fees" to be double counting. This item is therefore removed from the costs invoice. The applicant has subsequently agreed to the removal of the item.
 - ii. In relation to the complexity of the reference and the amount of annual rental assessed, the Tribunal considers Mr Burke's fee of £4,800 to be disproportionate. The Tribunal considers a reasonable fee for Mr Burke's expert services to be £3,000.
 - iii. The Tribunal also finds the applicant's "Professional Fee" of £7,314 to be disproportionate and considers a sum of £5,000 to be appropriate.

The other items in the applicant's invoice are reasonable and accepted by the Tribunal.

Conclusion

10. Accordingly the Tribunal fixes a lump sum of £10,589 plus VAT (if any) as the payable costs.

ORDERS ACCORDINGLY

23rd September 2016

**Henry M Spence MRICS Dip.Rating IRRV (Hons)
Lands Tribunal for Northern Ireland**