

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996**  
**BT/75/2003**

**FOYLESIDE LIMITED – LANDLORD**  
**AND**  
**DSG RETAIL LIMITED – TENANT**

**Premises: Units 19 and 20, Forestside Shopping Centre,  
Newtownbreda, Belfast**

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

**Belfast (Conference Call) – 2<sup>nd</sup> October 2003**

The Tenant holds the premises under a lease dated 25<sup>th</sup> August 1998 ('the lease') for a term of 15 years from 1<sup>st</sup> August 1998. The application is for an Order by the Tribunal that the agreement to surrender the current tenancy, for a consideration, be approved pursuant to Article 25 of the Business Tenancies (Northern Ireland) Order 1996 ("the Order"). The agreement is constituted by an exchange of correspondence between the tenant's solicitors (Messrs Denton Wilde Sapte and Park Nelson (Ireland)) and the landlord's solicitors (Messrs Carson McDowell),

In light of the urgency of the matter, the Tribunal heard the parties by Conference Call and gave an extemporaneous decision approving the agreement to surrender. The Tribunal now sets out its reasons.

This agreement to surrender is unusual in that Clause 11 of the lease is an "offer back clause" which the Tribunal, without deciding the issues, considers most probably an unreasonable restriction on alienation and/or an invalid agreement to surrender.

The Law Reform Advisory Committee for Northern Ireland Report No 1 on Business Tenancies (LRAC No 2 1994) sets out the background to the 1996 Order. That background included concerns about agreements to surrender and offer back clauses. The Committee

considered that, except in exceptional circumstances, they were contrary to the spirit of the then current legislation. They accepted however, that in certain circumstances a valid agreement to surrender is essential, for example, to cover a tripartite situation where an existing tenant wishes to move out and a new tenant wishes to move in, and the parties prefer a new lease to an assignment of an existing one. They considered that in such circumstances an agreement to surrender should be valid but considerable caution must be exercised to prevent abuse. So far as offer back clauses were concerned the Committee considered them in the wider question of covenants against assignment in business tenancy agreements and concluded that all covenants restricting assignment, whether by an offer back clause, or in any other way, should be treated as including a provision that the landlord's consent to assignment will not be unreasonably withheld. The recommendations were implemented in Articles 25 and 26 of the 1996 Order.

In the instance case, although no arguments were addressed to these issues, the Tribunal would be very surprised indeed if the circumstances were such that the offer back clause was not contrary to the spirit of the legislation and it is most unlikely that, if the offer back clause had been challenged, the Tribunal would have held it to be reasonable. However, no such challenge was made.

Although the Tribunal must exercise considerable caution where a lease contains an offer back clause, and the Tribunal most probably would not approve an agreement to surrender that merely reflected an offer back clause in a lease, such a clause should not operate as an absolute bar on the parties coming to an agreement to surrender, for reasons independent of that offer back clause. In this case Ms Ruth Deehan of Park Nelson (Ireland) who advised the tenant on Northern Ireland matters, confirmed that the tenant had received advice on the validity and reasonableness of the offer back clause but none-the-less did wish to surrender its leasehold interest.

Both solicitors also confirmed that they had advised their respective clients on the consequences of the agreement to surrender.

The Tribunal orders that the agreement be approved.

**ORDERS ACCORDINGLY**

**8<sup>th</sup> October 2003**

**Michael R Curry FRICS IRRV MCI.Arb Hon.FIAVI  
LANDS TRIBUNAL FOR NORTHERN IRELAND**

**Appearances:**

**Alan Reilly of Carson McDowell, Solicitors appeared for the Landlord.**

**Ruth Deehan of Park Nelson, Solicitors appeared for the Tenant.**