

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**PROPERTY (NORTHERN IRELAND) ORDER 1978**

**IN THE MATTER OF A REFERENCE**

**R/86/2007**

**BETWEEN**

**PATRICIA FRANCIS HUNT AND HAMPTON PROPERTIES LIMITED – APPLICANTS**

**AND**

**THE TRUSTEES OF BELVOIR GOLF CLUB – RESPONDENT**

**Re: 79-81 Church Road, Newtownbreda, Belfast**

**PART II - COSTS**

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

**Background**

1. The applicants had applied to the Tribunal for modification or extinguishment of a covenant so as to permit building within about 20 feet of the boundary of the respondent's golf course. By a decision dated 24<sup>th</sup> January 2013 the Tribunal refused the application.
  
2. The Tribunal had received written and oral expert evidence from Mr Gareth Johnston and Mr Kenneth Crothers, both experienced Chartered Surveyors. The only remaining issue was the amount of costs being sought by the respondent's expert witness, Mr Crothers. These are summarised:

(i) Fixed fee for production of a preliminary report	£1000.00
(ii) Fixed fee for producing expert witness report	£4000.00
(iii) Further work at an hourly rate of £225 @ 34.75	<u>£7818.75</u>
Total:	£12,818.75

**Procedural Matters**

3. The Tribunal received written submissions from Mr Bill McCann and Mr Shaun Jemphrey, the solicitors for the parties. The Tribunal also received details of the terms of engagement, timesheets and hourly rate of both expert witnesses.

### **Position of the parties**

4. Mr McCann considered the fee charged by Mr Crothers for additional work to be unreasonable both in extent and hourly rate, in comparison to the appellant's expert costs which were considerably less. Mr Jemphrey submitted that in light of the value and importance of the restrictive covenants to the respondent in protecting the integrity and layout of one of the most prestigious Championship Golf Courses in Ireland and the clear, thorough and professional evidence given by Mr Crothers in relation to the matter, Mr Crothers' fees were not only justified but most reasonable in all of the circumstances.

### **The Law**

5. Rule 33(1) of the Lands Tribunal Rules (Northern Ireland) 1976 provides:-

“33:-(1) Except in so far as [Article 5 of the Land Compensation (Northern Ireland) Order 1982] 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.”

### **Authorities**

6. Mr McCann referred the Tribunal to Margaret Johnston v Joe Ann Dawson and Robin Prince R/43/2010 (Dawson). This was a “Property Order” case along similar lines to the subject case and in which the applicant disputed the costs of the respondent's expert witness. Mr Callan, the respondent's expert witness had charged a rate of £150 per hour and the applicant contended that the hourly rate should be in the region of £100 - £120 per hour. The Tribunal in its written judgment noted:

“The Tribunal agrees with Mrs Cooper that this was a suitable case in which to employ an expert with the experience and skills of Mr Callan. The rate was well supported by that adopted by Mr Crothers in his terms of engagement and there was no evidence to suggest that the lower rate was appropriate for such an expert. The Tribunal adopts £150 per hour.”

The Tribunal awarded Mr Callan 43.42 hours at £150 per hour.

## **Discussion**

### **The Hourly Rate**

7. Mr McCann considered there was nothing to indicate that the rate which was adopted by the Tribunal in August 2012 and endorsed by Mr Crothers at that time had ceased to be an appropriate rate. He submitted that there had been no significant economic change since then which would justify an increase from £150 per hour to £225 per hour which represented an increase of 50%.
8. Mr Jemphrey referred to Mr Crothers' experience as a Chartered Surveyor. He noted that he was a principal of Crothers Chartered Surveyors, had over 38 years of professional experience and was one of the leading experts in the field of "Property Order" issues. He referred to the Dawson case and confirmed that Mr Crothers played no part in the challenge to the hourly rate in that case. Mr Jemphrey also asked the Tribunal to note that Mr Crothers' fee in the Dawson case was also based on £225 per hour.
9. The Tribunal accepts Mr Crothers is one of the leading experts in the field of "Property Order" issues and considers that due to the importance and complexity of the issues in the subject case the respondent was entitled to appoint an expert of Mr Crothers standing. The Tribunal notes that Mr Crothers' fee for the Dawson case was in fact £225 per hour and his terms of engagement for the subject case clearly stated that he would be charging a similar hourly rate. There is no evidence before the Tribunal to suggest Mr Crothers should be paid a lesser hourly rate than that which was agreed in his terms of engagement and the Tribunal finds Mr Crothers' rate of £225 per hour to be reasonable in all the circumstances.

### **The Number of Hours**

10. Mr McCann suggested that Mr Crothers' fee should be compared with that of the applicant's expert, Mr Johnston, which totalled £3562.50 plus VAT. Mr Johnston carried out some 23.75 hours of "additional work" in comparison to Mr Crothers' 34.75 hours and on that basis Mr McCann considered Mr Crothers' hours to be excessive.
11. Mr Jemphrey referred the Tribunal to Mr Crothers' responsibility as an expert witness and in particular the declaration of his responsibilities to the Tribunal outlined at paragraph 13 of his expert witness report. He suggested that this was a continuing obligation which required Mr Crothers to deal with all the relevant facts and any matter that would bear on the validity of his opinion. He referred to the experts'

responsibilities as set out in the “Ikarian Reefer” case. He further suggested that it was both inappropriate and impossible to limit that time input in order to constrain costs.

12. In his submission Mr McCann referred the Tribunal to Dawson and he considered that the case “similarly involved an application to the Tribunal for modification or extinction of a covenant to permit development.” In Dawson however, the Tribunal accepted that some 43.42 hours of involvement from the respondent’s expert Mr Callan was reasonable. The Tribunal agrees that the subject case involved similar issues and therefore finds Mr Crothers’ 34.75 hours of involvement to be reasonable in comparison to the “hours” as accepted in Dawson.

### **Conclusion**

13. The Tribunal awards the respondents their expert witness costs in full, £12,818.75 plus VAT.

### **ORDERS ACCORDINGLY**

**11<sup>th</sup> August 2014**

**Henry M Spence MRICS Dip.Rating IRRV (Hons)  
LANDS TRIBUNAL FOR NORTHERN IRELAND**

### **Appearances:**

**Applicant: Mr Bill McCann of Mills Selig, Solicitors**

**Respondent: Mr Shaun Jemphrey of King & Gowdy, Solicitors**