

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

**IN THE MATTER OF APPLICATION FOR COSTS**

**BT/38 & 39/2009**

**BETWEEN**

**TARWOOD LIMITED – APPLICANT**

**AND**

**ANTONINO GIORDANO & DESIREE GIORDANO – RESPONDENTS**

**Re: Ground Floor, 21 Ormeau Avenue, Belfast**

**Lands Tribunal - Mr M R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI**

**Background**

1. By a decision made 16<sup>th</sup> February 2010 the Tribunal decided that Mr and Mrs Giordano had unsuccessfully opposed the grant of a new lease to Tarwood Limited. But as part of those proceedings Tarwood had unsuccessfully contested the validity of the Landlord's Notice to Determine.

**Procedure**

2. Oral submissions were received from Stephen Shaw QC and Mark T Horner QC.

**Positions**

3. Mr Shaw QC suggested that Tarwood was entitled to its costs or almost all of them.
4. Mr Horner QC suggested that there should be no order as to costs or in the alternative Tarwood should be awarded perhaps 50% of its costs.
5. There was no real issue between the parties as to the applicable principles.

**Discussion**

6. In regard to the time spent on these two issues Mr Shaw QC referred the Tribunal to:
  - The hearing - all the evidence heard was on the intention issue;
  - The content relating to these two issues
    - In the Decision – about 50% related to the validity issue;
    - In the applicant's submission No.1 – about 15% related to the validity issue;

- The respondents' submission No.1 – about 45% related to validity;
- The applicant's submission No.2 - about 30% related to validity; and
- The respondents' submission No.2 – about 10% related to validity.

7. At the invitation of the Tribunal further submissions were received in regard to intention only.
8. Mr Shaw suggested that Tarwood had won and therefore the starting point was that it was entitled to its costs. The question was whether by raising the issue of validity which Tarwood lost, it had added to the costs of the proceedings and ought therefore to be deprived of some of its costs. He suggested that there was no equality of issues; the validity issue was very much a minor issue and there should be a minor adjustment only, if any. He suggested that, in terms of time and energy, the resources expended were very modest and any deduction should be de minimus.
9. Mr Horner QC, who had not appeared at the substantive hearing, suggested that the validity issue was not a small matter disposed of in passing. The best indications of that were the paragraphs devoted to each issue in the Decision. He suggested that costs should be treated as a blunt instrument. As the tenant had won one issue and lost one issue, his primary suggestion was that there should be no order as to costs. In the alternative, if that was too blunt an approach, the Tribunal might consider that the tenant should be awarded perhaps 50% of its costs.
10. The Tribunal accepts Tarwood was successful and the starting point is that it should receive its costs. However, Tarwood was unsuccessful on a major issue. In these special circumstances there should be a departure from the general rule that the successful party should receive its costs.
11. Without relying slavishly on the relative proportions of the documents referred to above, it is clear that the validity issue took up a not insignificant amount of time and effort.
12. Taking a very broad few, the Tribunal therefore concludes that the applicant is entitled to its costs less one quarter.

## **ORDERS ACCORDINGLY**

**19<sup>th</sup> May 2010**

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

**Appearances**

**Applicant: Stephen Shaw QC instructed by Thomas Armstrong, Solicitors.**

**Respondent: Mark Horner QC instructed by Hewitt & Gilpin, Solicitors.**