

**LANDS TRIBUNAL FOR NORTHERN IRELAND**

**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**

**LANDS TRIBUNAL RULES (NORTHERN IRELAND) 1976**

**BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996**

**IN THE MATTER OF AN APPLICATION FOR COSTS**

**BT/28/2018**

**BETWEEN**

**THE DOWN ROYAL CORPORATION OF HORSE BREEDERS – APPLICANT**

**AND**

**MICHAEL RODEN (SUCCESSOR IN TITLE TO BANN CATERING COMPANY LIMITED) – RESPONDENT**

**Re: Down Royal Racecourse, Maze, Lisburn**

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

**Background**

1. The Down Royal Corporation of Horse Breeders (“the applicant”) has been operating a racecourse at the Down Royal (“the reference property”) for some 300 years and on 5<sup>th</sup> February 2018 it served Michael Roden (“the respondent”), as landlord of the reference property, with a request for a new tenancy. The applicant is the current tenant on foot of a lease dating back to 1984.
2. By way of a Notice dated 26<sup>th</sup> March 2018 the respondent advised the applicant that he would be opposing its request for a new tenancy, under the grounds detailed in Article 12(1)(g) of the Business Tenancies (Northern Ireland) Order 1996 (“the Order”), in that he intended to occupy the premises himself.
3. On 23<sup>rd</sup> April 2018 the applicant served the Lands Tribunal with a tenancy application. The reference was mentioned before the Tribunal on 7<sup>th</sup> June 2018 and at that mention the Tribunal, with the agreement of both parties, issued directions for the submission of evidence, leading to a hearing on 17<sup>th</sup> and 18<sup>th</sup> October 2018.

4. The respondent's "Statement of Facts" setting out his intentions for operating the reference property on his own account, was received on 27<sup>th</sup> July 2018, as directed by the Tribunal. On 7<sup>th</sup> September 2018 the applicant submitted its response following a two week extension granted by the Tribunal.
5. The respondent subsequently served its expert report on 21<sup>st</sup> September 2018. On 1<sup>st</sup> October 2018, however, the applicant gave notice of its intention to withdraw.
6. The respondent now seeks its costs in the reference and this is the issue to be decided by the Tribunal.

#### **Procedural Matters**

7. The Tribunal received written and oral submissions from Mr Stephen Shaw QC on behalf of the respondent and from Mr David Dunlop BL on behalf of the applicant. The Tribunal is grateful to counsel for their helpful submissions.

#### **Position of the Parties**

8. The respondent's position was that costs should "follow the event" and on that basis the applicant's withdrawal meant that the respondent emerged from the process as if he had won, the respondent should therefore be awarded his costs in the reference.
9. The applicant's position was that it was fully entitled and justified in putting the respondent to its proofs and acted promptly in seeking consent to withdraw its case once the merits of the respondent's case could be assessed. The applicant therefore submitted that in those circumstances the Tribunal should make no order as to costs.

#### **Statute**

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

“33.-(1) Except in so far as section 5(1), (2) or (3) of the Acquisition of Land (Assessment of Compensation) Act 1919 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.”

11. Article 12(1) of the Order states:

“12.-(1) The grounds on which a landlord may make a tenancy application, or may oppose a tenancy application by the tenant, are such of the following grounds as may be stated in the landlord’s notice to determine under Article 6, or as the case may be, in the landlord’s notice under Article 7(6)(b), that is to say –

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) subject to article 13(4) and (5), that on the termination of the current tenancy the landlord intended that the holding will be occupied for a reasonable period –

(i) for the purposes, or partly for the purposes, of a business to be carried on in it by him or by a company in which he has a controlling interest; or

(ii) as his residence;”.

### **Authorities**

12. The Tribunal was referred to the following authorities:

- Ting Kiu Tsang Mo & Pik Yuk Tsang v R Bamford & Sons BT/19/2000, paragraphs 27 and 28:

“27. The landlord claims its costs because the tenants are seeking to withdraw their tenancy application and are therefore acknowledging that they were unlikely to succeed on the substantive issues (see Napier & Others v Nurse [1996] R/1/1996 and Priestly v Brown [1997] BT/8/1996). Costs should follow the event unless there are special circumstances connected with the proceedings that would warrant a departure from that general rule (see Oxfam v Earl & Others [1997] BT/3/1995).

28. The tenants say that the landlord did not put sufficient cards on the table at the appropriate time (see NIHE v Extravision [2000] BT/60/1999). The landlord says that each time a card was dealt to it, it was immediately placed face up on the table. The Tribunal accepts that there were no cards kept hidden by the landlord but on the other hand it is clear that the landlord was not dealt sufficient cards to comply with Article 12(f)(i) until about July 2002. The Notice to Determine may have been premature but even if it was not, the tenants were quite entitled to wait to see if the landlord’s intentions crystallized before they decided between going on or withdrawing.”

- Beaverbrooks the Jewellers Limited v Portland (NI) Limited BT/65/2012, paragraphs 16 to 20:

“16. The Tribunal was referred to several relevant decided cases but derives particular assistance from Tsang v Bamford and in paragraph 28 of that judgement:

.....

17. The respondent submits that the applicant’s intentions have been crystallising throughout the course of its application. As in Tsang v Bamford and NIHE v Extravision the question for the Tribunal is, therefore, when did the applicant have sufficient cards on the table to comply with the statute, in this case Article 12(1)(g) i.e. when should it have become clear that the applicant intended to occupy the premises for its own use?

18. Mr Stevenson submits that by 28<sup>th</sup> December 2012 the applicant had provided to the respondent details of its planned works, evidence of its intention to carry out the works (board minutes) and evidence of its ability to carry out the works (bank statements). He submitted, therefore, from that date at the latest, the applicant had provided evidence of its intention. This was before the first mention in front of the Tribunal.
19. On the other hand Mr Gowdy submitted that there was a good deal of uncertainty about the precise scope of the applicant's intentions until the disclosures released on 13<sup>th</sup> February 2013 – further detailed plans and costings.
20. The Tribunal agrees with Mr Stevenson. ....”.

### **Discussion**

13. As submitted by Mr Dunlop BL there was a statutory obligation on the respondent to demonstrate that he could rely on Article 12(1)(g) of the Order. The respondent was therefore required to prove that he had:
  - (i) a firm and settled intention
  - (ii) a reasonable prospect of achieving his intention.
14. As in the cited authorities, Tsang v Bamford and Beaverbrooks v Portland, the first issue for the Tribunal in the subject reference was when did the respondent put sufficient “cards on the table” to comply with Article 12(1)(g) of the Order?
15. The applicant first became aware of the respondent's intention by way of his Notice to Determine dated 26<sup>th</sup> March 2018. This notice, however, did not contain any proofs regarding his intention.
16. Following the direction of the Tribunal the respondent submitted his Statement of Facts on 27<sup>th</sup> July 2018. This document provided details of the respondent's intention for future

operations on the reference property and it also contained a business plan prepared by an accountancy firm as confirmation of his ability to carry out his intention.

17. Mr Dunlop BL asked the Tribunal to note that part of the evidence as to the respondent's intention was contained in the respondent's business plan. He submitted that the complex financial information and calculation of future profits contained in that business plan necessitated the applicant retaining its own accountancy expertise. The Tribunal agrees.
18. Some six weeks, following an extension of two weeks, the applicant filed its own accountancy report with the Tribunal on 7<sup>th</sup> September 2018. The Tribunal is satisfied that, on receipt of its own accountancy report, it should have been clear to the applicant that the respondent had a settled intention for the reference property and a reasonable proposal of carrying out that intention, as required under Article 12(1)(g) of the Order.
19. Mr Dunlop BL submitted that the applicant was entitled to await the respondent's expert report prior to taking a final decision. This was received on 21<sup>st</sup> September 2018. The Tribunal notes, however, that the applicant had objected to the respondent's expert report. The applicant considered it not to be a proper expert report as it merely contained the expert's opinion on the statutory test under Article 12(1)(g). In any case the Tribunal does not consider that it was necessary for the applicant to await this expert report. All of the necessary information required for taking a decision re the validity of the respondent's intentions should have been included in the applicant's accountancy report which it received on 7<sup>th</sup> September 2018.

### **Conclusion**

20. As per Rule 33(1) of the Rules costs in the subject reference are at the discretion of the Tribunal. The Tribunal awards the respondent his costs from 7<sup>th</sup> September 2018 onwards. Such costs to be taxed in default of agreement.

**ORDERS ACCORDINGLY**

**6<sup>th</sup> November 2018**

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

**Appearances:**

**Applicant – Mr David Dunlop BL instructed by Macaulay Wray, solicitors.**

**Respondent – Mr Stephen Shaw QC instructed by Tughans, solicitors.**