

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

IN THE MATTER OF AN APPLICATION

BT/11/2010

BETWEEN

ALAN LATIMER & PHILIP McGRENAGHAN – APPLICANTS

AND

CURLEY'S SUPERMARKETS (DUNGANNON) LIMITED – RESPONDENT

Re: Screen 3 Global Cinema, Oaks Centre, Oaks Road, Dungannon

Costs

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

1. On 14th March 2011 the Tribunal dealt with a preliminary issue in regard to its jurisdiction and determined that it had no jurisdiction in the circumstances ('the Part I decision'). The Respondent won and has applied for its costs.

Procedure

2. The Tribunal received oral submissions from Mr Gordon Greenfield, solicitor, on behalf of the applicants and also from Mr Kevin Denvir BL on behalf of the respondent.

Positions

3. Mr Denvir BL suggested that the respondent should be awarded its legal costs. Mr Greenfield suggested that each side should pay its own costs.
4. Mr Greenfield further suggested that if any costs were awarded against the applicants they should be confined to those relating to the preliminary point and that would not include the cost of expert reports or witness statements. Mr Denvir BL suggested that should depend on the extent to which the Tribunal found the material to be of assistance in the matter.

Discussion

5. Both parties accepted that costs would ordinarily follow the event but the Tribunal had a discretion to make a special award.

6. Mr Greenfield suggested that proceedings could have been avoided by clear and unambiguous drafting of the head lease. The applicants were not a party to that drafting, and the drafting had been criticised by the Tribunal (see paragraph 15 of the Part I decision). It had been perfectly reasonable to take the point in light of the need for clarification, the layout of the premises and the corresponding planning consent, the unrealistic prospect of obtaining a tenant who complied with the terms of the head lease and the conduct of the landlord. However the Tribunal agrees with Mr Denvir BL that questions of construction were a familiar basis for litigation and the fact that there might be ambiguity should not displace the ordinary rule. The other matters extended beyond the preliminary point on jurisdiction.
7. The Tribunal agrees with Mr Greenfield that witness statements and expert evidence never became part of the jurisdiction issue and so were of no assistance.

Conclusions

8. The Tribunal orders that the applicants pay the respondent's costs on this preliminary issue of jurisdiction but that does not include the cost of expert reports, witness statements or similar outlays.

ORDERS ACCORDINGLY

18th October 2011

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

Appearances

Applicants: Gordon Greenfield of McKinty & Wright, Solicitors

Respondent: Kevin Denvir BL instructed by Doris & MacMahon, Solicitors