

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

**BT/14/2003**

**BETWEEN**

**MUSGRAVE SUPERVALU•CENTRA (NORTHERN IRELAND) LIMITED –  
APPLICANT/TENANT**

**AND**

**EDMUND IRVINE – RESPONDENT/LANDLORD**

**Premises: Clifton Road, Bangor, County Down**

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

**Belfast – 4<sup>th</sup> June 2003**

1. The premises comprised part of a supermarket held under a lease dated 26<sup>th</sup> November 1976 for a term granted from 15<sup>th</sup> August 1976 until 31<sup>st</sup> December 1977 (the 'Lease'). This is an application to determine a preliminary point concerning the validity of a Notice to Determine dated 19<sup>th</sup> August 2002 (the 'Notice'), which the Respondent's Agents DTZ McCombe Pierce purported to serve under Article 6 of the Business Tenancies (Northern Ireland) Order 1996 (the '1996 Order').
2. Ms Denise McBride BL instructed by Arthur Cox appeared for the Applicant. Mr Patrick Good BL instructed by McConnell, Kelly & Co appeared for the Respondent. The procedure adopted was a short hearing, followed by written supplementary submissions on matters that arose in the course of the hearing or which were noted on the Tribunal's inspection.
3. On 4<sup>th</sup> February 2003 the solicitors for the Applicant made a Tenancy Application to this Tribunal. This was accompanied by a letter which, referring to the Notice, stated:

"You will note that the name and address of the tenant is stated as Supervalu Limited, Fortwilliam Business Park, Dargan Road, Belfast BT3 9JU. This name

and address are both incorrect and the Notice is therefore invalid. While expressly reserving our client's rights in this respect, we enclose a Tenancy Application ....".

4. At no time was the tenant ever called Supervalu Limited. The tenant's interest was assigned to Supervalu & Centra Distribution (Northern Ireland) Limited on 29<sup>th</sup> July 1997. On 8<sup>th</sup> February 1999 the company changed its name to Musgrave Supervalu•Centra (Northern Ireland) Limited and that is the actual name of the tenant.
5. Musgrave Supervalu•Centra (Northern Ireland) Limited has its registered office at 1/15 Dargan Crescent, Duncrue Road, Belfast but the Notice to Determine was served at Fortwilliam Business Park, Dargan Crescent, Belfast, BT3 9JU which was the principal office of the company.

#### *Waiver*

6. Mr Good relied extensively on the fact that the tenant actually made the Tenancy Application as evidence that the error in the name of the tenant did not mislead the tenant and was not capable of prejudicing the tenant's position. There is some support for that approach in Land v Sykes and Another [1992] 1 EGLR 1, CA in which Scott LJ was commenting on the validity of a statutory notice under the Agricultural Holdings Act 1986. But the test is primarily an objective test i.e. the question is not whether the tenant actually was misled, but whether a reasonable recipient of the Notice could have been misled. (See Sun Alliance and London Assurance Company Limited v Hayman [1975] 1 WLR 177 CA at 185, Tegerdine v Brooks (1977) 36 P&CR 261 CA at 266 and Pearson and Another v Alyo [1990] 1 EGLR 114 CA). In Pearson, Nourse L.J. said:

"But it must be emphasised that the validity of [an Article 6] notice is to be judged, and judged objectively, at the date at which it was given. The question is not whether the inaccuracy prejudices the particular person to whom the notice is given but whether it is capable of prejudicing a reasonable tenant in the position of that person."

7. The tenant had promptly made it expressly clear that the Tenancy Application was without prejudice to its contention that the name and address in the Notice were both incorrect and the Tribunal accepts there is no waiver in relation to those matters (see Airport Restaurants Limited v Southend-on-Sea Corporation (1960) 2 All ER 888 CA). It is important that it should be possible to make a ‘without prejudice’ challenge to the validity of a notice without the grave risk of injustice that would flow from the potential loss of the protection that the 1996 Order was intended to provide.

### *The Description*

8. In her skeleton argument, Ms McBride relied on the vagueness of the description of the premises as a further ground on which the Notice should be treated as invalid:

“Part of premises occupied by Supervalu at Clifton Road, Bangor, Co. Down.”

9. Ms McBride pointed out that it fails to refer to a street number on Clifton Road or to delineate the precise part of the premises to which the notice relates. It refers to “Supervalu” which is a company that does not exist.
10. The letter that accompanied the Tenancy Application expressly reserved the position in regard to the name and address only and the vagueness of the description of the premises was not raised until much later. The view of the Tribunal therefore is that the Tenant has elected to treat the Notice as valid in so far as the aspects of description of the premises, other than by reference to “Supervalu” is concerned. (See Tennant v London County Council (1957) 169 EG 689 CA and Stylo Shoes Limited v Prices Taylors Limited [1959] 3 All ER 901 ChD.) At this stage the Tribunal is concerned with the consequences in regard to the description of the premises only; the Tribunal will return to the consequences of the misstatement of the tenant’s name as recipient of the Notice.
11. Following its inspection of the premises the Tribunal advised the parties that it had noted the signage on the premises and drew their attention to the Internet site [www.supervalu.ie](http://www.supervalu.ie). The extensive signage on the premises shows the tenant trading as “Supervalu” and there was no suggestion that the recipient occupied premises at any other location on Clifton Road or that any other company traded as “Supervalu”. It follows that so far as the consequences in regard to the identification of the premises

are concerned, a reasonable person, circumstanced as the actual parties were, could not be misled by the reference to “Supervalu” in this part of the notice; it is quite clear to a reasonable recipient reading it. (See Bridgers v Another v Stanford [1991] 2 EGLR 265 CA; Mannai Investment Company Limited v Eagle Star Life Assurance Company Limited [1997] 1 EGLR 57 HL at 68; and, very recently, Trafford MBC v Total Fitness (UK) Ltd [2003] 2 P&CR 8 CA.)

12. Even if there has not been an election to treat the delineation of the precise part of the premises as valid, the Tribunal concludes that the description of the premises in this case is sufficient once it is set in its relevant objective contextual scene. As the law now stands (see Mannai etc. as above) it is presumed that the ‘reasonable recipient’ knows the terms of his tenure to which the Notice relates. It follows that where the premises are held as part only of a larger holding, the reasonable recipient is not the actual tenant but is someone who is presumed to have knowledge of the tenure of all parts of their entire holding. In this case, the tenant’s interest in the other portion of the property is a long lease from a different lessor for the residue of a term of 900 years from 26<sup>th</sup> October 1974. A reasonable recipient clearly must conclude the Notice relates to the relevant short lease and that identifies the particular premises; it could not mistake it to be one relating to such a long lease.
13. The Tribunal concludes a reasonable recipient, circumstanced as the actual parties were, could not be misled by the imprecise description of the premises in the Notice; it is quite clear to a reasonable tenant reading it.

#### *Service*

14. Musgrave Supervalu•Centra (Northern Ireland) Limited has its registered office at 1/15 Dargan Crescent, Duncrue Road, Belfast. The landlord’s Notice to Determine was served at Fortwilliam Business Park, Dargan Crescent, Belfast BT3 9JU which was the principal office of the company.
15. Under Article 6 of the 1996 Order the Notice has to be served on the tenant. In consequence of Section 24 of the Interpretation Act (Northern Ireland) 1954 service may be effected by delivering the Notice to the secretary or clerk of a corporate body at the principal office. (See Joyland Amusements (NI) Ltd v A S & D Enterprises Limited [1991] BT/102/1989.) The applicant accepts that the Notice was served at the

applicant's principal office and, although it was not served on the secretary or clerk, there is no suggestion of it not being received by him.

16. Ms McBride did not strenuously pursue the issue of service and the Tribunal accepts that the notice was validly served.

#### *The Tenant*

17. The landlord's Notice to Determine refers to the tenant as "Supervalu Limited". The tenant's interest was assigned to Supervalu & Centra Distribution (Northern Ireland) Limited on 29<sup>th</sup> July 1997. On 8<sup>th</sup> February 1999 the company changed its name to Musgrave Supervalu•Centra (Northern Ireland) Limited.
18. Ms McBride suggested that the name of the tenant is incorrect and therefore the notice is invalid as the incorrect identification of the tenant is a material inaccuracy.
19. In Bridgers v Stanford at pg 268 the Court of Appeal adopted the test of the Court of first instance being that of Gouling J in Carradine Properties Limited v Aslam (1976) 1 WLR 442 ChD.

"I would put the test generally applicable as being this:

'Is the notice quite clear to a reasonable tenant reading it? Is it plain that he cannot be misled by it'".

20. In Bridgers v Stanford Nourse LJ also said:

"The general rule is that, in order to be valid, a landlords notice under [Article 6 of the 1996 Order] must comply with all the requirements of the [Article]. Exceptionally, there are minor errors and omissions by which a notice will not be invalidated. In Morrow v Nadine (1987) 1 All ER 237 this Court reaffirmed the test stated by Barry J in Barclays Bank, Ltd and Another v Ascot [1961] 1 All ER 782 and proved by another division of this Court in Tegerdine v Brookes. The notice must give the tenants the real substance of the information which is necessary to enable him to deal with the situation, whatever it may be, referred to in the notice. If it does that the notice will not be invalidated by error or omission."

21. Ms McBride suggested that failure to take the simple step of checking the correct name and thereby failing to identify the Tenant rendered the Notice inaccurate or incomplete in a material respect. That was more than a minor error or omission and even though the tenant had not actually been misled by it, the Notice was invalid. (See Tegerdine v Brookes at 266-7 per Roskill LJ; and by analogy, with failure to identify the landlord correctly see Morrow v Nadine; Yamaha - Kemble Music (UK) Limited v ARC Properties Limited (1990) 1 EGLR 261 and Columba Eastwood v Laurence Loughran [1986] (BT/70/1986).)
  
22. She suggested that Bridgers v Stanford could be distinguished on the facts because in that case the tenant caused the confusion:

“the only doubt was as to the name under which they chose to be known”.
  
23. In the view of the Tribunal, care must be taken in drawing an analogy between the position of a lessor, as a server of a Notice and a lessee as a recipient. There is a material difference; the factual matrix of the reasonable recipient, although not the actual recipient, is anchored by his occupation of the premises. The contextual surroundings of a recipient of a notice, who occupies premises under a lease, may more readily provide sufficient additional information to clarify or rectify some errors or omissions in facts in a notice relating to those matters. Objective consideration of those contextual surroundings may not always be sufficient to remedy other defects in a Notice, particularly in the case of an error in the name and address of a server who is not the original lessor.
  
24. Although the Tribunal accepts that the facts in this case differ from those in Bridgers v Stanford, it does not accept that materially affects the applicability of the underlying principle that if notwithstanding the inadvertent misstatement of the name of the recipient, any reasonable tenant would not be misled, then the notice is valid (see Morrow v Nadine and Bridgers v Stanford). If anything, the facts in this case give rise to less possibility of doubt. There is no company “Supervalu Limited” but it is not a case of the wrong company being named; this is a case of the name being incomplete. The Tribunal accepts that the applicant never directly intimated to the landlord that it was known by the name of “Supervalu Limited”, but it is clear that in the relevant objective contextual scene the reasonable recipient of the notice was one,

who extensively and exclusively used “Supervalu” as his trading name, who had it as part of his correct name and who used it prominently on his signage at the premises, and who would not be misled as to the intended recipient of the notice. The circumstances are quite different from Yamaha - Kemble v ARC where it was a stranger that served the notice on the recipient.

25. Judged objectively, at the date at which it was given, the inaccuracy is not capable of prejudicing a reasonable tenant in the position of that person. (See Pearson.) This Notice gave the tenant the real substance of the information that is necessary to enable it to deal with the situation. That conclusion is consistent with the approach of Mr Justice Barry in Barclays Bank Limited v Ascot which was adopted by Cairns LJ in Tegerdine v Brookes and by this Tribunal in Joyland Amusements (Northern Ireland) Limited v AS & D Enterprises Limited [1991] (BT/102/1989).
26. The Tribunal concludes that, in the circumstances of this particular case, the Notice is not invalidated by the incomplete name of the tenant.
27. In conclusion the Tribunal therefore determines that the Notice is valid.
28. The Tribunal further comments in passing that, although not challenged, there may be an error in the Landlord’s name in the Tenancy Application. For business efficacy and the avoidance of disputes, all notices should be carefully drafted.

#### **ORDERS ACCORDINGLY**

11<sup>th</sup> July 2003

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

#### **Appearances:**

**Denise McBride BL instructed by Arthur Cox appeared for the Applicant/Tenant.**

**Patrick Good BL instructed by McConnell, Kelly & Co appeared for the Respondent/Landlord.**