

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
IN THE MATTER OF AN APPLICATION
BT/97/1993
BETWEEN
WILLIAM HENRY TEGGART AND SARAH ROSS TEGGART - APPLICANTS
AND
FRANCIS McILWAINE AND MAUD ELIZABETH McILWAINE - RESPONDENTS

Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS

Belfast - 19th November 1993

This Case concerned an application under Section 8(1) of the Business Tenancies Act (Northern Ireland) 1964 for a new tenancy of the Rock Petrol Filling Station at Ballymena Road, Larne, Co Antrim. Mr John Thompson of Counsel (for the Applicants) and Mr Henry Toner of Counsel (for the Respondents) submitted that there was a preliminary matter that concerned the jurisdiction of the Lands Tribunal. It concerned the validity or otherwise of a Landlord's Notice to Determine Business Tenancy under Section 4 of the 1964 Act.

The agreed facts are as follows:-

1. Sometime in 1966 Mr McIlwaine, one of the Respondents, left his employment in GEC Ltd and rented buildings at Ballymena Road, Larne to start work on his own doing car bodyshop repairs and vehicle breakdown repairs. The then owner was a Mr John Campbell who was persuaded to build and run a petrol filling station on the same site.
2. After the petrol filling station was run by Mr Campbell for six months or thereabouts, it was sold to the Respondents in Fee Simple - sometime in 1968.
3. An agreement for a lease was entered into by the Respondents with McMullans Ltd for the petrol filling station (excluding Mr McIlwaine's buildings used for his own business). A draft lease was prepared and amended as necessary by the lawyers but was never signed, sealed and delivered.
4. Nevertheless McMullan's entered into possession. The salient features of the draft lease are as follows:-

- (a) Consideration:- £7,500.
 - (b) Term:- 21 years from 1st January 1973.
 - (c) Rent:- £3,200 per annum (payable quarterly in advance).
 - (d) Covenant not to assign underlet or part with the possession of the demised premises without written consent of the Lessors such consent not to be unreasonably withheld.
 - (e) Rent reviews at the end of the fifth, tenth and fifteenth years of the tenancy.
5. As a result of the rent reviews which have taken place the present rent is £11,500 per annum.
6. McMullans Limited became Maxol Ltd and that Company operated the petrol filling station with a series of managers. The last such manager was Mr William Henry Teggart - one of the Applicants. Sometime in the middle of 1985 Maxol Ltd sublet the petrol filling station to the Applicants. The draft lease was sent to the Respondents for approval but no formal approval was forthcoming and the Applicants entered into occupation.
7. That subtenancy was as follows:-
- (a) Term:- 30 months from 1st July 1985 (expiring 31st December 1987) and then year to year. The Applicants are still in occupation under that subtenancy.
 - (b) Rent:- £2,000 per annum (contrasts with the present rent under the draft lease of £11,500. No doubt the difference is because of the terms for supply of petrol etc from Maxol Ltd to Applicants).
8. On 4th May 1993 Messrs Boal Anderson and Co, Solicitors for the Respondents issued a Landlord's Notice to Determine Business Tenancy and a Notice Requiring Information under Section 23(1) of the 1964 Act to Messrs Comerton and Hill Solicitors for Maxol Ltd asking:-
- "(a) Whether Maxol Ltd occupy the premises or any part of them wholly or partly for the purposes of a business carried on by you; and
 - (b) whether you have a sub-tenant of the whole or any part of the premises".

Additionally details were requested of any sub-tenancy.

9. The reply dated 19th May 1993 from Messrs Comerton and Hill contained all the information as in 7 above.
10. On 24th June 1993 the Respondents served a Landlord's Notice to Determine Business Tenancy under Section 4 of the 1964 Act on the sub-tenants, William Henry Teggart and Sarah Ross Teggart.

That Notice brought the sub-tenancy to an end on 31st December 1993. (That was also the date that the contractual tenancy in the draft lease to Maxol Ltd came to an end.)

That Notice stated that the Respondents would oppose the grant of a new tenancy on the following ground:-

"on the termination of the current tenancy the landlords intend that the holding will be occupied for a reasonable period for the purposes, or partly for the purposes, of a business to be carried on by them or by a company in which they have a controlling interest or as their residence".

11. On 25th June 1993 the Applicants' Solicitors wrote the Respondents' Solicitors as follows:-

"We have to advise that our clients have no intention whatsoever of giving up possession of the premises on the date specified in the Notice namely 31st December 1993.

We would enquire as to the precise reason for serving this Notice on our clients as they are not Tenants of your client but of Maxol Limited and in fact no relationship whatsoever exists between our clients".

12. On 22nd July 1993 the Applicants' Solicitors wrote the Respondents' Solicitors by Recorded Delivery as follows:-

"We have to advise you that we do not accept that your Notice to Determine is validly formulated or served but in the event that it should be found to be so our clients will not be willing to give up possession of the premises and intend to apply to the Lands Tribunal for a new Tenancy".

13. On 5th October 1993 the Applicants made an Application under Section 8(1) of the 1964 Act for a New Tenancy to the Lands Tribunal.

The accompanying letter from the Applicants' Solicitors included:- "May we say that the application is being made to protect our clients position and without prejudice to his right to query the validity of the Landlords Notice to Quit".

The preliminary matter put before the Lands Tribunal was whether or not the Landlords' Notice to Determine was valid. If not no jurisdiction lay with the Tribunal.

Mr Henry Toner of Counsel (for the Respondents) submitted:-

1. Any Landlord's Notice to Determine Business Tenancy served on Maxol Ltd was to no avail for Maxol Ltd in no way occupied the holding.
2. Following the reply from the Solicitors for Maxol Ltd a Landlord's Notice to Determine was served on the Applicants who occupied the entirety of "the holding" as defined in the 1964 Act.

The date of termination coincided with the end of the 21 years term in the draft lease to Maxol Ltd ie to the contractual tenancy.

3. Thus Maxol Ltd could not have given a Landlord's Notice to Determine on 24th June for Maxol could not grant a new lease.
4. The Respondents were the competent landlord and were able to determine the tenancy provided they did not require a date prior to 2400 hours on the 31st December 1993.
5. Refers to Section 28 of the 1964 Act and Schedule 1 thereof.

Also refers to Hill and Redman and the learned authors' commentary on Section 44 and the Sixth Schedule to the Landlord and Tenant Act 1954. Both that Section 44 and that Sixth Schedule have the same wording as Section 28 and Schedule 1 to the 1954 Act.

6. Submits that the Section 4 Landlord's Notice to Determine is valid.

Mr John Thompson of Counsel (for the Applicants) submitted:-

1. Primary submission is that the date specified in the Landlord's Notice to Determine under Section 4 of the 1964 Act should be at the earliest 1st January 1994.

The Lands Tribunal is a statutory Tribunal and any matter must be brought properly within the statute which gives the Tribunal jurisdiction.

2. At the time of determination the competent landlord must be the actual landlord of the occupying tenant.

Since Maxol's term as a matter of contract did not come to an end until 31st December 1993 therefore it follows that the Respondents were not the landlord on the date given in the Notice to Determine.

3. The term "reversion expectant" means that the expectation must have fallen in by the date of determination. Refers to Section 28 of the 1964 Act.

4. Refers to:-

- (a) X L Fisheries Ltd v Leeds Corporation [1955] 2QB 636; [1955] 2 All ER 197

That was a case of a tenant's request for a new tenancy but the reversion was acquired by a local authority after the date of that request.

- (b) A D Wimbush & Son Ltd v Franmills Properties Ltd and Others [1961] Ch 419; [1961] 2 All ER 197

In this Case X L Fisheries dicta was applied. Submits that although this was an application by the tenant to the landlord for a new tenancy ie the opposite to the instant Case it could be applied to the facts here - viz that the immediate landlord (Maxol Ltd) was the competent landlord.

5. Submits that the Respondents Notice to Determine is ineffective and, therefore, the Lands Tribunal has no jurisdiction.

Mr Toner in reply:-

1. What Mr Thompson argues is heresy. He asserts that at the date of termination of the lease the competent landlord would be the actual landlord. Therefore he concludes that it would not be possible for the Respondents to say to the subtenants that your sub-lease ends on 31st December 1993.
2. Refers to Section 4(5) of the 1964 Act. The notice to determine must not specify a date of termination earlier than the date on which the tenancy would come to an end by effluxion of time. The landlord therefore cannot specify 30th December 1993 because, as the sub-tenant's contractual term was until 31st December 1987 and then from year to year, the effluxion of time must be 31st December in every year.

Therefore, the competent landlord could not specify any date before 31st December.

3. Mr Thompson is not saying that the Respondents were not the competent landlords on 31st December 1993. The competent landlords cannot be precluded from using the date of 31st December 1993 or such later date as they might determine but are precluded from using any earlier date.
4. Statutory law permits the competent landlord to do the sensible thing and that is that the contractual date at which the tenant's lease expires and the termination date for the sub-tenant's occupation ending are coincidental.
5. The Applicants are asserting that the Respondents must be the actual landlord at the relevant date. The Respondents submit that is a statutory matter and the Lands Tribunal cannot go beyond the statute.
6. There are three types of landlord mentioned in Schedule 1 of the 1964 Act viz.

In paragraph 1 "competent landlord", "mesne landlord" and "superior landlord".

Because of the requirement in Section 28(1) of the 1964 Act that the estate of the "landlord" is a tenancy which "will not come to an end within fourteen months or less by the effluxion of time" then Maxol up to 1st November 1992 was the landlord (as defined in Section 28) and was also the "competent landlord" at that date. Up until 1st November 1992 the Respondents were the "superior landlord" but after that date the Respondents became the "competent landlord" for Maxol Ltd no longer satisfied the requirement of Section 28 of the 1964 Act as "landlord" but instead became "mesne landlord".

There is no statutory provision for the phrase "actual landlord".

DECISION

This matter is not without difficulty. The relevant statutory matters are as follows:-

Section 3 of the 1964 Act

"(1) A tenancy to which this Part applies shall not come to an end unless terminated in accordance with the provisions of this Part; and subject to the following provisions of this Part such a tenancy may be terminated by -

- (a) a notice to determine served by the landlord in accordance with the provisions of section 4; or
- (b) a request for a new tenancy made by the tenant in accordance with the provisions of section 5."

Here there was no Section 5 application by the tenant and there is no disagreement that a Section 4 notice to determine was served on the tenant in the prescribed form. The dispute between the parties is whether or not the Respondents, who served the Section 4 notice were the landlord in accordance with the statutory meaning of that word. That takes the Lands Tribunal to:-

Section 28 of the 1964 Act

"(1) In this part the expression "the landlord" in relation to a tenancy (in this section referred to as "the relevant tenancy") means the person (whether or not he is the immediate landlord) who is the owner of that estate in the property comprised in the relevant tenancy which for the time being fulfils the following conditions, that is to say:-

- (a) that it is an estate reversion expectant (whether immediately or not) on the termination of the present tenancy; and
- (b) that it is either the fee simple or a tenancy which will not come to an end within fourteen months or less by effluxion of time or by virtue of a notice already served being a notice served in relation to that tenancy by the immediate

landlord or tenant thereof in accordance with the terms of that tenancy or a notice to determine as defined in section 3 or a notice under section 5 requesting a new tenancy;

and is not in itself in reversion expectant (whether immediately or not) on an estate which fulfils these conditions.

- (2) The provisions of Schedule 1 shall have effect for the purposes of the application of this Part to cases where there are several persons standing in the relation to each other of landlord and tenant."

Here we have three persons:- the sub-tenant (the Applicants) who hold from year to year (ending 31st December in each year); the tenant (Messrs Maxol Ltd) whose lease expires on 31st December 1993 and the fee simple owners (the Respondents).

Two dates appear, to the Tribunal, to be of some importance viz -

- (a) the date of the Notice to Determine which was served on 24th June 1993; and
(b) the date of determination of the tenancy on 31st December 1993 as stated on that Notice to Determine.

The "relevant tenancy" at both dates would have been the subtenancy of the Applicants. If the Notice to Determine is valid then the termination date coincides with the end of a full year's occupation by the sub-tenant.

At 31st December 1993 (at 2400 hours) Maxol Ltd occupation as tenants has come to an end by effluxion of time. At 24th June 1993 the Maxol tenancy had six months and six days to run ie less than fourteen months.

Nevertheless the Tribunal must look further at Schedule 1 to the 1964 Act viz:-

"PROVISIONS FOR PURPOSES OF PART I WHERE SEVERAL PERSONS STAND IN THE RELATION OF LANDLORD AND TENANT

1. In this Schedule the following expressions have the meanings hereby assigned to them in relation to a tenancy (in this Schedule referred to as "the relevant tenancy"), that is to say:-

"the competent landlord" means the person who in relation to the tenancy is for the time being the landlord (as defined by section 28) for the purposes of Part I;

"mesne landlord" means a tenant whose interest is intermediate between the relevant tenancy and the interest of the competent landlord; and

"superior landlord" means a person whose interest is superior to the interest of the competent landlord.

2. (1) Any notice to determine served by the competent landlord under Part I to terminate the relevant tenancy, and any agreement made between that landlord and the tenant as to the granting, duration, or terms of a future tenancy, being an agreement made for the purpose of the said Part I, shall bind the interest of any mesne landlord notwithstanding that he has not consented to the service of the notice or was not a party to the agreement.
- (2) The competent landlord shall have power for the purposes of Part I to give effect to any agreement with the tenant for the grant of a new tenancy beginning with the coming to an end of the relevant tenancy, notwithstanding that the competent landlord will not be the immediate landlord at the commencement of the new tenancy, and any instrument made in the exercise of the power conferred by this sub-paragraph shall have effect as if the mesne landlord had been a party thereto.
3. (1) If the competent landlord, not being the immediate landlord, serves such notice or makes any such agreement as is mentioned in paragraph 2(1) without consent of any mesne landlord, any mesne landlord whose consent has not been given thereto shall be entitled to compensation from the competent landlord for any loss arising in consequence of the service of the notice or the making of the agreement.
- (2) If the competent landlord applies to any mesne landlord for his consent to such a notice or agreement, that consent shall not be unreasonably withheld, but may be given subject to any conditions which may be reasonable (including conditions as to the modification of the proposed notice or agreement as to the payment of compensation by the competent landlord).

(3) Any dispute as to the amount of compensation payable under this paragraph as to whether consent has been unreasonably withheld or as to whether any conditions imposed on the giving of consent are unreasonable shall be referred to and determined by the Lands Tribunal.

4. An agreement between the competent landlord and the tenant made for the purposes of Part I in a case where -

(a) the competent landlord is himself a tenant; and

(b) the agreement would apart from this paragraph operate as respects any period after the coming to an end of the estate of the competent landlord;

shall not have effect unless every superior landlord who will be the immediate landlord of the tenant during any part of that period is a party to the agreement."

If the immediate landlord (Maxol Ltd) as a result of a Section 4 Notice to Determine (or a Section 5 Tenant's request for a new tenancy) as at 24th June 1993 (the actual date of the Respondent's Notice) Maxol Ltd had agreed to a further year's tenancy to the Applicants from 1st January 1994 to 31st December 1994 it would not have any effect unless the Respondents were a party to the agreement. But, of course Maxol Ltd do not satisfy the requirements of Section 28 of the 1964 Act - their contractual tenancy ended by the effluxion of time in 6 months 6 days - considerably less than the 14 months required.

Here the Notice to Determine objected to the grant of a new tenancy on the ground contained in Section 10(1)(g) of the 1964 Act. The Respondents may or may not establish that objection to the Tribunal - the Tribunal has not had any evidence yet put in front of it regarding that objection. If there had been no objection to the granting of a new tenancy there is no doubt that the parties would have entered into negotiations regarding the terms of the new tenancy commencing 1st January 1994 and if any dispute had occurred would have been heard by the Tribunal in plenary hearing.

The Tribunal finds little help from the two authorities opened to the Tribunal viz:- X L Fisheries Ltd v Leeds Corporation and A D Wimbush & Son Ltd v Franmills Properties Ltd and Others.

One of those cases concerned a request for a new tenancy by the tenant and an objection to the grant of a new tenancy by the landlord who subsequently (and before the Court hearing) sold his reversionary interest to another.

The other concerned a landlord's notice to determine a business tenancy which objected to the grant of a new tenancy and prior to the Court hearing had sold his reversionary interest to another.

The learned editors of Hill and Redman's Landlord and Tenant give helpful examples of Section 44(1) of that Act (which differ in no relevant way from Section 28(1) of the 1964 Act). They are as follows:-

"The operation of the provisions of this section and the ascertainment of 'the landlord' may be illustrated by three examples.

- (1) L owns the freehold, T holds the tenancy due to expire in six months' time and ST is the sub-tenant in occupation of the whole premises. L is the competent landlord of ST. T cannot be the competent landlord since his tenancy will end within 14 months by the effluxion of time.
- (2) L owns the freehold, T holds the tenancy due to expire in 6 months' time and is in occupation of part of the premises having sub-let the remainder to ST. T is the competent landlord of ST. T's tenancy is within the protection of the Act. Consequently it will not come to an end within 14 months but will continue under S24 of the Act [Section 3 of the 1964 Act].
- (3) The same facts may be postulated as in the previous example except that L has served a notice under S25 of the Act [Section 4 of the 1964 Act] terminating T's tenancy. L is then the competent landlord of ST. T's tenancy will not come to an end within 14 months by the effluxion of time but he is prevented from being the competent landlord because a notice has been given by virtue of which his tenancy will come to an end within 14 months."

While these are only hypothetical examples given by the learned editors to illustrate the proper ascertainment of "the landlord" under Section 28 of the 1964 Act it is a coincidence that the actual facts in this matter are the same as in example (1).

This helps to underline the conclusion already arrived at by the Tribunal that the "competent landlord" under Section 28(1) and Schedule I to the 1964 Act is the Respondents. The Tribunal finds that the Section 4 Landlord's Notice to Determine is therefore valid.

The Tribunal is now prepared to hear the Landlord's objection to the granting of a new tenancy.

ORDERS ACCORDINGLY

Mr A L Jacobson

9th December 1993

Lands Tribunal for Northern Ireland

Appearances:-

Mr John Thompson of Counsel (instructed by Messrs O'Rorke, McDonald and Tweed, Solicitors) for the Applicants.

Mr Henry Toner of Counsel (instructed by Messrs Boal Anderson & Co, Solicitors) for the Respondents.