

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

IN THE MATTER OF AN APPLICATION

BT/9/1995

BETWEEN

MICHELLE DOUGLAS - APPLICANT

AND

PHILIP HUNTER AND IMELDA HUNTER - RESPONDENTS

Lands Tribunal - Mr Michael R Curry FRICS FSVA IRRV ACI Arb

Belfast - 9th October 1995 and 2nd November 1995

As a result of an application under Section 8 of the Business Tenancies Act (Northern Ireland) 1964 by the Applicant/Tenant of premises at 17 Bridge Street, Lisburn, for a new tenancy, the Tribunal was asked to determine, as a preliminary issue, whether the landlord has established one of the statutory grounds of opposition.

By an agreement dated 14th April 1992 the Applicant took a lease, of ground floor premises, as a tenant in common, with Imelda Hunter (nee Barrett) for a term of three years. The tenants shared the premises and there was patchwork, with considerable overlap, in terms of the parts each used but, generally speaking, Michelle Douglas carried on the premises of a hairdresser in most of the front part of the ground floor and Imelda Hunter carried on a beauty salon business in the remainder.

The relationship between the tenants deteriorated, the two of them had entered the venture as friends but both had different ways and the relationship had gone awry. Imelda Hunter and her husband, Philip Hunter, then acquired the lessor's interest in the premises. They wished to terminate the tenancy and had served Notice to Determine, dated 22nd September 1994. In that Notice they stated that they would oppose an application to the Lands Tribunal for the grant of a new tenancy on the ground that on the termination of current tenancy the Landlords intend to carry out substantial works of construction on the holding or part thereof ("The works") and that the Landlords could not reasonably do so without obtaining possession of the holding.

The extent of the holding was not precisely defined at the Hearing but for purposes of the determination of the issues in this part of the application only, that is not necessary.

There were different recollections about whether one or two addenda were made to the lease agreement at the time of signing, or about a year later, and whether there was an 'option to renew' addendum as well as the 'renovation' addendum.

Appearances

Mr Gregory McGuigan appeared for the Applicant/Tenant instructed by McKnight & Company, Solicitors. He called Mrs Michelle Douglas and her husband, Mr Joel Thomas Douglas.

Mr Patrick Good appeared for the Respondents instructed by Terence McCourt, Solicitor. He called Mrs Breige Marie Gibney who was employed in the Conservation Section of the Divisional Planning Office of the Department of Environment, Mr Brendan Patrick Eastwood who practised as an Estate Agent in Lisburn and Mrs Imelda Marie Hunter.

The Renovation Addendum

The Application was fixed for Hearing in May 1995 but was adjourned by consent when an addendum ("the renovation addendum") to the lease was discovered at the 11th hour.

The Works and Intention to carry them out

In an architectural design consultant's report the works were described as

"internal and external renovations and alterations ... to enhance the overall appearance ... and create a good working environment".

The works included structural alterations to the front part of the interior and exterior, and fitting out as a hairdressing salon. Some of the works set out in the scheme were substantial works and plans for carrying out the work were well advanced. It was accepted that the right of entry for the landlord to repair, contained within the lease, was not sufficiently wide to permit this proposed scheme.

Architectural design consultants had been employed and paid a substantial part of their fee. Structural design engineers had been employed and paid and Interior designers had been paid for their design work. Planning permission and building control approvals had been obtained. The works had been costed. Mrs Hunter gave evidence of expenditure to date on the scheme and produced documentary evidence verifying that funds were available to carry out the work. Her intention was to incorporate a beauty salon and hairdressers

together on the ground floor. In order to carry out the works the business would have to close for four or five weeks.

The Tribunal accepts her evidence and concludes that the landlords did intend to carry out substantial works of construction on part of the holding if they obtained vacant possession.

The Issues

Although helpfully the parties had reached agreement on a number of matters there were still issues which required to be addressed:

Had an option, for a new lease, been exercised?

Was there an enforceable renovation agreement?

Did the renovation provision permit the landlord to carry out the works without termination of the lease?

An Option to renew

The Tribunal has carefully considered all the evidence and submissions on the question of whether there was an agreement which gave the tenant the option of renewing the lease for a further term. A number of matters were raised but the fundamental issue for this Tribunal is whether any such option has already actually been exercised thereby renewing the lease and removing the need for this application to be dealt with. The question of whether or not there was an enforceable option agreement only falls within the jurisdiction of this Tribunal in that context.

Although recollections differed and the originals of the documentation setting out the terms of the lease were lost, and it is accepted that they genuinely were lost, the photocopies which could be found gave no indication of an option. That is not to say that the question of an option may not have been discussed between the parties and the tenants expected it to be incorporated within the lease.

It would be surprising if such an option were granted at a later date and perhaps more surprising if it were enforceable. Without speculating as to precisely what wording might have been incorporated in such an option, it is reasonable to assume that one essential requirement of the option would be that it be triggered, or exercised, in some way before the end of the contractual period of the lease. In order to determine that the Lands Tribunal had no jurisdiction to deal with this application the burden falls on the tenant to show that on

the balance of probabilities not only was there such an enforceable option but also that it had been properly exercised.

The evidence falls short of that standard and the Tribunal concludes that no option has been exercised.

The Approach to Construction of the Addendum

The addendum was roughly drafted and, having considered the submissions of Counsel, the Tribunal considers that a robust approach to its analysis is appropriate. What would a properly informed, reasonable person consider the agreement to be? The actual current proposals, of course, would not have been in the minds of the parties.

Was the Renovation Agreement enforceable

Having carefully considered the evidence, and again recollections differed, the Tribunal has concluded, but not without difficulty, that on the balance of probabilities, the Renovation Addendum was not signed at the same time as the lease. That raises the question of whether the addendum, viewed on its own, represented an enforceable contract. If the Tribunal had concluded that the addendum was signed at the same time, the question would not arise. The addendum read as follows

"The landlord hereby covenants with the tenant to provide alternative business premises should the said premises be eligible for renovation grant aid and Upon completion of such renovations to yield onto the tenants the original premises under the terms of this agreement."

Was there real consideration? The Tribunal concludes that this clearly was a bargain which included a valuable consideration and was not a mere promise, for the following reasons:

If the renovations were undertaken, by the landlord, during the term of the lease, the tenants would benefit, on resumption of their occupation, by obtaining better premises but on the same terms.

If the renovations were done, by the landlord, at or near the end of the lease, the tenants' right to temporary premises and to resume occupation would be a valuable right to retain possession which was additional to their rights under the Act.

Provided the condition of grant availability was satisfied, the landlord could obtain temporary possession and improve the premises, enhancing the value of the landlord's reversionary interest.

Grant aid

Conservation area Grant aid

Mrs Gibney gave evidence that the premises were within a conservation area and grant aid was available for the enhancement of conservation areas and in particular for the restoration of historic and traditional features and frontages. A suitable scheme for the facade of the subject would attract grant aid.

Other Grant aid

Although Mrs Gibney did not claim to be an expert about other grants and could only give second-hand information she had a general knowledge as a result of six years experience. Her experience from liaison with the Northern Ireland Housing Executive was that, although they made a number of grants available for improvement and repair of dwellings, there would be none available for a commercial property like the subject. Mrs Gibney was also aware from liaison with the International Fund for Ireland Grant Section that Urban Development Grant might have been available previously but, over the last year or so, the criteria had changed and the fund would no longer grant aid occupied property. It would only be available for vacant property.

Mrs Gibney was not aware of any other grant which might be available for renovation of the property.

0Did the renovation agreement permit the landlord to carry out the works without termination of the lease?

The view of the Tribunal is that the appropriate test to determine whether the landlord was entitled to exercise the right to obtain temporary possession is a test of whether or not the premises (as opposed to the scheme) were eligible for renovation grant aid.

Having regard to the submissions of Counsel and to its earlier stated views on how questions of construction of the addendum are to be approached, the Tribunal concludes that the reference in the addendum to a renovation grant is not a reference to any specific statutory grant. The 'r' in renovation should be treated as a small 'r'.

As a result of an application for grant aid, made on behalf of the landlord on 10th January 1995, the Department prepared a schedule of Conservation Area requirements for the building and that was issued on 6th March 1995. One of the requirements was that the shop windows should be suitably framed in painted timber but the Respondents intended to install aluminium window frames instead. These were not approved as grant eligible and as the policy was not to grant aid unless all requirements were met, Conservation Area Grant would not be available for the project. But the evidence was that the scheme, with modification to substitute wooden window frames instead of the proposed aluminium, would attract grant aid, but not in all regards.

It was suggested that the Respondents should not be dictated to or confined by the availability of grant and if the Respondents wished to carry out works outside the conservation grant scheme the Respondents should be able to do so. However, the Tribunal emphasises that the availability of grant does not of itself require either party to do anything, it is merely a condition that must be satisfied before the Respondents may, if they so choose, take advantage of the renovation agreement to enter into temporary possession to renovate the premises.

In reality, it is expected that grant aid will be subject to conditions and those conditions may reasonably be expected to include aspects of the specification of the works and further, it would not be safe to assume that grant aid is likely to be available for every feature of whatever scheme an applicant puts forward. That must be taken to be part of the surrounding circumstances in which the parties concluded their bargain.

Whatever the effect of the addendum, it is an addendum agreed to by landlord and tenant, albeit not quite the same parties in the same roles. The powers of the Tribunal to intervene between contracting parties is limited to that permitted by statute and even though an agreement may have a result not quite that expected by the parties, at the time of agreement, that does not give the Tribunal any power to sweep it aside.

If the works fell to be considered separated into two categories, those that may attract grant and those that were almost certain to not attract grant ie internal work, the parties indicated that they would like the opportunity to address the Tribunal again on the issue of whether the latter works would be substantial. The Tribunal does not consider that issue arises.

The Tribunal concludes that the premises were eligible for renovation grant aid, the Respondents were entitled to go into temporary occupation, in accordance with the terms of the Addendum, and the Respondents can reasonably carry out the works without obtaining legal possession of the holding. The Landlords have not established any of the statutory grounds of opposition and the Applicant is entitled to a new tenancy.

ORDERS ACCORDINGLY

1st December 1995

**M R CURRY FRICS FSVA IRRV ACIArb
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances:

Gregory McGuigan of Counsel instructed by McKnight & Co for the Applicant.

Patrick Good of Counsel instructed by Terence McCourt for the Respondents.