

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964
LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982
IN THE MATTER OF REFERENCES

R/1/2003

BETWEEN

ANTHONY AND CATHERINE CURLEY – CLAIMANTS

AND

NORTHERN IRELAND HOUSING EXECUTIVE – RESPONDENT

Re: 56 Cawnpore Street, Belfast

R/5/2003

JAMES JOSEPH AND NUALA McCRUDDEN – CLAIMANTS

AND

NORTHERN IRELAND HOUSING EXECUTIVE - RESPONDENT

Re: 84 Clonard Gardens, Belfast

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

Belfast – 5th November 2003

1. These were two claims for domestic disturbance which for convenience were heard together.

2. The claimants were owner-occupiers. The Northern Ireland Housing Executive ('the Housing Executive') redeveloped the area in which they lived under a scheme known as Clonard RDA 116. Their dwellings were acquired by Vesting Order dated 5th August 1994 and which came into operation on 19th September 1994. Some years later, when they were displaced, the Housing Executive rehoused them by granting them tenancies of two of their new dwellings. Some years later again, the claimants exercised their right to buy at a discount. That was under a Scheme for Sale of

3. The claims were settled apart from one heading; claims for the recovery of solicitors costs (the costs') incurred in the purchase of the claimants' new houses under the 1997 scheme.
4. By leave of the Tribunal Mr Joe Allen, a Chartered Surveyor with long experience of disturbance claims appeared for the claimants. Mr Paul Buggy, a solicitor of the Housing Executive appeared for the respondent.
5. The scope of such disturbance was considered in Harvey v Crawley:

“Compensation for disturbance ... includes all damage directly consequent on the taking of the house under statutory powers...

I would therefore say that [the costs] which have been expended and are the direct consequence of the freeholder being turned out of her house, are properly to be regarded as compensation for disturbance. I would not, however, like this to be taken too far....

Another case was put in the course of the argument. If an elderly man and wife owned and occupied a house which was compulsory acquired and they thought to themselves 'we do not think we need to get another house; we will go into a guest house', they would not get the costs of moving into a new house when they had not incurred them nor would they be able to claim the costs of living in a boarding house for the rest of their days. They would only get the market value of their former home. These illustrations show that the owner only recovers costs of the present kind in a case where a house is occupied by an owner, living there, who is forced out and reasonably finds a house elsewhere in which to live.”

per Denning LJ.

And:

“The authorities to which our attention was drawn established that any loss sustained by dispossessed owner (at all events one who occupies his house) which flows from a compulsory acquisition may properly be regarded as the subject of compensation for disturbance, provided, first, that it is not too remote

and, secondly, that it is the natural and reasonable consequence of the dispossession of the owner.“

per Romer LJ

6. As the Tribunal understands Mr Allen’s main argument, he suggested that Harvey v Crawley was authority for an irrefutable presumption that an owner/occupier who purchased another house was entitled to recover the costs. He suggested that the only datum line that would stop such a claim was the statute of limitations and all other factors were irrelevant.
7. The costs in Harvey v Crawley are no more than an example of the effect of the application of the principles to the particular facts of that case. The legal principles are those set out in the first sentence of the quotation from the judgement by Denning LJ above and in the passage from that of Romer LJ. In both the instant cases the claimants were displaced in consequence of the compulsory acquisition so any loss sustained which flows from that may properly be regarded as the subject of compensation for disturbance, provided, first, that it is not too remote and, secondly, that it is the natural and reasonable consequence of their dispossession. In both cases the claimants have repurchased dwellings and incurred the costs and it was not suggested that they would have done so in the absence of dispossession or that they have acted unreasonably.
8. In the view of the Tribunal, the issues concern causation not time as a datum line i.e. whether there was an event or free deliberate human behaviour by either or both claimants that amounted to a supervening cause of the costs. If so then the costs would not be directly consequent on the taking of the house under statutory powers, the natural and reasonable consequence of the dispossession, but would be consequent on the supervening cause.
9. Neither of the claimants bought new houses straight away but they had the opportunity of obtaining very substantial discounts on the purchase price of new houses if they initially rented them from the Housing Executive. That was the effect of the 1997 scheme. In such circumstances it would be unreasonable to conclude that their actions in renting were compelling evidence of a deliberate decision not to

10. The question for the Tribunal is whether these later house purchases were in consequence of a separate, supervening voluntary decision or event. If Denning's elderly man and wife who thought they would go into a guest house did so but, after a few years, changed their minds and thought to themselves 'we do not think we want to stay in this guest house; we will get another house' then they would not get the costs of moving into their new house. If the Tribunal were to conclude on the evidence that these claimants had arrived at a crossroads and taken a decision to rent and not to purchase but later, arrived at a further crossroads, changed their minds and decided to purchase, that would take the costs outside the scope of compensation for disturbance.
11. Note however that in Seamus Damian Brady v Northern Ireland Housing Executive the Tribunal found that a constant intention to repurchase despite a temporary lack of ability to do so, kept a claim within the scope.
12. Mrs Curley and her husband were joint owner/occupiers of 56 Cawnpore Street, Belfast and were displaced from that dwelling on 10th March 1997. On that date they became the tenants of premises at 63 Cluain Mor Drive, Belfast. About March 2000 they applied to purchase this dwelling under the 1997 Scheme and, later, about July 2002 they submitted to the Housing Executive a further claim for £230 in respect of legal costs associated with that purchase.
13. Mr McCrudden and his wife were joint owner/occupiers of 84 Clonard Gardens, Belfast and were displaced from that dwelling on 4th May 1998. On that date they became the tenants of premises at 25 Clonard Gardens. About November 2000, they applied to purchase this dwelling under the 1997 Scheme and, later, about July 2002 they submitted to the Housing Executive a further claim for £532 in respect of legal costs associated with that purchase.
14. In response to Mr Allen's claim for this additional disturbance the Housing Executive had pointed to the delay between the commencement of the tenancy and the application to purchase the property. They said they would wish to satisfy

15. At the invitation of the Tribunal the claimants had written down their reasons in their own words.
16. In her letter Mrs Curley explained that the reason they rented for [3] years before applying for purchase was that they needed time to make sure that they were able to settle in the area before committing themselves. At the hearing Mrs Curley accepted that her new home was only 5-7 minutes walk away from the old home but said that the neighbourhood was entirely different; where they had lived before the neighbours were of their own age group whereas at the new location the neighbours were much younger people and as a couple with no family the Curleys were not sure they would settle there. She said that previously they had always owned their property and wanted to become owners again but needed time to settle after such a big and traumatic upheaval. If she had not settled there she said she would have looked at settling in another neighbourhood. In August 2000 her husband had become redundant and they had known that was about to happen at the time they had applied to purchase.
17. Mr Buggy accepted that Mrs Curley's evidence was reliable and consistent but suggested that at first she was, at most, open minded about whether to buy in the future and the impending event of redundancy was an important trigger for the purchase. A degree of uncertainty in such circumstances is understandable but the Tribunal concludes that, on the balance of probabilities, even at the beginning of her tenancy, Mrs Curley had not made any decision not to buy, and the event of impending redundancy assisted the action of buying but did not amount to a supervening cause.

18. In his letter, Mr McCrudden gave two reasons. He said the first was that he had been led to believe that he had to wait for 2 years before he was eligible to purchase and the second was that he had to wait for 2 years to be eligible for a discount. As a previous owner/occupier he said he had no prior knowledge of Housing Executive procedures. He said that he had always declared his intention to buy at various meetings and discussions with the Local Residents Association and Housing Executive representatives.
19. At the hearing he said that the advice he had been given was not that he was ineligible to buy but was that, as it was a new house, it would be better to wait 2 years. Mr McCrudden was unable to identify any representatives with whom he had discussed the purchase apart from one, now deceased.
20. Mr Buggy produced details of the 1997 scheme, which was in force at the relevant time, and pointed to the absence of any requirement to wait 2 years for eligibility or discount. He said that there were inconsistencies in Mr McCrudden's evidence and suggested that he was not a reliable witness.
21. The explanation as to why the McCruddens delayed taking steps to buy for more than 2 years is not very satisfactory. Mr McCrudden's evidence was confused and exaggerated but despite that, having considered all the evidence, the Tribunal is not convinced that they really had arrived at a crossroads or drifted off the path and positively decided just to rent and only later, turned to the route to buy. The Tribunal, with reservations, concludes there was no supervening cause.
22. The Tribunal now turns to ancillary matters.
23. Mr Allen suggested, and the Tribunal agrees that in theory, if it were possible for an owner to prove he had a bona fide intention to repurchase another property then in principle the entitlement arises and the Housing Executive could pay him his costs at the date of Vesting - before they were incurred. On that approach the Statute of Limitations (NI) 1958 could place a time limit on such a claim. But in disturbance claims, the usual practice is to wait and see (approved in Munton v GLC) and that statutory datum line is seldom relevant.

24. Mr Allen suggested that the causal connection could not be deemed to have been broken simply because the repurchase costs were not incurred until 2 or 3 years after the earliest time they could have been incurred. The Tribunal agrees but agrees with Mr Buggy that a substantial time lapse is usually significant evidence in the context of causation.
25. Mr Buggy accepted that the Housing Executive could not fix an arbitrary time limit beyond which they would not entertain a claim. Claimants should be encouraged to act reasonably promptly and the Tribunal accepts that as a matter of administrative convenience, it is not unfair that the Housing Executive should fix some time limit beyond which it will call for an explanation.
26. The Tribunal orders that the Housing Executive pay the costs of £230.00 to Catherine Curley.
27. The Tribunal orders that the Housing Executive pay the costs of £532.00 to James McCrudden.

ORDERS ACCORDINGLY

5th December 2003

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

Appearances:

Claimants: Joe Allen, Chartered Surveyor.

Respondent: Paul Buggy, Solicitor from Legal Services, Northern Ireland Housing Executive.