

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
IN THE MATTER OF A REFERENCE

R/21/1995

BETWEEN

FRANCIS LINDBERG AND PAULA LINDBERG - CLAIMANTS

AND

NORTHERN IRELAND HOUSING EXECUTIVE - RESPONDENT

PREMISES: 5 TRALEE STREET, BELFAST

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

Belfast - 11th June 1996

Francis and Paula Lindberg ("the Claimants") were owner occupiers of a house which was situated in the Clonard Redevelopment Area RDA 116. This was acquired from them by the Northern Ireland Housing Executive ("NIHE") by means of a Vesting Order which became operative on 19th September 1994. Compensation for the land taken was agreed but an issue remained in connection with their mortgage interest payments after that date.

During the period, after the Vesting Order became operative but before an advance payment of compensation was made, between 19th September 1994 and 31st January 1995 the Claimants continued to occupy the property and were required by the NIHE, to pay a sum, less than full rental value, for use and occupation from the date of vesting. The property was the subject of a mortgage. During the period between the date that the Vesting Order became operative and the date of payment of the compensation, monthly mortgage interest payments were required and were kept up by the Claimants.

On the day of Hearing it was agreed to treat the following question as a preliminary point. That would produce considerable savings in cost and complexity of the proceedings.

The agreed question was as follows:

"The Claimants were required to make mortgage interest payments after the date of vesting. They were also required to make use and occupation payments to the NIHE. Consequently they say they suffered a loss as a direct result of vesting. Is their mortgage interest recoverable as compensation for disturbance under the Land Compensation (Northern Ireland) Order 1982, Part III, Article 6?"

Article 6(1)(6) provides:

"The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land."

Mr Jonathan Park instructed by Messrs O'Reilly Stewart appeared on behalf of the Claimants.

Ms Heather Gibson instructed by Northern Ireland Housing Executive appeared on behalf of the Vesting Authority ("NIHE").

Helpfully, both parties had prepared and submitted statements of their case prior to the Hearing.

Mr Park relied on the principle of compensation as described by Romer LJ in Harvey v Crawley Development Corporation [1957] 1 QB 485

"The authorities establish that any loss sustained by a 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, it is not too remote and, secondly, that it is the natural and reasonable consequence of the dispossession of the owner".

As a direct consequence of the dispossession the Claimants were required to make use and occupation payments in addition to the usual mortgage interest payments. The basis of the requirement for these payments is that the Vesting Authority is deemed to take possession on the date of vesting and not on the later date when compensation is actually paid. However, until the compensation was actually paid the Claimants' obligation to pay the mortgagee continued. Therefore, because of the delay in the payment of compensation the Claimants paid both. They were therefore worse off and suffered loss directly flowing from the compulsory purchase.

The NIHE had suggested that the alleged loss sustained by the Claimants in making the additional payments during this period should be set off against the interest that is paid on the compensation between the date the Vesting Order became operative and the date of payment of compensation. Interest is paid under Schedule 6(18) of the Local Government Act (Northern Ireland) 1972

"18 (1) The (NIHE) shall pay interest upon compensation money from the date of vesting of the land in respect of which the compensation is payable until the time of the

payment of the money and interest to the party entitled thereto, or, where such compensation is paid into Court, until the sum with such interest is paid into Court accordingly."

Mr Park submitted that the Claimants were therefore entitled by statute to interest on the compensation. They were granted interest in recognition of the fact that the compensation was due on the date of vesting but not received until a later date. There was no statutory basis or authority which suggested that the interest payment that the Claimants were entitled to under this Schedule may be reduced. Further there was no statutory basis or authority suggesting that any disturbance losses should be set off against this interest entitlement.

On behalf of the NIHE, Ms Gibson submitted that it was clear from the Statements made by Romer LJ in Harvey v Crawley Development Corporation that loss must result from actual interruption of beneficial occupation of land. This was echoed by Davies LJ in Judge Lee v Minister of Transport (1966) 1 QB at 111 when he said:

"Disturbance must in my judgment refer to the fact of having to vacate the premises."

The mortgage debt remained a personal debt on the part of the mortgagor and the covenant to pay that debt and interest continued notwithstanding the acquisition. The liability of the Claimants to pay mortgage interest from 19th September 1994 to 25th January 1995 flowed not from the vesting but rather from a pre-existing contractual arrangement between them and their lending institution.

The Claimants chose to remain in occupation of the property after the operative date of vesting. They were charged in respect of their use and occupation. That charge referred to was not a natural or reasonable consequence of their dispossession. It represents a payment by them for occupying the premises and constitutes value for money. Service Welding Ltd v Tyne and Wear County Council (1979) 250 EG 1291.

In Horn v Sutherland Corporation (1941) 2 KB 26 Scott LJ said

"The statutory compensation cannot, and must not, exceed the owner's total loss, for, if it does, it will put an unfair burden on the public authority or other promoters who on public grounds have been given the power of compulsory acquisition, and it will transgress the principle of equivalence which is at the root of statutory compensation, the principle that the owner shall be paid neither less nor more than his loss."

It was clearly established that a double overhead may be off set against interest payable. See B & T (Essex) Ltd v Shoreditch Corporation (1958) 9 P&CR 471; 172 EG 69 LT.

The mortgage payments made in addition to use and occupation payments did not constitute a loss flowing from the vesting for which the Claimants should be compensated. In any event, if such liability were considered to be a double overhead attributable to the vesting, then same must be off set against statutory interest.

Ms Gibson referring to B & T (Essex) said that it appeared the interest incurred in that case was incurred prior to the date from which interest on compensation monies would run. In this case the position was different. Because of the difference between Vesting Orders and Compulsory Purchase Orders interest was already payable from the date the Vesting Order became operative.

Ms Gibson illustrated a number of circumstances in which, if the Tribunal found against the NIHE, difficulties might arise in practice and in assessing compensation. NIHE lacked control of the situation and could not force payment on a claimant or lending institution. The effects would be very far reaching and relate to matters not under their control, it would penalise them and that was not the intention of the legislation.

In reply, Mr Park submitted that payments to the mortgagee were ongoing and not affected by vesting since, because of the delay between the Vesting Order becoming operative and compensation being paid, interest does have to be paid and the loss flows from the Vesting Order. The Claimants did not choose to remain, they had no alternative because they had no compensation money and it would be unreal to expect the Claimants to move out before payment of compensation. There was no authority or provision that would allow the entitlement to interest to be off set by statutory interest. No other items of claim were expected to be off set. So far as practical difficulties or questions of difficulty in measuring the loss were concerned, these were not insurmountable. The principle was that set out by Romer LJ. The loss flowed from vesting.

Decision

If " questions of causation are particularly difficult and have vexed the best of human intellects for 2,400 years" Arnott v O'Keefe [1977] IR 19, the addition of questions relating to interest on compensation and interest as part of compensation produces a heady brew indeed. However the Tribunal considers much progress can be made to unravelling the tangle in this matter, in which there is statutory provision for payment of interest on compensation, by asking a simple "what if" question or a "but for" test to which the Tribunal will come shortly.

To set the issue in context, it is important to bear in mind that the entitlement to interest on compulsory purchase compensation arises **only** as a result of the statutory provision for interest to be paid. The rate of interest is varied from time to time and, if it is the same as mortgage interest for a particular borrower and institution, that is only a coincidence. As interest rates fluctuate, the difference may be either a benefit or a burden to a claimant or indeed an acquiring authority.

The "what if" question is this:

"Would the alleged loss have been incurred if the compensation money had been paid at the date the Vesting Order became operative (the date from which statutory interest runs)? ", or

a "but for"

" Would the alleged loss have been incurred but for the delay in payment".

The answer is clear. It would **not** have been incurred because the mortgage could have been redeemed immediately. The Tribunal concludes that the alleged loss flows not from the acquisition but rather only from the delay, for which the NIHE is not of course criticised, in payment of compensation. The claim is in reality a claim for interest on compensation and not interest as part of compensation. The way in which Parliament has provided for not getting the right amount of money at the right time is statutory interest. It would not otherwise be recoverable.

Further, in the view of the Tribunal, the decided cases make clear that it is not sufficient that a disturbance loss flow from the acquisition, it must flow from the **disturbance from occupation** of a claimant. In this reference, it does not. There has not been any displacement. The claimants continue to occupy the property.

The statutory right to interest is ring fenced and cannot be reduced. But, if contrary to its views, the alleged loss were a disturbance item to be allowed under Rule 6, as a matter of public policy the Tribunal would disallow it to the extent that it would lead to enrichment of the claimants at the expense of the public purse.

Although the question formulated for the Tribunal was, strictly speaking, confined to "disturbance" and did not include "any other matter not directly based on the value of land", the Tribunal regards the latter as a limited category which includes valuer's fees and the like

(see Judge Lee v Minister of Transport) and, if the wider question had been asked, it would have considered the claim not allowable under that category either.

It may be unfortunate that a discrepancy in interest rates between the statutory rate and the effect of a different rate on mortgage loans may result in some, usually modest, loss to claimants. But in the view of the Tribunal that is not a compensatable loss.

The answer to the question put to the Tribunal is "No".

ORDERS ACCORDINGLY

12th September 1996

**Mr Michael R Curry FRICS FSVA IRRV ACI.Arb
Lands Tribunal for Northern Ireland**

Appearances:-

Mr Jonathan Park of Counsel (instructed by Messrs O'Reilly Stewart, Solicitors) for the Claimants.

Ms Heather Gibson of Counsel (instructed by NIHE) for the Respondent.