

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

IN THE MATTER OF A REFERENCE

R/30/1988

BETWEEN

SARAH BUTLER - CLAIMANT

AND

THE NORTHERN IRELAND HOUSING EXECUTIVE - RESPONDENT

Lands Tribunal for Northern Ireland - Mr A L Jacobson FRICS

Belfast - 15th January 1990 and 7th February 1990

This reference concerned a claim for compensation for the leasehold interest in a dwelling house at No 6 Eia Street, Belfast which was compulsorily acquired by the Northern Ireland Housing Executive ("the Executive") by Vesting Order dated 3rd August 1979 which came into force on 14th September 1979. Mrs Sarah Butler claimed compensation on 7th April 1987 from the Executive and referred the matter to the Lands Tribunal on 4th July 1988.

Mr Mark McEwan of Counsel (for the Claimant) called Mrs Sarah Butler to give evidence. Mrs Butler's evidence was most unsatisfactory and on some occasions contradictory eg she told the Tribunal that she moved into the house in 1972 and was in occupation continuously until 1978; in April 1978 while away from the house one weekend a fire was started in the hall of the house and she went (with her four children) to live with her mother at No 29 Eia Street. Later in her evidence she said she went to London on 10th April 1978 and stayed there until some time in 1979.

Again, she told the Tribunal that between 1972 and 1978 she had replastered the walls of the rooms of the house; converted an old room with an old WC into a bathroom; improved the kitchen; installed wash-hand basins in some bedrooms (started by letting one room and eventually had let three rooms); pointed some walls and fixed some roofing slates, guttering and down pipes; rewired and replumbed the house. Yet in 1978 she applied to the Executive for a grant to completely renovate the house.

Many other parts of her evidence were shown to be incorrect by later evidence.

Miss Heather Gibson of Counsel (for the Respondent) called Mr Francis Crilly (Solicitor); Mr Gerard O'Neill (formerly manager for McCormick Hopkins & Co, Estate Agents); Mr Alan Hazlett, ARICS (Senior Valuer in the Valuation and Lands Office) and Mr John Alexander Finlay (Senior Administrative Officer in the Executive) to give evidence.

The Tribunal finds the following facts proved:-

1. By Indenture dated 21st August 1961 between Hugh Anderson and John Ernest Arnott of the first part, John Ernest Arnott and Gerald Desmond Boyle of the second part and Mary Josephine Smith a lease of No 6 Eia Street for 4,000 years from 15th June 1961 subject to an annual ground rent of six pounds was granted.

By Indenture dated 16th June 1962 the above lease was assigned by Mary Josephine Smith to Mary Josephine Smith and her husband Terence Smith as joint tenants.

Mary Josephine Smith died on 16th July 1964.

By Indenture dated 17th January 1972 Terence Smith assigned the lease to Sarah Butler. The consideration was £1,200 but an Indenture of Mortgage dated 18th January 1972 for a sum of £900 required Sarah Butler to pay by instalments (of five pounds per week) of principal and interest at seven per cent per annum to Terence Smith.

2. Terence Smith died intestate on 8th May 1972 and probate was granted on 20th July 1972 to Henry Francis Smith of No 13 Trinity Road, Brighton.
3. Mr Francis Crilly, Solicitor, who had acted for many years for the Smith family, continued to act for Henry Francis Smith.
4. The weekly mortgage payments of £5 per week were not being made. The Estate Agents had received only £15 and a cheque for £35 which was subsequently dishonoured. Mr Crilly wrote to the Claimant by letter of 7th August 1972 demanding arrears to be paid in full forthwith failing which proceedings would be taken to obtain possession.

5. A Notice to Quit was prepared by Mr Crilly and the Estate Agents were instructed to serve same. That notice was dated 29th November 1972 requiring "the quiet and peaceable possession of ALL THAT and THOSE the dwelling house situate at 6 Eia Street in the City and County Borough of Belfast now in your possession as tenant at will by virtue of Mortgage Deed dated 18th January 1972, made between Terence Smith and you," . That notice was served by Mr O'Neill by leaving a copy with a man called "Garland" on the premises at No 6 Eia Street.
6. An Originating Summons for Possession (stamped by the Court on 5th January 1973) was not served nor was it proceeded with; for Mrs Butler proved difficult to find and it was not known whether she was or was not at the house. It was considered that the mortgagee's power of sale meant that it was not necessary to proceed.
7. Mr Crilly made a visit to the house on 29th August 1977. He found the front door lying open, the house abandoned and vandalised. There was no evidence of anyone living in it and it was completely empty of furniture and furnishings.

At that time Mr Crilly considered that he had taken possession on behalf of his client although he had not advised his client prior to vesting and entering the house.

At that time a number of houses in the general area had been abandoned and windows broken due to the general unrest in the area from time to time.

8. Mr Crilly requested the Estate Agent to visit the house. The last day of August the Estate Agent inspected the house and found it in an uninhabitable state.
9. Following an inspection in late April/early May 1978 and information from the Rating Division of the then Department of Finance that the house was not occupied for rating purposes, the Executive on 28th June 1978 issued a "Notice to Execute Works to Unoccupied Premises" under Article 66 of the Housing (Northern Ireland) Order 1976 to the "Persons or Persons Unknown" of 6 Eia Street requiring that "Block up all doors and window openings. Repair main roof and spoutings". That Notice was affixed to the premises at 11.25 am on 29th June 1978.

On 5th September 1978 the Executive's contractor carried out the above work on behalf of the Executive. On 25th October 1978 a Public Notice in the Belfast News Letter included No 6 Eia Street in a list of premises in ruinous or dangerous condition by the Belfast City Council.

10. Inter alia, No 6 Eia Street was compulsorily acquired under the Housing Acts (Northern Ireland) 1890 - 1978 and the Local Government Act (Northern Ireland) 1934 by Vesting Order dated 3rd August 1979 coming into operation on 14th September 1979 for the purpose of a Rehabilitation Scheme known as the Thorndale Avenue Scheme.
11. On 22nd October 1979 a claim for compensation for No 6 Eia Street was made by John J Smith of No 64 Riverdale Park East, Belfast. He was a brother of Henry Francis Smith and made the claim with his brother's knowledge and authority.
12. As a result of the claim negotiations took place between Messrs McCormick McGimpsey and Wimpress (formerly McCormick Hopkins & Co) Estate Agents and the then Valuation Office. Mr Smith's claim for £1,000 compensation had previously been reported as acceptable by the District Valuer and following negotiations the District Valuer on 9th June 1982 confirmed agreement at £1,000.

That compensation was offered to and accepted on 30th October 1982 by Henry Francis Smith "as personal representative of Terence Smith, deceased, and as mortgagee in possession".

13. Mrs Butler on 7th April 1987 claimed compensation for a leasehold interest in No 6 Eia Street. That claim to the Executive was for "to be agreed between parties (Mr Martin of McCrory and Jefferson Estate Agents). £50,000 - Between 6 Eia Street and 10 Eia Street at £20 pw for 14 bedsits". It also stated that the person having custody of the title documents was "Believed NIHE".
14. The District Valuer was instructed on 16th April 1987 to negotiate. His previous files had been destroyed, the house had been completely rehabilitated by the Executive. As a result of the limited information an offer of £2,000 was made on 26th July 1988 on the assumption "that prior to the operative date of vesting you held a compensatable interest".

Such offer was not accepted.

15. Arrears of ground rent (payable under the lease) for some years prior to vesting were paid by Mr Henry Francis Smith. Those arrears totalled £43-54.

Miss Heather Gibson of Counsel (for the Respondent) submitted:-

1. The market value of the leasehold interest had been agreed between expert valuers representing both the mortgagee in possession and the Executive at £1,000. There was no contradicting evidence in front of the Tribunal.
2. Mrs Butler's evidence that she spent a lot of money on improvements and lived in the house until 1978 did not stand up in the light of evidence that only £15 of the mortgage moneys were paid; that ground rent payments were much in arrear; that the house was lying open, empty and vandalised when Mr Crilly and Mr O'Neill visited the premises in late August 1977. Also in the light of a dangerous dwelling notice advertised in the Belfast News Letter dated 25th October 1978 by the Belfast City Council.
3. The acceptable evidence shows that the house was not in good repair and had not been occupied for some length of time by the time the Vesting Order Scheme became operative on 14th September 1979.
4. Mr Crilly, a well-known Belfast Solicitor had been acting for the Smith estate for some years. The Claimant was a mortgagor and the mortgage payments were (and had been for some time) in arrears.
5. Clause 4(vii) of the Indenture of Mortgage reads:-

"The Mortgagor hereby attorns and becomes tenant at will of the mortgaged property at a peppercorn rent during such time as the said principal sum as aforesaid or any part thereof shall remain owing on this security but nothing in this Clause contained shall prevent the Mortgagee from at any time entering or taking possession of the mortgaged property and so determining the tenancy hereby created."

Mr Smith as personal representative was entitled to all the rights of the mortgagee. A Notice to Quit was served and a power of sale arises because of the default of mortgage payments.

If the mortgagor is in possession the best way to get vacant possession is to obtain a Court Order. But if the house is vacant there is no need so to do.

6. Mr Crilly, who was acting for the Smith estate, visited the house on 29th July 1977 and found the premises open, completely unoccupied and vandalised. To all intents and purposes he obtained possession for the Smith estate. In any event he telephoned the Estate Agent and Mr O'Neill inspected the house. Mr O'Neill was also an agent for the estate and he obtained possession.
7. The estate of Terence Smith, (Deceased) was entitled to an interest of a mortgagee in possession and could use the power of sale obtaining the best price possible and accounting for the surplus (if any) over their debt to the mortgagor. In the event the money owing on the mortgage was £885 plus interest accruing up to the operative date of the Vesting Order £401-44. In addition the mortgagee had paid ground rent arrears of £43-54. The agreed compensation of £1,000 did not meet the total debt.
8. Mrs Butler did not apply for compensation until well after the mortgagee had taken possession and had agreed proper compensation for the compulsory acquisition.

Mr McEwan of Counsel (for the Claimant) submitted:-

1. In the absence of an expert valuer to give evidence the only valuation for the leasehold interest in front of the Lands Tribunal must be conceded to be correct viz:- £1,000.
2. Submits Claimant has a compensatable interest for:-
 - (a) the Lease was for 4,000 years subject to a mortgage in favour of Terence Smith (Deceased).
 - (b) although the Executive submits the mortgagee was in possession at the operative date of the Vesting Order:-

- (i) Mr Crilly had gone some way down the road for a Court Order but had not pursued it to finality;
 - (ii) instead Mr Crilly took the view that a Court Order was not required as the property was lying open and vacant;
 - (iii) Mr Crilly had not advised his client, the personal representative, that he could take possession but merely went into the property himself and Mr O'Neill the Estate Agent entered the property next day;
 - (iv) Mr Crilly therefore had not formed the necessary intention to take occupation on behalf of his client.
- (c) If the personal representative had not taken possession prior to vesting then Mrs Butler still had an interest.

Miss Gibson in reply:-

1. There was no necessity to obtain a Court Order for possession when the house was lying open and vacant.
2. Notice to Quit had been served on Mrs Butler who had attorned as a tenant at will in the Mortgage deed. In equity the lessee's interest was no longer in existence.
3. Mr Crilly's evidence was that he technically believed that he could take possession for his client. Whether he advised his client on that matter before or after that date is irrelevant. Mr O'Neill was able to enter the following day and that underlined the taking of possession.

DECISION

On a previous call-over of cases by the Lands Tribunal it was intimated that an application under General Rule 15 of the Lands Tribunal Rules, for a preliminary point of law to be decided, might be agreed between the parties. In the event that was not accepted by the Claimant.

Secondly, on the first sitting of the Lands Tribunal on 15th January 1990 an adjournment was granted to the Claimant because her expert valuer was not available on that date. Yet at the hearing on 7th February 1990 the expert valuer was not in attendance even though his proof of evidence and the Respondent's expert valuer's proof of evidence had been exchanged by the Registrar in accordance with the Lands Tribunal Rules.

The Tribunal finds the open market value of No 6 Eia Street at the operative date of the Vesting Order (14th September 1979) to be £1,000. Mr McEwan quite properly conceded that that figure must be accepted by the Tribunal for there was no evidence for any other sum in front of the Tribunal.

That £1,000 has been paid on 30th October 1982 to the personal representative of Terence Smith (Deceased) as mortgagee in possession.

Mrs Butler's claim dated 7th April 1987 was as lessee whose deeds (she believed) were with the Executive. The evidence she gave to the Tribunal in the main was unacceptable, bearing in mind her demeanour coupled with some important contradictions. The Tribunal accepts in full the evidence given by Mr Crilly, Mr O'Neill and Mr Finlay on behalf of the Respondent.

Thus the mortgage payments were much in arrears; a notice to quit had been given; Mr Crilly on his visit to the house found it lying open, vacant and vandalised; Mr O'Neill a day or two later found it to be uninhabitable; the Executive had given notice that it should be bricked up and the roof and downspouts put in order and finally the Executive compulsorily acquired it for the purposes of a Rehabilitation Scheme known as the Thorndale Avenue Scheme.

The Tribunal accepts that at the operative date of the Vesting Order the mortgagee was in possession :and therefore was entitled to the compensation for the house at open market value for the house with vacant possession but in its vandalised state. The Tribunal has already found that value to be £1,000 which has already been paid to the mortgagee in possession. The Tribunal finds that the claimant, Mrs Butler, has not a compensatable interest.

The Tribunal reserved the costs of the first hearing which was adjourned because the Claimant's expert value was unavailable - yet no valuation evidence was called on the Claimant's behalf at the second hearing.

The Claimant will pay the Respondent's reasonable costs of both days of the hearing, such costs if not agreed to be taxed by the Registrar of the Lands Tribunal on the County Court Scale.

ORDERS ACCORDINGLY

23rd February 1990

**Mr A L Jacobson FRICS
Lands Tribunal for Northern Ireland**

Appearances:-

Mr Mark McEwan of Counsel (instructed by Messrs Bogue and McNulty, Solicitors) for the Claimant.

Miss Heather Gibson of Counsel (instructed by the Legal Services Section of the Northern Ireland Housing Executive) for the Respondent.