

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

R/35/1998

BETWEEN

PAUL ROSS & LINDA ROSS - APPLICANTS

AND

MARGARET JOHNSTON – RESPONDENT

Part II

In the matter of Costs

PROPERTY: 291 UPPER ROAD, GREENISLAND, CARRICKFERGUS

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

1. By a decision of the Tribunal on 18th October 1999 on a preliminary point, the Respondent succeeded in her contention that Article 5(2) of the Property (NI) Order 1978 applied in the circumstances of the case: ie that permission of the Tribunal was required to bring the application and further that permission ought to be refused. The parties being unable to agree the allocation or amount of costs, the issues eventually were referred to the Tribunal. The Respondent sought to recover the costs that she had paid to her former solicitor and to counsel. Her solicitor also further sought the additional costs incurred in seeking to recover them.
2. The parties agreed they would deal with the issues by way of written representations. For convenience, the Tribunal continues to refer to the parties as they appeared, as Applicants and Respondent, in the preliminary point.
3. The Respondent's former solicitors' bill was produced and that was for an amount of £3,000 together with a brief fee of £1,500 paid to counsel and VAT on both items.
4. The solicitors for the Applicants pointed out that the matter was dealt with by the Tribunal as a preliminary application with the aim of saving on the costs of the substantive case. They accepted the general presumption that costs follow the event

- a. The Applicants' case was wholly meritorious;
 - b. The Applicants were not persons of considerable means; and
 - c. The Applicants were prevented from reaping the financial rewards of the business that they proposed to run from the premises and the Respondent had the continuing benefit of the covenant, which protected their commercial interest although the covenant was not included in the Fee Farm Grant for that purpose.
5. In response, the Respondent's solicitors suggested that since they failed in the litigation, the facts of Applicants' circumstances do not touch on the allocation or assessment of costs.
6. The Tribunal is not persuaded that the matters at 4 above, brought to its attention (that the case was meritorious; that the applicants were not persons of considerable means; or the significance of the commercial consequences as they were at the time for both parties) are relevant considerations that justify a departure from the general rule.
7. On the issue of the amount claimed, the solicitors for the Applicants suggested that:
 - a. The amount of costs claimed by the Respondent is excessive in the context of a preliminary hearing of a very net issue;
 - b. There were other difficulties in the parties' relationship as neighbours; in particular, there had been a dispute relating to a boundary fence etc and it appeared from the bill prepared by their former solicitors that it related to all matters on they had advised the Respondent. It was suggested that the work carried out by their legal representatives went outside the scope of the Article 5(2) Application; and
 - c. No detailed breakdown of costs was produced.
8. In response, the Respondent's solicitors relied on the view of their client's former solicitors that this was a very important and complex case, and they "feel that the fee furnished is fair".

9. It is clear from the bill furnished by the former solicitors that it included work outside the scope of the Lands Tribunal case and outside the scope of the preliminary point. Although invited to provide clarification and an apportionment, they opted to produce nothing more than an unsupported opinion that the fee furnished was fair.
10. Had the preliminary point not gone to a hearing, in the absence of any itemised allocation, the Tribunal would have been minded to allocate costs broadly equally (ie £1500) to each of the three areas of dispute – fencing, substantive issue, preliminary point. However one did go to a hearing. Although it was only an application for permission, not but novel and difficult issues were involved, and the Tribunal attributes a greater proportion to that area of dispute.
11. The Tribunal is persuaded that costs should be awarded to the Respondent, but a significant reduction is appropriate. The Tribunal awards a total sum of £2,000 plus VAT.
12. Having regard to the fact that the amount awarded is significantly less than the amount claimed and having regard to the manner in which the case for the amount claimed was supported the Tribunal makes no order as to the additional costs incurred in this application for costs.

ORDERS ACCORDINGLY

12th September 2003

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

Appearances:

Applicants: James J Macaulay of James J Macaulay Solicitors.

Respondent: Linda Emery of J G O'Hare & Co Solicitors.