

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

**IN THE MATTER OF AN APPLICATION**

**R/40/1991**

**BETWEEN**

**JAMES STEWART - APPLICANT**

**AND**

**SARAH JANE GORMAN AND COTTON, TURNBULL AND WATT - RESPONDENTS**

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

**Ballymena - 23<sup>rd</sup> March 1991**

This was an application to the Lands Tribunal dated 8<sup>th</sup> November 1991, by Mr Stewart, under Section 24 of the Leasehold (Enlargement and Extension) Act (Northern Ireland) 1971 ("the 1971 Act"). It sought determinations as follows:-

- "(a) that the applicant may be entitled to acquire the freehold reversion in the premises [No 36, Mill Park, Ballymena, Co Antrim];
- (b) that a person be appointed to act in lieu of all necessary parties for the purposes of the said acquisition;
- (c) that the appropriate purchase price be determined;
- (d) how the said purchase price be divided among the superior interests;
- (e) any other matter which is required to be considered under the Leasehold (Enlargement and Extension) Act (Northern Ireland) 1971."

Mr David McBrien of Counsel appeared for the Applicant.

Mr Patrick Good of Counsel appeared for the second named Respondent.

Mrs Sarah Jane Gorman made no appearance.

In the course of the hearing it became apparent that although Mrs Gorman had been served, by the Registrar, with a copy of this application to the Lands Tribunal she had made no reply to the Registrar's letter of 13<sup>th</sup> November 1991, nor did she appear at two subsequent call-overs of cases by the Lands Tribunal. Nevertheless (in error) no notification of the date of this hearing was sent to Mrs Gorman. The Tribunal continued with this hearing which concerned legal matters only and the Registrar was instructed to write Mrs Gorman to request whether she would wish to be heard when a subsequent hearing would be arranged.

As a result, a hearing was arranged for 10<sup>th</sup> June 1992 to enable Mrs Gorman (or someone representing her) to make any necessary representations. There was no appearance.

The Following facts were submitted:-

1. By Indenture of 6<sup>th</sup> August 1907 between Sir Fredrick Edward Shafto Adair and Hugh McManus and Edmund McManus a plot of building ground was leased for a term of 91 years from 1<sup>st</sup> May 1907 subject to a rent of £23 per annum.

Number 36 Mill Park was one of the houses erected on that plot.

No question was raised as to whether that rent required apportionment.

By Indenture dated 26<sup>th</sup> June 1952 between Sarah Jane Gorman and James Stewart No 36 Mill Park was sub-leased for the remainder of a term of 91 years from 1<sup>st</sup> May 1907 subject to a rent of £3 per annum. Mr Stewart was in occupation at that time under a periodic tenancy.

2. Mr Stewart's solicitor wrote on 2<sup>nd</sup> August 1988 to Mrs Gorman to say that Mr Stewart wished to purchase the freehold.

There was no reply and on 1<sup>st</sup> September 1988 a similar letter was sent to Messrs A S Merrick and Sons, Solicitors who were understood to be Mrs Gorman's solicitors. A reminder dated 23<sup>rd</sup> September 1988 was sent to Messrs A S Merrick and Sons but no reply was received.

3. On 25<sup>th</sup> April 1989 a notice was served on Mrs Gorman under Section 4(1)(a) of the 1971 Act requiring information of any superior interest. No reply was received but

although under Section 5 of the 1971 Act Mr Stewart could have applied to the Lands Tribunal for an order compelling Mrs Gorman to furnish such information, no such application to the Lands Tribunal was made.

On 31<sup>st</sup> May 1989 a further reminder was sent to Mrs Gorman giving her a six week time limit to answer - such limit to run from the date of the previous letter viz:- 25<sup>th</sup> April 1989.

4. On 31<sup>st</sup> May 1989 Mr Stewart's solicitors wrote Messrs McCartney and Crawford, Solicitors enquiring whether they could confirm that the head rent reserved on No 36 Mill Park vested in the Adair Estate for whom Messrs McCartney and Crawford acted.

A reminder dated 14<sup>th</sup> June 1989 was sent to Messrs McCartney and Crawford who replied on 16<sup>th</sup> June 1989 that the head rent in respect of No 36 Mill Park was not collected by them.

5. On 22<sup>nd</sup> June 1989 Mr Stewart's solicitors wrote A S Merrick and Sons following a telephone conversation and asking if any trace of correspondence in the matter had been found.

A reminder was sent on 18<sup>th</sup> September 1989 but there was no reply.

6. On 8<sup>th</sup> January 1990, Mr Stewart's solicitors wrote Messrs Shean Dickson and Merrick, Solicitors, referring to previous correspondence, various telephone conversations and to Notices sent to their client, Mrs Gorman. The letter required the formal provision of the information requested in the Notice of 25<sup>th</sup> April 1989 by return; otherwise a reference would be made to the Lands Tribunal for an appropriate Order.

There was no reply and no reference to the Lands Tribunal for an appropriate Order was made.

7. On 19<sup>th</sup> February 1990 Mr Stewart's solicitors wrote Messrs Peden and Reid, Solicitors, requesting advice as to whether clients of that Firm held an interest in No 36 Mill Park with regard to a possible acquisition of the freehold.

A reply from Messrs Peden and Reid dated 21<sup>st</sup> February 1990 referred to a possible mistake (in the letter received) in the date of the Head Lease.

8. On 26<sup>th</sup> February 1990 Mr Stewart's solicitors wrote Messrs Peden and Reid correcting the error.

On 16<sup>th</sup> March 1990 the reply from Messrs Peden and Reid indicated that the Head Lease in question was not included in their client's acquisition in 1962 from the Adair Estate and suggesting that Messrs Caruth and Bamber, Solicitors, may be able to give some assistance.

9. On 21<sup>st</sup> March 1990, Mr Stewart's solicitors wrote Messrs Caruth and Bamber requesting advice as to whether their clients held the Head Lease.

A reply dated 28<sup>th</sup> March 1990 from Messrs Caruth and Bamber advised that Messrs Cotton Turnbull and Watt were now the fee-simple owners of No 36 Mill Park.

10. On 30<sup>th</sup> March 1990, Mr Stewart's solicitors wrote Messrs Caruth and Bamber indicating that Mr Stewart first intimated his wish to acquire the freehold of the premises by letter to the intermediate landlord Mrs Gorman on 2<sup>nd</sup> August 1988. The letter further requested on what terms Mr Stewart might purchase the freehold.

There was no reply and reminders were sent on 4<sup>th</sup> May 1990, 29<sup>th</sup> May 1990 and on 7<sup>th</sup> January 1991. The last reminder indicated if a reply was not shortly forthcoming a reference of the matter would be made to the Lands Tribunal.

11. On 24<sup>th</sup> January 1991, Messrs Crawford and Lockhart, Martin H Turnbull and Co, Solicitors wrote Mr Walker's solicitors referring to previous correspondence with Messrs Caruth and Bamber and a subsequent telephone conversation. The letter advised that the matter was being looked into and a reply would be shortly made.

12. On 6<sup>th</sup> February 1991 Messrs Crawford and Lockhart, Martin H Turnbull and Co wrote Mr Stewart's solicitors as follows:-

"We cannot see that your client presently complies with the conditions laid down in Section 1(3) of the Leasehold (Enlargement and Extension) Act 1971 nor are we aware of a Notice being served on our clients under Section 2(1)(B) of that Act. We therefore do not consider that your client is entitled to acquire the freehold under the said Act.

However, our clients naturally would not wish your client's position to be prejudiced in any way by the explosion caused by the bomb adjacent to the Police Station. Therefore, provided your client would otherwise have met all the conditions laid down by the Act, our clients would be prepared to negotiate with your client subject to the following:-

1. That he has submitted and intends to pursue a claim for compensation to allow him to reinstate the premises in accordance with the covenants and obligation in the Lease.
  2. That when compensation is received by your client that he reinstates the premises in accordance with those covenants and obligations.
  3. That he resumes residence in the property as his principal residence."
13. On 8<sup>th</sup> February 1991, Mr Stewart's solicitors wrote Messrs Crawford and Lockhart, Turnbull and Co as follows:-

"We thank you for your letter of 6<sup>th</sup> February and note your comments. Upon perusing the Act we consider that the relevant date upon which our client must comply with all the conditions set out in the Act is the date upon which our client first intimates his intention to acquire the freehold.

We wrote on behalf of our client on 2<sup>nd</sup> August 1988 to Mrs Sarah Jane Gorman the person who at that time was entitled to the next Superior Estate in the premises indicating our client's desire to acquire the freehold and requesting information with regard to the identity of her legal advisors and also the party to whom she paid ground rent in respect of the Head Lease.

In addition we wrote to Messrs A S Merrick and Sons on 1<sup>st</sup> September 1988 upon the basis that that firm acted on behalf of Mrs Sarah Jane Gorman and in that letter we requested the terms upon which the purchase of the freehold could be made.

In these circumstances we would therefore request that you let us have terms upon which our client can acquire the freehold in the premises with the protection of the Act."

On 27<sup>th</sup> February a reminder was sent to Messrs Crawford and Lockhart.

On 6<sup>th</sup> March Messrs Crawford and Lockhart, Martin H Turnbull and Co replied referring to the position stated in their previous letter of 6<sup>th</sup> February 1991.

14. Mr Stewart initially rented No 36 Mill Park prior to purchasing by Indenture of 26<sup>th</sup> June 1952. On 25<sup>th</sup> March 1990 the explosion in the immediate vicinity damaged No 36 Mill Park. Mr Stewart, who was at the time inside the house, was badly shocked and since then he went to live with his daughter at No 57 Glenariff Crescent, Ballymena. He has no intention of returning to live at No 36 Mill Park.

A claim for compensation was lodged with the Northern Ireland Office but has not yet come to fruition - the Lands Tribunal was not informed as to why after two years no progress seems to have been made.

Mr David McBrien of Counsel (for the Applicant) submitted:-

1. Both 30<sup>th</sup> March 1990 (the date of the letter from Applicant's solicitor to Messrs Caruth and Bamber) and 7<sup>th</sup> January 1991 (the date of the last reminder to Messrs Caruth and Bamber) are relied on by the Applicant as showing his wish to buy the freehold. However, a statutory notice served on any category of lessor starts the statutory procedure laid down by Section 2(1) of the 1971 Act. Section 2(3) of the 1971 Act allows any individual notice which is defective to be amended at the discretion of the Lands Tribunal.
2. The application to buy the freehold should not be defeated because of terrorist action for:-
  - (a) the qualifying date for the Applicant is 2<sup>nd</sup> August 1988 (the date of the letter to Mrs Gorman saying Mr Stewart wished to buy the freehold). It does not matter what happened subsequently eg the house being damaged, Mr Stewart going to live elsewhere and not wishing to take up occupation again;
  - (b) if the Lands Tribunal did not accept that date and preferred some later date it would be contrary to public policy to deprive the Applicant of his legitimate statutory right eg if the Lands Tribunal preferred January 1991 it would produce a harsh result which would be contrary to public policy. Refers to Poland v Earl Cadogan [1980] 3 All ER 544 and to Steele v Wilson R/9/1987 a decision of this

Lands Tribunal. The latter can be distinguished for the occupier in that case had taken ill, had voluntarily left and taken up residence in an hotel next door.

3. Submits that there is no authority to be found - that leaves an "open field" to the Lands Tribunal. Refers to Woodfall - Landlord and Tenant and to Volume 27 of Halsbury's Laws @ p 750 para 1019 onwards.
4. If the Lands Tribunal holds that the notice of 2<sup>nd</sup> August 1988 was defective in that it was not served on all parties on 2<sup>nd</sup> August 1988 then the Lands Tribunal has been given the discretion by Section 2(3) of the 1971 Act to amend that notice in any way the Lands Tribunal sees fit.

Mr Patrick Good of Counsel (for the second named Respondent) submitted:-

1. In Section 2(1) of the 1971 Act the language used is patently clear. A person proposing to purchase the fee simple must serve a notice on each person who can be found and ascertained. The word "each" coupled with the conjunctive nature of Section 2(1)(a), (b), (c) and (d) make it clear that it is not sufficient to serve notice on one of the four persons as Mr McBrien's construction would have it.
2. The words finding and ascertaining - the bundle of documents submitted by the Applicant shows that his solicitor knew of Section 4 of the 1971 Act and (eventually) served a formal notice on 25<sup>th</sup> April 1989. No reply was received from that Section 4 notice and the Applicant could have used the punitive powers of Section 4(5) of the 1971 Act through the Lands Tribunal. If the Applicant had so done this case would not have arisen for the house was not damaged until some 10 months later.
3. The house was not occupied, therefore, at any relevant date of 30<sup>th</sup> March 1990 or 7<sup>th</sup> January 1991 for the house was then damaged, the Applicant had moved to his daughter's house and did not intend to return.
4. Refers to Woodfall 4<sup>th</sup> Volume @ p 3579 and paragraph 3-0961 where the proposition is put forward that the relevant date is the date that proper notice is given.

Submits that if the Applicant had served notice on the fee simple owner on the day before the house was damaged his application would be valid.

5. The Applicant now wishes to purchase the fee simple of a house which he does not intend to occupy.
6. The notices in the two letters to the owner of the fee simple are not in the prescribed form and do not contain all the particulars they should. The onus is on the Applicant to comply with the statutory procedure. A solicitor who deals with a large estate may have a number of enquiries regarding the purchase of a freehold which may not come to fruition as an acquisition under the 1971 Act.
7. Section 2(3) of the 1971 Act cannot be applied to the notices to the freeholder for they are not merely defective but out of time. The Lands Tribunal cannot use its discretion properly if the notice is out of time.

Mr David McBrien in reply:-

1. Section 25 of the Interpretation Act (Northern Ireland) 1954 deals with the question of minor deviations in a prescribed form of notice.
2. The problem of serving a notice with letters may result in many difficulties. In this case the Applicant's solicitors kept pressing and did not let the matter lie dormant.
3. Section 15(1) of the 1971 Act covers the point of representation by Mrs Gorman.

### **DECISION OF THE LANDS TRIBUNAL**

Two preliminary matters were raised in this case:-

#### **Firstly:-**

"That as the applicant has failed to occupy the subject buildings, situate at and known as 36 Mill Park, Ballymena, County Antrim, as a sole or principal residence, since 25<sup>th</sup> March 1990, whether the applicant fails to fulfil the provisions of Section 1(3)(e) of the Leasehold (Enlargement and Extension) Act (Northern Ireland) 1971."

#### **Secondly:-**

"Whether the failure of the applicant to serve a Notice of Intention to Acquire the Fee Simple upon Messrs Cotton Turnbull and Watt, c/o Caruth and Bamber, Solicitors,

Wellington Street, Ballymena, being the persons who are in relation to the lands superior lessors of the applicant as required by Section 2(1)(b) of the Leasehold (Enlargement and Extension) Act (Northern Ireland) 1971 causes the instant application to fail."

Those matters were put forward by the second named Respondent.

The relevant parts of the 1971 Act are as follows:-

**Section 1(1)** "A person who, as respects any land, is a person to whom this section applies, shall subject to the provisions of this Act, have the right as incident to his existing estate in the land -

(a) to enlarge that estate into the fee simple, and for that purpose to acquire by purchase the fee simple in the land and any intermediate estates therein".

**Section 1(3)(e)** "Subject to subsections (4) and (6), this section applies to every person where -

(e) the person occupies the buildings in whole or in part by virtue of the lease as his sole or principle residence and is not by reason of such occupation in breach of a covenant in the lease;"

It is common case that all other requirements of Section 1 of the 1971 Act are satisfied by the Applicant. As far as the requirement of Section 1(3)(e) of the 1971 Act it is agreed that the Applicant was occupying the building as his sole or principal residence at the time of his first letter of 2<sup>nd</sup> August 1988 to Mrs Gorman indicating his wish to purchase. But from the damage to the house on 25<sup>th</sup> March 1990 the Applicant has not occupied the house nor does he intend to return to occupy. Thus by the time of his letters to the solicitors representing the fee simple owners (on either 30<sup>th</sup> March 1990 or 7<sup>th</sup> January 1991) the Applicant could not satisfy the requirements of Section 1(3)(e) of the 1971 Act.

**Section 2** - "(1) Where a person proposes to acquire the fee simple in the land or an extension of his leasehold estate in the land by virtue of this Act he shall serve a notice in the prescribed form upon each of the following persons who can be found and ascertained, that is to say, -

(a) the person who is for the time being entitled to the next superior estate in the land; and

- (b) every person (if there be any such person) who is, in relation to the land, a superior lessor of the person so proposing; and
- (c) every mortgagee of the land (if there be any such person); and
- (d) every owner of any other encumbrance affecting the land (if there be any such person)."

The form is prescribed by regulations made under Section 32 of the 1971 Act (Leasehold (Enlargement & Extension) (Notices) Regulations (Northern Ireland) 1971 No 140).

Mr McBrien argued that the letter of 2<sup>nd</sup> August 1988 to Mrs Gorman satisfied the requirements of Section 2(1) of the 1971 Act, but in any case the letters of 30<sup>th</sup> March 1990 and 7<sup>th</sup> January 1991 showed the Applicant's wish to buy the freeholder's reversionary interest.

Two matters arise from that argument:-

- (i) does the word "and" between sub-paragraphs (a), (b), (c) and (d) cause Section 2(1) to be read conjunctively? Mr McBrien's view was that once a person had served a notice on the immediate lessor the determination of the purchase price of the fee simple has to be found at the date of the service in accordance with the requirements of Section 14 of the 1971 Act. That leads to the absurdity in this case that the freeholders first heard of the lessee's wish to purchase the fee simple reversion some two years later - at which time the lessee was not in occupation and did not intend to return. Mr McBrien called in aid one or two decisions of this Lands Tribunal where that date was taken to be the relevant date when the fee simple reversioner could not be found. That view ignores the wording of Section 2(1) of the 1971 Act that "he shall serve a notice in the prescribed form upon each of the following persons who can be found and ascertained ...". It also ignores the fact that on those particular decisions the applicant's solicitor had gone to great lengths to try to find the reversioner (his heirs or assigns) but in vain.

The Tribunal prefers Mr Good's view that Section 2(1) of the 1971 Act must be read conjunctively. A person wishing to purchase the fee simple under the terms of the 1971 Act should have discovered his superior lessors prior to serving notices. The 1971 Act provides in Section 4 a means of so discovering. In fact the Applicant in

this case issued a Section 4 notice requiring information from Mrs Gorman but when that notice was not complied with did not in accordance with Section 4(5) apply to the Lands Tribunal for an Order compelling the furnishing of the information required (and the Tribunal notes that "any such order may be enforced by mandamus").

All the enquiries should have been made before any notice under Section 2 was served ie "upon each of the following persons who can be found and ascertained ...".

- (ii) The letter to Mrs Gorman dated 2<sup>nd</sup> August 1988 and the two letters of 30<sup>th</sup> March 1990 and 7<sup>th</sup> February 1991 to the freehold reversioner were not in the prescribed form required by the regulations.

The Lands Tribunal has the statutory discretion given it to perfect any such notice by Section 2(3) of the 1971 Act viz:-

"Where for any reason whatsoever a notice served under subsection (1) is defective, the Lands Tribunal may allow the person who served the defective notice to serve an amended notice within such time and subject to such order as to costs as the Tribunal may determine."

No application could possibly be made at this hearing allowing the service of an amended notice at this stage - more than 3½ years have passed since the commencing letter of 2<sup>nd</sup> August 1988 and the Applicant does not reside in the house and has no intention to return.

Section 25 of the Interpretation (Northern Ireland) 1954 enables minor deviations from a prescribed form to be corrected, viz:-

"Where a form is prescribed or specified by any enactment, deviations therefrom not materially affecting the substance nor calculated to mislead, shall not invalidate the form used."

The letters sent to Mrs Gorman on 2<sup>nd</sup> August 1988 and to Messrs A S Merrick and Sons, Solicitors on 1<sup>st</sup> September 1988 were submitted to be notices complying with Section 2(1). The same submission was made in respect of the letters of 30<sup>th</sup> March 1990 and 7<sup>th</sup> January 1991 to Messrs J & A Caruth and Bamber, Solicitors.

But all of those letters could have been read as mere enquiries as on what terms could the freehold be acquired. The answer might well have been a sum of money that would have made the Applicant change his mind. None of those letters intimated that the Applicant was pursuing his rights under the 1971 Act, be that as it may, did those letters contain most of what was required by a form prescribed in the Regulations so that it might be deemed to be a valid form?

These Regulations prescribe a simple Form No 1 which is a formal notice declaring that the signatory is a person to whom Section 1 of the 1971 Act applies. As far as the letter to Mrs Gorman is concerned the Tribunal would find little or no difficulty but not so with the letters of 30<sup>th</sup> March 1990 and 7<sup>th</sup> January 1991.

The Applicant therefore fails on all accounts:-

1. He did not serve a notice in the prescribed form or a notice with deviations not materially affecting the substance on each of the persons required by Section 2(1)(a) and (b) of the 1971 Act.
2. The Tribunal would not exercise properly the discretion given to it by Section 2(3) of the 1971 Act if it allowed the Applicant to serve an amended notice at this day's date.
3. By the time any indication was given to the freehold reversioner the Applicant no longer complied with Section 1(3)(e) of the 1971 Act. Although that might have been temporary pending compensation being awarded for the criminal damage caused by the explosion, and the house being put back into repair the Applicant does not intend to take up occupation again in No 36 Mill Park.

The Tribunal dismisses the application.

The Tribunal makes no order as to costs.

**ORDERS ACCORDINGLY**

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

**Appearances:-**

**Mr David McBrien of Counsel (instructed by Messrs Samuel Cumming and Son, Solicitors) for the Applicant.**

**Mr Patrick Good of Counsel (instructed by Messrs Crawford and Lockhart, Martin Turnbull and Company, Solicitors) for the second named Respondent (Messrs Cotton Turnbull and Watt).**

**No appearance by the first named Respondent, Mrs Sarah Jane Gorman.**