

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982

IN THE MATTER OF AN APPLICATION

R/41/1999

BETWEEN

SEAMUS DAMIAN BRADY - APPLICANT

AND

NORTHERN IRELAND HOUSING EXECUTIVE - RESPONDENT

Property: 19 Spamount Street, Belfast

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

Belfast - 1st March 2001

Mr Seamus Damian Brady had owned a house at 19 Spamount Street, Belfast ('the old house'). In October 1996 the house was compulsory acquired from him by the Northern Ireland Housing Executive ('the Housing Executive'). Things got worse: he was ill and off work from the 5th August 1997 and then he was made redundant in November 1997.

In accordance with their statutory duty, in November 1997, the Housing Executive had rehoused him by giving him a tenancy of a house at 17 Portland Place ('the new house'). Although jobless, almost immediately Mr Brady applied to purchase the new house but did not proceed to completion. The new house was worth about 10% more than the old house but Mr Brady had had a mortgage and his equity in the old house was only about 50% of the open market value.

In October 1998, things improved - he got a new job. In November 1998, he applied to buy the new house from the Housing Executive. The sale was duly completed.

Mr Brady claimed the costs and outlay of that purchase as a disturbance amount flowing from the loss of his old house. However, the Northern Ireland Housing Executive declined to pay, they said that the essential causal connection between the acquisition of

the old house and the purchase of the new house was missing: the chain was broken when, in November 1997, he applied to purchase the new house but did not then proceed to completion.

The Tribunal was asked to determine whether or not he was entitled to recover those costs and outlay.

Mr Joe Allen, a Chartered Surveyor, appeared for the Applicant, by leave of the Tribunal and Mr Brady gave evidence.

Ms Heather Gibson BL instructed by Northern Ireland Housing Executive Legal Department appeared for the Respondent. Mrs Sheila Black, an employee of the NI Housing Executive who had a responsibility for the administration of housing benefit also gave evidence.

The Tribunal was referred to a number of cases:

Harvey v Crawley Development Corporation (1957) 8 P&CR 141 CA; [1957] 1 QB 485 CA; [1957] 1 All ER 504 CA; [1957] 2 WLR 332

Rutter v Manchester Corporation 1974 RVR 372 LT

Clarke v Wandsworth District Board of Works (1868) 17 LT 549

Horn v Sunderland Corporation [1941] 2KB 26; [1941] 1 All ER 480

and also considered at the Hearing:

Director of Buildings and Land v Shun Fung Iron Works Ltd [1995] 2 AC 111 PC

Mr Brady was questioned closely about exactly when he had become unemployed. The precise details were not entirely clear but, from the evidence of both Mr Brady and Mrs Black, in November 1997, when he first applied to buy the new house he was unemployed. He said that he had not decided to buy the new house at that stage: he did not know the price and he was unemployed. He said that he had made the application to see what the procedure was and what the cost would be. He did not expect to be out of work for long and he wanted to know whether he could purchase the house when employed again but he accepted that he had not indicated any future intention to buy at the time.

“The application of the general principles of fair and adequate compensation bristles with problems.” - Shun Fung - but there are useful guidelines - three conditions which must be satisfied:

- there must be a causal connection between the acquisition and the loss in question
- the loss must not be too remote, and
- fairness requires that those who claim recompense behave reasonably.

Although not all former owners who were rehoused as tenants in new houses went on to buy the houses, it was not suggested that, in principle:

- the consequential costs and outlay would be a loss that was too remote, nor that
- it would have been unreasonable behaviour for Mr Brady to purchase a replacement house.

The issue for the Tribunal turned on whether there was a sufficient causal connection between the acquisition and the loss in question.

Although business relocation is not quite the same as domestic relocation, many of the principles are similar and developments in the law in regard to one should not lightly be withheld from the other. In Shun Fung the majority gave an extended meaning to the concept of causal connection - a less strict approach - and, in the view of the Tribunal, the application of the underlying principle should not be confined to the particular circumstances of that business case.

A primary issue in Shun Fung concerned relocation (at page 128):

“The first issue: the claimant company’s relocation claim

Three principal questions arise on relocation claims. (1) Can the business be relocated, or has it effectually been extinguished? Most businesses are capable of being relocated, but exceptionally this may not be practicable: for example, another suitable site may not exist. If the business is not capable of being relocated, then perforce compensation will have to be assessed on the extinguishment basis. (2) Does the claimant intend to relocate? The claimant must have reached a firm decision to relocate his business, and he must be reasonably assured that he will be able to do so. (3) Would a reasonable businessman relocate the business?”

And, in particular, the inability of the claimant to relocate unless he received adequate compensation (at page 130):

“The qualification concerning receipt of sufficient compensation is to be noted. This does not negative the intention to relocate. Compensation cannot be assessed on a relocation basis unless the claimant has moved his business or intends to do so. If he has already moved his business by the time of the hearing, this particular point does not arise. If he has not done so, the tribunal needs to satisfy itself that the claimant will do so. But many a person who has to close down his business because his land is taken compulsorily does not have sufficient other means of his own to move and set up again at another place. He may be desperately anxious to resume his business at another site he has found, but unless he receives enough compensation, he is not financially able to do so. Such a claimant does not lack the necessary intention to relocate. If he receives adequate compensation for his loss, it will be duly applied in meeting the expenses for which it was awarded to him. The Court of Appeal was therefore correct in holding that, on the tribunal’s findings, the claimant company had the necessary intention to relocate.

This is not to say that the qualification concerning receipt of sufficient compensation is irrelevant in the present case. It furnishes an explanation on a point arising on the third of the relocation claim questions.”

So far as the instant case is concerned, much turned on the question of intention. Ms Gibson submitted that, from his own honest answer, when Mr Brady first applied to purchase in November 1997 it was quite clear that at that time he had not made his mind up to purchase. She submitted that the intention to buy only came about in October 1998 when he made the second application. Ms Gibson’s submission was that the thread of continuity of intention had been broken and it followed that the chain of causation had been broken.

Mr Allen submitted that Mr Brady’s first application to buy was not a frivolous application. His intention was to become a home owner again.

From the evidence, the Tribunal finds that it is clear that the primary obstacle to the purchase of a replacement house by Mr Brady was the absence of any job. Before he lost his old house he had a mortgage in place and, when he became unemployed, might have been entitled to some assistance to fund that. Afterwards, with no job, he was

unable to afford a mortgage. Although that was the position at the time of his first application to buy the new house, Mr Brady did not see that condition as permanent.

There is an important distinction between intention and ability - a distinction that has been highlighted in the cases about landlords' opposition to the grant of new business tenancies (most recently in this Tribunal in McCandless v Lynch [2001] BT/65/2000). In Shun Fung the inability arose because of the absence of payment of the compensation itself and in this case the difficulty arose as a result of action by a third party - Mr Brady's employer at the time of the compulsory acquisition. But whatever the reason for the inability, the need to make the distinction remains: was Mr Brady's intention constant although clearly his ability was not?

The Tribunal accepts that in plain words Mr Brady said he did not intend to purchase the new house at the time of his first application. But it would be wrong to consider that statement in isolation or take it too literally. When his evidence is considered in its totality, it is apparent that what he meant was that he accepted that he did not have the ability to purchase at that time: he had not given up on the underlying intention to become a home owner again. Actions speak louder than words: immediately he was in a position to proceed with a purchase, he did so. The Tribunal is persuaded that the intention to purchase, although not the ability, was there from long before the time of the actual purchase of the new house and was due to the acquisition.

The Tribunal finds that Mr Brady was entitled to recover the costs and outlay in the purchase of the new house and so orders.

ORDERS ACCORDINGLY

6th June 2001

**Mr Michael R Curry FRICS Hon.FIAMI IRRV MCI.Arb
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances:-

Mr Joe Allen appeared by the Applicant.

**Ms Heather Gibson BL instructed by NI Housing Executive Legal Department
appeared for the Respondent.**