

LANDS TRIBUNAL FOR NORTHERN IRELAND
THE LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982
LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972

IN THE MATTER OF A REFERENCE

R/49/2009

Part II

BETWEEN

DONAL & VIVIENNE O'NEILL – CLAIMANTS

AND

NORTHERN IRELAND HOUSING EXECUTIVE – RESPONDENT

In the matter of costs

Re: 57 Glenwood Street & 94 Battenburg Street, Belfast

Lands Tribunal - Mr M R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAMI

Background

1. The Claimants were the owners of 57 Glenwood Street, Belfast which was compulsorily acquired by the Respondent. As the mortgage debt exceeded the market value of the lands, it follows that the Claimants were in what is commonly termed 'negative equity'. They sought to recover some or all of that negative equity as compensation, from the Respondent. The Tribunal agreed to address a number of preliminary questions arising from that. The key issue was whether the Respondent, as a promoter pursuant to the Land Clauses Consolidation Act 1845, was bound to discharge all or any of the mortgaged debts secured on the property where the assessed compensation fell below the current redemption figure. For the reasons set out in its [Part I] decision of the 18th August 2010 the Tribunal concluded that it was not. Therefore the Claimants had lost on the key issue.
2. Both parties now have sought to recover their costs.

Procedure

3. The Tribunal received oral submissions from Mr Keith Gibson BL and from Mr Patrick Good BL.

Position of the parties

4. Mr Gibson BL suggested that the Claimants should be allocated their reasonable costs.
5. Mr Good BL suggested that the Respondents should be allocated their reasonable costs or in the alternative he suggested there should be no order as to costs.

Discussion

6. The Tribunal was referred to:

- Purfleet Farms Ltd v Secretary of State for Transport, Local Government and the Regions [2002] EWCA Civ 1430; and
- Blakes Estate Ltd v Government of Montserrat [2005] UKPC 46;

and decisions of this Tribunal:

- Dawn Bell v South Eastern Health and Social Services Trust [2004] R/10/2002 Part II;
- McMahon and Anr v Kingsmoat Developments Ltd [2003] R/40 & 41/2002; and
- Oxfam v Earl & Ors [1996] BT/3/1995;

7. Mr Good BL suggested that, as the Claimants would receive their ordinary, usual costs paid to their valuers and solicitors in connection with all other aspects of the acquisition, it would be inequitable to fix the Respondents with the additional costs of addressing this discrete issue that the Claimants had lost.

8. In Purfleet Farms [2002] Potter LJ stated the presumption that, under the compulsory purchase code, a claimant should be entitled to its costs in the absence of some special reason to the contrary. A tribunal not allowing such costs must be able to identify circumstances:

“in which the tribunal considers that an item of costs incurred, or an issue raised, was such that it could not, on any sensible basis, be regarded as part of the reasonable and necessary expenses of determining the amount of the disputed compensation.

... in which the claimant’s conduct of, or in relation to, the proceedings has led to an obvious and substantial escalation in costs over and above those costs which it was reasonable to incur in vindication of his right to compensation.”

9. Purfleet Farms [2002] was approved in Blakes Estate [2005].

10. Mr Good BL did not oppose Mr Gibson’s BL suggestion that no distinction should be made between a point of legal principle and a valuation issue.

11. Mr Good BL referred to Bell v SEHSST [2004] in which Mrs Bell claimed a disturbance payment. The Tribunal decided that it was a ‘compensation reference’ but determined that the Claimant had chosen the wrong forum for determination of the issue. The Tribunal concluded that on balance it was fair to make no award of costs.

12. Negative equity is a matter of current widespread concern, no helpful recent authority on the consequences for compulsory purchase was found by either party and the Tribunal concludes that it was neither unreasonable nor unnecessary to raise the issue.
13. The Tribunal agrees with Mr Gibson's BL suggestion that in this case, although the claimants lost on the issue, there was no special reason to depart from the Purfleet presumption and the Claimants should have their reasonable costs.

ORDERS ACCORDINGLY

26th January 2011

Mr M R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI

LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:

Claimant: Keith Gibson BL instructed by O'Reilly Stewart Solicitors.

Respondent: Patrick Good BL instructed by Harrisons Solicitors.