ACQ/153/2003

LANDS TRIBUNAL ACT 1949

COMPENSATION – compulsory purchase – chattels removed from land by acquiring authority and sold – claim for loss of value – held claimant had failed to establish any loss due to action of acquiring authority

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN	**EDWARD BRIAN HALL**	**Claimant**
	and	
	SANDWELL METROPOLITAN BOROUGH COUNCIL	**Acquiring Authority**

Re: Land at the rear of
32 Park Lane East
Tipton
West Midlands

Before: The President

Sitting at Birmingham Civil Justice Centre, 33 Bull Street, Birmingham B4 6DS on 7 October 2008

The claimant in person
David Park instructed by Legal Services, Sandwell Metropolitan Borough Council, for the acquiring authority

DECISION

1. I gave a decision on preliminary issues in this reference on 14 January 2008. That decision sets out the background and relevant factual matters relating to the claim, and it is unnecessary for me to repeat them here. I determined that Mr Hall's commercial use of the subject land was unlawful and that the claim for compensation for loss of business profits and the value of chattels belonging to the business that were on the land when possession was taken was excluded by virtue of rule (4) in section 5 of the Land Compensation Act 1961.

2. I concluded that Mr Hall might possibly have a valid claim for the value of his own personal chattels that were on the land when possession was taken. I said this at paragraphs 28 and 29:

> "28. It was in my judgment undoubtedly lawful for the council to deal under section 41 with the items left on the land that they had acquired. They were property found on premises that they owned. The fact that they acted lawfully in vesting the items in themselves would not, however, necessarily preclude any claim for compensation under rule (6) in respect of their value. If Mr Hall is correct in his contention that he was unable to remove them because of factors consequential upon the compulsory acquisition, then he may be able to claim the value of those items that belonged to him personally rather than to the business. He attributed his bankruptcy to the failure of the council to make an advance payment, and his inability to rent alternative premises was, he said, due to his bankruptcy.
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> 29. The issue thus resolves itself into what is essentially a question of fact, and I have considered whether there is sufficient evidence before me to determine this question at this stage. Although I note in Mr Hall's witness statement at paragraph 62 that his bankruptcy ended in June 2001, so that this could not have been the factor that Mr Hall said it was in July 2002 when the section 41 notice was served, I do not think that I can conclude on the facts that Mr Hall is necessarily unable to succeed on this sole remaining element of the claim. This is a matter on which each party ought to be allowed to adduce evidence."

3. I made clear in paragraph 31 that it would be for Mr Hall to prove his case in relation to the chattels. I ordered that each party must not later than 16 March 2008 file and exchange any further witness statements on which it might wish to rely on this issue; that the acquiring authority must lodge an agreed statement of facts not less than 21 days before the hearing and a bundle of documents not less than 14 days before the hearing; and that skeleton arguments must be lodged and exchanged not less than 7 days before the hearing.

4. On 25 April 2008 (after time had been extended) the council filed witness statements by David Philip Rowe, formerly employed as a Principal Structural Engineer by the council, and Alan William Whitney, a Senior Legal Assistant in the council's Legal Services Division. Mr Hall filed no witness statement. The council lodged a statement of facts. This had been sent to Mr Hall for his agreement, but Mr Hall had not responded. At the hearing he said that

he did not agree the statement. The council also prepared trial bundles as required, and the skeleton argument of Mr David Park was lodged as required. Mr Hall provided nothing.

5. At the hearing Mr Hall said that he had received the witness statements, the trial bundles and the skeleton arguments in each case two days after the time limited by the order and the draft agreed statement of facts had been sent to him insufficiently in advance of the deadline for him to consider it. He therefore applied, he said, to "strike", by which I understood him to mean that I should not allow the council to rely on any of the material that they had submitted. Since there was nothing to suggest that Mr Hall had been prejudiced in any way, I refused this application. In the event Mr Park saw no need to rely on the witness statements in the absence of any new evidence on Mr Hall's part.

6. Mr Hall said that he relied on his own witness statement, which he had signed on 1 March 2006. He said that he had been unable to remove from the premises the goods that were his because they were held by his trustee in bankruptcy at all times up to their removal by the council. The goods consisted of a Borgward Isabella car, a Wolseley Hornet Special car and quite a few other items which he was unable to identify, although he believed that they had been listed. The value of the cars was well in excess of the amounts for which the council had sold them. In his witness statement Mr Hall said that in 1998, following the vesting of the land in the council under the CPO, he had instructed his solicitors, Silks, to obtain some form of interim payment from the council. At that time he was running short of money, and as a result of the council delaying the making of a payment to him he was made bankrupt in June 1998.

7. Mr Hall's claim is dependent on his being able to show that his bankruptcy, and thus his inability to remove and sell his personal chattels, was caused by the council's failure to make an advance payment of compensation. The council, however, would only have been under a duty to make an advance payment if a request in writing complying with the requirements of section 52(2) of the Land Compensation Act 1973 had been made. There is no evidence that any such request was made. Indeed Mr Hall did not suggest that any written request at all had been made. It follows that for this reason at least the claim must fail.

8. In view of this conclusion, which disposes of the claim, it is unnecessary for me to make findings of facts and to reach conclusions on other matters that Mr Hall would have had to establish in order to succeed in his claim.

9. I indicated at the hearing that I proposed to dismiss the claim on this basis. Mr Park applied for the council's costs for the period after November 2005 (when the trustee in bankruptcy assigned his interest in the claim to Mr Hall). Mr Hall sought to resist this. He said that until seven days before the preliminary hearing the council were dealing with the claim on the basis that there was a claim in respect of the tools that were legally on the premises. Seven days before the preliminary hearing, however, he said, the council changed its case to argue that the use of the land for the commercial storage of parts and machinery was unlawful.

10. Mr Hall's recollection in this respect was inaccurate. The preliminary hearing had been ordered in February 2007 to determine as a preliminary issue whether the use of the land was lawful and whether compensation was excluded under rule (4). A joint statement dated 15 March 2006 by the valuers on each side had made clear that the council was taking the point.

11. I can see no reason why the council should not have their costs. The claim is dismissed, and the claimant must pay the acquiring authority's costs of the reference from 1 December 2005, such costs if not agreed to be the subject of detailed assessment by the Registrar on the standard basis.

Dated 9 October 2008

George Bartlett QC, President