

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2021] UKUT 78 (LC)
UTLC Case Number: ACQ/288/2019

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – COSTS

BETWEEN:

**SMOKE CLUB LIMITED (1)
(IN ADMINISTRATION)
KAYMONT FINANCE LIMITED (2)
ROBERT ALAN DOYLE (3)**

Claimants

and

**NETWORK RAIL INFRASTRUCTURE
LIMITED**

Respondent

**Re: Crucifix Lane,
London SE1**

DETERMINATION ON COSTS BY WRITTEN REPRESENTATIONS

**Mr Justice Fancourt, Chamber President
and
Mr Mark Higgin FRICS**

Miss Tiffany Scott QC for the claimants
Mr Philip Sissons for the respondent

Introduction

1. On 30 March 2021 the Tribunal handed down its decision in this reference, in which we found the claimant had a compensatable interest in land for the purposes of the Compensation Code, namely a periodic tenancy from year to year of Arch 11, the Reference Land, with security of tenure under the 1954 Act. This was the determination of the preliminary issue in this reference as previously ordered by the Tribunal.
2. We have now received submissions on costs from the parties.

Submissions

3. Miss Scott QC on behalf of the claimants (“SCL”) submits that the claimants were the successful party in the determination of the preliminary issue, and while the Tribunal determined that the case for a 15-year lease based on proprietary estoppel failed, the factual matters explored, the disclosed documents and witness evidence were all relevant and of assistance the Tribunal in coming to its decision on the alternative periodic tenancy issue.
4. It was further submitted that in substantiating the claim for a periodic tenancy it was necessary to establish the nature and origin of the relationship between the parties in order to provide the Tribunal with the context in which the dispute had arisen. It was essential for the Tribunal to hear the entire account and the evidence of Mr Doyle and Mr Gill to comprehend the true nature of the agreement that had been reached. The claimants therefore seek payment of their costs.
5. Mr Sissons on behalf of the respondents (“NR”) submits that it is wrong for the claimants to declare that they were the successful party and that both parties enjoyed some degree of success. In the circumstances the outcome could be described as a “draw”. Mr Sissons suggests that an issues-based approach with parties having the costs in the elements of the decision where they were each successful would reflect that, but he recognises that disentangling the costs on an assessment would be practically impossible. His conclusion is that no order as to costs would most fairly reflect the respective success of the parties. In the alternative, given that the Tribunal has no basis for assessing the significance of the preliminary issue in relation to the amount of compensation eventually payable, the costs should be in the reference.
6. We have submissions from both parties in relation to interest on costs and payment on account. The claimants seek 3% above the Bank of England base rate from the date of payment by the claimants to the date of judgment and 8% thereafter. Mr Sissons submits that the rate should be 3% both before and after the judgment. Miss Scott QC has provided a brief summary of costs incurred and seeks a payment on account of £285,000, a figure Mr Sissons regards as excessive on the basis that it contains items not germane to the preliminary issue, including fees for Mr Meyric Lewis and Mr Richard Honey, Counsel who were not instructed to appear on the preliminary issue.

Discussion and Conclusion

7. We can see no merit in delaying the outcome of our decision on costs until the question of the amount of compensation is settled. The matter of whether a compensatable interest exists at all has been dealt with as a standalone issue and the question of costs falls to be similarly determined.

8. We do not accept that the outcome of this reference can be characterised as a “draw”. NR sought to deny that SCL had a compensatable interest and consequently asserted that their interest in Arch 11 was that of a tenancy at will, with the consequence that no compensation would be payable. The decision of the Tribunal that SCL had a periodic tenancy, represents some measure of success for the claimants but it falls short of the outcome they sought.
9. Whilst we acknowledge that it was necessary for the Tribunal to have a detailed picture of the relationship between NR and SCL, a significant proportion of the costs associated with this reference have been incurred in SCL’s attempt to secure a lease by proprietary estoppel. A significant amount of the witness and documentary evidence related to that issue, as did the written and oral submissions that we heard. Ultimately, that case was not made out and in principle there needs to be a significant reduction in the proportion of costs that SCL is awarded. Although it was the successful party, it did not succeed on its primary case and was only partly successful. We therefore determine that the claimants are entitled to 50% of their costs, which if not agreed are to be subject to detailed assessment.
10. We further determine that the respondent will make a payment on account of £120,000. We consider the global sum of costs incurred by SCL on the preliminary issue to be too high: we reduced that figure to £400,000 and have awarded 60% of one half of that sum.
11. Regarding the interest on costs, we agree with Mr Sissons that the rate adopted by Miss Scott QC for the interest from the date of judgment is excessive. We take the same stance in relation to interest for the earlier period but award 2% above base rate up to date of this Order and 3% above base rate thereafter.

Mr Justice Fancourt, Chamber President
Mr Mark Higgin FRICS

25 May 2021