LP/74/2006

LANDS TRIBUNAL ACT 1949

IN THE MATTER OF AN APPLICATION UNDER SECTION 84 OF THE LAW OF PROPERTY ACT 1925

BY

MARTIN JOHN HURLEY
and
ALICE MIRIAM HURLEY

Re: 3 Castle Road
Kendal
Cumbria LA 9 7AU

DECISION ON COSTS

1. The originating application was due to be heard on 28 September 2006. On 19 September 2006 the applicants wrote to the Tribunal stating their intention of withdrawing their application because they had taken the view that the restriction in respect of which they had made it was positive in nature so that the Tribunal had no jurisdiction in the matter. They said that they had given notice of their intention to the outstanding objectors, Mrs Nickalls of 7 Castle Road, for whom her son Mr J Nickalls was acting, and Mr Heslop of 9 Castle Road. In a letter to the applicants dated 19 September 2006 Mr Nickalls said that his mother would consent to withdrawal on suitable terms, and he listed 7 matters which he said should be addressed, including "continuation and binding status of covenant", "that there has been no breach of covenant in which there has been acquiescence by the Objectors", and "Applicants payment of costs of the Objectors on the indemnity basis to date the [ ]". Mr and Mrs Hurley replied saying that the terms were unacceptable. Mr Heslop wrote to the applicants on 18 September 2006 saying that he had not had time to consider the proposal to withdraw.

2. In the light of this Mr P R Francis FRICS, the Member who was due to hear the case, ordered that the hearing should be adjourned for 3 months. On 6 October 2006 Mr Nickalls wrote to the Registrar asking the Tribunal to proceed with a hearing or, if the Tribunal considered it necessary, to hold a preliminary hearing to determine the issue of jurisdiction. On 24 October 2006 the Tribunal wrote to Mr Nickalls as follows:

> "Your suggestion that the Tribunal should proceed with the hearing or alternatively with a preliminary hearing as to jurisdiction does not appear to be appropriate. The applicants are seeking to withdraw their application on the ground that the restriction is positive and the Tribunal therefore has no jurisdiction. There is therefore no need for the Tribunal to determine the matter. The appropriate course would be for you to apply to the President under rule 45(2) of the Lands Tribunal Rules 1996 for an order to dismiss the proceedings on terms that the applicants pay your costs. The President would then determine this after giving the applicants the opportunity to make representations in writing."

3. Mr Nickalls, however, did not accept that this course was appropriate, and he continued to press for the issue of jurisdiction to be determined.

4. On 11 February 2007 Mr Nickalls applied to the Tribunal for the proceedings in the Tribunal to be suspended to enable him to make application to the High Court under section 84(2) of the Act for a declaration as to the nature of the restriction. Since under rule 16 the Tribunal has no discretion to refuse such an application the Tribunal ordered that the proceedings be suspended for 4 weeks with liberty to Mr Nickalls to apply to extend the period if application to the court had been made within that time. The Tribunal's order was not issued until 30 May 2007. Mrs Nickalls had in fact died on 6 May 2007. No proceedings in the High Court were brought, and on 28 August 2007 Mr Nickalls applied to have the proceedings in the Tribunal dismissed with the award to the objectors of their costs on the indemnity basis.

5. On 14 September 2007 I ordered, inter alia, that the proceedings should stand dismissed on 19 September 2007 subject to an order as to costs, which would follow. Mr Heslop had applied on 10 February 2007 for his costs in the sum of £2825.61, and Mr and Mrs Hurley had replied to the application, contending that they were not liable for Mr Heslop's costs, and, if they were, that the costs claimed were excessive. On 18 September 2007 Mr Nickalls made application for costs on behalf of his mother's estate, and Mr and Mrs Hurley have responded to this application. I have considered all these submissions.

6. Where an applicant withdraws an application the objectors ought to have their costs unless there is some good reason why they should not. In the case of Mr Heslop I can see no reason why he should not have his costs. The valuation report costs were, in my view, reasonably incurred. The claim for 257 hours of his own time appears to me to be excessive, even allowing for the fact that, being a litigant in person in unfamiliar territory, he would have had to spend more time than a professional. I think that about 150 hours would have been reasonable, and I determine costs in his case at £1850.

7. In relation to the objection of the late Mrs Nickalls, had Mr Nickalls agreed to the withdrawal of the application in September 2006, I would have seen no reason why costs should not have been awarded to his mother up to that time. He did not, however, agree to withdrawal and, despite the clear advice in the Tribunal's letter of 24 October 2006, he continued to refuse to withdrawal. He caused the Tribunal to suspend the proceedings so that he could make application to the High Court. In the event he did not commence High Court proceedings, and eventually he asked that the proceedings be dismissed. The result of his conduct has been that the resolution of the application has been delayed by a year, with the time of the Tribunal and the applicants having had to be spent on procedural matters that it was wholly inappropriate to pursue. In view of this unreasonable conduct on Mr Nickalls's part I think it right to make no award of costs.

8. The application stands dismissed pursuant to the order of 14 September 2007. The applicants must pay Mr Heslop's costs in the sum of £1850. There is no order for costs in relation to the objection of the late Mrs Nickalls.

Dated 5 December 2007

George Bartlett QC, President