

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2009] UKUT 164 (LC)
LT Case Number: LCA/269/2008

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – limitation – Land Compensation Act 1973 – whether proceedings brought when notice of reference sent to Tribunal – whether notice of reference a nullity if failing to identify all persons interested in the land – held claim not statute barred – 1973 Act s 16, Limitation Act 1980 s 9(1), Lands Tribunal Rules 1996 rr 10 & 11

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN

CHRISTOPHER O'DONOVAN

Claimant

and

**MANCHESTER (RINGWAY)
AIRPORT PLC**

**Acquiring
Authority**

**Re: Windyridge,
Mill Lane, Ridgeway,
Altrincham, Cheshire
WA15 ORE**

Before: The President

**Sitting at 43-45 Bedford Square, London WC1B 3AS
on 25 August 2009**

Joseph Harper QC instructed by Orr Litchfield for the claimant
Patrick Walker, barrister, of Hammonds LLP, solicitors of Manchester, for the compensating authority

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The following case is referred to in this decision:

Hillingdon London Borough Council v ARC Ltd [1999] Ch 139

DECISION ON A PRELIMINARY ISSUE

1. This reference is one of over 200 made by owners of houses in the vicinity of Manchester Airport under Part 1 of the Land Compensation Act 1973 claiming compensation for depreciation caused by noise arising from the use of runway 2 at the airport. The preliminary issue that I have to determine is whether the claim in this case is statute-barred.

2. Under section 1(1) of the 1973 Act, where the value of an interest in land is depreciated by physical factors (which include noise caused by the use of public works) compensation is payable by the responsible authority, provided that the interest is one qualifying for compensation and a claim is made in accordance with the Act. Under section 2(1) and (2) an interest qualifies for compensation if it was acquired by the claimant before the relevant date and, if the interest is in land which is a dwelling, it is the interest of an owner-occupier and the claimant resides in the dwelling. The interest (subsection (4)) must be the fee simple or a tenancy with at least three years unexpired. “Relevant date” is defined by section 1(9) as the date when the works were first used after completion. Section 3(1) provides that a claim shall be made by serving on the authority a notice containing particulars that are set out in the subsection. Section 3(2) provides that no claim shall be made before the expiration of twelve months from the relevant date and that the day next following the expiration of the twelve months is referred to as “the first claim day.”

3. Section 16 provides that “any question of disputed compensation” shall be referred to and determined by the Lands Tribunal. Under section 9(1) of the Limitation Act 1980 an action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued. In *Hillingdon London Borough Council v ARC Ltd* [1999] Ch 139 the Court of Appeal held that it was appropriate to regard a reference to the Lands Tribunal by a claimant for the purpose of resolving a question of disputed compensation as “an action to recover” that compensation within the meaning of this provision.

4. The Lands Tribunal Rules 1996 (as amended) contain (and, incidentally, still contain, after the transfer of the Tribunal’s jurisdiction to the Lands Chamber of the Upper Tribunal) the following provisions:

“10. Notice of reference

(1) A reference shall be made by sending to the registrar a notice of reference together with sufficient copies for service upon every other person named in the notice.

(2) The parties to the proceedings shall be the person lodging the notice of reference and the persons named in that notice.

(3) The notice of reference shall contain—

- (a) the name and address of the person lodging the reference and, if he is represented, the name, address and profession of the representative;
- (b) the name and address of every other person with an interest in the land to which the reference relates (“the land”);
- (c) the address or description of the land;
- (d) the nature of the interest in the land of the person lodging the reference;
- (e) the statutory provision under which the reference is made; and
- (f) the signature of the person lodging the reference or his representative and the date the reference was signed...

11. Entry of reference

- (1) Upon receipt of a notice of reference, the registrar shall enter particulars of it in the Register of References and shall send a copy of the notice to every party to the proceedings other than the applicant.
- (2) The registrar shall inform all parties to the proceedings of the number of the reference which shall constitute the title of the proceedings.”

5. Runway 2 at Manchester Airport, the public works in respect of which the claim was made, was first used on 5 February 2001, which is the relevant date, therefore, under section 1(9). The first claim day accordingly was 6 February 2002. On this latter date Guest Burgess, chartered surveyors, gave notice of claim under Part 1 on behalf of Mr and Mrs C O’Donovan, identifying the land as Windyridge, Mill Lane, Ashley, and stating the claimant’s interest in it as “long leasehold”. On 31 January 2008 Mr Christopher P O’Donovan (the son of Mr and Mrs C O’Donovan, in whose name the claim had been made) telephoned the Tribunal and the Tribunal sent to him a fee remission form. On 7 February 2008 the Tribunal received from Mr C P O’Donovan, together with a cheque for £50, a completed form entitled “Application under Part 1 Land Compensation Act 1973” and dated 20 December 2007. Because the notice was not on the Tribunal’s standard form, a form was sent to Mr C P O’Donovan for completion, and the completed form was received by the Tribunal on 12 February 2008. In both the form received by the Tribunal on 7 February 2008 and that received by the Tribunal on 12 February 2008 the claimant was stated to be Christopher O’Donovan. On 13 March 2008 the Tribunal wrote to the claimant and to the compensating authority’s solicitors giving the reference allotted to the case and enclosing (in its letter to the solicitors) a copy of the notice of reference.

6. On 22 May 2008 Hammonds, the authority’s solicitors, wrote to the Tribunal to say that the authority did not accept that Mr O’Donovan had the right to apply for compensation as the claim had been referred to the Tribunal after the limitation period had expired; and on 24 June 2008 they applied to have this matter determined as a preliminary issue. On 25 July 2008 I ordered that the issue of whether the claim is statute-barred should be determined as a preliminary issue, and I ordered that any witness statements must be filed and exchanged not

later than 3 October 2008. In the event no witness statements were filed before that date, and I rejected a request on the part of the authority to have the time extended.

7. The documents received by the Tribunal on 7 February 2008 had been sent by recorded delivery. It was always asserted by Mr C P Donovan that they had been posted on 5 February 2008, but no proof of this had been put forward. At the hearing, however, a witness statement by Mr C P Donovan was proffered and this exhibited a photocopy of a receipt of a recorded delivery letter stamped in Altrincham “05 FE 08”. On the basis of this record Mr Patrick Walker for the authority accepted that the documents had indeed been posted on 5 February 2008. It was also accepted that rule 10 does not require notice of reference to be made on the tribunal’s standard form and that, with the exception of one matter to which I will refer later, the form sent on 5 February 2008 contained the particulars required by rule 10(3).

8. Notwithstanding this Mr Walker still contended that the claim was statute-barred. He said that, although rule 10(1) provides that a “reference shall be made by sending to the registrar a notice of reference”, posting a notice of reference does not constitute the bringing of an action within section 9(1) of the Limitation Act. He relied on the provisions of the Civil Procedure Rules in arguing that the earliest date on which proceedings are brought for the purposes of the Act is the date when the claim form is received by the court office (CPR 7PD5.1); and that it is the existence of “proceedings” that signifies the bringing of an action, and that, under the Rules, it is the allocation of a number to the reference that signifies the start of proceedings.

9. I cannot accept these arguments. In my judgment proceedings in the Lands Tribunal on a claim for compensation are “brought” when reference of the dispute is made; and reference is made, as rule 10(1) states, by sending to the Registrar a notice of reference. There is nothing in the provision to suggest that the reference is not made until it has been received. In this respect there is an obvious contrast with rule 6(1), dealing with appeals, which provides:

“An appeal to the Tribunal shall be made by sending to the registrar a written notice indicating an intention to appeal so that it is received by the registrar –”

within 28 days of the decision appealed against or the grant of permission to appeal.

10. Nor can I see any reason to conclude that proceedings are not brought until the Registrar has allocated them a number under rule 11. The Civil Procedure Rules have no application in the Lands Tribunal (although they may have some persuasive force in terms of the way in which the Tribunal exercises its powers). Certainly the CPR cannot under any principle of construction be used for the purposes of construing the Lands Tribunal Rules.

11. Mr Walker advanced a further argument. He pointed out that under rule 10(3) a notice of reference must state both the name and address of the person lodging the reference and the name of every other person with an interest in land to which the reference relates. Producing a copy of the Land Registry title Mr Walker said that the proprietors are shown to be Christopher Edmund O’Donovan and Audrey O’Donovan. The notice of reference stated as the person

entitled to the interest Christopher O'Donovan, and it did not give Mrs O'Donovan's name either as a claimant or as another person interested in the land. Therefore, said Mr Walker, the notice of reference was void and of no effect.

12. The contention is a surprising one. The authority were given notice of the notice of reference on 13 March 2008. The claim under Part I had been submitted to them on 6 February 2002 and, as I have said, it had named as the claimants Mr and Mrs C O'Donovan. The authority had corresponded with Mr and Mrs O'Donovan as claimants at least up until 4 September 2007. The suggestion that the notice of reference was invalid because Mrs O'Donovan was not mentioned in it was first raised in Mr Walker's skeleton argument on the day before the hearing, 17 months after the authority had received notice of the reference under rule 11. Besides being without merit the contention is in my judgment clearly wrong. As Mr Joseph Harper QC for the claimant pointed out, the Tribunal received what on the face of it was a valid notice of reference. There was no reason for it to treat it as other than valid. Nor can there be any doubt that the "question of disputed compensation" (within the meaning of section 16) to which the proceedings relate is the amount of compensation payable in respect of the long leasehold interest in Windyridge. If, in the course of such proceedings, it is discovered that a part-owner was not identified in the notice of reference, I can see no difficulty in amending the record so that it is correct in this respect. There can be no justification for treating the proceedings (which, as here, may have been continuing for many months) as a nullity, so that they have to be started all over again.

13. I would add that I am surprised that in the correspondence and documents prepared and sent to the Tribunal by Mr C P O'Donovan over a period of months (he has only very recently instructed solicitors), reference is always made to "Christopher O'Donovan", with no attempt to distinguish father from son on the basis of a middle name or initial. Each of them signs "C O'Donovan". All of the correspondence comes from Windyridge. This does not appear to be of concern to the authority, but amendment of the record to include Mrs O'Donovan as a claimant would reduce the possibility of confusion in future.

14. The preliminary issue is decided in the claimant's favour. The claim is not statute-barred, and the Tribunal has jurisdiction to determine the question of disputed compensation, which is the subject of the reference. The parties are now invited to make submissions on costs, and a letter relating to this accompanies this decision, which will become final when the question of costs has been determined.

Dated 26 August 2009

George Bartlett QC, President